



By email: kathleen.funchion@oireachtas.ie

(CC: All Senators)

Deputy Kathleen Funchion

Chair of the Joint Committee on Children, Equality, Disability, Integration and Youth

Leinster House

Kildare Street

Dublin 2

D02 XR20

15th May 2023

Re: Observations on the Mother and Baby Institutions Payment Scheme Bill 2022

Dear Deputy Funchion,

As I'm sure you're aware, we issued [legislative observations](#) on the General Scheme of the Mother and Baby Institutions Payment Scheme in October 2022. We previously provided an [advisory paper](#) in April 2021 to the Interdepartmental Group on the Government's planned development of a redress scheme. In December 2022, we wrote to the Minister with a list of substantive issues that should be addressed within the legislation.

As the Bill progresses through its final stages, we are of the view that a number of amendments can be made to the legislation in order to improve compliance with human rights and equality standards. We are of the view that two issues, in particular, deserve particular attention: the exclusion of children who spent less than 180 days in an institution and the exclusion of the harm faced by boarded out children from the scheme. In the attached, we set out our observations on these issues for your consideration, as well as other outstanding headline issues with the legislation.

Many thanks in advance for your consideration of these issues.

Yours sincerely,

Sinéad Gibney



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**
Irish Human Rights and Equality Commission

Chief Commissioner

Irish Human Rights and Equality Commission



Observations on the Mother and Baby Institutions

Payment Scheme Bill

Eligibility criteria for a child: We see no rational connection between the potential harm suffered and the requirement in the legislation for a child to have been resident in a relevant institution for a period not less than 180 days in order to be eligible for a general payment. We are of the view that the 180 days period is not an indicator of whether a child suffered harm such as from the forced separation of mother and child or harms related to being boarded out. This exclusion is arbitrary particularly as the legislation provides that there is no minimum length of stay requirement for a person who was resident in a relevant institution for reasons relating to pregnancy, birth or care of their child to be eligible for a general payment. We do not see a rational reason for this distinction between children and mothers who were resident in the institutions. The Payment Scheme must ensure that access to an adequate and effective remedy is provided to all survivors without discrimination. We call for the removal of the six-month stay requirement to ensure that all children – including children who were adopted, boarded out and fostered – who were resident in a relevant institution for any length of time are eligible to apply to the Scheme.

Boarded out children: We have strong concerns regarding the lack of provision in the legislation for redress in respect of harm suffered while a child was boarded out from a relevant institution and that such individuals will be completely excluded from the Payment Scheme. This is contrary to the Interdepartmental Group report acknowledging that the Commission of Investigation found that in some cases children who were boarded out experienced some of the worst abuses. We note that one of the grounds advanced by the [Interdepartmental Group](#) for excluding children who were boarded out from being eligible for redress was that it would require an individualised approach to assessing abuse. This need for an individualised approach in respect of boarded out children has also been recently stated by the [Minister](#) who also stressed that the Payment Scheme was designed so as not to use individual assessment. However, we are of the view that the legislation should include an individualised assessment of harm, alongside a general payment, to recognise the specific harms experienced in these institutions including abuse and ill-treatment



that occurred where children born in mother and baby institutions were boarded out, adopted or fostered, as well as other harms such as discriminatory treatment and being subject to illegal or unethical vaccine trials.^[1] We recommend that the harms recognised in the legislation should be done in consultation with survivors and their representative groups, and in line with human rights and equality standards.

Other headline issues and recommendations

- **Recognition of harm:** The legislation should be clear on what the purpose of the payments are and what the payment and Payment Scheme aims to achieve.
- **Eligibility for health support payments and health services:** We recommend that all persons who were resident in an institution for any length of time should be eligible for a health support payment or health services without charge.
- **Eligibility criteria for a work-related payment:** We recommend that all people who were resident in a relevant institution and who undertook work without pay should be eligible for a work-related payment regardless of the institution they were resident in, the nature of the work, or length of stay.
- **List of institutions included in the Payment Scheme:** We recommend that reparations should not be limited to those resident in institutions which were investigated by the Commission of Investigation, and that there should be consultation with survivors on the list of institutions to be included under the Payment Scheme.
- **Signing of a waiver of a right of action before accepting an award:** We recommend this provision be removed from the legislation.

^[1] We stated that harm should, at a minimum, capture the following: loss of life due to malnutrition, or neglect; discriminatory treatment, including racism (including mixed race discrimination), sexism, classism, ableism, etc; unauthorised burials; forced or unlawful separation of mother and child and consequential relational loss of intimacy and affiliation with one's child/mother; arbitrary detention; abuse and ill-treatment that occurred in homes and related institutions, and where children born in said institutions were boarded out, adopted or fostered. Abuse should include both emotional, physical and sexual abuse, trafficking and include illegal or unethical vaccine trials; ongoing harms such as lack of access to information about one's identity (including the registration of false birth certificates) or about the fate or where about of relatives; all forms of forced labour (including domestic and other labour) which occurred within mother and baby homes. See IHREC, [Advisory Paper to the Interdepartmental Group on the Government's Planned Development of a 'Restorative Recognition Scheme for former residents of Mother and Baby Homes and County Homes](#) (April 2021) pages 23-24.



- **Provision of independent legal advice:** We recommend that all applicants be provided with financial support to avail of legal advice and representation when making a decision to apply, during the application process and at the point of accepting a redress payment.
- **Ex gratia nature of the Payment Scheme:** We call for the Scheme to not be established on an 'ex gratia' basis, and that provisions seeking to deny or limit liability by the State or other private entities should not find expression in the legislation or Payment Scheme.
- **Duration of the Scheme:** We recommend that there should be no deadline to close the Scheme, and that it should remain open for new applicants.

