

# **THE MAGDALEN COMMISSION REPORT**

**Report of Mr Justice John Quirke**

**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**

**May 2013**

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## CHAPTER 1 INTRODUCTION

### A TERMS OF REFERENCE AND ESTABLISHMENT OF COMMISSION

1.01 Following the publication of the Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries, (“the McAleese Report”), I was requested to advise and report to the Government pursuant to the following Terms of Reference:

“Mr Justice Quirke will, taking into account the findings of the “Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries”, be asked to do the following:

(i) to advise on the establishment of an ex gratia Scheme (to operate on a non-adversarial basis) including identifying the criteria and factors to be taken into account to facilitate the early establishment and effective conduct of an ex gratia Scheme for the benefit of those women who were admitted to and worked in a Magdalene Laundry and in the Laundry operated in the Training Centre at Stanhope Street, Dublin, taking into account criteria determined to be relevant, including work undertaken and other matters as considered appropriate, to contribute to a healing and reconciliation process;

(ii) to examine how best to operate (as part of that Scheme) an ex gratia Fund, of a sum sufficient to meet the recommendations of Mr Justice Quirke, the nature and amount of ex gratia payments to be made out of the Fund and on the determination of applications for payment in an effective and timely manner that ensures the monies in the Fund are directed only to the benefit of eligible applicants and not on legal fees and expenses.

(iii) to examine how the Government might best provide supports (including health services such as medical cards, mental health services and counselling services and other welfare needs) as part of the Scheme for women who require such supports as a result of their experiences in the Laundries.

(iv) to consider the approach to be taken in circumstances in which a payment has already been made by the Redress Board by way of redress to a former resident of an industrial school, where such payment included a sum specifically due to the direct transfer of that person from an industrial school to a relevant Laundry and their time or part of their time spent in a Laundry or Laundries.

(v) to examine the effect, if any, of the making of an ex gratia payment to a person who is resident in the UK and how best the making of any such payment should be structured so as not to adversely affect their existing entitlements to benefits and supports.

(vi) to advise as to what steps or measures are appropriate to ensure that ex gratia payments or supports or assistance provided are disregarded for the purposes of determining entitlement of Social Welfare payments and/or income tax liability.

(vii) to report back to Government within three months with recommendations.”

1.02 Because of the diversity and scope of the matters to be addressed and determined within the prescribed three-month period I immediately established and chaired the following small advisory group of individuals with particular professional expertise and experience:

Mr Ciarán Breen, Director, State Claims Agency,

Mr Turlough O’Donnell, Senior Counsel,

Ms Sarah Jane Maguire, Solicitor and Mediator

The group provided me with ongoing voluntary advice and assistance and was central to the recruitment of more than 40 other professional persons (psychologists, counsellors and barristers) who also worked tirelessly with me on a voluntary basis during this project.

The group was (collectively with those who worked voluntarily on my behalf) entitled the Magdalen Commission (“the Commission”) in order to establish an identity for communication purposes.

Ms Sarah Garry was Secretary to the Commission.

Its professional advisors were:

Mr Brian Murray, S.C.

Mr Brendan Savage, B.L.

Mr James Kehoe, Actuary.

Mr Kevin Reynolds, Actuary.

I would like, in particular, to thank the following for their considerable assistance at different stages of this project.

Mr Raymond Byrne, Director of Research, Law Reform Commission,

Ms Nuala Ní Mhuircheartaigh,

Ms Bairbre O’Neill B.L.

## **B WORKING METHOD**

1.03 The Commission met on 12 occasions.

1.04 Because the Scheme envisaged is expressly required to “operate on a non-adversarial basis”<sup>1</sup> the principles and methods applicable to the assessment of damages by the Courts and other Tribunals could not be applied effectively to the Scheme’s design and operation. Other methods and principles had to be found.

1.05 After detailed discussion and consideration the Commission decided that the principles of restorative justice and the methods applicable to and used in alternative dispute resolution, (“ADR”) should be adopted and applied to the design of the proposed Scheme.

In consequence the Commission undertook an “interest-based dispute resolution process” which acknowledged the “blameless” status of the women (“the Magdalen women) who are the subject of this report and focussed upon their present and future needs, interests and underlying requirements.

### **(1) Consultation Process**

1.06 In order to discover the needs, interests and requirements of the Magdalen women the Commission decided to replace sworn evidence (upon which the assessment of damages in an adversarial based system is based) with informal conversations. Only those women who expressed a wish to converse were contacted. A large majority of the eligible Magdalen women expressed a wish to participate and did so.

It was decided to engage with the women directly and to enter into a conversation and a dialogue with them. This conversation was intended to be both an information gathering process and, more importantly, an opportunity for the Magdalen women to convey directly to the Commission and to me, who they were, where they were, what their circumstances were and what could be done to assist them and make their lives more comfortable.

Accordingly, between the 26th of March 2013 and the 9th of May 2013 the Commission spoke with 337 women who had, by then, expressed an interest in the proposed Scheme. Most, but not all are likely to be eligible for inclusion in the Scheme. Some others who expressed an interest could not be contacted within

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<sup>1</sup> See Terms of Reference (i).

the time available. Others were in poor health. One representative group did not wish its members to be interviewed by telephone. All those interviewed were helpful, co-operative polite and totally credible.

The information provided by the women to the Commission has been very valuable. It has often been shocking.

Chapter 4 of this Report describes the conversation and the information gathering process in full.

1.07 The Commission also met and conversed with the representatives and senior members of all of the Religious Orders who were responsible for and managed the designated Magdalen laundries.

Those representatives and members were of considerable assistance to the Commission and expressed agreement and a wish to assist the operation of the process and the proposed Scheme so as to accommodate healing and reconciliation between participants who wish to achieve that objective.

1.08 The Commission also engaged and conversed with a large number of State officers, officials and civil servants. It received co-operation and considerable assistance from the officials, particularly those from the Department of Health, the Department of Justice and Equality and the Department of Social Protection.

## **(2) Submissions**

1.09 Many of the Magdalen women have enjoyed the benefit of excellent representative and advocacy groups and individuals who speak on their behalf and represent their interests in a responsible effective and efficient manner.

At an early stage in its work the Commission decided to invite submissions from those representative and advocacy groups. It was provided with detailed and helpful oral and written submissions from them.

A summary of the submissions made by those individuals and groups is provided in Chapter 4 of this Report.

## **C STRUCTURE OF THE REPORT**

Chapter 2 contains an Executive Summary of the Report.

Chapter 3 of the Report gives detailed consideration to each of the individual Terms of Reference and describes the approach adopted by the Commission to the relevant issues arising in each Term of Reference.

Chapter 4 of the Report describes the Commission's working method and consultation process including conversations with the Magdalen women, the information gathered and the submissions received.

Chapter 5 of the Report considers in detail the proposed ex gratia Scheme.

Chapter 6 of the Report considers the issue of decision-making capacity, in particular in the context of some Magdalen women who may be vulnerable.

Chapter 7 of the Report considers the approach to be taken where eligible Magdalen women may have received certain awards from the Redress Board.

Chapter 8 of the Report examines the special cases of the Magdalen women who are resident in the UK.

## **D ACKNOWLEDGMENTS**

1.10 I am indebted to the following persons, organisations and corporate bodies who provided the Commission and me with their expert services generously, helpfully and tirelessly on an entirely voluntary basis and often for very long periods of time.

Ms. Bernadette Fahy, Counselling Psychologist

The clinical team of "Toward Healing" Counselling and Support Services

The Residential Institutions Redress Board

The Hon Mr Justice Esmond Smyth

Ms. Julia Lomas, Partner, Irwin Mitchell, Solicitors, London, England

Officials of the Irish Embassy in London

The Bar Council of Ireland

Mr. David Nolan S.C.

**The Volunteers.**

Ms. Aoife Fennelly BL, Ms. Sarah Jane Hillary BL, Ms. Sinead Dullaghan BL, Ms. Imelda Kelly BL, Ms. Aisling Dunne BL, Ms. Julia Fox BL, Ms. Jane Ferry BL, Ms. Catriona O'Reilly BL, Ms. Jane Logan Phelan BL, Ms. Sally O'Neill BL, Ms. Deirdre O'Donohue BL, Ms. Jane Horgan Jones BL, Ms. Pamela Keegan BL, Ms. Meg McMahon BL, Ms. Patricia Sheehy Skeffington BL, Ms. Sophie Honohan BL, Ms. Diane Duggan BL, Ms. Michelle Mortell BL, Ms. Maeve Gleeson BL, Ms. Louise Beirne BL, Ms. Anne Marie O'Sullivan BL, Ms. Katherine McGillicuddy BL, Ms. Fiona McMorrow BL, Ms. Laura Maunsell BL, Ms. Sinead Drinan BL, Ms. Sheila Reidy BL, Ms. Hilary Lennox BL, Ms. Kate McCormack BL, Ms. Brenda NicGiolla Mhichil BL, Ms. Caroline McGrath BL, Ms. Alva Maguire, Ms. Helen Louise Caffrey BL, Ms. Orla Ryan BL.

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Senior Officials of the Department of Health

Mr. Brian Purcell, Secretary General, Department of Justice and Equality

Mr. Jimmy Martin, Assistant Secretary General, Department of Justice and Equality

Mr. Karl Oliver, Clerical Officer, Department of Justice and Equality

"Justice for Magdalenes"

Dr. Katherine O'Donnell

Ms. Claire Mc Gettrick,

"Magdalen Survivors Together"

Mr. Stephen O'Riordan

"The Irish Women's Survivors Support Network"

Ms. Sally Mulready

Ms. Phyllis Morgan

Ms. Deirdre Carroll.



## CHAPTER 2 EXECUTIVE SUMMARY

### A INTRODUCTION

2.01 The *ex gratia* Scheme which I am recommending will have the following characteristics:

(i) it will exclude mutually antagonistic roles and positions and will avoid invasive and painful inquiry and interrogation

(ii) it will not require the individual assessment of any of the Magdalen women and

(iii) it will be a speedy procedure as part of a final process of healing, reconciliation and closure and, in consequence,

(iv) it should reflect the expressed wishes of an overwhelming majority of the 337 Magdalen women who actively participated in a consultation process with the Commission.

### B CHAPTER 4 – WORKING METHOD AND CONSULTATION PROCESS

#### (1) *Working Method*

2.02 The “traditional” methods and principles which apply to the awarding and assessment of damages for personal injury are adversarial in nature and require individual assessment based on sworn and documentary evidence of liability, cause, injury and consequence. Individual assessments of the 520 women who, by the 23<sup>rd</sup> May 2013, had expressed an interest in the Scheme would probably take several years to complete and might be further delayed by appeal processes.

2.03 It was decided that a flexible and consensus-orientated approach applying the principles of restorative justice was the appropriate means of achieving the objectives envisaged by the Terms of Reference.

Those principles place an emphasis on underlying interests rather than divisions and seek a creative resolution based upon those factors.

The process adopted was a form of “alternative dispute resolution” (“ADR”) which is an umbrella term for a variety of alternative and flexible processes for resolving disputes. The primary focus of these processes is not the parties’ respective differences, but the needs, interests and underlying requirements of the parties.

The consultation process chosen was intended to give the participants significant control over its conduct and outcome.

The process and the methodology are described in Chapters 4 and 5.

#### (2) *Consultation Process*

2.04 The consultation process commenced on the 26<sup>th</sup> March 2013 and concluded on the 9<sup>th</sup> May 2013.

During that time the Commission consulted and conversed personally with 337 Magdalen women and with a number of senior members of the Religious Orders who now accommodate and care for a further 117 of those women.

A number of groups and individuals who represent and advocate on behalf of the Magdalen women were invited to engage in the consultation and review process. They did so readily and helpfully and they

provided the Commission with oral and written submissions which were considered carefully by the Commission and contributed significantly to my recommendations.

The submissions provided by the groups and individuals have been summarised in Part 4 of Chapter 4.

**C CHAPTER 5: THE SCHEME**

**(1) Part 1: Supports and Benefits**

2.05 The following important information and recurring trends and themes emerged from the consultation process namely: (a) an age profile; (b) diverse and sometimes serious health concerns and problems; (c) concerns relating to the vulnerability and capacity of some women, (d) a significant education deficit and (e) some unsatisfactory living conditions.

**(a) Age Profile**

2.06 The age profile of those Magdalen women with whom the Commission conversed up to and including the 9<sup>th</sup> of May 2013 is shown below. Some 386 of 454 women provided their age. The average age of a Magdalen woman is now 68 years, 3% are under 50 years and 14% are over 80 years.

**Age profile**

Total	Excluding those in care with Religious Orders	Including those in care with Religious Orders	Total in Percentage Terms
Under 50	<b>9</b>	11	3%
50 -60	<b>70</b>	74	19%
60-65	<b>67</b>	74	19%
66-70	<b>72</b>	84	22%
70-75	<b>43</b>	57	15%
75-80	<b>22</b>	33	9%
over 80	<b>32</b>	53	14%
	<b>315</b>	<b>386</b>	<b>100%</b>

**(b) Health Concerns**

During the consultation process the following were amongst many health concerns of Magdalen women: (1) cancer, (2) heart complaints, (3) high blood pressure and diabetes, (4) mental health illnesses, (5) mobility problems, (6) dementia, (7) arthritic complaints, (8) arterial difficulties and (9) visual and hearing deficits.

2.07 A fundamental element of the Scheme should relate to the provision of healthcare and access to healthcare services. The health needs and requirements of the women surveyed are diverse in nature so the women should be provided with access to a comprehensive suite of health care services. Those services include:

- GP services;
- Prescribed drugs, medicines, aids and appliances;
- Dental services;
- Ophthalmic services;
- Aural services;
- Home support;

- Home nursing;
- Counselling services;
- A range of other services, to include chiropody / podiatry and physiotherapy.

I have, therefore, formed the opinion that the health provisions of the Scheme should operate in a manner similar to the scheme made available to certain persons under the Health (Amendment) Act 1996.

### **1<sup>ST</sup> RECOMMENDATION**

***Magdalen women should have access to the full range of services currently enjoyed by holders of the Health (Amendment) Act 1996 Card (“the HAA card”).***

***As an integral part of the ex gratia Scheme a card entitling its holder to health services equivalent to those provided to the holder of a HAA card should be given to each of the women who were admitted to and worked in a designated Magdalen laundry.***

***Details of the range, extent and diversity of the community services to be provided to the Magdalen women are described within Appendix G.***

***Primary legislation similar to the Health (Amendment) Act 1996 or a statutory amendment to that Act is required in order to implement this recommendation. (A draft Heads of Bill is provided within Appendix E).***

#### **(2) Part 2: Ex Gratia Payments**

##### **(c) Vulnerability and Capacity.**

2.08 A significant number of the Magdalen women are frail and some are very vulnerable. Many are now at an advanced age. The Commission is concerned to protect, for the benefit of those vulnerable women, the resources which they will acquire when they receive monetary payments arising out of the proposed Scheme.

It has been necessary for the Commission to seek to balance the needs and interests of those elderly vulnerable women with the needs and interests of the many other Magdalen women who are younger, healthier, more energetic and more independent.

Additionally the Commission has been concerned to accommodate the requirements of those Magdalen women whose capacity to manage their own affairs are in question. Its conclusions and recommendations in that respect can be found in Chapter 6 and Appendix F.

##### **(d) Education Deficit.**

2.09 A number of the women had been deprived of an education because they were admitted to the laundries at an early age and received no additional education.

Some stated that they believed that their right to an education had been “taken away” from them; some could not read or write and some had taught themselves to read and write.

Those who struggled with literacy and numeracy described how they would sometimes feel embarrassed when asked to read or to work with numbers. Some described how they had often wished to return to education but that they believed that it was now “too late”.

A very large number of the women received inadequate educational assistance within the laundries at a time within their lives when education was of considerable importance.

**(e) Living Conditions.**

2.10 Whilst a large proportion of the women surveyed indicated that they were married or widowed, approximately one-third of the women stated that they now lived alone. A significant proportion of women<sup>1</sup> indicated that they lived in conditions that they would not describe as warm and comfortable.

Many of the women stated that they found it hard to make ends meet and to pay household bills. Others indicated that they were “just about” able to pay their bills. Others wished to improve their living conditions; a number of women spoke of having no hot water and no central heating; some women described difficulties in climbing the stairs of their home and indicated that stair lift would improve their situation greatly.

One woman described how she has undergone knee-replacement surgery and is now on a waiting list to have a bathroom shower installed by the local authority. Some women lived in rental accommodation and found it difficult to pay their rent on a regular basis. Some described worries about security and wished to be in a position to replace the doors and the windows of their homes. In particular, many women spoke about being unable to properly heat their homes or described being worried about exceeding their home heating allowance.

**(3) “Criteria” taken into account**

2.11 The advice which I must provide in relation to the proposed Scheme requires me to take into account “criteria determined to be relevant, including work undertaken and other matters as considered appropriate, to contribute to a healing and reconciliation process”.

The above information relating to the Magdalen women’s education and living conditions has been included within the criteria which I have taken into account in deciding upon and calculating “the nature and amount of ex gratia payments...” to be recommended for those women.

I am also taking into account the observations within the McAleese Report in relation to the harsh and physically demanding work required of the women and the traumatic, on-going effects which their incarceration and misery within the laundries has had upon their security, confidence and self-esteem.

In order to seek a level of proportionality between my recommendations for *ex gratia* payments and full and complete awards of damages for personal injuries I have examined and considered some of the methods of assessments of damages for personal injuries adopted by statutory and non-statutory bodies established in recent times.

## **2<sup>ND</sup> RECOMMENDATION**

### **The State Pension (Contributory)**

***While many of the women were in receipt of social welfare and related payments, a very small proportion<sup>2</sup> of the women indicated that they are currently in receipt of the State Pension (Contributory).***

***All of the women who worked within the designated laundries worked without pay, some for very long periods of time. I am recommending that the proposed Scheme should include provisions enabling all of the women who were admitted to and worked in the designated laundries upon reaching pension age, to receive, (from an administrative scheme created for that purpose), the equivalent of the State Pension (Contributory) for the remainder of their lives.***

***The receipt of that benefit will acknowledge the fact that the Magdalen women have worked within (and, arguably to an extent for), the State for a period of time. They are entitled to recognition of that fact.***

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<sup>1</sup> 25% based on answers received from 223 women.

<sup>2</sup> 4% of the women who answered this particular question.

*The payments received by the women under this heading should be tax-free and should not be considered “means” for any means-assessed benefit in the State.*

*Magdalen women who are already in receipt of other State benefits (such as a State Widow’s pension, or a State Non Contributory Pension), should not receive that payment in addition to those existing benefits, but rather a payment sufficient to top this up to the amount of the State Contributory Pension.*

*Equally the minimum weekly payment of €100 for those women who have not yet attained State Retirement Age (see 4<sup>th</sup> Recommendation) is intended to ensure a minimum level of income inclusive of any other State benefits but not in addition to such benefits.*

*This principle should apply equally to other similar circumstances.*

*How that can be achieved is discussed in Chapter 5.*

### **3<sup>d</sup> RECOMMENDATION**

#### **Other Payments.**

*I am satisfied that the traumatic effect of admission and incarceration within the designated laundries has had such an adverse effect upon the education, perceived reputation, subsequent health, life, lifestyle, confidence and self esteem of the Magdalen women that those amongst them who were admitted to a designated laundry and worked there for less than 3 months should be paid the sum of €10,000.*

*That payment should be supplemented to reflect the “work undertaken” by the women within the laundries and under this heading I am recommending that women who worked in the laundries for up to 3 months should be paid a further €1,500 so that women who have spent less than 3 months in the laundries will receive €11,500 (€10,000 as a General Payment and €1,500 as an additional payment for work done).*

*The effects upon the education, reputations, health, lives, confidence and self esteem of those who were admitted to and worked in designated laundries for longer periods are likely to have been greater than those who worked for less than 3 months and I am recommending that they should be paid sums of money correspondingly greater, increasing by €1,000 for each month in the laundries up to 5 years and 3 months, and thereafter by €500 per month up to a maximum total payment of €100,000. The payments for a sample of terms spent in the laundries are set out as follows:*

Time spent in laundries					
Years	Months	General	Work	Total	
		Payment	Payment	Payment	
	up to 3	€ 10,000	€ 1,500	€ 11,500	
0	4	€ 10,500	€ 2,000	€ 12,500	
0	5	€ 11,000	€ 2,500	€ 13,500	
0	6	€ 11,500	€ 3,000	€ 14,500	
0	7	€ 12,000	€ 3,500	€ 15,500	
0	8	€ 12,500	€ 4,000	€ 16,500	
0	9	€ 13,000	€ 4,500	€ 17,500	
0	10	€ 13,500	€ 5,000	€ 18,500	
0	11	€ 14,000	€ 5,500	€ 19,500	
1	0	€ 14,500	€ 6,000	€ 20,500	
2	0	€ 20,500	€ 12,000	€ 32,500	
3	0	€ 26,500	€ 18,000	€ 44,500	
4	0	€ 32,500	€ 24,000	€ 56,500	
5	0	€ 38,500	€ 30,000	€ 68,500	
6	0	€ 40,000	€ 36,000	€ 76,000	
7	0	€ 40,000	€ 42,000	€ 82,000	
8	0	€ 40,000	€ 48,000	€ 88,000	
9	0	€ 40,000	€ 54,000	€ 94,000	
10	0	€ 40,000	€ 60,000	€ 100,000	
More than 10 years		€ 40,000	€ 60,000	€ 100,000	

A more detailed Table of Payments showing precise calculations can be found in Appendix A.

#### **4th RECOMMENDATION**

##### **Income Payments**

***A significant number of the Magdalen women are frail and some are very vulnerable. Many of them are now at an advanced age. The Commission is concerned to protect, for the benefit of those vulnerable women, the resources which they will acquire when they receive monetary payments arising out of the proposed Scheme.***

***It has been necessary for the Commission to seek to balance the needs and interests of those elderly vulnerable women with the needs and interests of the many other Magdalen women who are younger, healthier, more energetic and more independent. In order to achieve that balance the Commission has taken the view that the needs and interests of the Magdalen women would be best addressed by making any ex gratia payments in excess of €50,000 payable to the women as tax free weekly income for the remainder of their lives.***

***The weekly income payable has been calculated actuarially based upon established life expectancy tables. It continues for life and then ceases.***

*It should not be forgotten that the proposed Scheme also requires the provision of weekly tax free payments equivalent to the State Pension (Contributory) - amounting to €230.30 weekly to each woman upon reaching the State Retirement Age (SRA).*

*I am recommending that those women who have not yet reached the SRA should be granted a minimum tax free weekly income of not less than €100 (€5,200 annually), to be paid until the payments equivalent to the State Pension (Contributory) commence. This should overlap with any ex gratia payments in excess of the €50,000 which will also be converted into an income set at a minimum of €100 per week (€5,200 annually) which will be paid until State Retirement Age has been reached or to increase their income if they have already attained State Retirement Age.*

*Similarly, I am recommending that for women who have reached the State Retirement Age, those women should be provided with payments equivalent to the State Pension (Contributory). This should also overlap with any ex gratia payments in excess of the €50,000 which will also be converted into a life income.*

*Examples of the weekly and annual payments to be paid to women under State Retirement Age (SRA) can be found in Part 1 of Appendix C.*

*Examples of the weekly and annual payments to be paid to women who have reached SRA can be found in Part 2 of Appendix C.*

*The exact method to convert the amount of any payment over €50,000 into income (with examples) is described in Appendix D.*

#### **5<sup>TH</sup> RECOMMENDATION**

*I am recommending that appropriate legislative and other measures should be taken to ensure that all monetary payments (whether paid as “lump sums” or as income) should be exempt from income and other tax and should be exempt from being assessed as “means” in relation to other means tested benefits to which eligible Magdalen women are currently entitled.*

*How that can be achieved is discussed in Chapter 5 herein and I am recommending the inclusion of the Magdalen women within the specific exemptions from income and other taxes described in Chapter 5 in respect of payments made to them under the proposed Scheme.*

#### **6<sup>th</sup> RECOMMENDATION**

##### **Payments to fund a “Dedicated Unit”**

*Many of the advocates and representative groups who spoke to the Commission on behalf of the Magdalen women emphasised the need to provide the women with ongoing support and assistance. They, and many of the women in conversation, also spoke of the wish of many women to meet and interact with one another.*

*Some representatives and advocates and some of the women expressed a wish to meet with members of the Religious Orders who were responsible for the management of the designated laundries.*

*Others recommended the establishment of a museum or archival centre or project to honour and commemorate the Magdalen women past and present. There appeared to be a consensus in favour of the creation and maintenance of a small memorial garden within the Sean Mc Dermott Street premises to honour and commemorate the women.*

*All of the above suggestions are consistent with the principles of restorative justice which have influenced and regulated the proposed Scheme.*

*I am therefore recommending that the State should establish, fund, staff and accommodate a small Dedicated Unit which should be charged to provide the following services for eligible Magdalen women:*

- *A helpline accessible daily by the women to assist them to obtain the health, monetary and other benefits to which they will now be entitled<sup>3</sup>*
- *Investigative and other help and assistance in obtaining such sheltered or other housing as they may be entitled to.*
- *Investigative and other help and assistance in obtaining such educational assistance as they may be entitled to.*
- *Practical and, if necessary professional, assistance to enable those women who wish to do so to meet with those members of the Religious Orders who have similar wishes to meet and interact.*
- *Similar practical assistance to meet and interact with other Magdalen women.*
- *The acquisition, maintenance and administration of any garden, museum or other form of memorial which the Scheme's administrator, after consultation with the advisory body or committee referred to below has decided to construct or establish.*

*The Unit should be established after the Scheme's administrator has first consulted with and received written submissions from an advisory body or committee which should be established by the administrator for that purpose and which should include at least 6 Magdalen women. That body or committee should additionally include at least 2 representatives of eligible women currently living within the UK or elsewhere.*

*A simple appeal process to a single agreed independent person should also be provided to resolve disagreement or dissatisfaction by the advisory body or committee with preliminary decisions made by the Scheme's administrator in respect of the matters identified above.*

## **7<sup>th</sup> RECOMMENDATION**

### **Eligibility and Qualification Process**

*I am strongly of the opinion and recommend that, if the proposed Scheme is to be successfully implemented, it will be imperative for the Scheme's administrator to apply a fair and robust eligibility or qualification process so that eligible applicants will have access to institutional and other relevant records and receive such additional and other co-operation and assistance from State and other agencies as they may require in order to enable them to properly record and verify the work which they have done and the periods(s) of time which they have spent within the laundries. Where a written "expression of interest" (or other written application for inclusion within the proposed Scheme) has been provided to the State by or on behalf of a Magdalen woman who was alive on or after the 19th of February 2013 then that woman will be eligible for consideration to be included within the Scheme. Additional income ex gratia payments (payable to women entitled to payments in excess of €50,000) will not accrue to the benefit of the estate of any Magdalen woman.*

*The eligibility or qualification process should provide an appeal procedure for applicants who are dissatisfied with the primary process.*

## **WAIVER**

**2.12** Eligible Magdalen women should be entitled to apply for inclusion within the proposed Scheme and there should be no time limitation placed upon their right to do so.

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<sup>3</sup> This would be comparable to the Liaison Officer available in respect of the HAA card provided for under the Health (Amendment) Act 1996.



However, those women who apply for, are included within and obtain the benefits of the Scheme should not be permitted to make any further claim against the State or any of its agencies in respect of their admission to and time spent within the designated laundries.

Similarly any Magdalen woman who pursues to completion a claim against the State or any of its agencies in any Court or Tribunal seeking compensation or redress in respect of her admission to or work within a designated laundry shall not then be eligible for inclusion within the Scheme.

### **8<sup>TH</sup> RECOMMENDATION**

***I am recommending that they should, therefore, upon agreeing to participate in and accept the benefits of and associated with the Scheme, agree also to waive in writing any further right of action against the State and its agencies arising out of their admission to and work within the designated laundries.***

***The State should provide a draft of an appropriate document of waiver to each woman who applies for inclusion within the Scheme. Because agreement to comply with the terms of such a document will involve the abandonment of a right of access to the courts, each applicant must be advised to take professional legal advice before concluding such an agreement.***

***The cost of such professional legal advice should be borne by the State. The Commission believes that such advice should not be onerous for legal advisors and the State should place an appropriate “cap” upon those costs after such tendering or other process as it deems appropriate.***

### ***State Funding***

During the consultation process the representatives of a number of the Religious Congregations expressed concerns regarding State funding. Under the Health Act 2004 (the “2004 Act”) the HSE is entitled to enter into arrangements with those persons or bodies (the “service providers”) that provide health or other personal social services on behalf of the HSE.

Under s.38 and s.39 of the 2004 Act, the HSE may provide funding and assistance to those service providers and to certain bodies. The service providers must provide the HSE with details of income and expenditure on an annual basis.<sup>4</sup>

Some Congregations (as “service providers”), are concerned that where payments are made to Magdalen women in their care, this could have an adverse effect in terms of funding for their ongoing care. A similar concern arises that any payments made under the Scheme I am recommending would adversely affect the entitlements of those Magdalen women.

### **9<sup>TH</sup> RECOMMENDATION**

***I do not believe that payments made to those Magdalen women in care will or should have an adverse effect on funding received under s.38 or s.39 of the Health Act 2004 but I am aware that under s.10 of the 2004 Act the Minister for Health is entitled to issue “general written directions”<sup>5</sup> to the Health Service Executive (“the HSE”).***

***Since the Minister for Health is empowered to direct the HSE (in respect of s.38 or s.39 funding) not to take into account any monies received by individuals or groups such as the Magdalen women so as to reduce the funding that their carers (including Religious Congregations) will receive I am recommending that the Minister should make such a direction in relation to the Magdalen women.***

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<sup>4</sup> Section 38(3) of the Health Act, 2004.

<sup>5</sup> Section 10(1) of the Health Act, 2004.

***The Minister for Health is, separately, empowered by section 36(1) of the Nursing Homes Support Scheme Act 2009 to make Regulations to give full effect to that Act. I am therefore recommending that the Minister should make Regulations under section 36 of the 2009 Act providing that any monies received by the Magdalen women under the Scheme are not to be taken into account for any purposes under the 2009 Act.***

## **D CHAPTER 6: CAPACITY**

2.13 A significant number of the Magdalen women are frail and some are very vulnerable. Many are now at an advanced age. It will be necessary to protect the resources which some of the women will acquire when they receive monetary payments arising out of the proposed Scheme.

Safeguards must, therefore, be put in place to ensure that the payments made to them are secured and protected and used exclusively for their benefit. Their rights to participate and benefit from the proposed Scheme must remain identical to the rights which will attach to all of the other women who participate in it.

It has been necessary to seek to balance the needs and interests of those elderly vulnerable women with the needs and interests of the many other Magdalen women who are younger, healthier, more energetic and more independent.

### **10<sup>th</sup> RECOMMENDATION**

***The Nursing Homes Support Scheme is a scheme that operates primarily for the benefit of those members of society who are at an advanced age, who may be vulnerable and who may require assistance making important decisions.***

***The provisions of the Nursing Homes Support Scheme Act 2009 (“NHSS Act 2009”) and in particular the provisions concerning the appointment of care representatives will enable a balance to be struck between oversight and supervision on the one hand, and flexibility on the other.***

***I am, therefore, recommending that the scheme established under the NHSS Act 2009 (and in particular the aspects of the scheme that allow for the appointment of certain persons who are bound to act in the best interests of the vulnerable person and who are subject to supervision and accountable to the court for their actions) should be extended and should apply to those women who may benefit under the ex gratia Scheme.***

***The scheme established under the NHSS Act 2009 combines adequate supervision and oversight with flexibility and the scheme should, therefore, be extended to apply to those women who may benefit under the ex gratia Scheme.***

***Details of how this can be achieved can be found in Chapter 6 and in Appendix F.***

## **E CHAPTER 7: THE REDRESS BOARD SCHEME**

2.14 This Term of Reference contemplates the potential for “double recovery” where an applicant for inclusion in the proposed Scheme has already recovered under the Redress Board scheme “due to the direct transfer of that person from an industrial school to a relevant Laundry and their time or part of their time spent in a Laundry or Laundries”.

It is clear that the Oireachtas intended that disclosure of information relating to Redress Board proceedings should be prohibited save in very limited, specific and prescribed circumstances.

However there is scope for accessing certain information. Pursuant to s.28(5A) of the Residential Institutions Redress Act 2002, as amended, the administrators of the Magdalen scheme could, subject to a Ministerial order to that effect and only in the course of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed, request the Redress Board to provide to those administrators documentation prepared for the purposes or in contemplation of an application to the

Board or a submission for a review by the Review Committee (or given in evidence in such application or review).

Pursuant to s.28(5B) of the 2002 Act, the administrators of the Magdalen scheme could, subject to a Ministerial order to that effect (and only in the course of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed), request the Redress Board to provide to those administrators, information or evidence provided or given to the Board or the Review Committee.

Importantly however, and with regard to both s.28(5A) and s.28(5B) I do not believe that these provisions can be relied upon to justify a request to the Redress Board to disclose to the administrators of the Scheme the fact that an award was made or to disclose the details of an award. Further, and in accordance with s.28(6), any information provided may not contain information that could reasonably lead to the identification of any third party, such as an institution or relevant person.

Under section 28(5A) and (5B) of the 2002 Act, disclosure could be made of application forms, submissions for review by the Review Committee and evidence and information given to the Redress Board or Review Committee in respect of applications or submissions for review.

It is possible that documentation disclosed would have to be disclosed in a redacted form. It is not possible to accurately assess whether or not any documentation and information disclosed would enable the administrators of the Scheme to carry out a "cross referencing" exercise effectively (i.e. to identify the extent to which any award made by the Redress Board included a sum specifically due to the direct transfer of that person from an industrial school to a relevant laundry and their time or part of their time spent in a laundry).

Common sense and anecdotal information suggest that it would be difficult, if not impossible. It would certainly be an expensive exercise.

### **11<sup>th</sup> RECOMMENDATION**

***I do not consider that the enactment of further legislation and the time and expense which disclosure, perusal and investigation of Redress Board Orders, transcripts, and remaining evidence would require is warranted since such measures are very unlikely to provide for the Scheme Administrators evidential or other information which would be of relevance to the proposed Scheme.***

***That is because detailed examination of Redress Board orders, transcripts and other documents is very unlikely to identify and measure that part of an award which has been made because it is "specifically due to the direct transfer of that person from an industrial school to a relevant Laundry and their time or part of their time spent in a Laundry or Laundries".***

***I am therefore recommending that the Scheme should not seek to investigate or consider this matter further.***

## **F CHAPTER 8 - UK RESIDENTS**

2.15 A number of women who may benefit under the Scheme are resident in the UK and are concerned that any payment made to them by the Irish Government will be regarded as income for means-tested benefits purposes;

2.16 In the UK when payments which are "*made in consequence of any personal injury to the claimant*" are paid into a "*bare trust*" fund known as a "*personal injury trust*" fund that payment is disregarded as capital for income support / means-tested benefit purposes.

It is the *source* of the funds that dictates whether or not the statutory disregards should apply. Where the *personal injuries* element of the payment is absent, the disregard will not apply.

Where funds which are not deemed to derive from a payment made in consequence of a personal injury are placed within a “*personal injury trust*” those funds will be regarded as capital for means-tested benefits purposes and the beneficiary under the trust may lose their entitlement to benefits and supports.

Neither I nor the UK expert whose advice I have sought can advise with authority that the making of the ex gratia payments recommended within this Report will not adversely affect the existing social and other entitlements, benefits and supports available to UK residents if the payments are paid into “*personal injury trust*” funds created for that purpose.

Those parts of the recommended payments which are made in recognition of the effects which incarceration has had upon the health, life, lifestyle, confidence and self-esteem of the Magdalen women can certainly be validly be described as “*personal injury*” payments and it can also be validly argued that the payments equivalent to the State Pension (Contributory) and those made for the “*work undertaken*” by the women during that time was “*made in consequence of... (a)... personal injury to the claimant*”.

However contrary arguments can be advanced and legislative and other changes can be made for policy and other purposes within the UK at any time.

Bilateral arrangements exist between the Department of Social Protection and the Department of Work and Pensions (the Department which has responsibility for welfare and pension policy in the UK).

### **12<sup>TH</sup> RECOMMENDATION**

***Since the UK tax and benefit regime is governed and regulated by the UK authorities it is ultimately those authorities who will decide whether payments will be disregarded in the context of either tax or means-tested benefits or both.***

***Dialogue at a political level, where possible, with a view to ensuring certainty on this matter is all that I can recommend.***

***If dialogue at political level confirms that payments into “personal injury trusts” will have no adverse effects upon UK benefits then the Scheme should allow for payments (capped at ST£1000) in respect of the cost of establishing the requisite trust funds.***

(Some Magdalen women now live in other jurisdictions, including the US, Canada, Australia, Germany, Switzerland and other countries.

Although my Terms of Reference do not expressly refer to those women the observations which I have just made apply with equal force to their circumstances, their tax liabilities and the social and other benefits to which they are entitled).

## CHAPTER 3 TERMS OF REFERENCE

### A THE MCALEESE REPORT

*“taking into account the findings of the “Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries”*

3.01 Since I have been specifically required to take into account the findings of the Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries (“the McAleese Report”) it is necessary to consider a number of those findings.

The McAleese Report identified and examined five main areas in which there was State involvement in the running and operation of the Magdalen laundries. These were:

- Routes by which the girls and women entered the laundries;
- State inspections of the laundries;
- State funding of and financial assistance to the laundries;
- Routes by which girls and women left the laundries;
- Death registration, burials and exhumations.

The Report found that there were many routes by which women entered the laundries and that the routes of entry made or facilitated by the State included:

- Referrals of girls and women from the criminal justice system;
- Referrals from Industrial and Reformatory Schools;
- Referrals from the health and social services sector; and
- Referrals from Mother and Baby Homes.<sup>1</sup>

It found further that the Magdalen laundries were, as workplaces, subject to the provisions of the Factories Acts and that accordingly the laundries were inspected in the same way and to the same extent as commercial and non-religious operated laundries.

It also found evidence of State oversight or follow-up of individual women in the laundries. This included women referred to Magdalen laundries by probation or social services and thereafter followed-up by Probation Officers and Social Workers.<sup>2</sup>

The Report further found evidence of direct financial assistance to the Magdalen laundries and evidence of State funding and financial assistance grouped under the following headings:

- Payments under the Public Assistance Acts;
- More generalised payments under the Health Acts;
- Payments in respect of certain remand and probation cases;
- Miscellaneous direct payments from health authorities.

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<sup>1</sup> McAleese Report, Part III, Chapters 9-11. Available at <http://www.justice.ie/en/JELR/Pages/MagdalenRpt2013>.

<sup>2</sup> McAleese Report, Part III, Chapter 9.

It also found that there were many different routes by which women left the Magdalen laundries and that a number of routes of exit involved women moving from a Magdalen laundry to a State-run or operated institution.

The McAleese Committee sought to discover whether every death that occurred within a Magdalen laundry had been registered with the General Register Office and it investigated burials of women who died in Magdalen laundries.<sup>3</sup> It also included information regarding some other areas of State involvement with Magdalen laundries.<sup>4</sup>

3.02 Part IV of the McAleese Report described the background and profile of the women who were admitted to the Magdalen laundries (“the Magdalen women”) and recorded recollections of living and working conditions in the laundries described by a number of women.

The Report did not make specific findings in relation to these matters because the number of women surveyed was comparatively small. However the historical accounts provided by the 337 women who were interviewed by me and on my behalf, whilst anecdotal in nature, were entirely consistent with the observations of Senator Mc Aleese in the introduction to his Report and, in particular the following:

“The women who were admitted to and worked in the Magdalen Laundries, whether for short or long periods of time since the foundation of the State, have for too long felt the social stigma of what was sometimes cruelly called the ‘fallen woman’. This is a wholly inaccurate characterisation, hurtful to them and their families, that is not borne out by the facts.....”<sup>5</sup>

He noted that the women who entered the Magdalen laundries were from diverse backgrounds and that the circumstances that led to their admission were varied and complex stating that:

“Some were children, released on licence from Industrial or Reformatory Schools to the Magdalen Laundries before they reached 16 years of age.

Some were former Industrial School children referred onwards either directly from these Schools or during the period of their post-discharge supervision.

Some were young girls who had been boarded-out and were rejected by their foster parents when maintenance payments from the authorities ceased.

Some were young women over 16 years of age, who had been orphaned or who were in abusive or neglectful homes (in many of these cases, their younger siblings would have been committed to Industrial Schools).

Some were women with either mental or physical disabilities which rendered them unable to live independently, at a time when supported living facilities did not exist. Some had psychiatric illnesses and were referred from psychiatric hospitals.

Some were referred by social services at a time when appropriate accommodation for teenagers was not available.

Some were simply poor and homeless and either voluntarily sought shelter in or were referred to the Magdalen Laundries by County Homes or, later, by social services.

Many girls and women were placed in the Magdalen Laundries by their own families, for reasons that we may never know or fully understand, but which included the socio-moral attitudes of the time as well as familial abuse.

These and a myriad other stories make up the background of the women who spent some period of time in a Magdalen Laundry between 1922 and the closure of the last such institution in the State in 1996.

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<sup>3</sup> McAleese Report, Part III, Chapter16.

<sup>4</sup> McAleese Report, Part III, Chapter17.

<sup>5</sup> McAleese Report, Introduction, paragraph 7.

The girls and women referred to the Magdalen Laundries by officials in the criminal justice system, social services, or even from psychiatric hospitals and County Homes would have been made aware why they were there and – in the case of court referrals - how long they were required to stay.”<sup>6</sup>

He continued:

“However, this would not have been the experience of the young girls referred to the Magdalen Laundries from industrial schools or by non-state agents, including girls referred by their own families.

None of us can begin to imagine the confusion and fear experienced by these young girls, in many cases little more than children, on entering the Laundries - not knowing why they were there, feeling abandoned, wondering whether they had done something wrong, and not knowing when - if ever - they would get out and see their families again.

It must have been particularly distressing for those girls who may have been the victims of abuse in the family, wondering why they were the ones who were excluded or penalised by being consigned to an institution.

To add to this confusion, most found themselves quite alone in what was, by today’s standards, a harsh and physically demanding work environment. The psychological impact on these girls was undoubtedly traumatic and lasting”<sup>7</sup>

## **B THE EX GRATIA SCHEME**

*“(i) to advise on the establishment of an ex gratia Scheme (to operate on a non-adversarial basis) including identifying the criteria and factors to be taken into account to facilitate the early establishment and effective conduct of an ex gratia Scheme for the benefit of those women who were admitted to and worked in a Magdalene Laundry and in the Laundry operated in the Training Centre at Stanhope Street, Dublin, taking into account criteria determined to be relevant, including work undertaken and other matters as considered appropriate, to contribute to a healing and reconciliation process;”*

3.03 The concept of the proposed Scheme results directly from the findings of the McAleese Report and the unprecedented responses of the Taoiseach, the Government of Ireland, the Oireachtas and the Irish people to those findings.

As I have indicated earlier the McAleese Report found that there had been direct State involvement in the running and operation of the Magdalen laundries.

The consultation process conducted by the Commission suggested that a large number of young girls and women who were admitted to the Magdalen laundries were degraded, humiliated, stigmatised and exploited (sometimes in a calculated manner).

3.04 The Scheme envisaged is intended, amongst other things, to reflect the wish of the Irish community to reduce the hurt and pain suffered by the Magdalen women by providing them with monetary payments and with sufficient health and other State benefits to ensure that the remainder of their lives will be made as comfortable as is reasonably possible.

3.05 The Scheme has been described as “ex gratia”. It is required to operate on a “non-adversarial basis” (a) for the benefit of the Magdalen women and (b) in order to “contribute to a healing and reconciliation process”. The Scheme envisaged is clearly intended to provide personal monetary and other benefits to the Magdalen women. It does not contemplate the provision of benefits to persons who may have been indirectly or otherwise affected by the admission of those women to and their work within a designated laundry.

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<sup>6</sup> McAleese Report, Introduction, paragraphs 7-8.

<sup>7</sup> McAleese Report, Introduction, paragraph 9.

The Scheme will have novel characteristics and, if adopted, will be the first such Scheme to be established in this jurisdiction.<sup>8</sup>

**(1) Criteria and factors**

3.06 I have been asked to identify the “criteria and factors to be taken into account” in order to establish the Scheme and to enable it to function speedily and effectively. I have also been specifically required to take into account relevant criteria “including the work undertaken” by the Magdalen women during their time in the Magdalen laundries.

3.07 For generations the Courts in Ireland and elsewhere have adopted particular methods and applied particular principles to the awarding and assessment of damages required to compensate claimants who have suffered personal injury, loss and damage as a result of the wrongdoing of others. In order to be in a position to make valid and coherent assessments the Courts (and successive Tribunals and Redress Boards) rely upon documentary and other evidence including the sworn testimony of witnesses.

In general terms, to recover damages a claimant must be assessed individually and must adduce sworn and other evidence which will establish, on the balance of probabilities, (a) the cause of the injury, (b) the nature, extent and effect of the injury (i.e. the pain, suffering, distress and loss of amenity of life), (c) the nature and extent of any past and future loss and damage accruing to the injured person as a consequence of the injury and (d) that the injury was caused by the unlawful act or omission of the party sued.

One of the many principles of law applicable to the awarding and assessment of damages by the Courts is the principle that the wrongdoer (who must pay the damages) is entitled to “fair procedures”. Those fair procedures include the right of the wrongdoer to test and challenge the evidence of the claimant by way of cross-examination or by adducing contrary sworn evidence if the wrongdoer believes that the claimant’s evidence has been false or exaggerated.

The Courts also undertake a careful analysis of factors such as legal and factual causation and issues relating to the extent to which it could be said that the claimant or other third parties contributed to injuries or loss suffered. Each applicant is assessed individually, usually after protracted exchanges of documents and procedures known as “pleadings”. The process for each applicant usually extends over a period of time that is often measured in years rather than months.

3.08 Since the proposed Scheme upon which I have been asked to advise must operate on a non-adversarial basis, lengthy and mutually antagonistic roles and positions leading to invasive and painful inquiry and interrogation cannot be entertained and must be specifically avoided.

It follows that the “traditional” methods and principles which apply to the awarding and assessment of damages cannot appropriately and effectively be applied to the function and administration of the proposed Scheme and must be replaced in order to meet its requirements.

**(2) Alternative Dispute Resolution**

3.09 The Commission decided at an early stage that the proposed Scheme would be best founded upon a flexible collaborative and consensus-orientated process, fostering an environment of healing and of reconciliation. The needs and interests of the Magdalen women should be at the forefront of its consideration rather than the parties’ respective differences.

“Alternative dispute resolution”, (“ADR”) is an umbrella term for a variety of alternative and flexible processes for resolving disputes. The primary focus of these processes is not the parties’ respective differences, but the needs, interests and underlying requirements of the parties.

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<sup>8</sup> In Australia similar, but not identical, Schemes, have been established. These are: Redress Scheme (QLD, WA and Tas) (redress for harm suffered by children in State care); Stolen Wages Scheme (QLD) and Aboriginal Trust Fund Repayment Scheme (NSW) (both reparation payments made to individuals whose wages and savings were controlled by the authorities under government ‘Protection Acts’); and the Stolen Generations Compensation Scheme (Tas) (compensation payments for effect of forcible removal policies). See generally Stephen Winter, “Australia’s *Ex Gratia* Redress” (2009) 13(1) AILR 49. Available at <http://www.austlii.edu.au/au/journals/AUIndigLawRw/2009/3.html>.



In its *Report on Alternative Dispute Resolution*<sup>9</sup> the Law Reform Commission has described how interest-based dispute resolution processes allow for an expansion beyond the parties' legal rights and involve consideration of the parties' underlying personal interests:

“[interest-based dispute resolution processes] address parties' emotions, and seek creative solutions to the resolution of the dispute. The focus of these processes is on clarifying the parties' real motivations or underlying interests in the dispute with the aim of reaching a mutually acceptable compromise which meets the real interests of both parties.”<sup>10</sup>

3.10 This Commission decided that a flexible and consensus-orientated approach placing an emphasis on underlying interests rather than divisions and seeking a creative resolution based upon those factors was the appropriate means of achieving the objectives envisaged by the Terms of Reference. ADR processes are intended to give participants significant control over the conduct and outcome of the process (adversarial processes can sometimes be largely delegated to third parties like legal representatives and experts).

The Commission took the view that an ADR process would give a coherent voice and a degree of “self-determination” to a cohort of women who for so long have been “wondering why they were the ones who were excluded or penalised” (as Senator McAleese so eloquently explained)<sup>11</sup> and who have told me that they have for a very long time felt forgotten, denied and disbelieved.

### **(3) Conclusion**

3.11 I have decided to recommend the establishment of an ex gratia Scheme which has been designed after the application and completion of an interest based dispute resolution process in which a large proportion of the participants were persons, and organisations with legitimate intrinsic interests in the proposed Scheme and its functions and outcomes.

The criteria and factors taken into account in the design of the Scheme have been:

- (a) The needs and interests of the Magdalen women,
- (b) The avoidance of “positional” or confrontational advocacy,
- (c) The nature and extent of the work undertaken by the Magdalen women,
- (d) The wish of the contemporary Irish community to reduce the hurt and pain suffered by the Magdalen women by providing them with monetary and other benefits;
- (e) The needs and interests of that community including its capacity to provide such benefits in a manner which will be (i) fair, just and equitable to all of those, who will be affected by the proposed Scheme and (ii) as proportionate as is reasonably possible having regard to the assessment and calculation of other similar monetary awards made within this and other jurisdictions and;
- (f) The need to facilitate and encourage any reasonable measures which may be required to accommodate consensual healing and reconciliation between parties having an interest in the Scheme.

The process undertaken is described in full within Chapter 4 of this Report.

## **C THE OPERATION OF THE EX GRATIA FUND**

*“(ii) to examine how best to operate (as part of that Scheme) an ex gratia Fund, of a sum sufficient to meet the recommendations of Mr Justice Quirke, the nature and amount of ex gratia payments to be made out of the Fund and on the determination of applications for*

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<sup>9</sup> Law Reform Commission *Report on Alternative Dispute Resolution* (LRC 98 – 2010).

<sup>10</sup> *Ibid* at paragraph 2.22.

<sup>11</sup> McAleese Report, Introduction, paragraph 9, quoted in full at paragraph 3.02, above.

*payment in an effective and timely manner that ensures the monies in the Fund are directed only to the benefit of eligible applicants and not on legal fees and expenses.”*

3.12 This Term of Reference requires me to recommend within the proposed Scheme ex gratia payments which are to be paid out of a Fund (which is not yet in existence) in a manner which will reflect the regret of the Irish community for the pain, suffering, injury, stigma and downright misery which was inflicted upon the Magdalen women.

It is acknowledged that such monetary payments cannot and will not fully compensate them for what they have endured. However the payments are intended to address their current needs and interests and reduce the level of injury pain and hurt which they have suffered. Again, the Scheme is intended to provide payments to the Magdalen women. It does not contemplate payments to persons who may have been indirectly or otherwise affected by the admission of those women to and their work within a designated laundry.

3.13 The conversations and information gathering process described in Chapter 4, consideration of written and oral submissions made by individuals and groups representing the Magdalen women and detailed consultation with the advisory members of the Commission were required in order to reach conclusions and make the necessary recommendations relating to the operation of the proposed Fund.

A discussion and recommendation regarding the operation of the proposed ex gratia fund is provided in Part A of Chapter 5.

## **D SUPPORTS AS PART OF THE SCHEME**

*“(iii) to examine how the Government might best provide supports (including health services such as medical cards, mental health services and counselling services and other welfare needs) as part of the Scheme for women who require such supports as a result of their experiences in the Laundries.”*

3.14 The Magdalen women comprise a broad and diverse group with multiple medical and other needs, requirements and capacity. The conversations described in Chapter 4 were of considerable relevance to this Term of Reference. They identified a large number of discrete and collective needs and requirements that would not otherwise have been discovered.

Suitable supports and benefits were discussed and identified after helpful consultation with relevant Government officials and departments and with the advisory members of the Commission.

Part B of Chapter 5 describes the Commission’s investigation of the availability and suitability of certain supports.

In consequence I have made a number of recommendations relating to the timely and effective provision of certain supports within the proposed Scheme.

## **E THE REDRESS BOARD**

*“(iv) to consider the approach to be taken in circumstances in which a payment has already been made by the Redress Board by way of redress to a former resident of an industrial school, where such payment included a sum specifically due to the direct transfer of that person from an industrial school to a relevant Laundry and their time or part of their time spent in a Laundry or Laundries.”*

3.15 Since a number of applicants seeking to recover under the Scheme may have received payments under the Redress Board Scheme, this Term of Reference appears to envisage the administrator of the proposed Scheme carrying out an investigation in order to discover whether, and to what extent, applicants have been awarded damages or compensation by the Redress Board.

The objective appears to be to avoid an “overlap” or double recovery by some applicants and to reduce the risk of over-compensation. The relevant legislation applies strict confidentiality requirements to awards made by the Redress Board for a variety of reasons.

Chapter 7 considers this matter in detail and makes appropriate recommendations.

## **F PERSONS RESIDENT IN THE UK**

*“(v) to examine the effect, if any, of the making of an ex gratia payment to a person who is resident in the UK and how best the making of any such payment should be structured so as not to adversely affect their existing entitlements to benefits and supports.”*

3.16 Since a number of Magdalen women are resident in the UK it is necessary to ensure that their existing entitlement to benefits and supports within the UK will not be adversely affected by any monetary or other benefit given to or provided for them by this State. It has, therefore, been necessary for me to investigate the various benefits available to Magdalen women who are resident within the UK.

The Irish Women Survivors Support Network provided me with detailed and helpful written submissions concerning health and other benefits which the relevant Magdalen women may enjoy within the UK. At the invitation of the Network I travelled to the UK where I met and had personal conversations with the founder members of the Network and with 35 Magdalen women who are represented by the Network and are presently resident within the UK.

I also consulted on a number of occasions on this matter with professional advisers including a professional adviser within the UK who has a special expertise in the interaction between awards and benefits and entitlements in that jurisdiction and I have been provided with useful help, advice and assistance from that adviser.

The effects that the payments from the proposed Scheme will have upon health and other benefits that UK residents enjoy are discussed in Chapter 8 of the Report.

## **G SOCIAL WELFARE PAYMENTS AND INCOME TAX LIABILITY**

*“(vi) to advise as to what steps or measures are appropriate to ensure that ex gratia payments or supports or assistance provided are disregarded for the purposes of determining entitlement of Social Welfare payments and/or income tax liability.”*

3.17 In Part B of Chapter 5 the Report examines this Term of Reference and provides guidance in relation to the steps to be taken to ensure that ex gratia payments, and supports and assistance provided to Magdalen women pursuant to the proposed Scheme do not impact negatively upon entitlement to Social Welfare payments.

Similar guidance is provided within Part B of Chapter 5 in relation to income tax liability.

## **H TIME FRAME**

*“(vii) to report back to Government within three months with recommendations.”*

3.18 I have been requested to report back to the Government within three months from the 19th February 2013 with my recommendations.



## CHAPTER 4 WORKING METHOD: CONSULTATION PROCESS

4.01 The proposed Scheme is to be described as *ex gratia* and is intended to contribute to a *healing and reconciliation process*. It will, accordingly, have unique and novel characteristics and, if adopted, will be the first such Scheme to be established within this jurisdiction.

In order to achieve its objective the Commission decided to engage in a comprehensive interest-based analysis that placed an emphasis, not on the respective parties' adopted positions and not on the differences and divisions between the parties, but on the needs and interests of those to be affected by the Scheme.

The principles of restorative justice (i.e. where collaboration and consensus replaces positional and adversarial methods) and particular alternative dispute resolution methods were, accordingly, applied to the process.

### A NEEDS AND INTERESTS

4.02 The McAleese Report recorded that its Committee received "invaluable insights"<sup>1</sup> from its conversations with the Magdalen women. Those "insights" provided invaluable historical evidence of the past experiences and hardships endured by the women.

The methods employed by the Commission required details and information concerning the present needs, interests and circumstances of the women. In order to acquire those details and information the Commission decided to engage in a conversation and enter into a dialogue with the women in order to discover exactly who the Magdalen women now are, how they now are and where they now are.

The dialogue was also intended to provide a voice to each of the Magdalen women who wished to participate in the process and an opportunity to convey to the Commission, in a non-adversarial setting, their present needs, interests and concerns. It was also intended to encourage them to make such suggestions towards benefits, healing and reconciliation and otherwise as they thought appropriate.

It was hoped that the process would also result in the compilation of useful information that would facilitate the effective design and establishment of a Scheme directed towards the needs and interests of the Magdalen women.

4.03 It was also necessary to give careful consideration to the needs and interests of the State and to other persons affected by the proposed Scheme. As I have explained earlier in this Report, it would be unjust and unrealistic for me to ignore the obvious fact that our nation is currently affected by an economic recession of unprecedented proportions which is likely to endure for a protracted period of time and I have not done so.

4.04 I have also had the opportunity to meet and converse with representatives of the Religious Orders who were responsible for the management and administration of the designated laundries. Most of the Orders have a number of elderly women within their care who, having been admitted to and worked within the designated laundries, are probably eligible for inclusion in the proposed Scheme.

Most of those Magdalen women who are currently within the care of the Orders (more than 100 in number) are fragile and very vulnerable. The Orders are, understandably, concerned for their ongoing care, health and welfare.

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<sup>1</sup> McAleese Report, Part IV, Chapter 19, p.927, para.7.

The Commission is also very concerned for the ongoing care, health and welfare of those and other Magdalen women who are and remain fragile and vulnerable, and in need of ongoing care. My recommendations herein have been significantly influenced by that factor.

The representatives of the Orders expressed the wish to meet with those Magdalen women who would like to do so in order to facilitate a healing and reconciliation process.

## **B THE CONVERSATION**

### **(1) Preparation**

4.05 After detailed discussion the Commission concluded that, in order to discover the present needs and interests of the Magdalen, it was necessary to speak to them personally. The resultant “conversation” between the Commission and the Magdalen women was intended to be both an information gathering process and an opportunity for the Magdalen women to convey directly to the Commission who they were, where they were, what their circumstances were and what could be done to assist them and make their lives more comfortable.

It was anecdotal in nature, has not been scientifically validated and was not and does not purport to be scientifically based. The information compiled was processed and collated and was used by the Commission in order to obtain an informal understanding of the needs and interests of the Magdalen women and of particular categories and sub-sets of those women.

4.06 Following discussions between the Commission and the Chairman of the Bar Council of Ireland, Mr. David Nolan S.C., the Bar Council agreed to authorise the Commission to seek the voluntary assistance of a number of female barristers who, after additional training by suitably qualified experts would be asked to conduct monitored, supervised interviews with those Magdalen women who had at the relevant time registered interest in participating in the proposed Scheme.

Women barristers were chosen so that the Magdalen women would feel comfortable when discussing sensitive issues and personal experiences. Detailed security and other measures were taken to ensure that records of the proposed interviews would be and remain totally confidential and that the volunteer barristers (“the Volunteers”) would be enabled to conduct the interviews and gather information either by telephone or, if necessary, by meeting with the women personally.

A protocol was devised to ensure that the survey was conducted and the information gathered in a controlled environment that protected the interests of all parties concerned. The survey was also to be conducted in an environment of strict confidentiality.

Within 48 hours of the Bar Council announcing a request for assistance 33 women members of the Bar volunteered to assist the Commission in its task and to undergo the necessary training, monitoring and supervision.

These volunteer barristers (“the volunteers”) were fully briefed and received comprehensive professional training in respect of the task to be undertaken. They also attended discussions and coaching sessions chaired by members of the Glencree Centre for Peace and Reconciliation.

### **(2) Stage 1 - Correspondence**

4.07 By letters dated the 26th March 2013 I wrote to all of those women who had, by that date, notified the State that they wished apply for inclusion within the proposed Scheme. The letters invited the women, should they wish to do so, to participate in a telephone conversation with a volunteer concerning their present needs and interests for the purposes of the proposed Scheme.

They were provided with a telephone number to call if they did not wish to participate.

### **(3) Stage 2 – Telephone conversations**

4.08 During the week commencing the 26th March 2013 the volunteers began to telephone the Magdalen women from a controlled, secure and confidential location and environment. The telephone conversations averaged 45 minutes in duration. The process was informed by experts from the Glencree

Centre for Peace and Reconciliation (Ms. Barbara Walshe and Mr. Geoffrey Corry) and was monitored by expert mediators and a counselling psychologist. The information gathered was processed and collated.

The conversations were directed towards the following factors: (a) basic personal details; (b) home-life details; (c) education and work history; (d) financial circumstances; (e) what could be done to improve life and lifestyle; (f) mobility problems; (g) serious health problems or disabilities; (h) entitlement to medical and "GP visit" cards; (i) receipt or need for care from family members; (j) receipt or need for home-help care; (k) receipt or need for care from healthcare professionals; and (l) duration of time working within designated laundries.

Each woman was also invited, should she wish to do so, to have a personal conversation with me at the Commission's offices in Dublin on one of three designated dates.

#### **(4) Stage 3 – Conversations in person**

4.09 Appropriate application of the principles of restorative justice required that the voices of the Magdalen women would be heard within the process and that they would be provided with the opportunity to speak, be listened to and be heard.

At the invitation of the Irish Women Survivors Support Network I travelled to London and Manchester and during three days commencing on the 2nd April 2013 I met and had comprehensive helpful conversations with 36 women.

All of the women who participated in conversations with volunteers were invited to attend the Commission's building in Dublin to meet with me by appointment during a three day period commencing on the 16<sup>th</sup> of April 2013. More than 30 women who had chosen not to converse with the volunteers were also invited to attend and did so.

I had personal conversations with a further 137 women during those 3 days in Dublin.

All of the women to whom I spoke within this jurisdiction and in England were dignified, courteous and helpful. Although their recollections often provoked emotion they were entirely credible.

### **C MEETINGS WITH THE RELIGIOUS ORDERS**

#### **(1) Overview of meetings**

4.10 All of the Religious Congregations responsible for the management of Magdalen Laundries met with me. The meetings provided valuable insights in relation to the needs of the ladies who still remain in their care and provided an opportunity for the Commission to listen to the concerns raised by the Congregations many of which were common concerns.

On the 22nd April 2013, The Commission met with representatives of the Congregation of the Sisters of Mercy who managed the Laundries at No. 47 Forster Street, Galway and Saint Patricks Refuge, Crofton Road, Dun Laoghaire, Co. Dublin.

On the 30rd April 2013, The Commission met with representatives of the Sisters of the Good Shepherd who were responsible for management of Magdalen Laundries at Saint Mary's, Cork Road, Waterford, Saint Mary's, New Ross, Wexford, Saint Mary's, Pennywell Road, Limerick and Saint Mary's, Sunday's Well, Cork.

The Sisters of the Good Shepherd have 47 women in their care. The Congregation committed itself to caring for these women following the closure of the Laundries. The women within their care have varying degrees of vulnerability or disability. Many have difficulty living independently and need assistance to manage their affairs.

On the 24th April 2013 the Commission met with representatives of the Sisters of Our Lady of Charity of Refuge who were responsible for the management of Laundries at Saint Mary's Refuge, High Park, Grace Park Road, Drumcondra, Dublin and the Monastery of Our Lady of Charity, Sean Mc Dermott Street, Dublin 1 (formerly Gloucester Street). The representatives of the Congregation indicated that

historically their function was to provide refuge to women who needed it. They did not provide any education and they stressed that it was never intended that they would perform that role.

The Congregation currently has 29 women in its care, 15 of whom are residents within the nursing home and 14 of whom are in residential hostels currently partly funded by the Congregation. These residential hostels are semi detached houses. The Congregation representatives described the women as living in an "assisted environment". The Congregation is committed to caring for the women for as long as is needed.

On the 9th May 2013, the Commission met with representatives from the Religious Sisters of Charity who were responsible for the management of Saint Mary Magdalen's, Florville Road, Donnybrook, Dublin; St Vincent's, St Mary's Road, Peacock Lane, Cork; St Mary's, Stanhope Street, Dublin 7.

The representatives of the Congregation indicated that they still have 39 women in their care. Many of these women currently receive assistance managing their affairs.

## **(2) Common themes**

4.11 Each Congregation expressed concern for women in their care who are vulnerable, some of whom may lack capacity to manage their affairs. They indicated that there was a need to protect them from potential exploitation.

The representatives from the Religious Orders who met with the Commission belong to a different generation to those nuns who managed the Laundries when many of the ladies resided there.

Each of the Congregations indicated an interest in meeting with the women who formerly resided with them if the women wished to meet with them.

Each expressed a desire to engage in any reconciliation and restorative process which will assist in healing and reducing the hurt experienced by the ladies in the laundries.

## **(3) Results - Trends and themes**

4.12 The Commission spoke with 337 Magdalen women and all of the Religious Congregations who now care for Magdalen women.

The conversation was intended to combine an information gathering process with a process of healing and reconciliation. Although the information gathering process was not "scientific" in nature it was intended to permit trends and themes relevant to the proposed Scheme to be identified.

The following important information and recurring trends and themes emerged from the process namely: (1) an age profile; (2) diverse and sometimes serious health concerns and problems; (3) concerns relating to the vulnerability and capacity of some women, (4), a significant education deficit and (5) some unsatisfactory living conditions.

## **D SUBMISSIONS**

4.13 The Magdalen women have been well served by some advocacy and representative groups and individuals. These individuals and representative groups were invited to engage in the consultation and review process. The following helpfully did so.

### **1. Ms Bernadette Fahy**

4.14 Ms Bernadette Fahy, a remarkable lady who entered Goldenbridge orphanage with her three brothers when she was 7 years old and remained there until she was 16, is now an eminent psychologist and author. She works with and provides support and assistance to a number of Magdalen women. She



made a number of important submissions to the Commission on their behalf. Those submissions are outlined below.

During this process Ms Fahy has worked tirelessly with me and with the Commission, helping to monitor the work of the volunteers, advising, counselling and sharing her depth of experience. I am deeply indebted to her.

Her submissions on behalf of the Magdalen women included the following;

- (i) payment to reflect loss of earnings and a loss of opportunity,
- (ii) access to physical, emotional and psychological support and assistance,
- (iii) the payment of a lump sum,
- (iv) access to a medical card and dentistry services,
- (v) home refurbishment assistance
- (vi) long term of end-of-life care in institutional or nursing home settings for women who have been raised in an institutional environment
- (vii) payment of a pension to those Magdalen women resident in the UK.

She also suggested the establishment of a dedicated liaison service to act as a single point of contact for assistance and to facilitate access to the services the women required.

### ***2. Magdalene Survivors Together***

Magdalene Survivors Together (“MST”) is a survivor-led organisation that represents the interests of a number of women who were admitted to and worked within the designated Magdalen laundries. Mr Steven O’Riordan represents the group.

His submissions on behalf of the women whom he represents included the following:

- (i) each woman should receive a basic lump sum of €50,000,
- (ii) each woman should receive an additional sum in respect of loss of earnings,
- (iii) a national museum should be established in Sean McDermott Street in Dublin and the records retained by the religious orders should be deposited in this museum,
- (iv) a concert should be held in a nationally important location such as Croke Park in honour of the Magdalen women and,
- (v) a small memorial garden should be established on Sean McDermott Street.

### ***3. Justice for Magdalens***

4.15 Justice for Magdalens (“JFM”) was an independent voluntary advocacy organisation established in 2003.<sup>2</sup> It provided Magdalen women and their families with support and advice via an information phone line and e-mail account and handbooks and information to assist in tracing relatives and records of periods of residence within a Magdalen laundry.

JFM made written and oral submissions to the Commission which included the following:

- (i) reparation provided through the Scheme commensurate to the gravity of abuse and harm suffered by the Magdalen women,
- (ii) reparation under five separate headings, namely: (a) restitution, (b) compensation, (c) rehabilitation, (d) satisfaction and (e) guarantees of non-repetition,
- (iii) that the Scheme will be administered through a process that is (a) independent and on a statutory footing; (b) accessible and non-adversarial; and (c) subject to appeals and monitoring and (d) transparent and open because many records are unavailable or incomplete and the

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<sup>2</sup> In May 2013, it announced its intention to disband, since its main objectives had been achieved.

duration of stay is known for only 6,151 admissions of a total of the 14,607 admissions cited in the McAleese Report,

(iv) the establishment of a dedicated unit to facilitate the provision of pensions, lost wages and State services,

(v) acceptance "...as a proven fact that Magdalene Laundries were by their nature abusive, punitive institutions in which girls and women were routinely subjected to forced unpaid labour and unlawful imprisonment",

(vi) support for the "Magdalen Laundries Archival and Oral History" project designed by the Women's Studies Centre at the School of Social Justice, University College Dublin,

(vii) extension of the National Counselling Service to include the Magdalen women and access to free legal advice through the Legal Aid Board,

(viii) the provision of medical cards to survivors and to their families,

(ix) appropriate measures to compel religious orders to hand over records to a properly resourced and suitable data protection agency,

(x), social housing to be provided to those Magdalen women who are in need of it,

(xi) the establishment of a permanent educational memorial to all women who were admitted to the designated laundries,

(xii) detailed proposals concerning those Magdalen women who are institutionalised and / or incapable of managing their own affairs and measures to facilitate notification of the existence of the Scheme to eligible women outside the jurisdiction.

#### **4. The Irish Women Survivors Support Network**

4.16 The Irish Women Survivors Support Network (the "IWSSN") is a group representing the interests of former residents of Irish religious institutions who are now resident within the UK. The IWSSN provides outreach services to all survivors of Irish institutional care and the group offers individualised support as well as support to isolated women.

I met with representatives of the IWSSN in Dublin and was, subsequently, happy to accept the kind invitations of Ms Sally Mulready and Ms Phyllis Morgan, (Chair and Vice-Chair of the IWSSN) to travel to the UK to meet some of the women whom they represent. During three days commencing on the 2nd April 2013 I met and had lengthy conversations with approximately 36 women in London and Manchester.

The oral and written submissions provided by the IWSSN stressed the importance of an understanding of the individual financial circumstances of the Magdalen women. The submissions included the following:

(i) the provision of pensions commensurate with pensions that would have accrued if wage and social insurance contributions had been paid on their behalf in Ireland but taking into account interaction between any pension or other monetary payment made and its potential impact upon UK means tested or other social benefits that eligible women living within the UK may receive or be entitled to,

(ii) the Scheme should avoid prolonged and complex litigation and should operate in a non-adversarial environment. Women should not be individually assessed before a Board or a judge,

(iii) religious congregations should contribute to the ex gratia fund in order to accommodate a reconciliation and healing process,

(iv) provision should be made for women wishing to return from the UK to Ireland to be provided with a legislative right to be re-housed in social housing in Ireland in an area or county of their choice,

(v) that suitable commemorative records and memorabilia should be established and maintained within appropriate premises, locations and gardens. It was suggested that an

existing premises and grotto at St Anne's School, Lenaboy, Taylors Hill in Galway is voluntarily maintained by survivors of that institution and should be considered as a location.



**CHAPTER 5 THE SCHEME**

This Chapter of the Report considers in detail the proposed ex gratia Scheme.

**A PART 1: SUPPORTS AND BENEFITS**

5.01 The principal information and recurring trends and themes which emerged from the conversations with the women were identified as (1) an age profile; (2) diverse health concerns and problems; (3) concerns relating to the vulnerability and capacity of some women; (4) an education deficit; and (5) some unsatisfactory living conditions.

**(1) Age profile**

5.02 Arising from the conversations the age profile of those Magdalen women with whom the Commission conversed up to and including the 9<sup>th</sup> of May 2013 is shown below. Some 386 of 454 women provided their ages.

**Age profile**

Total	Excluding those in care with Religious Orders	Including those in care with Religious Orders	Total in Percentage Terms
Under 50	<b>9</b>	11	3%
50 -60	<b>70</b>	74	19%
60-65	<b>67</b>	74	19%
66-70	<b>72</b>	84	22%
70-75	<b>43</b>	57	15%
75-80	<b>22</b>	33	9%
over 80	<b>32</b>	53	14%
	<b>315</b>	<b>386</b>	<b>100%</b>

**(2) Health care**

5.03 The conversations have identified the following health complaints and worries of the Magdalen women as important factors for consideration within the proposed Scheme:

- (i) Many of the women surveyed spoke of serious health problems. Some women indicated that they were suffering from cancer or other very serious illnesses and simply wished to be given the opportunity to be as comfortable as possible for their remaining years.
- (ii) Some of the friends, relatives or carers who completed the surveys on behalf of a number of women indicated that a number of them required full time nursing care and would require such care for the remainder of their lives; in some cases the women were said to have been resident in nursing homes for many years and were suffering from dementia and related conditions.
- (iii) Some women spoke of how they worried about being unable to afford medical care as they became older or as their illness deteriorated. Many women also spoke of illnesses that required regular GP visits, such as high blood pressure and diabetes. Some women also spoke of mental health illnesses.

- (iv) Many women indicated that they wished to be provided with access to counselling.
- (v) Some wished to have access to a medical card and to be given an opportunity to see their GP on a more regular basis. Others described how they were currently on waiting lists awaiting surgery and how their scheduled surgery has been delayed or cancelled.
- (vi) Some women described how they struggled with mobility issues and a number of women stated that they believed that their lives would be greatly improved were they to be provided with walking frames or stair-lifts.
- (vii) Some described how they required improvements and alterations to be made to their homes to accommodate their health conditions. For example, some women described how they required showers to be installed or bathrooms facilities improved. Others described how they required help with DIY and jobs around the home.

Some details concerning the health of some of the women are provided below. Not all of the women spoken to wished to discuss matters concerning their health.

#### **Level of Mobility**

	Number	Percentage
Good	142	49%
Fair	64	22%
Bad	76	26%
Wheelchair	10	3%
	292	100%

#### **Serious health issues**

Yes	187	66%
No	95	34%
	282	100%

#### **Medical / GP visit Card**

Yes	210	91%
No	21	9%
	231	100%

#### **Health Insurance**

Yes	19	11%
No	156	89%
	175	100%

5.04 A fundamental element of the Scheme should relate to the provision of healthcare and access to healthcare services. The health needs and requirements of the women surveyed are diverse in nature so the women should be provided with access to a comprehensive suite of health care services.

I am, therefore, of the opinion that the health provisions of the Scheme should operate in a manner similar to the scheme made available to certain persons under the Health (Amendment) Act 1996.

### **(3) The Health (Amendment) Act 1996 Card**

5.05 The Health (Amendment) Act 1996 established the legal framework for a comprehensive range of healthcare to be established and provided to all men, women and children who had been infected with Hepatitis C as a result of administration, within the State, of contaminated blood and blood products. Persons who were infected with Hepatitis C as a result of receiving contaminated blood and blood products are entitled to what is called a Health (Amendment) Act Card (a "HAA card"). The card entitles the holder, for his or her lifetime, to primary care services (services delivered outside of the hospital setting) and hospital services. The services to which the card holder has access outside of the hospital setting include:

- GP services;
- Prescribed drugs, medicines, aids and appliances;
- Dental services;
- Ophthalmic services;
- Aural services;
- Home support;
- Home nursing;
- Counselling services;
- A range of other services, to include chiropody / podiatry and physiotherapy.

The range of services provided without charge under the HAA card scheme is comprehensive. Holders of the card are entitled to attend any registered GP of their choice, without charge. Pharmacists dispense prescriptions provided by GPs without charge and upon production of the card.

HAA card holders are entitled to all necessary routine and emergency dental treatment as well as full denture treatment. Dental treatments are provided to HAA card holders by dentists who participate in the Dental Treatment Services Scheme operated by the Health Service Executive (the "HSE").

Counselling services, including psychological and psychotherapy services, can be availed of at any time by HAA card holders. Card holders do not need to be referred by a GP or consultant to counselling and the HSE will provide card holders with a list of counsellors who are available to provide counselling.

HAA card holders are also entitled to home nursing. Requests and referrals for home nursing services under the HAA scheme is facilitated throughout the country by the HSE. Following referral, a clinical nurse coordinator / designated HSE nurse will carry out an assessment in consultation with the client and family, from which it will be decided what type of care plan is required. The home plan will be an individualised, flexible and easily accessible plan of care which will meet the needs of the HAA card holder. Card holders are also entitled to home support services which will assist in the areas of household chores and tasks such as cooking and cleaning.

In addition to the HAA card, each of the HSE areas provides a person, described as a hepatitis C liaison officer, whose role it is to ensure that persons who are entitled to the HAA card receive the services to which they are entitled under the legislation. The liaison officer fulfils an important role and is responsible for coordinating and assisting the card holder to access primary care services only – these are the services provided outside of the hospital setting.

In practical terms every card holder is entitled to pick up the phone and to contact the liaison officer assigned to their area. The liaison officer is provided in order to ensure that card holders receive the services to which they are entitled and to provide advice and assistance in relation to those services.

There is also a liaison officer within the State whose remit extends to liaising with all of the eight designated hospitals with an oversight role nationally, in relation to all aspects of the delivery of the hospital services.

## **1<sup>ST</sup> RECOMMENDATION**

***Magdalen women should have access to the full range of services currently enjoyed by holders of the Health (Amendment) Act 1996 Card (“the HAA card”).***

***As an integral part of the ex gratia Scheme a card entitling its holder to health services equivalent to those provided to the holder of a HAA card should be given to each of the women who were admitted to and worked in a designated Magdalen laundry.***

***Details of the range, extent and diversity of the community services to be provided to the Magdalen women are described within Appendix G.***

***Primary legislation similar to the Health (Amendment) Act 1996 or a statutory amendment to that Act is required in order to implement this recommendation. (A draft Heads of Bill is provided within Appendix E.)***

## **B PART 2: EX GRATIA PAYMENTS AND RESTORATIVE JUSTICE**

5.06 It is again important for me to emphasise that the payments which I am recommending are expressly required by my Terms of Reference to be “ex gratia” in nature. They are not and do not purport to comprise full and complete damages to compensate the Magdalen women for injury and loss caused by the wrongdoing of the State. Compensation payments of that kind can, in general, only be calculated and awarded after a detailed (and usually lengthy) adversarial process.<sup>1</sup>

### **(1) Benefits of approach based on restorative justice**

5.07 The payments have been decided upon and calculated after the application of a process based upon the principles of restorative justice that I consider to be appropriate to the circumstances of the Magdalen women. The benefits of an approach based on restorative justice have been well described in a 2009 paper that reviewed a number of Australia’s ex gratia schemes:<sup>2</sup>

“In a restorative approach, monetary payments assist the faultlessly burdened by significantly increasing the material resources available for ongoing development at both individual and community levels. But this is not their only restorative purpose. By recognising past failures, monetary redress payments play a role in expressing state sincerity. In terms of sincerity, individual payments fill an expressive gap in the depersonalised context of state redress... The voluntary character of the ex gratia payments may appear to support this expression of state sincerity. Not bound by the courts to deliver through an adversarial process pitting the state (yet again) against its victims, the payments’ discretionary quality expresses the sincere nature of the state’s reconciliatory intent.”

That analysis identifies the elements of restorative justice that meet all relevant needs and interests in two important respects.

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<sup>1</sup> A number of obstacles may arise in the context of any claims that might be considered or initiated by the Magdalen women. These include: (a) claims may be barred by the Statute of Limitations 1957; (b) prejudicial delay may bar claims even if they come within the “disability” exception in the Statute of Limitations 1957; (c) evidential difficulties may arise from recalling events from long ago; (d) it may not be possible to establish negligence or breach of duty by a named defendant and/or a named defendant with sufficient resources to meet any claims; (e) even assuming proof of negligence, it may be difficult to establish a causative link (causation) between any negligence and loss for which the courts would award compensation. Comparable obstacles were also identified in the *Review of Government Compensation Payments*, para 1.20, published in December 2010 by the Legal and Constitutional Affairs References Committee of the Australian Commonwealth Senate.

Available at <http://www.finance.gov.au/financial-framework/discretionary-compensation/finance-submission.html>.

<sup>2</sup>Stephen Winter, “Australia’s Ex Gratia Redress” (2009) 13(1) AILR 49, at p.54. Available at <http://www.austlii.edu.au/au/journals/AUIndigLawRw/2009/3.html>.



Firstly, the monetary payments are intended to assist the Magdalen women who have endured suffering through no fault of theirs. The payments therefore form an important and sincere part of the recognition of past State failures.

Secondly, by avoiding any adversarial process, the needs and interests of the Magdalen women and of Irish society generally are also met, because the voluntary nature of the offer of payments contributes to the process of on-going reconciliation to which the other aspects of the Scheme also contribute.

5.08 The following information arising from the consultation process assisted in the assessment of the recommended monetary payments for the Magdalen women. Not all of the women spoken to wished to discuss matters concerning their education.

**(2) Education**

**Level of Education**

Primary	<b>209</b>	<b>90%</b>
Inter cert	<b>12</b>	<b>5%</b>
Leaving Cert	<b>3</b>	<b>1%</b>
Primary Degree	<b>6</b>	<b>3%</b>
Post Grad Level	<b>1</b>	<b>0%</b>
	<b>231</b>	<b>100%</b>

5.09 A number of the women were deprived of an education when they were admitted to the laundries at an early age and provided with no further education.

Some stated that they believed that their right to an education had been “taken away” from them; some could not read or write and some had taught themselves to read and write.

Those who struggled with literacy and numeracy described how they would sometimes feel embarrassed when asked to read or to work with numbers. Some described how they had often wished to return to education but that they believed that it was now “too late”.

A very large number of the women received inadequate educational assistance within the laundries at a time within their lives when education was of considerable importance.

**(3) Living conditions**

5.10 While a large proportion of the women surveyed indicated that they were married or were now widowed, approximately one-third of the women stated that they now lived alone. A significant proportion of women<sup>3</sup> indicated that they lived in conditions that they would not describe as warm and comfortable.

Many of the women stated that they found it hard to make ends meet and to pay household bills. Other women indicated that they were “just about” able to pay their bills. Many of the women wished to improve their living conditions; a number of women spoke of having no hot water and no central heating; some women described difficulties in climbing the stairs and of their home and indicated that stair lift would improve their situation greatly.

One woman described how she has undergone knee-replacement surgery and how she is now on a waiting list to have a bathroom shower installed by the local authority. Some women lived in rental accommodation and found it difficult to pay their rent on a regular basis. Some women described being worried about security and wished to be in a position to replace the doors and the windows of their homes. In particular, many of women spoke about being unable to properly heat their homes or indeed described being worried about exceeding their home heating allowance.

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<sup>3</sup> 25% based on answers received from 223 women.

#### **(4) The Payments – Criteria to be taken into account**

5.11 The advice which I must provide in relation to the proposed Scheme is required to take into account “criteria determined to be relevant, including work undertaken and other matters as considered appropriate, to contribute to a healing and reconciliation process”.<sup>4</sup>

5.12 The above information relating to the Magdalen women’s education and living conditions has been included within the criteria which I have taken into account in deciding upon and calculating “the nature and amount of ex gratia payments...” to be recommended for those women.

5.13 The McAleese Report recorded that the women were “at one” regarding their memories of the work which they carried out at the Magdalen laundries<sup>5</sup>. Although the Report made no specific findings in that regard it described harsh and physically demanding work, sometimes for long hours and Senator McAleese observed that:

“None of us can begin to imagine the confusion and fear experienced by these young girls, in many cases little more than children, on entering the Laundries - not knowing why they were there, feeling abandoned, wondering whether they had done something wrong, and not knowing when - if ever - they would get out and see their families again.

It must have been particularly distressing for those girls who may have been the victims of abuse in the family, wondering why they were the ones who were excluded or penalised by being consigned to an institution. To add to this confusion, most found themselves quite alone in what was, by today’s standards, a harsh and physically demanding work environment. The psychological impact on these girls was undoubtedly traumatic and lasting”<sup>6</sup>

The McAleese Report also found that the women had been stigmatised and depicted as “fallen women” because of their presence within the designated laundries and that this depiction was a “wholly inaccurate characterisation” which was “not borne out by the facts.”

The Commission’s conversations with the Magdalen women have further confirmed the accuracy of the observations of Senator McAleese and his committee and have, importantly, assisted the Commission’s understanding concerning the extent to which admission to the designated laundries has impacted upon the lives, lifestyles and health of the women.

Those facts are also among the criteria which I have taken into account in determining the payments to be made within the proposed Scheme.

A very large number of the women described the traumatic, ongoing effects which incarceration within the laundries has had upon their security, their confidence and their self-esteem. Many described the lasting effects of traumatic incidents such as escape from the laundries and subsequent recapture and return.

#### **(5) The State Pension (Contributory)**

5.14 The State pension (contributory) is paid to persons from the age of 66 who have sufficient Irish social insurance contributions. In order to qualify for a State pension (contributory) a person must:

- Have paid social insurance contributions before a certain age;
- Have a certain number of social insurance contributions paid; and
- Have a certain average number of contributions paid over the years since that person first started to pay.

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<sup>4</sup> Term of Reference (i).

<sup>5</sup> McAleese Report, Chapter 19, p 940, para 39.

<sup>6</sup> McAleese Report, Introduction, paragraph 9.

It is unclear how many, if any, of the women who worked in the Magdalen Laundries currently qualify for a State Pension (Contributory).<sup>7</sup>

Depending on the qualifying contributors' requirement, some may already qualify for a full or pro-rata State Pension (Contributory).

Other women may be in receipt of a State pension (non-contributory), which is means tested whereas the State pension (contributory) is not, but is taxable.

State Pension (Contributory) rates for people who qualify for pensions from 1 September 2012 can be found in Appendix B.

The legislation underpinning the State pension (contributory) scheme is multiple – with many amending Acts – and is complex in nature.

I have been advised that it is not possible to make a statutory amendment to extend the benefit of the State pension (contributory) scheme to persons who do not qualify on the basis of the legislative criteria i.e. persons who have not paid the qualifying social insurance contributions.

However, it is possible to devise an administrative scheme, which would require authorisation by the Department of Finance, which could pay weekly sums equivalent to the top rate of the State pension (contributory) – €230.30 – for the benefit of a limited class of recipients, namely those women who were admitted to and worked in the Magdalen Laundries.

Once such a scheme is established, it can operate on a prospective basis so that persons over the qualifying age will receive the full rate of income and other persons will receive the full rate of income on reaching the qualifying age.

It is possible, therefore, to devise an administrative scheme to deliver an income equivalent to the current top rate (€230.30) of the State pension (contributory) to all women who were admitted to and worked in the Magdalen Laundries but who are not in receipt at the top rate of an existing State pension (contributory).

The Department of Social Protection advises that such a scheme can be operated by the Department of Justice and Equality.

## **2<sup>nd</sup> Recommendation**

***While many of the women were in receipt of social welfare and related payments, a very small proportion<sup>8</sup> of the women indicated that they are currently in receipt of the State Pension (Contributory).***

***All of the women who worked within the designated laundries worked without pay, some for very long periods of time. I am recommending that the proposed Scheme should include provisions enabling all of the women who were admitted to and worked in the designated laundries upon reaching pension age, to receive, (from an administrative scheme created for that purpose), the equivalent of the State Pension (Contributory) for the remainder of their lives.***

***The receipt of that benefit will acknowledge the fact that the Magdalen women have worked within (and, arguably to an extent for), the State for a period of time. They are entitled to recognition of that fact.***

***The payments received by the women under this heading should be tax-free and should not be considered "means" for any means-assessed benefit in the State.***

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<sup>7</sup> 5% of the women who answered this particular question appeared to qualify.

<sup>8</sup> 5% of the women who answered this particular question appeared to qualify.

**Magdalen women who are already in receipt of other State benefits (such as a State Widow's pension, or a State Non Contributory Pension), should not receive that payment in addition to those existing benefits, but rather a payment sufficient to top this up to the amount of the State Contributory Pension.**

**Equally the minimum weekly payment of €100 for those women who have not yet attained State Retirement Age (see 4th Recommendation) is intended to ensure a minimum level of income inclusive of any other State benefits but not in addition to such benefits.**

The recommendation to provide a weekly income of €230.30 per week for Magdalen women over State Pension Age is intended to put them in the position that they would have occupied had they acquired sufficient stamps to qualify for the State Contributory Pension.

For instance, where the husband of a Magdalen woman is in receipt of an adult dependant's allowance that would cease if she was entitled to the State Contributory Pension, the weekly income payable from the administrative scheme should leave her in the same position, (allowing for the adult dependant's allowance), that she would have occupied if she had accumulated sufficient stamps to qualify for the State Contributory Pension.

The Scheme's Administrator must, accordingly, take all necessary measures to ensure that the administrative scheme does not permit inadvertent or other "double recovery" by women who are currently (or will in the future be) in receipt of the State's non-contributory pension or whose spouse or partner is (or will be) in receipt of a similar pension benefit.

That measure should be taken and should include benefits which the women receive as a dependent of a spouse or partner.

It is also possible, by means of a specific regulation, rather than primary legislation, to exempt any payments made to persons under an administrative scheme from being assessed as means in relation to other means-assessed benefits of which the women are currently in receipt.

## **(6) Other ex-gratia payments**

5.15 As I have stated the *ex gratia* payments which I am recommending do not comprise and are not intended to represent full and complete compensation for injuries suffered or losses sustained by the Magdalen women.

Although "*work undertaken*" is a criteria which I have taken into account the payments are not intended to reflect or include a calculation of loss of earnings sustained by the women. The payments are simply intended to express the "sincere nature of the State's reconciliatory intent".<sup>9</sup>

5.16 In order to seek a level of proportionality between my recommendations for *ex gratia* payments and full and complete awards of damages for personal injuries I have examined and considered some of the methods of assessments of damages for personal injuries adopted by statutory and non-statutory bodies established in recent times including:

- the system of "weighting" adopted by the Residential Institutions Redress Board, (established in 2002 by the Residential Institutions Redress Act 2002 (Assessment of Redress) Regulations 2002),
- the "Book of Quantum" which the Personal Injuries Assessment Board (established in 2003) is statutorily required to maintain as "guidelines" for the assessment of damages to be awarded in relation to a range of different physical injuries,

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<sup>9</sup> Stephen Winter, "Australia's *Ex Gratia* Redress" (2009) 13(1) AILR 49, at p.54, quoted at paragraph 5.07, above. Available at <http://www.austlii.edu.au/au/journals/AUIndigLawRw/2009/3.html>.

- the *Guidelines for the Assessment of General Damages in Personal Injury Cases* published and updated by the Judicial Studies Boards of England and Wales and of Northern Ireland
- The Lourdes Hospital Redress Scheme
- The Stardust Victims Compensation Tribunal
- The Hepatitis C and HIV Compensation Tribunal
- The Australian *Ex Gratia* Redress Schemes in Tasmania, Queensland and Western Australia.

5.17 I am satisfied that the traumatic effect of admission and incarceration within the designated laundries has had such an adverse effect upon the education, perceived reputation, subsequent health, life, lifestyle, confidence and self esteem of the Magdalen women that those amongst them who were admitted to a designated laundry and worked there for less than 3 months should be paid the sum of €10,000.

5.18 That payment should be supplemented to reflect the “*work undertaken*” by the women within the laundries.

**(7) *Work undertaken***

5.19 On the information provided the average age of the Magdalen women is now 68.<sup>10</sup>

Although a majority of the women surveyed<sup>11</sup> indicated that they had worked for periods between 1 and 5 years within a designated laundry many within that group were unclear and unsure as to precisely when and for how long they had been there. That is unsurprising since decades have elapsed since those events and it is universally acknowledged that personal memory is likely to be unreliable in such circumstances.

Some women were admitted to different laundries for different periods of time. Others were removed or escaped from laundries and were returned to the same or a different laundry for differing periods at different times.

The Commission has not sought and has not been requested to seek details or records from the relevant Religious Orders concerning the duration of time spent by the Magdalen women within the designated laundries.

The McAleese Report found that the median duration of stay within a designated laundry was approximately 7 months. That finding is scientifically based and is, accordingly, likely to be more reliable than any information gathered during the conversations which the Commission has undertaken.

However, the finding relates to the cohort of 14,607 women who worked within the laundries between 1922 and 1996 whereas the Commission spoke with a group of 337 women who, in 2013, remain as living survivors from that cohort.

The following information was provided by 288 Magdalen women during the consultation process. As I have indicated many were unsure as to precisely how long they had spent within a designated laundry.

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<sup>10</sup> See Table at paragraph 5.02, above.

<sup>11</sup> See Table overleaf.

## Time at Laundries

Under 1 year	27	9%
1 - 5 years	197	68%
5 - 10 years	37	13%
more than 10 years	27	9%
	288	100%

### **3rd RECOMMENDATION**

#### **Other Payments.**

*I am satisfied that the traumatic effect of admission and incarceration within the designated laundries has had such an adverse effect upon the education, perceived reputation, subsequent health, life, lifestyle, confidence and self esteem of the Magdalen women that those amongst them who were admitted to a designated laundry and worked there for less than 3 months should be paid the sum of €10,000.*

*That payment should be supplemented to reflect the “work undertaken” by the women within the laundries and under this heading I am recommending that women who worked in the laundries for up to 3 months should be paid a further €1,500 so that women who have spent less than 3 months in the laundries will receive €11,500 (€10,000 as a General Payment and €1,500 as an additional payment for work done).*

*The effects upon the education, reputations, health, lives, confidence and self esteem of those who were admitted to and worked in designated laundries for longer periods are likely to have been greater than those who worked for less than 3 months and I am recommending that they should be paid sums of money correspondingly greater, increasing by €1,000 for each month in the laundries up to 5 years and 3 months, and thereafter by €500 per month up to a maximum total payment of €100,000.*

*The payments for a sample of terms spent in the laundries are set out as follows.*

Time spent in laundries					
Years	Months	General	Work	Total	
		Payment	Payment	Payment	
	up to 3	€ 10,000	€ 1,500	€ 11,500	
0	4	€ 10,500	€ 2,000	€ 12,500	
0	5	€ 11,000	€ 2,500	€ 13,500	
0	6	€ 11,500	€ 3,000	€ 14,500	
0	7	€ 12,000	€ 3,500	€ 15,500	
0	8	€ 12,500	€ 4,000	€ 16,500	
0	9	€ 13,000	€ 4,500	€ 17,500	
0	10	€ 13,500	€ 5,000	€ 18,500	
0	11	€ 14,000	€ 5,500	€ 19,500	
1	0	€ 14,500	€ 6,000	€ 20,500	
2	0	€ 20,500	€ 12,000	€ 32,500	
3	0	€ 26,500	€ 18,000	€ 44,500	
4	0	€ 32,500	€ 24,000	€ 56,500	
5	0	€ 38,500	€ 30,000	€ 68,500	
6	0	€ 40,000	€ 36,000	€ 76,000	
7	0	€ 40,000	€ 42,000	€ 82,000	
8	0	€ 40,000	€ 48,000	€ 88,000	
9	0	€ 40,000	€ 54,000	€ 94,000	
10	0	€ 40,000	€ 60,000	€ 100,000	
More than 10 years	0	€ 40,000	€ 60,000	€ 100,000	

*A more detailed Table of Payment can be found in Appendix A.*

#### **4th RECOMMENDATION**

##### **Income Payments**

*A significant number of the Magdalen women are frail and some are very vulnerable. Many of them are now at an advanced age. The Commission is concerned to protect, for the benefit of those vulnerable women, the resources which they will acquire when they receive monetary payments arising out of the proposed Scheme.*

*It has been necessary for the Commission to seek to balance the needs and interests of those elderly vulnerable women with the needs and interests of the many other Magdalen women who are younger, healthier, more energetic and more independent. In order to achieve that balance the Commission has taken the view that the needs and interests of the Magdalen women would be best addressed by making any ex gratia payments in excess of €50,000 payable to the women as tax free weekly income for the remainder of their lives.*

*The weekly income payable has been calculated actuarially based upon established life expectancy tables. It continues for life and then ceases.*

***It should not be forgotten that the proposed Scheme also requires the provision of weekly tax free payments equivalent to the State Pension (Contributory) - amounting to €230.30 weekly to each woman upon reaching the State Retirement Age (SRA).***

***I am recommending that those women who have not yet reached the SRA should be granted a minimum tax free weekly income of not less than €100 (€5,200 annually), to be paid until the payments equivalent to the State Pension (Contributory) commence. This should overlap with any ex gratia payments in excess of the €50,000 which will also be converted into an income set at a minimum of €100 per week (€5,200 annually) which will be paid until State Retirement Age has been reached or to increase their income if they have already attained State Retirement Age.***

***Similarly, I am recommending that for women who have reached the State Retirement Age, those women should be provided with payments equivalent to the State Pension (Contributory). This should also overlap with any ex gratia payments in excess of the €50,000 which will also be converted into a life income.***

***Examples of the weekly and annual payments to be paid to women under State Retirement Age (SRA) can be found in Part 1 of Appendix C.***

***Examples of the weekly and annual payments to be paid to women who have reached SRA can be found in Part 2 of Appendix C.***

#### **(8) Income Tax Exemption**

5.20 Part 7, Chapter 1 of the Taxes Consolidation Act 1997 (which comprises sections 187 to 216) provides that a number of payments are exempt from income tax. Section 190 of the 1997 Act provides that payments made by the Haemophilia HIV Trust established by the Minister for Health in 1989 are exempt from income tax. Section 191 of the 1997 Act similarly provides that payments made by the Hepatitis C Tribunal established under the 1995 Scheme of Compensation for certain persons who have contracted Hepatitis C are exempt from income tax. In comparable terms, section 192 of the 1997 Act provides that payments made by the Foundation established in respect of Thalidomide children are also exempt from income tax. Section 192C of the 1997 Act, inserted by section 48 of the Nursing Homes Support Scheme Act 2009, provides for comparable exemptions from income tax in respect of State supports given to nursing home residents under the 2009 Act. It will be noted that there are specific exemptions from income tax in respect of compensatory-type payments, and also in the case of the amendment made by the 2009 Act for State-provided supports, made for these categories of persons.

The 1997 Act, as amended, provides that income arising from the investment and reinvestment of payments made to such classes of persons or of income arising from such payments is also exempt from income tax to the extent that it would otherwise be chargeable to tax under schedule C, case 3, case 4, case 5 and schedule F.

Gains accruing on the disposal of assets acquired directly or indirectly with such payments or income derived from such payments are except from capital gains tax.

Similarly, an exemption from income and other taxes could be made in respect of payments to the Magdalen women.

Such an exemption from income and other taxes could be contained in a Finance Bill which would treat such payments in all respects as if they arose out of a civil action for damages for personal injury so that the provisions of section 189 (dealing with personal injury) would apply.

#### **5<sup>TH</sup> RECOMMENDATION**

***I am recommending that appropriate legislative and other measures should be taken to ensure that all monetary payments (whether paid as “lump sums” or as income) should be exempt from income and other tax and should be exempt from being assessed as “means” in relation to other means tested benefits to which eligible Magdalen women are currently entitled.***



**(9) Payments to fund a “Dedicated Unit”**

5.21 Many of the advocates and representative groups who spoke to the Commission on behalf of the Magdalen women emphasised the need to provide the women with ongoing support and assistance. They, and many of the women in conversation, also spoke of the wish of many women to meet and interact with one another.

Some representatives and advocates and some of the women expressed a wish to meet with members of the Religious Orders who were responsible for the management of the designated laundries.

Others recommended the establishment of a museum or archival centre or project to honour and commemorate the Magdalen women past and present. There appeared to be a consensus in favour of the creation and maintenance of a small memorial garden within the Sean Mc Dermott Street premises to honour and commemorate the women.

All of the above suggestions are consistent with the principles of restorative justice which have influenced and regulated the proposed Scheme.

**6<sup>TH</sup> RECOMMENDATION**

***I am therefore recommending that the State should establish, fund, staff and accommodate a small Dedicated Unit which should be charged to provide the following services for eligible Magdalen women:***

- ***A helpline accessible daily by the women to assist them to obtain the health, monetary and other benefits to which they will now be entitled<sup>12</sup>***
- ***Investigative and other help and assistance in obtaining such sheltered or other housing as they may be entitled to.***
- ***Investigative and other help and assistance in obtaining such educational assistance as they may be entitled to.***
- ***Practical and, if necessary professional, assistance to enable those women who wish to do so to meet with those members of the Religious Orders who have similar wishes to meet and interact.***
- ***Similar practical assistance to meet and interact with other Magdalen women.***
- ***The acquisition, maintenance and administration of any garden, museum or other form of memorial which the Scheme’s administrator, after consultation with the advisory body or committee referred to below has decided to construct or establish.***

***The Unit should be established after the Scheme’s administrator has first consulted with and received written submissions from an advisory body or committee representing the needs and interests of the Magdalen women. That body or committee, in turn, should be broadly representative of the majority of Magdalen women and should include representatives of eligible women currently living within the UK or elsewhere.***

***A simple appeal process to a single agreed independent person should also be provided to resolve disagreement or dissatisfaction with preliminary decisions made by the Scheme’s administrator in respect of the matters identified above.***

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<sup>12</sup> This would be comparable to the Liaison Officer available in respect of the HAA card provided for under the Health (Amendment) Act 1996.

(10) **Eligibility and Qualification Process**

**7<sup>th</sup> RECOMMENDATION**

**Eligibility and Qualification Process**

***I am strongly of the opinion and recommend that, if the proposed Scheme is to be successfully implemented, it will be imperative for the Scheme's administrator to apply a fair and robust eligibility or qualification process so that eligible applicants will have access to institutional and other relevant records and receive such additional and other co-operation and assistance from State and other agencies as they may require in order to enable them to properly record and verify the work which they have done and the periods(s) of time which they have spent within the laundries.***

***Where a written "expression of interest" (or other written application for inclusion within the proposed Scheme) has been provided to the State by or on behalf of a Magdalen woman who was alive on or after the 19th of February 2013 then that woman will be eligible for consideration to be included within the Scheme.***

***Additional income ex gratia payments (payable to women entitled to payments in excess of €50,000) will not accrue to the benefit of the estate of any Magdalen woman.***

***The eligibility or qualification process should provide an appeal procedure for applicants who are dissatisfied with the primary process.***

(11) **Waiver**

5.22 Eligible Magdalen women should be entitled to apply for inclusion within the proposed Scheme and there should be no time limitation placed upon their right to do so.

However, those women who apply for, are included within and obtain the benefits of the Scheme should not be permitted to make any further claim against the State or any of its agencies in respect of their admission to and time spent within the designated laundries.

Similarly any Magdalen woman who pursues to completion a claim against the State or any of its agencies in any Court or Tribunal seeking compensation or redress in respect of her admission to or work within a designated laundry shall not then be eligible for inclusion within the Scheme.

**8<sup>th</sup> RECOMMENDATION**

***I am recommending that they should, therefore, upon agreeing to participate in and accept the benefits of and associated with the Scheme, agree also to waive in writing any further right of action against the State and its agencies arising out of their admission to and work within the designated laundries.***<sup>13</sup>

***The State should provide a draft of an appropriate document of waiver to each woman who applies for inclusion within the Scheme. Because agreement to comply with the terms of such a document will involve the abandonment of a right of access to the courts, each applicant must be advised to take professional legal advice before concluding such an agreement.***

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<sup>13</sup> I note that pursuant to s.5(10) of the Hepatitis C Compensation Tribunal Act 1997, as amended, where a claimant under that scheme accepts an award he or she must agree in writing to waive any right of action which he or she may have had against any party and discontinue any other proceedings arising out of the circumstances of the claim before the Hepatitis C Tribunal. Similarly, in relation to the Redress Board scheme, very similar provisions apply. Under s.13(6) of the Residential Institutions Redress Board Act 2002 where a claimant accepts an award made by the Redress Board or by the Review Committee, he or she must agree in writing to waive any right of action which he or she may otherwise have had against a public body or relevant person. Similar provisions apply in relation to the Health Repayment Scheme (s.10(2) of the Health Repayment Scheme Act 2006) and in relation to the Lourdes Hospital Redress Scheme (see Clause 11(4) of the *Lourdes Hospital Redress Scheme* document published by the Department of Health and Children, April 2007).

***The cost of such professional legal advice should be borne by the State. The Commission believes that such advice should not be onerous for legal advisors and the State should place an appropriate “cap” upon those costs after such tendering or other process as it deems appropriate.***

**(12) State Funding**

During the consultation process the representatives of a number of the Religious Congregations expressed concerns regarding State funding. Under the Health Act 2004 (the “2004 Act”) the HSE is entitled to enter into arrangements with those persons or bodies (the “service providers”) that provide health or other personal social services on behalf of the HSE.

Under s.38 and s.39 of the 2004 Act, the HSE may provide funding and assistance to those service providers and to certain bodies. The service providers must provide the HSE with details of income and expenditure on an annual basis.<sup>14</sup>

Some Congregations (as “service providers”), are concerned that where payments are made to Magdalen women in their care, this could have an adverse effect in terms of funding for their ongoing care. A similar concern arises that any payments made under the Scheme I am recommending would adversely affect the entitlements of those Magdalen women.

**9<sup>TH</sup> RECOMMENDATION**

***I do not believe that payments made to those Magdalen women in care will or should have an adverse effect on funding received under s.38 or s.39 of the Health Act 2004 but I am aware that under s.10 of the 2004 Act the Minister for Health is entitled to issue “general written directions”<sup>15</sup> to the Health Service Executive (“the HSE”).***

***Since the Minister for Health is empowered to direct the HSE (in respect of s.38 or s.39 funding) not to take into account any monies received by individuals or groups such as the Magdalen women so as to reduce the funding that their carers (including Religious Congregations) will receive I am recommending that the Minister should make such a direction in relation to the Magdalen women.***

***The Minister for Health is, separately, empowered by section 36(1) of the Nursing Homes Support Scheme Act 2009 to make Regulations to give full effect to that Act. I am therefore recommending that the Minister should make Regulations under section 36 of the 2009 Act providing that any monies received by the Magdalen women under the Scheme are not to be taken into account for any purposes under the 2009 Act.***

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<sup>14</sup> Section 38(3) of the Health Act, 2004.

<sup>15</sup> Section 10(1) of the Health Act, 2004.



### A INTRODUCTION

6.01 The information gathered during the consultation process suggests that, whilst the majority of Magdalen women have full decision-making capacity, a significant minority will face difficulties managing their affairs. The Commission is concerned to protect, for their benefit, the resources which the vulnerable minority will acquire when they receive monetary payments arising out of the proposed Scheme.

Safeguards must, therefore, be put in place to ensure that the payments made to them are secured and protected and used exclusively for their benefit. Their rights to participate and benefit from the proposed Scheme must remain identical to the rights which will attach to all of the other women who participate in it.

### B CONSULTATION

6.02 Sometimes during the consultation process friends, family members or carers indicated that they were speaking on behalf of eligible Magdalen women who lacked the capacity to converse or correspond with the Commission. Documents confirming those facts were often completed on behalf of the women by those persons.

Representatives of the Religious Congregations responsible for the management of the Magdalen laundries have concerns as to the capacity of some of the women within their care who appear to be eligible for inclusion within the Scheme.

### C STATUTORY SCHEMES

6.03 The Commission has considered the Redress Board scheme set out under the Residential Institutions Redress Act 2002 (as amended) (the “2002 Act”) and the compensation scheme established under the Hepatitis C Compensation Tribunal Act 1997 (as amended) (the “1997 Act”).

Both of these schemes are “statutory” in nature (i.e. they have been set up pursuant to specific legislation) and the boards and tribunals established under the legislation are given certain statutory powers to manage the affairs and assets of persons who are or may be unable to properly manage their own affairs and assets.<sup>1</sup>

Where the Redress Board, having heard appropriate evidence, forms the opinion that an applicant is incapable of managing monies awarded by the Board it may order that payments be made in instalments or “in any other manner that is appropriate” and may direct that the balance of any award made be lodged in the High Court to be dealt with through Office of the Accountant of the Courts of Justice.

6.04 Persons who have become infected with Hepatitis C and with HIV on account of having received contaminated blood products are entitled to apply to the Hepatitis C and HIV Tribunal and to claim compensation. The Tribunal may, in its absolute discretion, direct that an award to a claimant is to be made by way of instalments.<sup>2</sup>

Since the proposed Scheme will be non-statutory in nature its administrators will be unable to rely on specific and dedicated primary legislation when dealing with applications brought by or on behalf of vulnerable women who are unable to manage their own affairs.

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<sup>1</sup> Or where persons wish to receive certain payments by instalments.

<sup>2</sup> See s.5(11) of the 1997 Act.

## **(1) Wardship**

6.05 A person who is over the age of eighteen and who is found to lack capacity may be made a Ward of Court. The purpose of bringing an application to have a person deemed to be a Ward of Court is to ensure that that person's property is protected and managed for the benefit of the ward and his or her dependents.

An application for wardship is usually brought by a family member of the vulnerable person and, where the application is successful, the High Court will appoint a person to manage the property and affairs of the ward. This person is known as the "committee". The committee may only act as directed by the High Court.

In its *Report on Vulnerable Adults and the Law*<sup>3</sup> published in 2006, the Law Reform Commission described the system as "archaic" and "complex",<sup>4</sup> pointing out that the paternalistic concepts which are at the heart of the wardship system sit "*somewhat uncomfortably with the more recent social and human rights models which emphasise ability over disability*"<sup>5</sup> and noted that aspects of the procedure "*do not contain adequate procedural safeguards designed to protect human rights.*"<sup>6</sup>

The Government has recently announced<sup>7</sup> that it will shortly publish the Assisted Decision-Making (Capacity) Bill. This legislation will replace wardship and provide a statutory framework to govern decision making and capacity that reflects contemporary human rights standards, that will promote assisted and supported decision-making while also ensuring appropriate safeguards against exploitation.

## **(2) Nursing Home Support Scheme Act 2009**

6.06 The Nursing Home Support Scheme Act 2009 (the "NHSS Act 2009") contains a number of provisions intended (i) to facilitate applications made by or on behalf of people who may lack full mental capacity and (ii) to provide financial support to those persons who require long term nursing care.

Under s.47 of the NHSS Act 2009, a person who is deemed to be a "specified person" may be entitled to act on behalf of another person in the context of the scheme.

A specific person may include a family member over the age of 18, a partner or spouse, a legal representative, a medical practitioner or a next friend appointed by the court.<sup>8</sup> That specified person may, for example, apply to the HSE for a care needs assessment or for State support on behalf of another person.

It provides that a *specified person* may act on behalf of another person in relation to any matter under the Act, including, but not limited to, any application, appeal, review or the giving of consent, where that other person is not of full mental capacity.

Section 47(7) defines a *specified person* as:

- (a) if a ward of court, the Committee of the Person of the ward, duly authorised in that behalf,
- (b) a person appointed under a valid, registered Enduring Power of Attorney who is not restricted from applying for the scheme

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<sup>3</sup> (LRC 83 – 2006).

<sup>4</sup> Law Reform Commission Consultation *Report on Vulnerable Adults and the Law* (LRC 83 – 2006) at para. 1.77.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *The Irish Times*, 7<sup>th</sup> May 2013, <http://www.irishtimes.com/news/social-affairs/legislation-labelling-disabled-as-lunatics-to-be-replaced-1.1383492>.

<sup>8</sup> See s.47(7) of the NHSS Act 2009.

- (c) a care representative appointed under the Nursing Homes Support Scheme Act (section 21)
- (d) a spouse or partner
- (e) a relative who is 18 years of age or over
- (f) a next friend appointed by a court
- (g) a legal representative
- (h) a registered medical practitioner, nurse or social worker.

Those persons listed at (a)–(c) have priority over those listed at (d)–(h), that is, they have the right to act as a specified person before the other categories. Those persons listed at (a)–(c) may consent in writing to a person with lesser priority acting as the *specified person*. Where a person has reduced capacity to make decisions and wishes to apply for the Nursing Home Loan, only the people listed at (a)–(c) may make the application.

Importantly, where the HSE is not satisfied that the specified person is acting in the best interests of the relevant person, the HSE may refuse to deal with that person.

Where a person does not have capacity to make a decision regarding an application for State support or an application for a Nursing Home Loan, another person may apply to the Circuit Court and may seek to be appointed as a care representative.

The full list of persons who may apply to be a care representative is set out under s.21 (12) of the NHSS Act 2009 and includes a person's partner, parent or child and brother or sister.

The application for appointment is made to the County Registrar in the county in the Circuit in which the person requiring a care representative lives. The application is made by way of notice of motion and is grounded on an Affidavit setting out the reasons for the application. Reports from two separate registered medical practitioners are required by the Court as evidence that the person is of diminished mental capacity.

Where the Court is satisfied that a person is of full age and capacity, and is, in the view of the court, a fit and proper person to be a care representative,<sup>9</sup> an order appointing a care representative may be made. The order is subject to such conditions restricting the care representative's power to act as the Court considers appropriate.<sup>10</sup>

Pursuant to s.21(28) of the NHSS Act 2009 the care representative is bound by a duty to act in the best interests of the person in respect of whom he or she has been appointed. The care representative is obliged to keep records relating to his or her actions.

An application may also be made to the Circuit Court at any time by a person who is deemed to have a good and sufficient interest in the welfare of the person who lacks capacity and on foot of such an application, the court may direct that the care representative prepare and file with the court a report on his or her actions as care representative.

The care representative may also be obliged to attend before the Court with such records and documents as may be specified.<sup>11</sup> Further details on the 2009 Act are set out in Appendix F.

6.07 Department of Health officials advise that the operation of the Nursing Homes Support Scheme Act 2009 and, in particular, those section dealing with the *specified person*, the *care representative* and the capacity provisions, including applications to the County Registrar, have operated without controversy and/or legal challenge. Those officials have also observed that the procedures in the 2009 Act, in relation

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<sup>9</sup> See s.21(20) of the NHSS Act 2009.

<sup>10</sup> See s.21(22) of the NHSS Act 2009.

<sup>11</sup> See s.21(31) of the NHSS Act 2009.

to capacity and the appointment of a specified person/care representative, have greatly simplified the legal issues concerning capacity.

Additionally, if the NHSS Act 2009 is extended, certain specified persons may apply to the Circuit Court to be deemed to be the equivalent of a care representative; such persons will be required to act in the best interest of the *vulnerable person and to comply with any directions* of the Court. They will also be obliged to maintain a record of their actions and, if necessary, to appear before the Court and to explain those actions.

Where a person is concerned about the welfare of a recipient of a payment under the proposed Scheme, that person will be entitled to apply to be deemed the equivalent of a care representative. Where a person is deemed to have a good and sufficient interest in the welfare of the person who lacks capacity, that person may apply to court and may ask the court to conduct an inquiry into the actions of the person previously appointed as a care representative.

Similarly, where persons who wish to apply to be deemed to be the equivalent of a care representative, have complied in full with the procedures set out under the NHSS Act 2009 and the related regulations and rules of court, will be entitled to apply to the Court for directions. These directions may concern, for example, the opening and management of bank accounts payments to be made out for the benefit of the applicant under the Scheme.

6.08 Since the proposed Scheme will be non-statutory in nature the provisions concerning the operation of the Redress Board and the Hepatitis C and HIV Tribunal are of limited assistance.

The Wards of Court system has been the subject of criticism for many years and appears to be outdated and incapable of adapting to a modern understanding of capacity and related mental health issues. Significant reform has been proposed and the Government is to publish the Assisted Decision-making (Capacity) Bill in the coming months. However, at the time of publication of this Report the scheme established under the NHSS Act 2009 is the most appropriate scheme available to ensure that the relevant safeguards are in place to protect, for the benefit of vulnerable women, the resources which they will acquire when they receive monetary payments arising out of the proposed Scheme.

The Nursing Home Support Scheme is a scheme that operates primarily for the benefit of those members of society who are at an advanced age, who may be vulnerable and who may require assistance making important decisions.

The provisions of the NHSS Act 2009 and in particular the provisions concerning the appointment of care representatives will enable a balance to be struck between oversight and supervision on the one hand, and flexibility on the other.

#### **10<sup>th</sup> RECOMMENDATION**

***I am, therefore, recommending that the scheme established under the NHSS Act 2009, (and in particular the aspects of the scheme that allow for the appointment of certain persons who are bound to act in the best interests of the vulnerable person and who are subject to supervision and accountable to the court for their actions), should be extended and should apply to those women who may benefit under the ex gratia Scheme.***

***The scheme established under the NHSS Act 2009 combines adequate supervision and oversight with flexibility and the scheme should, therefore, be extended to apply to those women who may benefit under the ex gratia Scheme.***

***Further details of how the 2009 Act operates can be found in Appendix F.***



## CHAPTER 7 THE REDRESS BOARD SCHEME

This Chapter of the Report considers the approach to be taken where eligible Magdalen women may have received certain awards from the Redress Board.

*“(iv) to consider the approach to be taken in circumstances in which a payment has already been made by the Redress Board by way of redress to a former resident of an industrial school, where such payment included a sum specifically due to the direct transfer of that person from an industrial school to a relevant Laundry and their time or part of their time spent in a Laundry or Laundries.”*

7.01 This Term of Reference contemplates the potential for “double recovery” where an applicant for inclusion in the proposed Scheme has already recovered under the Redress Board scheme “due to the direct transfer of that person from an industrial school to a relevant Laundry and their time or part of their time spent in a Laundry or Laundries”.

### A GENERAL PROVISIONS OF THE REDRESS SCHEME

7.02 The Residential Institutions Redress Board (the “Redress Board”) was established under the Residential Institutions Redress Act 2002 (the “2002 Act”) as amended by the Commission to Inquire into Child Abuse (Amendment) Act 2005 (the “2005 Act”).

With regard to an applicant’s entitlement to an award under the 2002 Act, section 7(1) of the 2002 Act provides as follows:

“Where a person who makes an application (an “applicant”) for an award to the Board establishes to the satisfaction of the Board—

- (a) proof of his or her identity,
- (b) that he or she was resident in an institution during his or her childhood, and
- (c) that he or she was injured while so resident and that injury is consistent with any abuse that is alleged to have occurred while so resident,

the Board shall make an award to that person in accordance with section 13(1).”

“Injury” is defined under s.1 of the 2002 Act as including physical or psychological injury and injury that has occurred in the past or currently exists. Abuse is defined under s.1 of the 2002 Act in the following terms:

- (“a) the wilful, reckless or negligent infliction of physical injury on, or failure to prevent such injury to, the child,
- (b) the use of the child by a person for sexual arousal or sexual gratification of that person or another person,
- (c) failure to care for the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare, or
- (d) any other act or omission towards the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare.”

7.03 In summary, therefore, pursuant to the provisions of the 2002 Act, a person can seek redress under the Redress Board scheme where he or she can demonstrate that he or she was resident in a

specified institution during his or her childhood (i.e. under the age of 18) and that he or she was injured while so resident and that any injury suffered is consistent with the abuse alleged to have occurred.

At paragraph 14 of the Guide to the Redress Scheme<sup>1</sup> issued under the 2002 Act a number of examples of injury for which redress may be payable are set out, and these include: (a) physical or psychiatric illness; (b) psychological injury; and (c) loss of opportunity.

## **B PROHIBITION ON DISCLOSURE OF INFORMATION**

7.04 Section 28 of the 2002 Act places a prohibition on the disclosure by any person of information provided to the Redress Board or generated during any application made to the Redress Board (or indeed to the Review Committee). Section 28, as amended by the 2005 Act, provides:

“(1) A person (including the Board and the Review Committee) shall not, subject to this section, disclose information other than the information specified in subsection (4) or (5) that is provided to the Board or the Review Committee and obtained by that person in the course of the performance of the functions of the person under this Act.

(2) A person referred to in subsection (1) shall disclose information so referred to for the purpose of the performance of the functions of the person under this Act.

(3) Documents that are—

(a) provided to or prepared by the Board and where appropriate the Review Committee, or

(b) prepared by a person for the Board or the Review Committee in the course of the performance of the functions of such person as a member of the Board, Review Committee, a member of the staff of the Board or the Review Committee or an adviser,

shall not constitute Departmental records within the meaning of section 2(2) of the National Archives Act, 1986 .

(4) The Board shall keep a record of the following information—

(a) the name, address and date of birth of an applicant,

(b) the name of the institution concerned

(c) the period in which the applicant was resident at the institution, and

(d) the amount awarded to the applicant under this Act,

and such records shall be available to the Minister for the purposes of section 13 (13) and to any party against whom proceedings are initiated contrary to section 13 (12).

(5) Notwithstanding subsection (1) or any other provision of, or an instrument made under, a statute or any other rule of law, a person shall disclose information other than the information specified in subsection (4) that is provided to the Board or the Review Committee and obtained by that person in the course of the performance of the functions of the person under this Act to—

(a) a member of the Garda Síochána if the person is acting in good faith and reasonably believes that such disclosure is necessary in order to prevent an act or omission constituting a serious offence, and

(b) to an appropriate person (within the meaning of the Protections for Persons Reporting Child Abuse Act, 1998) if the person is acting in good faith and reasonably believes that such disclosure is necessary to prevent, reduce or remove a substantial risk to the life or to prevent the continuance of abuse of a child

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<sup>1</sup> Residential Institutions Redress Board, *Guide to the Redress Scheme* (3<sup>rd</sup> ed, December 2005).

(5A) Nothing in subsection (1) operates to prohibit the production of a document prepared for the purposes or in contemplation of an application to the Board or a submission for a review by the Review Committee, or given in evidence in such application or review, to—

(a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or

(b) such body or other person as may be prescribed by order made by the Minister, when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.

(5B) Nothing in subsection (1) operates to prohibit the giving of information or evidence provided or given to the Board or the Review Committee to—

(a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or

(b) such body or other person as may be prescribed by order made by the Minister, when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed

(6) A person shall not publish any information concerning an application or an award made under this Act that refers to any other person (including an applicant), relevant person or institution by name or which could reasonably lead to the identification of any other person (including an applicant), a relevant person or an institution referred to in an application made under this Act.

(7) The Board shall, prior to the making of an order under section 3 (3), determine the disposal of the documents concerning applications made to it.

(8) The Review Committee shall, prior to the making of an order under section 14 (3), determine the disposal of the documents concerning applications made to it.

(9) A person who contravenes subsection (1) or subsection (6) shall be guilty of an offence.”

It is a criminal offence for any person, including an applicant or the Redress Board, to disclose information contrary to s.28(1) and s.28(6).

7.05 Disclosure of certain information is permitted in the following circumstances:

- (i) The Redress Board shall maintain a record of certain information to allow the Minister for Education and Skills to (a) submit an award to the Review Board or (b) to allow the Minister and any other specified party to defend proceedings that have been commenced in contravention of s.13(12);
- (ii) A person may disclose information to a member of An Garda Síochána in certain limited circumstances. A person may also disclose certain information to an appropriate person if he or she reasonably believes that it is necessary to do to reduce or to remove a substantial risk to the life of a child;
- (iii) A person may disclose a document or other information used in connection with an application to the Board to anybody conducting a hearing, inquiry or investigation under statutory powers, or to any other body as may be prescribed by order made by the Minister.

## **C RELEVANT CASE LAW**

7.06 In *FMcK v OL*<sup>2</sup> the Supreme Court considered the provisions of the 2002 Act as amended in the context of family law proceedings. In that case the applicant had custody of two dependent children and sought maintenance from his former partner. In the District Court it emerged that the respondent partner had received an award under the Redress Board scheme. The respondent argued that she could not divulge any information in relation to that award because section 28 imposed a prohibition on the disclosure of information. The respondent appealed the maintenance order to the Circuit Court and the Circuit Court stated a case for the opinion of the Supreme Court.

The following two questions were asked of the Supreme Court:

- (i) Whether the applicant was entitled to details of the award made by the Residential Institutions Redress Board?
- (ii) Whether the court was entitled to take into account the award when deciding the issue of maintenance.

The respondent made submissions to the effect that s.28(6) and s.28(9) are unambiguous and reflected the clear intention of the Oireachtas; the requirement of confidentiality is designed to encourage those who suffered abuse to come forward. It was argued inter alia that notwithstanding that the Circuit Family Court proceedings are heard in camera disclosure of the amount of the award to the Circuit Court would amount to a clear breach of the provisions of s.28 of the 2002 Act.<sup>3</sup>

Considering section 28(5A) and (5B) Finnegan J held that the Circuit Family Court, when hearing an application for maintenance is deemed to be a body or person performing functions under an enactment consisting of the conduct of a hearing.<sup>4</sup> Accordingly, it was held that the exemptions permitting disclosure under section 28(5A) and (5B) applied:

Finnegan J proceeded to consider s.28(6) which prohibits a person from publishing information concerning an award that refers to any other person by name or which could lead to the identification of any other person including an applicant, a relevant person<sup>5</sup> or an institution. He held:

“For the respondent to furnish information as to the amount of the award to her would not be to publish information concerning ‘any other person’, relevant person or institution by name nor would this lead to the identification of any other person, relevant person or institution. In short the effect of subs. (6) is that an applicant may make known the amount of an award received so long as no other person, relevant person or institution is named and provided that the disclosure could not reasonably lead to the identification of any other person, a relevant person or an institution...”<sup>6</sup>

7.07 Finnegan J (McKechnie and O’Donnell JJ concurring) answered both questions asked of the Supreme Court in the affirmative.

## **D INTERACTION BETWEEN THE INSTITUTIONS**

7.08 A person was entitled to apply for redress under the Redress Board scheme where he or she could establish his or her residence in an institution listed in the schedule to the 2002 Act. Importantly, the

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<sup>2</sup> [2010] IESC 51, [2011] 1 IR 263.

<sup>3</sup> Ibid. at para. 8.

<sup>4</sup> Ibid. at para. 13.

<sup>5</sup> Defined under s.1 of the 2002 Act in the following terms: “a person who is referred to in an application as having carried out the acts complained of in the application, and in the case of an institution that is referred to in an application as being the institution in which the acts complained of in the application were carried out, the person who is concerned with the systems of management, administration, operation, supervision, inspection and regulation of such institution as the institution concerned may determine and specify in writing to the Board.”

<sup>6</sup> [2011] 1 IR 263 at para. 15.

Magdalen laundries are not listed in the schedule to the 2002 Act. This is probably because children were not, as a matter of course, admitted to the laundries<sup>7</sup>.

The McAleese Report states:

“The Committee identified a variety of linkages between Industrial and Reformatory Schools and the Magdalen Laundries. These included:

Girls committed by the Courts to an Industrial or Reformatory School but refused entry by that School and transferred instead to a Magdalen Laundry;

Girls released on licence from Industrial or Reformatory Schools to the Magdalen Laundries before the age of 16;

Girls referred onwards from an Industrial School to a Magdalen Laundry directly on discharge at the age of 16; and

Former industrial or reformatory school children referred to a Magdalen Laundry during the period of their post-discharge supervision (which from 1941 onwards, continued up to the age of 21).<sup>8</sup>”

Accordingly, there are potentially two categories of claimant who may have received compensation under the Redress Board scheme specifically due to the direct transfer of that person from an industrial school to a relevant Laundry, namely (a) those girls released on licence from industrial schools to the Magdalen laundries before the age of 16 and (b) those girls who were referred on from an industrial school directly to a Magdalen laundry on attaining the age of 16.

## **E ANALYSIS**

7.09 Having considered the provisions of s.28 of the 2002 Act I believe that it is clear that the Oireachtas intended that disclosure of information relating to Redress Board proceedings should be prohibited save in very limited, specific and prescribed circumstances.

However I am also of the view that there is scope for accessing certain information. Pursuant to s.28(5A) of the 2002 Act the administrators of the Magdalen scheme could, subject to a Ministerial order to that effect and only in the course of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed, request the Redress Board to provide to those administrators documentation prepared for the purposes or in contemplation of an application to the Board or a submission for a review by the Review Committee (or given in evidence in such application or review).

I also believe that, pursuant to s.28 (5B), the administrators of the Magdalen scheme could, subject to a Ministerial order to that effect (and only in the course of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed), request the Redress Board to provide to those administrators, information or evidence provided or given to the Board or the Review Committee.

7.10 Importantly however, and with regard to both s.28(5A) and s.28(5B) I do not believe that these provisions can be relied upon to justify a request to the Redress Board to disclose to the administrators of the Scheme the fact that an award was made or to disclose the details of an award. Further, and in accordance with s.28 (6), any information provided may not contain information that could reasonably lead to the identification of any third party, such as an institution or relevant person.

I am also of the opinion that the administrators of the Scheme would be entitled to enquire of the applicants under the Magdalen Scheme whether or not they have received a Redress Board award and the amount of any such award. Relying on the principles identified in *F McK v OL*, a claimant who

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<sup>7</sup> McAleese Report, Chapter 8, p.173: Age on entry was unknown for 2,346 women (21% of the relevant dataset). Based on the remaining 8,852 girls and women for whom age on entry was available, the average age on entry was 23.8 and the median age on entry was 20. The youngest person known to have entered a Magdalen laundry was 9 years old. The oldest person known to have entered a Magdalen laundry was 89 years old.

<sup>8</sup> McAleese Report, Executive Summary, at xvii, para 14.

received an award under the Redress Board scheme is entitled to make disclosure of the fact that an award was made and to disclose the amount of any such award. Crucially however, disclosure of that information may not have the effect of identifying any other person, to include any institution or relevant person.

7.11 The relevant Term of Reference refers to a previous award made by the Redress Board where this “included a sum specifically due to the direct transfer of that person from an industrial school to a relevant Laundry and their time or part of their time spent in a Laundry or Laundries”.

It is likely that the administrators of the proposed Scheme would be required to engage in a “cross referencing” exercise to some extent, under which it would be necessary to ascertain the following information:

- (i) Whether or not the claimant under the Magdalen Scheme had previously sought redress under the Redress Board scheme;
- (ii) Whether or not that claimant had succeeded in her application and had received an award;
- (iii) The amount of that award; and
- (iv) Whether or not that award included “a sum specifically due to the direct transfer of that person from an industrial school to a relevant Laundry and their time or part of their time spent in a Laundry or Laundries”

In practical terms, therefore, the administrators would be required to examine the evidence produced by and relied upon by the Redress Board applicant in support of her application and the final decision or determination reached by the Redress Board to assess whether or not that award included a sum due to the direct transfer of that person to a Magdalen laundry.

Under section 28(5A) and (5B) of the 2002 Act, disclosure could be made of application forms, submissions for review by the Review Committee and evidence and information given to the Redress Board or Review Committee in respect of applications or submissions for review.

It is possible that documentation disclosed would have to be disclosed in a redacted form. It is not possible to accurately assess whether or not any documentation and information disclosed would enable the administrators of the Scheme to carry out a “cross referencing” exercise effectively (i.e. to identify the extent to which any award made by the Redress Board included a sum specifically due to the direct transfer of that person from an industrial school to a relevant laundry and their time or part of their time spent in a laundry).

Common sense and anecdotal information suggest that it would be difficult, if not impossible. It would certainly be an expensive exercise.

The administrators of the scheme could also ask each Magdalen scheme claimant to disclose whether or not they received an award from the Redress Board and the amount of that award. It is not possible to say whether the claimants would be in a position to indicate whether or not part of any award they received did in fact relate to the transfer of that claimant to a Magdalen laundry.

7.12 Finally, I note that there is provision under the 2002 Act for the disclosure of information to certain specified parties. The 2002 Act envisages a situation where a defendant in civil proceedings may seek to strike out or dismiss a plaintiff’s claim on the ground that the claim is barred pursuant to the provisions of s.13(12) of the 2002 Act.

It appears that the Oireachtas decided to include this specific provision within the 2002 Act in order to ensure that disclosure relating to actual awards and disclosure that could lead to the identification of a relevant person or institution would only ever be made for the limited s.13 (12) purposes.

Although sections 13(12) and 28(4) were enacted in order to guard against double-recovery it should not be forgotten that before the administrators of the proposed Scheme could seek to embark on an enquiry pursuant to s.28 (4) it would be necessary for them to qualify as a party to whom the s.28 (4) information should be made available – this would require a statutory amendment.

### **11<sup>th</sup> RECOMMENDATION**

***I do not consider that the enactment of further legislation and the time and expense which disclosure, perusal and investigation of Redress Board Orders, transcripts, and remaining evidence would require is warranted since such measures are very unlikely to provide for the Scheme Administrators evidential or other information which would be of relevance to the proposed Scheme.***

***That is because detailed examination of Redress Board orders, transcripts and other documents is very unlikely to identify and measure that part of an award which has been made because it is “specifically due to the direct transfer of that person from an industrial school to a relevant Laundry and their time or part of their time spent in a Laundry or Laundries”.***

***I am therefore recommending that the Scheme should not seek to investigate or consider this matter further.***





## Introduction

8.01 A number of Magdalen women have left Ireland and now live in many different countries across the world.

I have been asked to examine whether the making of ex gratia payments under the Scheme will have adverse effects upon the benefits which those women who are resident in the UK may be entitled to receive. I have also been asked to advise on the structure of payments so as to avoid such adverse effects.

I have sought and obtained professional advice upon this matter from an eminent and experienced lawyer<sup>1</sup> in the United Kingdom who has particular expertise and experience in the interaction between monetary awards made by Courts and Redress Boards and the social and other benefits and entitlements available in the UK. The following reflects that advice.

### A UK BENEFITS AND THE PERSONAL INJURY TRUST

8.02 A number of women who may benefit under the Scheme are resident in the UK and are concerned that any payment made to them by the Irish Government will be regarded as income for means-tested benefits purposes; put simply, where a person is deemed to be in receipt of income or to have access to capital, this may have an adverse effect in terms of benefits and entitlements.

A “bare trust” can be established so that, in certain limited circumstances, and subject to strict criteria, where a recipient of personal injuries compensation places that compensation into the “bare trust” (described as a “personal injury trust”), the payment is disregarded as capital for income support / means-tested benefit purposes.

#### (1) Means tested benefits

8.03 When a claimant decides to place a compensation award into a personal injury trust, then, provided that their income from other sources is below a certain threshold,<sup>2</sup> the award is deemed to be disregarded capital for means-tested benefits purposes.<sup>3</sup> Importantly however, it is the *source* of the money in the trust fund which triggers the applicability of the disregard; the funds must be derived from a payment made “*in consequence*” of any *personal injury* to the claimant.<sup>4</sup>

Income/instalment payments paid out of the trust can be used for any purpose<sup>5</sup> and by way of example:

- Personal items can be bought directly from the trust fund;
- The family home may be bought in the name of the trust fund;

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<sup>1</sup> Ms Julia Lomas, Partner, Irwin Mitchell, LLP, Solicitors.

<sup>2</sup> A person may not be entitled to receive means-tested benefits where his or her income exceeds £16,000 per annum. A person may lose benefits on a sliding scale where he or she receives an income between £6,000 and £16,000 per annum.

<sup>3</sup> The award is deemed to be disregarded capital within the meaning of Paragraph 12 of Schedule 10 of the English Income Support (General) Regulations 1987.

<sup>4</sup> Pursuant to Paragraph 12 of Schedule 10 of the English Income Support (General) Regulations 1987.

<sup>5</sup> Pursuant to the English Social Security (Miscellaneous Amendments) (No. 4) Regulations 2006 (S.I. 2006/2378).

· General capital can be paid out of the trust fund to the claimant and so long as the beneficiary's own available assets do not exceed £6,000, his/her entitlement to means-tested benefits will not be affected;

· Income-type payments can be made to the beneficiary *out of* the trust and those payments can be used to fund any purchase (again, provided that these income/instalment payments do not exceed £6,000 in a year).

Further, the existence of a personal injury trust fund does not affect the entitlement to the means-tested benefits of a partner or child who is resident in the same household as the beneficiary of the trust.

## **(2) Long-term care**

8.04 The English National Assistance (Assessment of Resources) Regulations 1992/2977 (the "Assessment Regulations") disregard the value of "personal injury trust" funds in the context of the local authority means testing.

Whilst the National Health Service (the "NHS") is deemed to have no responsibility for the provision of long-term residential care, local authorities in the UK are responsible for providing residential accommodation for certain vulnerable people.<sup>6</sup> Those local authorities also have an obligation to charge for those services pursuant to s.22 of the National Assistance Act, 1948.

A resident with over £22,250 in properly assessable capital is responsible for payment of relevant fees based on a sliding scale with a lower threshold of £13,500. This means test is an individual as opposed to a household means test.

Regulation 25(1) of the Assessment Regulations 1997 provides as follows:

"A resident may be treated as possessing actual capital of which he has deprived himself for the purpose of decreasing the amount that he may be liable to pay for his accommodation except—

(a), where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the resident; or

(b), to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 26."

Accordingly, where a person places capital derived from a payment made "*in consequence of personal injury*" on trust, there will be no knock-on effect in terms of benefits associated with long term residential care.

For those persons in receipt of long-term home care, as opposed to long-term residential care, where a person places capital derived from a payment made in consequence of personal injury on trust, there will be no knock-on effect in terms of State benefits. However, in the case of long-term home care, local authorities are entitled to charge for services provided in the home, with each local authority being permitted to charge what is reasonable in the circumstances.<sup>7</sup>

## **(3) Specific means-tested benefits**

8.05 There are a number of discrete and individual benefits to which certain specific provisions apply. A person's entitlement to receive the majority of these benefits is not adversely affected where a person receives a personal injuries award and transfers that award into a personal injury trust, again provided that their income is below a certain threshold.

Those benefits include Income Support, Jobseeker's Allowance, Employment and Support Allowance, Pension Credit, Housing Benefit, and Council Tax Benefit.

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<sup>6</sup> Section 21(1) of the English National Assistance Act 1948 as amended by the National Health Service and Community Care Act 1990.

<sup>7</sup> See English Department of Health "Fairer Charging Guidance", 2012 edition.

## **B THE SCHEME AND PERSONAL INJURIES**

8.06 Under the Scheme it is proposed to make a payment to each woman in recognition of the traumatic effect of admission and incarceration within the designated laundries.

The payments are also intended to recognise the adverse effect which that incarceration has had upon their education, perceived reputation, subsequent health, life, lifestyle, confidence and self-esteem. The payments are intended to be used by the Magdalen women to address their current *"needs and interests"* and will include supplementary payments in recognition of the *"work undertaken"* by the women within the laundries.

Separately, all of the Magdalen women will, upon reaching State Retirement Age (currently 66 years), receive the equivalent of the State Pension (Contributory) which, at present is €230.30 per week.

8.07 Full details of the recommended ex gratia payments to be made under the Scheme are outlined in Chapter 5 above.

In summary when payments which are *"made in consequence of any personal injury to the claimant"* are paid into a *"bare trust"* fund known as a *"personal injury trust"* fund the payment is disregarded as capital for income support / means-tested benefit purposes.

It is the *source* of the funds that dictates whether or not the statutory disregards should apply and where the *personal injuries* element of the payment is absent, the disregard will not apply.

Where funds which are not deemed to derive from a payment made in consequence of a personal injury are placed within a *"personal injury trust"* those funds will be regarded as capital for means-tested benefits purposes and the beneficiary under the trust may lose their entitlement to benefits and supports.

Neither I nor the experts whose advice I have sought can advise with authority that the making of the ex gratia payments recommended within this Report will not adversely affect the existing social and other entitlements, benefits and supports available to UK residents if the payments are paid into *"personal injury trust"* funds created for that purpose.

Those parts of the recommended payments which are made in recognition of the effects which incarceration has had upon the health, life, lifestyle, confidence and self-esteem of the Magdalen women can certainly be validly be described as *"personal injury"* payments and it can also be validly argued that the payments equivalent to the State Pension (Contributory) and those made for the *"work undertaken"* by the women during that time was made *"made in consequence of ..(a).. personal injury to the claimant"*.

However contrary arguments can be advanced and legislative and other changes can be made for policy and other purposes within the UK at any time.

Bilateral arrangements exist between the Department of Social Protection and the Department of Work and Pensions ( the Department which has responsibility for welfare and pension policy in the UK).

For example, it is possible, for the purposes of qualifying for a pension in either Ireland or the UK to amalgamate contributions paid in either jurisdiction.

It is hoped that the UK benefits agencies, in conjunction with the Department of Work and Pensions will apply an interpretation to payments made under the Scheme which will allow those payments placed on trust to be regarded as payments made *in consequence of "personal injuries to the claimant"* but that cannot be guaranteed.

## **12<sup>th</sup> RECOMMENDATION**

***I cannot say with any certainty how payments made to persons domiciled in another jurisdiction will be treated for tax purposes. The UK tax and benefit regime is governed and regulated by the UK authorities and it is ultimately those authorities who will decide whether payments will be disregarded in the context of either tax or means-tested benefits or both. Dialogue at a political level, if possible, with a view to ensuring certainty on this matter is all that I can recommend.***

***If dialogue at political level confirms that payments into “personal injury trusts” will have no adverse effects upon UK benefits then the Scheme should allow for payments (capped at £1000) in respect of the cost of the establishment of the requisite trust funds.***

8.08 Some Magdalen women now live in other jurisdictions, including the US, Canada, Australia, Germany, Switzerland and other countries.

Although my Terms of Reference do not expressly refer to those women the observations which I have just made apply with equal force to their circumstances, their tax and other liabilities and the social and other benefits to which they are entitled.

**APPENDIX A TABLE OF PAYMENTS**

<b>Time spent in laundries</b>					
<b>Years</b>	<b>Months</b>	<b>General Payment</b>		<b>Work Payment</b>	<b>Total Payment</b>
	up to 3	€ 10,000		€ 1,500	€ 11,500
	4	€ 10,500		€ 2,000	€ 12,500
	5	€ 11,000		€ 2,500	€ 13,500
	6	€ 11,500		€ 3,000	€ 14,500
	7	€ 12,000		€ 3,500	€ 15,500
	8	€ 12,500		€ 4,000	€ 16,500
	9	€ 13,000		€ 4,500	€ 17,500
	10	€ 13,500		€ 5,000	€ 18,500
	11	€ 14,000		€ 5,500	€ 19,500
1	0	€ 14,500		€ 6,000	€ 20,500
	1	€ 15,000		€ 6,500	€ 21,500
	2	€ 15,500		€ 7,000	€ 22,500
	3	€ 16,000		€ 7,500	€ 23,500
	4	€ 16,500		€ 8,000	€ 24,500
	5	€ 17,000		€ 8,500	€ 25,500
	6	€ 17,500		€ 9,000	€ 26,500
	7	€ 18,000		€ 9,500	€ 27,500
	8	€ 18,500		€ 10,000	€ 28,500
	9	€ 19,000		€ 10,500	€ 29,500
	10	€ 19,500		€ 11,000	€ 30,500
	11	€ 20,000		€ 11,500	€ 31,500
2	0	€ 20,500		€ 12,000	€ 32,500
	1	€ 21,000		€ 12,500	€ 33,500
	2	€ 21,500		€ 13,000	€ 34,500
	3	€ 22,000		€ 13,500	€ 35,500
	4	€ 22,500		€ 14,000	€ 36,500
	5	€ 23,000		€ 14,500	€ 37,500
	6	€ 23,500		€ 15,000	€ 38,500
	7	€ 24,000		€ 15,500	€ 39,500
	8	€ 24,500		€ 16,000	€ 40,500
	9	€ 25,000		€ 16,500	€ 41,500
	10	€ 25,500		€ 17,000	€ 42,500
	11	€ 26,000		€ 17,500	€ 43,500
3	0	€ 26,500		€ 18,000	€ 44,500
	1	€ 27,000		€ 18,500	€ 45,500

	2	€ 27,500		€ 19,000		€ 46,500
	3	€ 28,000		€ 19,500		€ 47,500
	4	€ 28,500		€ 20,000		€ 48,500
	5	€ 29,000		€ 20,500		€ 49,500
	6	€ 29,500		€ 21,000		€ 50,500
	7	€ 30,000		€ 21,500		€ 51,500
	8	€ 30,500		€ 22,000		€ 52,500
	9	€ 31,000		€ 22,500		€ 53,500
	10	€ 31,500		€ 23,000		€ 54,500
	11	€ 32,000		€ 23,500		€ 55,500
4	0	€ 32,500		€ 24,000		€ 56,500
	1	€ 33,000		€ 24,500		€ 57,500
	2	€ 33,500		€ 25,000		€ 58,500
	3	€ 34,000		€ 25,500		€ 59,500
	4	€ 34,500		€ 26,000		€ 60,500
	5	€ 35,000		€ 26,500		€ 61,500
	6	€ 35,500		€ 27,000		€ 62,500
	7	€ 36,000		€ 27,500		€ 63,500
	8	€ 36,500		€ 28,000		€ 64,500
	9	€ 37,000		€ 28,500		€ 65,500
	10	€ 37,500		€ 29,000		€ 66,500
	11	€ 38,000		€ 29,500		€ 67,500
5	0	€ 38,500		€ 30,000		€ 68,500
	1	€ 39,000		€ 30,500		€ 69,500
	2	€ 39,500		€ 31,000		€ 70,500
	3	€ 40,000		€ 31,500		€ 71,500
	4	€ 40,000		€ 32,000		€ 72,000
	5	€ 40,000		€ 32,500		€ 72,500
	6	€ 40,000		€ 33,000		€ 73,000
	7	€ 40,000		€ 33,500		€ 73,500
	8	€ 40,000		€ 34,000		€ 74,000
	9	€ 40,000		€ 34,500		€ 74,500
	10	€ 40,000		€ 35,000		€ 75,000
	11	€ 40,000		€ 35,500		€ 75,500
6	0	€ 40,000		€ 36,000		€ 76,000
	1	€ 40,000		€ 36,500		€ 76,500
	2	€ 40,000		€ 37,000		€ 77,000
	3	€ 40,000		€ 37,500		€ 77,500
	4	€ 40,000		€ 38,000		€ 78,000
	5	€ 40,000		€ 38,500		€ 78,500
	6	€ 40,000		€ 39,000		€ 79,000
	7	€ 40,000		€ 39,500		€ 79,500
	8	€ 40,000		€ 40,000		€ 80,000
	9	€ 40,000		€ 40,500		€ 80,500
	10	€ 40,000		€ 41,000		€ 81,000
	11	€ 40,000		€ 41,500		€ 81,500

7	0	€ 40,000		€ 42,000		€ 82,000
	1	€ 40,000		€ 42,500		€ 82,500
	2	€ 40,000		€ 43,000		€ 83,000
	3	€ 40,000		€ 43,500		€ 83,500
	4	€ 40,000		€ 44,000		€ 84,000
	5	€ 40,000		€ 44,500		€ 84,500
	6	€ 40,000		€ 45,000		€ 85,000
	7	€ 40,000		€ 45,500		€ 85,500
	8	€ 40,000		€ 46,000		€ 86,000
	9	€ 40,000		€ 46,500		€ 86,500
	10	€ 40,000		€ 47,000		€ 87,000
	11	€ 40,000		€ 47,500		€ 87,500
8	0	€ 40,000		€ 48,000		€ 88,000
	1	€ 40,000		€ 48,500		€ 88,500
	2	€ 40,000		€ 49,000		€ 89,000
	3	€ 40,000		€ 49,500		€ 89,500
	4	€ 40,000		€ 50,000		€ 90,000
	5	€ 40,000		€ 50,500		€ 90,500
	6	€ 40,000		€ 51,000		€ 91,000
	7	€ 40,000		€ 51,500		€ 91,500
	8	€ 40,000		€ 52,000		€ 92,000
	9	€ 40,000		€ 52,500		€ 92,500
	10	€ 40,000		€ 53,000		€ 93,000
	11	€ 40,000		€ 53,500		€ 93,500
9	0	€ 40,000		€ 54,000		€ 94,000
	1	€ 40,000		€ 54,500		€ 94,500
	2	€ 40,000		€ 55,000		€ 95,000
	3	€ 40,000		€ 55,500		€ 95,500
	4	€ 40,000		€ 56,000		€ 96,000
	5	€ 40,000		€ 56,500		€ 96,500
	6	€ 40,000		€ 57,000		€ 97,000
	7	€ 40,000		€ 57,500		€ 97,500
	8	€ 40,000		€ 58,000		€ 98,000
	9	€ 40,000		€ 58,500		€ 98,500
	10	€ 40,000		€ 59,000		€ 99,000
	11	€ 40,000		€ 59,500		€ 99,500
10	0	€ 40,000		€ 60,000		€ 100,000





## APPENDIX B STATE PENSIONS

### State Pension (Contributory) rates for people who qualify for pensions from 1 September 2012

Yearly average PRSI contributions	Personal rate per week, €	Increase for a qualified adult* (under 66), €	Increase for a qualified adult* (over 66), €
48 or over	230.30	153.50	206.30
40-47	225.80	146.00	196.00
30-39	207.00	139.00	186.00
20-29	196.00	130.00	175.00
15-19	150.00	100.00	134.00
10-14	92.00	61.00	83.00

\*Increases for qualified adults are means-tested payments

### State Pension (Contributory) rates for people who qualified for pensions before 1 September 2012

Yearly average PRSI contributions	Personal rate per week, €	Increase for a qualified adult (under 66), €	Increase for a qualified adult (aged 66 and over), €
48 or over	230.30	153.50	206.30
20 - 47	225.80	153.50	206.30
15 - 19	172.70	115.10*	154.70*
10 - 14	115.20	76.80*	103.20*

\*Qualified adult rates apply to claims made from 6 April 2001.



**APPENDIX C      EXAMPLES OF HOW INCOME PAYABLE IN LIEU OF LUMP SUM IS CALCULATED**

**Appendix C.1 - Those over State Pension Age**

The Table below sets out for various ages and time spent in the laundries the life income that will be provided **in addition** to the lump sum payment that will be paid.

		Weekly	Annual
	Time in	Life	Life
Age	Laundry	Income	Income
66	1	€230	€11,960
66	4	€239	€12,428
66	8	€282	€14,664
66	10	€299	€15,548
68	1	€230	€11,960
68	4	€240	€12,480
68	8	€286	€14,872
68	10	€304	€15,808
70	1	€230	€11,960
70	4	€240	€12,480
70	8	€290	€15,080
70	10	€309	€16,068
72	1	€230	€11,960
72	4	€241	€12,532
72	8	€295	€15,340
72	10	€316	€16,432
74	1	€230	€11,960
74	4	€242	€12,584
74	8	€301	€15,652
74	10	€324	€16,848
76	1	€230	€11,960
76	4	€243	€12,636
76	8	€309	€16,068
76	10	€334	€17,368
78	1	€230	€11,960
78	4	€245	€12,740
78	8	€318	€16,536
78	10	€345	€17,940
80	1	€230	€11,960
80	4	€247	€12,844
80	8	€328	€17,056
80	10	€360	€18,720

		Weekly	Annual
	Time in	Life	Life
Age	Laundry	Income	Income
82	1	€230	€11,960
82	4	€249	€12,948
82	8	€341	€17,732
82	10	€376	€19,552
84	1	€230	€11,960
84	4	€252	€13,104
84	8	€356	€18,512
84	10	€396	€20,592
86	1	€230	€11,960
86	4	€254	€13,208
86	8	€373	€19,396
86	10	€418	€21,736
88	1	€230	€11,960
88	4	€258	€13,416
88	8	€392	€20,384
88	10	€444	€23,088
90	1	€230	€11,960
90	4	€262	€13,624
90	8	€414	€21,528
90	10	€473	€24,596
92	1	€230	€11,960
92	4	€266	€13,832
92	8	€440	€22,880
92	10	€506	€26,312
94	1	€230	€11,960
94	4	€271	€14,092
94	8	€471	€24,492
94	10	€546	€28,392
96	1	€230	€11,960
96	4	€277	€14,404
96	8	€503	€26,156
96	10	€590	€30,680

**Example 1**

If a woman aged 70 spent 8 years in the Laundries her gross payment amounts to €88,000. €50,000 is paid as a lump sum and the excess, €38,000, is converted into a life income.

Looking up the above table shows that the woman will be granted a life income of €290 per week, that is, €15,080 per annum made up of €230 per week (€11,960 per annum) being the payment equivalent to the State Contributory Pension, and €60 per week (€3,120 per annum) in lieu of that part of her payment not paid as a lump sum (€38,000).

**Example 2**

If a woman aged 80 spent 10 years in the Laundries her gross payment amounts to €100,000. €50,000 is paid as a lump sum and the excess, €50,000, is converted into a life income.

Looking up the above table shows that the woman will be granted a life income of €360 per week, that is, €18,720 per annum, made up of €230 per week (€11,960 per annum) being the payment equivalent to the State Contributory Pension, and €130 per week (€6,760 per annum) in lieu of that part of her payment not paid as a lump sum (€50,000).

**Example 3**

If a woman aged 68 spent 3 years in the Laundries her gross payment amounts to €44,500. The entire payment is paid as a lump sum as it is less than €50,000.

The woman will be granted a life income of €230 per week, that is, €11,960 per annum, being the payment equivalent to the State Contributory Pension.

## Appendix C.2 - Those under State Pension Age

The Table below sets out for various ages and time spent on the Laundries the income that will be provided **in addition** to the lump sum payment that will be paid.

			Weekly	Annual		Weekly	Annual
	Time in		Income	Income		Income	Income
Age	Laundry		until SPA	until SPA		from SPA	until SPA
50	1		€100	€5,200		€230	€11,960
50	4		€109	€5,668		€230	€11,960
50	8		€152	€7,904		€230	€11,960
50	10		€169	€8,788		€230	€11,960
52	1		€100	€5,200		€230	€11,960
52	4		€110	€5,720		€230	€11,960
52	8		€157	€8,164		€230	€11,960
52	10		€175	€9,100		€230	€11,960
54	1		€100	€5,200		€230	€11,960
54	4		€112	€5,824		€230	€11,960
54	8		€167	€8,684		€230	€11,960
54	10		€189	€9,828		€230	€11,960
56	1		€100	€5,200		€230	€11,960
56	4		€113	€5,876		€230	€11,960
56	8		€178	€9,256		€230	€11,960
56	10		€202	€10,504		€230	€11,960
58	1		€100	€5,200		€230	€11,960
58	4		€116	€6,032		€230	€11,960
58	8		€192	€9,984		€230	€11,960
58	10		€221	€11,492		€230	€11,960
60	1		€100	€5,200		€230	€11,960
60	4		€123	€6,396		€230	€11,960
60	8		€231	€12,012		€231	€12,012
60	10		€245	€12,740		€245	€12,740
62	1		€100	€5,200		€230	€11,960
62	4		€133	€6,916		€230	€11,960
62	8		€245	€12,740		€245	€12,740
62	10		€260	€13,520		€260	€13,520
64	1		€100	€5,200		€230	€11,960
64	4		€164	€8,528		€230	€11,960
64	8		€262	€13,624		€262	€13,624
64	10		€278	€14,456		€278	€14,456

### **Example 1**

If a woman aged 58 spent 8 years in the Laundries her gross payment amounts to €88,000. €50,000 is paid as a lump sum and the excess, €38,000, is converted into an income.

Looking up the above table shows that the woman will be granted an income to State Pension Age (SPA) of €192 per week, that is €9,984 per annum made up of the minimum income of €100 per week (€5,200 per annum), and €92 per week (€4,784 per annum) in lieu of that part of her payment not paid as a lump sum (€38,000).

From State Pension Age she will receive a life income of €230 per week, that is, €11,960 per annum, being the payment equivalent to the State Contributory Pension.

### **Example 2**

If a woman aged 50 spent 10 years in the Laundries her gross payment amounts to €100,000. €50,000 is paid as a lump sum and the excess, €50,000, is converted into an income.

Looking up the above table shows that the woman will be granted an income to State Pension Age (SPA) of €169 per week, that is, €8,788 per annum made up of the minimum income of €100 per week (€5,200 per annum), and €69 per week (€3,588 per annum) in lieu of that part of her payment not paid as a lump sum (€50,000).

From State Pension Age (SPA) she will receive a life income of €230 per week, that is, €11,960 per annum, being the payment equivalent to the State Contributory Pension.

### **Example 3**

If a woman aged 64 spent 3 years in the Laundries her gross payment amounts to €44,500. The entire payment is paid as a lump sum as it is less than €50,000.

The woman will be granted an income to State Pension Age (SPA) of €100 per week, that is, €5,200 per annum, being the minimum income payable to State Pension Age (SPA).

From State Pension Age (SPA) she will receive a life income of €230 per week, that is, €11,960 per annum, being the payment equivalent to the State Contributory Pension.

### **Example 4**

If a woman aged 64 spent 10 years in the Laundries her gross payment amounts to €100,000. €50,000 is paid as a lump sum and the excess, €50,000 is converted into an income.

Looking up the above table shows that the woman will be granted an income to State Pension Age (SPA) of €278 per week, that is, €14,456 per annum made up of the minimum income of €100 per week (€5,200 per annum), and €178 per week (€9,256 per annum) in lieu of a portion of that part of her payment not paid as a lump sum.

From State Pension Age (SPA) she will receive also receive a life income of €278 per week, that is, €11,960 per annum, being the payment equivalent to the State Contributory Pension, and €48 per week (€2,496 per annum) in lieu of the rest of that part of her payment not paid as a lump sum.

**APPENDIX D      METHODOLOGY FOR CONVERTING PAYMENT IN EXCESS OF €50,000 INTO AN INCOME**

**Appendix D.1 Conversion of excess payment to life income**

Each of the women will be paid an income equivalent to the State Contributory Pension. In addition, for those with payments in excess of €50,000 the excess will be converted into an additional life income using as the conversion basis the mortality implied by the Irish Life No 15 Table and using a real interest rate of 3%. The life income should increase annually in line with increases applied to the State Contributory Pension.

The appropriate rates being as follows

		<b>Weekly Life</b>				<b>Weekly Life</b>
		<b>Income per</b>				<b>income per</b>
<b>AGE</b>		<b>€1,000</b>		<b>AGE</b>		<b>€1,000 payment</b>
		<b>payment</b>				
50		€0.937		76		€2.070
51		€0.953		77		€2.183
52		€0.971		78		€2.309
53		€0.989		79		€2.445
54		€1.009		80		€2.591
55		€1.030		81		€2.755
56		€1.052		82		€2.924
57		€1.075		83		€3.106
58		€1.100		84		€3.311
59		€1.127		85		€3.534
60		€1.155		86		€3.759
61		€1.186		87		€4.016
62		€1.218		88		€4.274
63		€1.253		89		€4.566
64		€1.290		90		€4.854
65		€1.330		91		€5.181
66		€1.374		92		€5.525
67		€1.420		93		€5.917
68		€1.471		94		€6.329
69		€1.524		95		€6.757
70		€1.585		96		€7.194
71		€1.647		97		€7.692
72		€1.718		98		€8.264
73		€1.795		99		€8.850
74		€1.876		100		€9.615
75		€1.969		101		€9.615

For example, if a woman aged 70 spent 5 years in the Laundries her gross payment amounts to €68,500. €50,000 is paid as a lump sum and the excess, €18,500, is converted into a life income. The factor for

conversion for a 70 year old is €1.585 per €1,000 payment. The excess amount of €18,500 thus secures a weekly income of €29. She is thus paid a total life income of €259, that is, €230 plus €29.

**Appendix D.2 Conversion of Excess Payment to Income Payable to State Pension Age**

Each of the women will be paid a minimum income of €100 per week up to State Pension age when an income equivalent to the State Contributory Pension will commence. In addition, for those with payments in excess of €50,000 the excess will be converted into an income payable up to State Pension Age using a real interest rate of 3% as the conversion basis. In the event that the excess payment is sufficient to increase the income payable to State Pension Age to €230 per week the amount of the residual payment left after this income has been secured will be converted into a life income. In this way a continuous level income will be paid.

The appropriate rates being as follows

		<b>Weekly income payable until SPA</b>				<b>Weekly income payable until SPA</b>
		<b>per €1,000 payment</b>		<b>AGE</b>		<b>per €1,000 payment</b>
50		€1.37		58		€2.43
51		€1.43		59		€2.69
52		€1.50		60		€3.49
53		€1.67		61		€4.12
54		€1.78		62		€5.08
55		€1.90		63		€6.68
56		€2.04		64		€9.87
57		€2.21		65		€19.45

For example, if a woman aged 55 spent 8 years in the Laundries her gross payment amounts to €88,000. €50,000 is paid as a lump sum and the excess, €38,000, is converted into a payment payable to State Pension Age (to a maximum of €230 per week). The factor for conversion for a 55 year old is €1.90 per €1,000 payment. The excess amount of €38,000 thus secures a weekly income of €72. She is thus paid a total income of €172 per week to State Pension Age and thereafter receives an income of €230 per week.



**CONTENTS**

**Head**

1. Short title, collective citation, construction and commencement
2. Provision of health services without charge to participants in Magdalen Scheme

**ACTS REFERRED TO**

Health Act 1970	1970, No. 1
Health Acts 1970 to 1996	
Medical Practitioners Act 2007	2007, No.25

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**DRAFT HEADS OF HEALTH (AMENDMENT) BILL**

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**Head 1: Short title, collective citation, construction and commencement**

Provide that:

- (1) This Act may be cited as the Health (Amendment) Act 2013.
- (2) The Health Acts 1970 to 1996, and this Act may be cited together as the Health Acts 1970 to 2013, and shall be construed together as one Act.
- (3) This Act shall come into operation on such day or days as the Minister for Health may appoint by order.

**Head 2: Provision of health services without charge to participants in Magdalen Scheme**

Provide that:

- (1) The Health Service Executive (“the Executive”) shall make available without charge to persons who are participants in the Magdalen Scheme—
  - (a) general practitioner medical and surgical services, in relation to all medical conditions, provided by registered medical practitioners (within the meaning of the Medical Practitioners Act 2007) chosen by the persons,

- (b) drugs, medicines and medical and surgical appliances,
- (c) the nursing service specified in section 60 of the Act of 1970,
- (d) the service specified in section 61 of the Act of 1970,
- (e) dental, ophthalmic and aural treatment and dental, optical and aural appliances,
- (f) counselling services in respect of time spent by the person in a Magdalen laundry,
- (g) hospital services<sup>1</sup> and
- (h) such other services as may be prescribed.

(2) In this head “the Act of 1970” means the Health Act 1970.

(3) In this head, “the Magdalen Scheme” means the Scheme established on [INSERT DATE] for the benefit of those women who were admitted to and worked in a Magdalen Laundry and in the Laundry operated in the Training Centre at Stanhope Street Dublin.

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<sup>1</sup> Note: eligibility for hospital services was not included in the Health (Amendment) Act 1996 but forms part of the benefits of a HAA Card.

**1. Presumption of capacity under section 21 of 2009 Act.**

There is a presumption, until the contrary is established, that a person has full capacity. This does not apply to a person:

- (a) who is a ward of court,
- (b) who has appointed a person to be his/her attorney under an Enduring Power of Attorney,
- (c) in respect of whom another person is permitted by law to act on behalf of that person in relation to a matter to which section 21 of the Nursing Homes Support Scheme Act 2009 applies notwithstanding that the person concerned does not have the capacity to make a decision in relation to such a matter.

**2. Applications to court under section 21 of 2009 Act.**

If the court is satisfied that the relevant person concerned is incapable, for the time being, of making a decision to which this section applies, and the court determines that it is the best interests of the relevant person concerned, having regard to:

- a) the expressed wishes (if known) of the relevant person concerned, and
- b) the circumstances of the relevant person concerned the court may appoint a person to be a care representative in accordance with section 21,

the court may appoint more than one person to be a care representative of a relevant person and unless the court otherwise orders, the care representatives shall act jointly.

A person belonging to one of the following classes of persons may apply to be appointed as a care representative:

- a) where the person is a member of a couple, the other member of the couple
- b) a parent of the relevant person
- c) a child of the relevant person
- d) a brother or sister (whether of the whole or half blood) of the relevant person
- e) a niece or nephew of the relevant person
- f) a grandchild of the relevant person
- g) a grandparent of the relevant person
- h) an aunt or uncle of the relevant person
- i) a person other than a person who is:
  - (i) the proprietor of a nursing home in which the relevant person resides or is likely to reside, or
  - (ii) one of the registered medical practitioners who examined the relevant person and prepared a report (under section 21(18) of the 2009 Act) in respect of such person, and who appears to the court to have a good and sufficient interest in the welfare of the relevant person.

Where there is more than one person with a class of persons, referred to above, an application may be made by one such person, but the court shall be satisfied that all other person within that class or a class which has greater priority have received proper notice of the application.

The court shall not appoint a person to be a care representative unless it has before it a report from at least two registered medical practitioners who have examined the relevant person concerned and such reports confirm that the person does not have the capacity to make the decisions to which the section applies and setting out the basis for the conclusion.

The court may hear such other evidence relating to:

- a) The health or circumstances of the person concerned, and
- b) The circumstances of the partner of the person concerned, as it considers necessary to determine whether it should make an order under this section.

### **3. Functional Test of Capacity in the 2009 Act**

Section 21(43) of the 2009 Act provides:

“A person shall be considered not to have the capacity to make a decision relating to a matter to which this section applies if he or she is unable:

- (a) to understand the information relevant to the decision,
- (b) to retain that information,
- (c) to use or weigh that information as part of the process of making the decision,  
or
- (d) to communicate his or her decision (whether by talking, using sign language or any other means), or if the decision requires the act of a third party to be implemented, to communicate by any means with the third party.”

Reports from two registered medical practitioners are required by the Court as evidence that a person does not have capacity. The report must be in the form prescribed by the Minister in the Nursing Homes Support Scheme (Assessment of Capacity Report) Regulations 2009.

### **4. Procedure for Appointment as a Care Representative**

The application for appointment as a Care Representative must be made to the County Registrar in any county in the circuit in which the person who requires a care representative now lives or which he/she has lived at any time during the past three years.

In order to make an application, the following documents must be lodged with the Circuit Court to the county in which the application is being made.

- *Notice of Motion* which must be addressed to the County Registrar.

- An *Affidavit* setting out the reasons for the application; the *Affidavit* must be sworn before a Commissioner for Oaths or a practising solicitor.
- Two medical reports from two separate registered medical practitioners as evidence that a person is of diminished mental capacity.
- The medical reports must be attached to the *Affidavit* prior to the swearing thereof.
- Any *Consents* in writing to the application received from persons with an equal or greater priority to be appointed as care representative must also be exhibited i.e. attached to the *Affidavit* prior to the swearing.
- The *Notice of Motion*, the *Affidavit*, the medical reports and *Consents* must be lodged together in the Circuit Court Office which can be done either in person or by post. The *Notice of Motion* and the *Affidavit* must be stamped in advance with the appropriate stamp duty.
- When the documents are received by the Circuit Court Office, the application shall be listed before the County Registrar.
- The person making the application must also serve a copy of the *Notice of Motion* together with a copy of the *Affidavit* and the attached medical reports, on the person in respect of whom the application is being made as well as on every person with an equal or greater priority to apply for appointment to be the care representative. The documents must be served personally on the person in respect of whom the application is being made. In every other case, they may be served personally or by registered post. It is important to note that there is no requirement to serve copies of the documents on every person with an equal or greater priority if the person has already consented in writing to the application.
- Finally, the person making the application must also serve a document called a *Reply* on the person in respect of whom the application is being made. In the *Reply*, the person can indicate whether or not he/she objects to the appointment. The *Reply* should be sent to the County Registrar seven days before the date in which the matter is to be listed.

Where at the Hearing of the Originating Notice of Motion before the County Registrar, objection is made by any notice party relating to the appointment of a care representative, the County Registrar shall transfer the Originating Notice of Motion, when in order for hearing, to the Judge's List on the first opportunity. Unless otherwise permitted by the County Registrar or the Court, evidence in proceedings under Section 21 of the Act shall be heard and determined on Affidavit.



## **APPENDIX G      EXTRACT FROM GUIDE TO COMMUNITY SERVICES AVAILABLE TO HAA CARD HOLDERS UNDER HEALTH (AMENDMENT) ACT 1996**

This Appendix largely reproduces Chapter 3 of the updated *Information Guide to Primary Care and Hospital Services* published in 2013 by the HSE in connection with the HAA Card issued under the Health (Amendment) Act 1996. The full text of this 2013 Guide is available at [http://www.hse.ie/eng/services/list/1/schemes/hepc/Information\\_Guide\\_to\\_Services\\_Provided\\_with\\_the\\_HAA\\_Card.pdf](http://www.hse.ie/eng/services/list/1/schemes/hepc/Information_Guide_to_Services_Provided_with_the_HAA_Card.pdf). It is reproduced here for the purposes of illustrating the type and extent of the primary and community services which (in addition to hospital care) I have recommended in this Report should be available to the Magdalen women. Not all the community services described in that Guide may be directly relevant to the Magdalen women and any comparable Guide for the Magdalen women would require suitable adaptation.

### **CHAPTER 3: PRIMARY AND COMMUNITY BASED HEALTH & SOCIAL CARE SERVICES**

#### **WHAT ARE THESE SERVICES?**

Community based health and social care services, also known as Primary Care services, include any healthcare services which are available outside of the hospital setting either through the Health Service Executive in your area or in some circumstances through other accredited professionals. Each community based service is described here individually.

#### **CHIROPODY / PODIATRY SERVICES**

Chiropodists assess, diagnose and treat diseases and abnormalities of the foot. Chiropodists work will vary greatly from one chiropodist to another and will depend on the individual clients needs. Podiatry is a medical term used that means more or less the same as chiropody and is now becoming more widely used. The aim of chiropody/podiatry services is to cure the patient's problem and where possible, prevent recurrence of existing foot problems or the development of new foot problems. Health promotion is another important aspect of the chiropodist's work.

The type of services which are offered by most chiropodists/podiatrists include the following:

- footcare and footwear advice;
- pain management in the foot;
- nail surgery;
- verrucae treatment;
- diabetic footcare and continuous assessment;
- preventative footcare by the use of customised orthotics.

Arrangements for chiropody and podiatry services vary from area to area. Some HSE areas provide chiropody/podiatry services through their own clinics, others arrange for private contractors to provide it on their behalf. Some hospitals also provide chiropody/podiatry services under certain circumstances, and on the basis of medical need. There are a small number of Chiropodists who have given their contact details to Liaison Officers and who are willing to provide services, and bill the HSE directly. You should check with your Liaison Officer to see if there is a list of Chiropodists from your area available. In any case the Liaison Officer will assist you in accessing chiropody services.

HAA cardholders can also avail of chiropody/podiatry services from any qualified chiropodist/podiatrist. You can avail of as many visits to the chiropodist/podiatrist as you need and there is no requirement to obtain prior approval or a GP's referral. You can then either recoup the cost of your consultations with the chiropodist on production of receipts with your Liaison Officer or alternatively the Liaison Officer can arrange to pay the chiropodist directly on your behalf. You should discuss with your Liaison Officer whichever arrangement suits you best and it will be facilitated. If the chiropodist/podiatrist is unwilling to be paid directly or go onto the Liaison Officers list of Chiropodists, or if you would prefer that the Hepatitis C Liaison Officer did not get involved, you are still free to attend this chiropodist/podiatrist and have the

cost recouped. You do not have to attend a local chiropodist/podiatrist, or to continue attending the same chiropodist/podiatrist if you choose not to.

If you attend a chiropodist/podiatrist other than those on the HSE list, you should be careful to check that he/she is professionally qualified. Hepatitis C Liaison Officers will not refund the cost of chiropody services provided by an unqualified or unregistered practitioner. If in doubt, check with the Hepatitis C Liaison Officer before incurring any expense.

The Department of Health and Children is in the process of establishing a revised assessment mechanism for those chiropodists/podiatrists who wish to work in the public health service. This will involve establishing minimum standards for acceptable practice and assessment of chiropodists/podiatrists against this standard.

There are four separate professional bodies representing chiropodists/podiatrists in Ireland:

- Society of Chiropodists and Podiatrists in Ireland;
- Irish Chiropodists/Podiatrists Organisation Ltd.;
- Institute of Chiropodists and Podiatrists in Ireland;
- Irish Branch of the British Chiropody and Podiatry Association.

If you require further information about chiropody or wish to check whether your practitioner is a registered member of one of these organisations, you should contact them directly. The telephone numbers are given at the back of this Guide. **[Note: these numbers are not included in this reproduction of the 2013 Guide].**

### **In Summary**

- You are entitled to all chiropody/podiatry services provided by qualified chiropodists.
- You can avail of services whenever and as often as you wish and do not need referral from a GP or prior approval from your Liaison Officer.
- Payment can be arranged by the HSE directly with your chiropodist if you wish or you can be reimbursed by your Liaison Officer on production of receipts.
- If you have any queries on any aspect of chiropody services you should speak with your Liaison Officer.

## **COMPLEMENTARY THERAPIES**

### **What are complementary therapies?**

There are a wide variety of complementary therapies, and the term generally refers to therapies that are not used as part of conventional medicine. However, the position is now changing, and some healthcare professionals are now offering and providing complementary therapies to their patients as part of their overall care. Many people have found complementary therapies beneficial in dealing with a number of conditions as part of their overall care and well-being. Complementary therapies may include for example;

- Massage
- Reflexology
- Acupuncture
- Aromatherapy
- Hydrotherapy

### **How can I avail of complementary therapies with my HAA card?**

Complementary therapies are available to all HAA cardholders as part of the overall range of healthcare services provided to you. These services are available to you in a number of settings including some of the hospitals where there are designated liver units and also in some private practices. There are a number of complementary therapists who provide therapies to HAA cardholders in the private setting and contact details for some of these are available from your Liaison Officer. Some of the patient support groups have lists of registered practitioners who also work as complementary therapists and if you are a member of one of the groups you should contact them for further details.

In order for you to avail of complementary therapies privately and to have the cost of this covered under your HAA card, it is important that you ensure the therapist providing the particular therapy is a registered medical practitioner. This can include a GP, RGN or in the case of massage for example, a Physiotherapist. A small but growing number of GPs now provide acupuncture and similarly some chartered physiotherapists provide massage-based therapies, manipulation-based therapies, or hydrotherapy. Registered nurses may have appropriate qualifications in massage-based therapies. Some registered chiropodists may have appropriate qualifications to provide reflexology.



It is essential that your liver specialist approves of any complementary therapy that you are proposing to avail of. You should keep your liver specialist informed of any service or treatment you are undertaking, regardless of whether the HSE are refunding all or part of the cost or you are paying for it in full yourself.

In general, you should talk to your Hepatitis C Liaison Officer first to check the position regarding payment. The Hepatitis C Liaison Officer will refund the cost of complementary therapies under the following criteria:

- the therapist is a currently registered general practitioner, currently registered nurse or chartered physiotherapist
- in the case of reflexology the therapist must be either a registered general practitioner, a registered general nurse, chartered physiotherapist or a currently registered chiropodist.
- the general practitioner, nurse, chartered physiotherapist or registered chiropodist has appropriate qualifications in the therapy being offered, copies of qualifications will be validated by Liaison Officers.

If you have been referred by your GP or Liver Specialist to undertake a course of complementary therapy, one referral is necessary and then it will be at the discretion of the therapist as to how many, which type and for what duration you need to attend sessions. In the hospital setting the Liver Unit which you attend may refer you to complementary therapies that are available within the hospital and in certain cases there are therapy services provided within some of the liver units.

If you are thinking about using complementary therapies of any kind, always discuss with your liver specialist first. Even therapies, herbs or supplements that seem harmless can cause unexpected problems, or can react badly with other conventional medicines or therapies that have been prescribed for you.

For your own protection, you should check that your therapist has an acceptable level of professional indemnity or insurance.

At the moment, no complementary therapy is regulated by the Department of Health and Children, or by any recognised regulatory agency acting on its behalf including the Health Service Executive. Neither are there any statutory registration bodies for persons offering these services. As a result, it is not possible to give any advice on appropriate qualifications for persons who are not registered GPs, nurses or chartered physiotherapists. The Report of the National Working Group on the Regulation of Complementary Therapists, launched in May 2006 by the Department of Health and Children, makes a number of recommendations on strengthening the regulatory environment for complementary therapists.

At the same time as the launch of the Report in 2006, an Information Guide for the Public was also launched. It offers guidance for members of the public when choosing to see a complementary therapist. Copies of this leaflet are available from [www.dohc.ie/publications](http://www.dohc.ie/publications).

### **In Summary**

- Complementary therapies are available to you under the terms of the Health Amendment Act card and can be availed of once referred by a GP or Consultant.
- One referral is sufficient to allow you to attend sessions as often as required and agreed by your therapist.
- Therapies can be availed of in both the public and private setting.
- Therapies availed of in the private setting must be performed by a therapist who is qualified as a registered practitioner, i.e. GP, RGN, Physiotherapist, Chiropodist.
- Your Hepatitis C Liaison Officer can advise on qualified therapists in your area and will make arrangements to pay them directly on your behalf or re-imburse you on production of receipts/evidence of qualifications.

## **COUNSELLING SERVICES**

### **Who can avail of counselling services?**

Counselling is a very personal and important aspect of the overall care of persons with Hepatitis C and their immediate relatives. Access to counselling services is provided in a way which is flexible and fits in with the needs of clients so that they can avail of counselling wherever and whenever it is needed.

Counselling, including psychological and psychotherapy services, can be availed of at any time by HAA cardholders and their immediate relatives. Counselling is also available to persons who received infected or potentially infected Anti-D, blood or blood products but who have tested negative for Hepatitis C.

Many people attend a counsellor directly after they have been diagnosed, or when they are preparing to attend the Hepatitis C & HIV Compensation Tribunal or the High Court. However, you are not confined to seeking counselling at these times; you can attend a counsellor whenever you feel you need to. You do not have to remain with this counsellor if you would prefer to attend another, nor do you have to attend a local counsellor if you choose not to do so. The choice of Counsellor is entirely yours.

### **How can I access counselling?**

You do not need to be referred by your GP or consultant for counselling and you do not need prior approval from the Liaison Officer, as long as you attend one of the counsellors on the HSE list, which is available from your Liaison Officer. This also applies to counselling services for your spouse or partner and children (including adult children). In the case of children who contracted Hepatitis C, counselling services will also be available to their parents, brothers and sisters, without prior approval or referral.

Under certain circumstances, counselling for adults with Hepatitis C can also be extended to other close family members, particularly relatives or carers who are living with you or who are in close contact with you, with the prior approval of your Hepatitis C Liaison Officer.

Each Liaison Officer in the HSE has a list of counsellors who are available to provide counselling under the Health (Amendment) Act 1996. The Liaison Officers have checked the credentials and qualifications of these counsellors to ensure that they are professionally trained and accredited. At the moment, accreditation from the following bodies is acceptable and recognised by the HSE.

- Psychological Society of Ireland (PSI)
- Irish Association for Counselling and Therapy (IACT)
- Irish Council for Psychotherapy (ICP).

The Liaison Officer pays the counselling fees directly to the counsellors registered to provide this counselling service. To avail of this service, you should contact the counsellor of your choice directly to arrange your appointment. S/he will ask you to sign a form that will allow him/her to be paid by the HSE for the consultation.

If you are already attending, or wish to attend, a counsellor who is not on the HSE list you will have to pay the counselling fee directly to the counsellor yourself. By providing your Liaison Officer with registration/accreditation details of your counsellor you will be able to recoup these payments but you should always discuss with them in advance if that is possible to make arrangements. You should also satisfy yourself about the qualifications and professional accreditation of any counsellor you attend who is not on the HSE list.

In general, the HSE will not refund payments in respect of counsellors who do not have professional accreditation. However, under exceptional circumstances, the HSE has the discretion to refund such fees, particularly if you have already built up a relationship with a counsellor. However, you should note that this does not mean that the HSE is endorsing unaccredited counsellors in any way and you attend an unaccredited counsellor at your own risk. Such counsellors will not be added to the HSE's list and the Liaison Officer will not refund any other HAA cardholder to attend this counsellor. In other words the Liaison Officer will deal with each client and their preference for accessing a particular counsellor on an individual basis.

Any queries with regard to this service should in the first instance be directed to the Hepatitis C Liaison Officer.

### **What about counselling services/psychological support in hospital?**

Although you do not need a doctor's referral for counselling, your liver specialist might decide that you need additional psychological support, and will refer you to an appropriate professional, either within the hospital, or in the community. Most of the designated units have a Hepatitis C Nurse Counsellor. In some instances s/he may not have the facility to offer counselling on a regular basis, although this can vary from hospital to hospital. However, s/he will be happy to talk you through any specific problems you have, perhaps in conjunction with your hospital visit (it would be advisable to phone first to make sure that the nurse counsellor will be available). Even if a unit does not have a qualified nurse counsellor, the dedicated Hepatitis C Nurse will be happy to talk you through any specific problems you might have. Some hospital units also have the services of a Psychologist.

Counselling can also be availed of to address special needs. If you are undertaking anti-viral treatment, support will be available from a specially trained treatment nurse and in some liver units support from the

unit's psychologist may be available; your hospital will give you details when your planned treatment is being discussed with you. Counselling can also be necessary to address problems caused directly or indirectly by Hepatitis C within a marriage, or within a family. The Liaison Officer in your area will be able to advise whether counsellors on their lists have particular skills in these areas.

Psychiatry services are also available to HAA cardholders, referrals are made on very specific medical needs and only by your GP/Consultant. Access to this service is generally separate to counselling services and normally provided on an out-patient basis in the hospital setting.

### **In summary**

- Counselling is available to all HAA cardholders and immediate relatives.
- Prior approval and referral from a GP/Consultant is not required.
- There is no restriction or limit on the number of sessions you attend, this is a decision only you and your counsellor can reach.
- Counselling is available to family members of children who were infected with Hepatitis C.
- Counselling and /or psychological support is available in the hospital setting also, you will need to check with each unit to see what supports are in place.
- In all cases if you are unsure of your access to counselling or if you wish to see the list of counsellors on the HSE list you should speak to your Liaison Officer.

## **DENTAL SERVICES**

HAA Cardholders are entitled to all

- necessary routine and emergency dental treatment
- full denture treatment and appliances

Dental treatments will be provided by dentists who participate in the Dental Treatment Services Scheme (DTSS) operated by the Health Service Executive. (A list of participating dentists is given at the back of this Guide [**note: not included in this reproduction of the 2013 Guide**] or from your Liaison Officer). If the dentist of your choice participates in the DTSS s/he must provide you with services at the agreed DTSS rates.

### **How do I avail of services from a participating dentist?**

Once you have checked with your Liaison Officer that your chosen dentist is on the list of dentists participating in the DTSS scheme, you may begin attending them for treatment and then simply present your HAA card to them as payment.

Before you leave the dentist's surgery, you will be asked to sign a form that will enable the dentist to be paid for the consultation.

If you require a prescription - your dentist should write your prescriptions on a private prescription form (*not on the form used for medical card prescriptions*). You are then entitled to have these prescriptions dispensed without charge on production of your HAA card by a pharmacist. (please see page 33 for further details on pharmacy services) [**note: not included in this reproduction of the 2013 Guide**]

### **Can I attend a Dentist who does not participate in the Scheme?**

If your dentist does not participate in the DTSS you can continue routine treatment with this dentist, provided you have the prior approval of the Hepatitis C Liaison Officer. Hepatitis C Liaison Officers will look sympathetically at such applications, particularly if you have been attending the dentist for some time or there is no DTSS participating dentist in your local area.

### **What treatments are covered?**

The following are the different types of treatments, which are covered by the scheme:

- Oral Examination;
- Scaling and treatment of mild gum conditions;
- Routine Fillings;
- Extractions (including surgical);
- Root canal treatment (front teeth upper / lower);
- Amputation of roots;
- X-rays;
- Dentures (including repairs).

For more serious conditions your dentist may refer you to an appropriate expert for investigation and/or treatment.

### **Are other dental treatments covered?**

As well as the routine dental treatments described above, other treatments might be provided in certain circumstances, with the prior agreement of the Hepatitis C Liaison Officer, who will be guided by the advice of the Health Service Executive Principal Dental Surgeon. Treatments which are considered as cosmetic, such as: crowns / bridges / Orthodontic treatment are generally not covered.

Orthodontic treatment is not covered if it is solely for cosmetic purposes. There might be instances where orthodontic treatment is required for other reasons, and the HSE Principal Dental Surgeon or Orthodontic Consultant will have the final say in deciding on whether it is eligible for refund or not. In some circumstances, the HSE might decide to recoup part of the cost, but not the full amount.

However, if the dentist is of the opinion that such treatment is justified the dentist must apply to the Hepatitis C Liaison Officer outlining the ground of the request.

In the case of non-routine dental treatments which have been approved and completed, the invoice/receipt should be forwarded directly to the Hepatitis C Liaison Officer.

### **In summary**

- Any dental treatments which are medically necessary are covered.
- If you have any doubt as to whether a treatment is medically necessary or not, please check with the Hepatitis C Liaison Officer before incurring any expense.
- The Liaison Officer will seek the advice of the Principal Dental Surgeon or Orthodontic Consultant.
- If you have any particular difficulty with any aspect of the scheme you should contact the relevant Hepatitis C Liaison Officer.
- If necessary, the Hepatitis C Liaison Officer will refer problems to the HSE Principal Dental Surgeon for advice.

### **GENERAL PRACTITIONER SERVICES**

You are entitled to the following:

- To attend any registered GP of your choice.
- To change GP if you wish (for health reasons it would be better to remain with a specific doctor who would have the primary responsibility for providing services to you).
- To all general practitioner (GP) medical and surgical services, in relation to all medical conditions, provided by a registered medical practitioner chosen by you.

#### **This service is provided by:**

- All registered GPs (Doctors who are registered with the Irish Medical Council).
- GPs that are members of the Primary Care Reimbursement Services Scheme (PCRS). Doctors who are members of the PCRS scheme are reimbursed for the cardholders visit from the PCRS. Prior to leaving the GP's surgery, you should sign a form (General Practitioner Consultation Claim Form for Health (Amendment) Act 1996 or Special Treatment Cover Form / STC), this will enable the GP to claim payment for your visit from the PCRS.
- Private GPs. Private doctors are reimbursed via your Liaison Officer. You may pay the GP and send the receipt to your Liaison Officer for reimbursement or the GP can send an invoice to the Liaison Officer for payment.

#### **Prescriptions:**

- The GP should write prescriptions on a private prescription form.
- A pharmacist will dispense prescriptions prescribed by your GP without charge on production of your HAA card (please see page 33 for further details on pharmacy services) [**note: not included in this reproduction of the 2013 Guide**]

#### **Out of Hours GP services:**

Should you require a GP out of hours there are many existing telephone lines and services available in your area for out of hours GPs and on-call doctors. You should enquire via your Liaison Officer for further details on what is available in your area. You will of course be covered for this service with your HAA card but in the unlikely event that the GP on-call does not have the facility to record your HAA card, you will be re-imbursed by your Liaison Officer for any expense incurred.

**Hepatitis A & B Vaccinations are available from the following:**

- Your designated hospital or if you prefer from
- Your GP (You will usually have to arrange this in advance with the GP of your choice).

**Travel Vaccinations:**

- The HAA Card covers vaccinations required prior to travelling abroad.
- Travel vaccinations can be administered by GPs, (most GPs will not routinely carry stocks of these vaccines and will have to order them for you).
- Travel vaccinations will usually only be available with your GP by prior appointment. If you are planning to travel abroad, you are advised to check this with your GP well in advance.

**HEARING TESTS AND AIDS**

Hearing tests and aids (sometimes referred to as aural services) are available to all HAA cardholders. If you have difficulty with your hearing, you are advised to contact your GP or hepatologist in the first instance, so that any medical problems can be ruled out. If necessary, your hepatologist or GP might decide to refer you to an Ear, Nose and Throat (ENT) specialist. This referral as with all referrals to another specialty should be facilitated within 2 weeks and you should liaise with the Hepatitis C Liaison Nurse in your Liver Unit.

Alternatively, you might be referred to an audiology service for further investigation and treatment, or for the supply of a hearing aid. In general, this service is provided by the HSE's own professionals but, in some cases, it can be provided by private practitioners, who have an arrangement with the HSE or where the service required is not available within the public health service.

If any cardholder requires hearing tests and/or hearing aids/he should initially contact the Hepatitis C Liaison Officer for details of how to access the service, as arrangements for audiology services vary from region to region.

**HOME NURSING SERVICE****(the Service specified in Section 60 of the Health Act 1970)**

Home nursing is available in respect of all conditions affecting the health of eligible persons, not just Hepatitis C.

In 2006 the HSE began developing a co-ordinated approach to home nursing services for HAA cardholders. This involved appointing a dedicated person within the greater Dublin area whose role is to establish and develop a specialist home nursing service to all HAA cardholders residing within the greater Dublin area with a view to extending the co-ordinating role nationally. It should be emphasised that requests and referrals for home nursing services as one of the HAA statutory entitlements will be facilitated throughout the country by the HSE.

All referrals for home nursing services should be facilitated through the office of the clinical nurse coordinator in the greater Dublin area and outside this area should be brought to the attention of the Hepatitis C Liaison Officer in the first instance. These referrals can come from the Liver Consultant in the relevant hepatology unit, the client themselves or their family, clients support group, liver transplant coordinator, GP, Public Health Nurse, social worker, Hepatitis C Liaison Officer etc. However, referrals from non-clinicians will be brought to the attention of the hepatology team so that a shared care plan can be developed in collaboration with the relevant health care professionals.

Following referral, the clinical nurse coordinator/designated HSE nurse will carry out an assessment in consultation with the client and family, from which it will be decided what type of care plan is required and fits in appropriately with the client's needs. The home care plan will be an individualised, client focused, flexible and easily accessible plan of care which meets the assessed needs at any given time of each client and which is reviewed on a regular basis to reflect changing needs. The aim of the care plan is to provide and support client focused care in the community to enable the individual to be cared for at home and to reduce unnecessary admissions to hospital. Critical to the success of the care plan will be the involvement of the client and where relevant, his/her family/carer, with the professionals in determining what supports are needed in each individual case.

From time to time it may arise that the circumstances of referral may not give ample time for a full care at home plan to be put in place immediately, and in such a case, services will be put in place as quickly as possible. An interim care plan may be put in place while a full needs assessment is taking place. Each

home care plan will be monitored by the clinical nurse coordinator or designated nurse with responsibility for arranging home nursing care and will be reviewed at regular intervals and as client's needs alter.

As the establishment of this dedicated home nursing service is still in its development stage it is important that you link in with your Hepatitis C Liaison Officer and Hepatitis C Nurse Specialist to determine what is available to you in your area and as the service develops you will be notified of arrangements in place locally for you. **[note on contact details not included on this reproduction of the 2013 Guide].**

### **HOME SUPPORT SERVICE**

If as a result of your condition, you are having difficulty in carrying out normal household chores, you are entitled to avail of home support services. If your normal household responsibilities include cooking for a family, cleaning the family home or looking after children, the home support service can cover any or all of these duties. Access to home support services is available to both male and female HAA cardholders on production of supporting documentation from your general practitioner or consultant. Supporting documentation should be forwarded to the Hepatitis C Liaison Officer.

The number of hours of home support to be provided is based on your needs and that of your family. The support provided should also be flexible, and fit in with your particular circumstances. For example, cardholders with school-going children might require additional support during the school holidays, or patients undergoing antiviral therapy might need more support during this time. Home support services can be provided at evenings, weekends or bank holidays in exceptional circumstances, but only if the nature of the support required means that it cannot be provided during normal working hours. Home support provided out of hours is usually paid at premium rates, however, if the reason why the support is provided out of hours is to facilitate your home support worker (for example a family member who is otherwise engaged Monday to Friday) rather than because of your condition, then the premium rate does not apply.

Basically there are 2 options open to you when accessing home support services. You can request the HSE via your Liaison Officer to arrange for the provision of home support service or you can decide to directly employ a person of your choice.

If you opt for a home support service as provided by the HSE, either the Public Health Nurse or Home Help Organiser (depending on the HSE area) will liaise directly with you to ensure that your needs are met.

You should be aware that your home support worker may be made aware by the HSE that you have Hepatitis C, but will be obliged to maintain the confidentiality of this information and any breach of this would result in disciplinary action by the HSE.

The HSE are obliged to provide you with a suitable service, and the onus is not on you to find a home support worker for yourself. Even if you do source your own home support worker, the HSE may be prepared to undertake the role of employer on your behalf and to pay the worker directly but this should be discussed with your Hepatitis C Liaison Officer in the first instance.

**IMPORTANT** note re employing your own home support worker/workers.

If you wish to employ your own home support person, you can do so, on the understanding that you will be responsible for fulfilling the usual employer's requirements, in relation to P.R.S.I., TAX and Public Liability Insurance. The onus will also be on you to advise your home support worker/workers of your medical condition.

This is a serious legal responsibility and you should think carefully before you take it on. Because of this, the preferred option is that your HSE area undertakes the direct sourcing, employment and payment of your home support worker. If you decide to go ahead and employ someone yourself, the HSE will pay the home support grant to you directly and you will be responsible for paying your home support worker yourself. All HSE areas will require a regular form returned from cardholders confirming that the specified hours of home support have been undertaken. On receipt of these signed details, payment will be made at the appropriate rates.

Home support workers are paid on the home help national pay scale rates. Details on these rates of pay are available from [www.dohc.ie/publications/salaryscales](http://www.dohc.ie/publications/salaryscales).

If you have any queries about any aspect the home support service, you should contact your Hepatitis C Liaison Officer directly.

## **OPHTHALMIC SERVICES**

### **Treatment and Appliances**

If you require eyesight tests and/or spectacles, you can attend any Ophthalmic Optician of your choice. You are entitled to any optical appliance or service that is clinically necessary. The HSE will reimburse the optician directly for the cost of the sight test and spectacle lenses (the rates are agreed annually between the HSE, Department of Health and Children and the Irish Association of Optometrists). Details on allowances you are entitled to are outlined in this section below.

Prior approval from your Hepatitis C Liaison Officer is not required when you avail of ophthalmic services as forms are available in all opticians, which allows your HAA card number to be recorded. Your optician will ask you to sign the form when you receive a service or are dispensed a pair of spectacles, this will enable the optician to be paid for the goods or service. A list of contracted opticians in your area is available from your Liaison Officer.

### **What am I entitled to?**

- An eye examination without charge, whenever necessary.
- Spectacles required for either distance or reading, or both, with plastic lenses if desired. Bifocal and varifocal lenses are also covered.
- The full cost of any clinically necessary lenses.
- A grant of €90 towards the cost of the frames (from 1st July 2005)
- You are entitled to two pairs of new spectacles per prescription within any two-year period, unless of course you need to have them replaced more often because of a change in your prescription.

The cost of any lenses that are clinically necessary in your glasses are covered. In the case of varifocal lenses, a grant of €249 is available for a complete pair (including €90 towards the frames) which should cover the full cost. However, in the case where the complete cost of the varifocals is not covered by the €249 grant, the balance will have to be paid by you and then once you provide receipts to your Liaison Officer you will be reimbursed. In the meantime the HSE are reviewing the situation with the Association of Optometrists Ireland, to agree a grant, which will cover the total cost of varifocals so that you will not need to be re-imbursed by your Liaison Officer.

Any cardholder requiring a *specialist* medical eye examination must be referred by his/her GP or hepatologist to an appropriate consultant (this does not apply to straightforward sight tests), the optician may provide assistance with this in certain cases. The cardholder will receive priority treatment from the HSE's Community Ophthalmic Physician, or will receive their first appointment with a hospital consultant within two weeks. In some cases, an ophthalmologist might do specialist tests in conjunction with your eye examination.

Any special requirements not covered in this guide will be dealt with on the basis of individual need, and the Hepatitis C Liaison Officers will consider each case on its merits. Any problems which arise in the course of obtaining ophthalmic services can be resolved through the Hepatitis C Liaison Officer.

### **What if I wear contact lenses?**

If you choose contact lenses (standard or disposable) instead of glasses, a grant is made towards the cost of dispensing and materials, and the cost of the examination (these costs include VAT). Where disposable lenses are chosen, the grant applies to the initial testing, dispensing and initial supply costs only, and not for further supplies or testing within a two year period, unless clinically necessary. In circumstances where it is clinically necessary for you to wear contact lenses instead of glasses, the cost of these lenses will be fully covered, provided you have a doctor's recommendation.

## **PHARMACY SERVICES**

### **PRESCRIBED DRUGS AND MEDICATIONS**

HAA cardholders are entitled to any prescribed drugs and medicines without charge. In order to avail of this service you should present your HAA Card to the pharmacy of your choice along with the relevant prescription. The pharmacy you choose is at your discretion. You do not have to attend a local pharmacy, or attend the same pharmacist each time you get a prescription dispensed if you choose not to.

Your prescribing physician, that is your GP, Consultant or Dentist should write your prescription on a private prescription and not on the prescriptions used for medical cardholders.

You will be required to sign a receipt for the items dispensed to allow the pharmacist to be paid. Pharmacists are paid through the PCRS (Primary Care Re-imbusement Service) of the HSE. There are certain items which your GP/Consultant/Dentist may prescribe for you and which the pharmacist cannot get re-imbursed for from the PCRS. In this case the pharmacist needs to get refunded by the HSE directly via your Hepatitis C Liaison Officer and they should not under any circumstances ask you to pay for these items yourself once they have been prescribed. It is a matter for the Pharmacist to address with the Liaison Officer and not with you.

All pharmacists have been advised that if there are any questions regarding the recoupment of individual items, these should be brought to the attention of either the PCRS, or to the relevant Hepatitis C Liaison Officer, and not to the HAA cardholder. Every effort will be made by the HSE and the PCRS to sort out any problems that might arise without recourse to the individual cardholder if at all possible.

#### **What Pharmacy products are not covered?**

Cosmetic type toiletries (e.g. perfume etc) are not covered under the HAA card, this does not include creams and lotions used for certain skin conditions, which may be prescribed by your GP or Consultant in certain circumstances. Your Hepatitis C Liaison Officer can advise you on whether or not certain items are available to you on your HAA card and you should discuss any queries with them in the first instance.

#### **High Tech Drugs**

The High Tech Drugs Scheme provides for the dispensing of High Tech Medicines through Community Pharmacies. These medicines will generally only be prescribed or initiated by a hospital consultant. Examples of high tech medicines are: anti-rejection drugs for transplant patients, chemotherapy and growth hormones. If you are prescribed a high tech medicine, the hospital will ask you to indicate the community pharmacy from which you wish to obtain these medicines. This does not have to be your local pharmacy or the pharmacy that you normally attend.

However, it is a good idea to get all your medicines from the one pharmacy so that your community pharmacist will be in a position to monitor your overall drug therapy having regard to other medicines that you may also be taking.

If you wish to change your nominated pharmacy, you will need to notify your local HSE high tech liaison officer of your new pharmacy. Details of your local liaison officer will be issued to you when you are prescribed the high tech medicine initially.

#### **Aids and Appliances**

You are entitled to receive any necessary aids and appliances under your HAA card, regardless of whether they are required because of your Hepatitis C, or for another condition. These must be prescribed by your GP, Consultant, Occupational Therapist or Public Health Nurse/Clinical Nurse Co-ordinator.

#### **What types of aids and appliances am I entitled to?**

There are many different aids and appliances used nowadays by people to assist them inside and outside their home with mobility, movement etc. These include walking sticks and frames, wheelchairs, grab rails, shower seats, bath and bed hoists etc. Depending on your need, the GP/Consultant/ Occupational Therapist will decide what suits you best. Training may be required in the use of certain appliances and in most cases this will be arranged by the Occupational Therapist providing the appliance.

In some cases, medical and surgical aids and appliances might be stocked by pharmacies and can be obtained on foot of a prescription in the same way as drugs and medicines. However, most aids and appliances are specialist in nature and are not routinely available from local pharmacies. In many cases such items can be obtained from the HSE's community services or they can order the item for you. In case of difficulties, the Hepatitis C Liaison Officer will assist.

Certain persons may also be entitled to avail of a grant through the Disabled Persons Grant Scheme which is administered by Local Authorities and this may assist with house modifications etc. Your Local Authority will be able to provide you with further information on this scheme.



## **Physiotherapy Services**

Physiotherapists are specialised members of the healthcare profession who use methods such as exercise, manipulation, and massage to treat pain, injury and disability associated with a wide variety of conditions and illnesses that can affect people of all ages.

Physiotherapy services are available to you either privately by a chartered physiotherapist or else in the hospital setting once you are referred by your GP/Consultant. Chiropractic, osteopathic and hydrotherapy services are also available to you and can be availed of once they are performed by a registered chartered Physiotherapist.

### **How do I avail of services and arrange payment?**

Once you are referred by your GP/Consultant you should contact your Liaison Officer who will advise you on private chartered physiotherapists in your area that already provide physiotherapy services to HAA cardholders and can make an initial appointment for you if you wish. The HSE will then pay this Physiotherapist directly for you each time you attend.

Alternatively you may attend a Physiotherapist of your choice and if you wish, the Hepatitis C Liaison Officer will contact the physiotherapist on your behalf to check whether he/she wishes to be added to the HSE list, or if not, will agree to bill the HSE directly for your own treatment. If the physiotherapist is unwilling, or if you would prefer that the Hepatitis C Liaison Officer did not get involved, you are still free to attend this physiotherapist and have the cost recouped. You do not have to attend a local chartered physiotherapist, or to continue attending the same physiotherapist if you choose not to.

If you attend a chartered physiotherapist other than the ones on the HSE list, you should be careful to check that he/she is professionally qualified. Hepatitis C Liaison Officers will not recoup the cost of physiotherapy or any other associated services provided by an unqualified or unregistered practitioner. If in doubt, check with the Hepatitis C Liaison Officer before incurring any expense.

The Irish Society of Chartered Physiotherapists is the professional body representing chartered physiotherapists in Ireland. You can find out more information on physiotherapy in Ireland, including contact information for chartered physiotherapists nationwide through their web site or by contacting the Society. Details are included in the Useful Contact Details section in chapter 4 of this Guide. **[note: not included in this reproduction of the 2013 Guide]**