



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

Sent by email: minister@dcya.gov.ie

Minister Roderic O'Gorman, TD.
Department of Children, Equality, Disability, Integration and Youth,
Block 1, Miesian Plaza,
50 – 58 Lower Baggot Street
D02 XW14

15 December 2022

Re: Mother and Baby Institutions Payment Scheme Bill 2022

Dear Minister,

As I'm sure you're aware, we have issued [Legislative Observations](#) in response to the publication of the General Scheme of the *Mother and Baby Institutions Payment Scheme Bill*. We made a number of recommendations which we hope will improve the compliance of the Bill with recognised human rights and equality standards.

When the *Mother and Baby Institutions Payment Scheme Bill 2022* was published, we also conducted an analysis of the Bill to determine how our recommendations had been implemented. We continue to analyse the Bill as it progresses through the legislative process. Whilst at Committee Stage, you advised that you will consider bringing a number of amendments to the Bill at Report Stage. Sadly, none of these amendments will address the attached list of substantive issues that we consider remain outstanding and which should be addressed.

I'm grateful that you invited our human rights and equality expertise into the Inter Departmental Working Group at the early stages of this legislation. And I acknowledge your stated commitment to human rights and equality in the design of the scheme. This is a priority area for us in the Commission and our suggestions are motivated to design a scheme for redress for survivors of Mother & Baby Institutions that meets the highest standards possible of human rights and equality, and which we believe are achievable in Ireland.

16-22 Sráid na Faiche,
Baile Átha Cliath 7
16-22 Green Street, Dublin 7

Guthán/Phone + 353 (0) 1 8589601
Facs/Fax + 353 (0) 1 8589609
Íosghlao/Lo-call 1890 245 245

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The team and I are available to meet with you or your officials in order to discuss these outstanding issues.

Yours Sincerely,

Sinéad Gibney
Chief Commissioner
Irish Human Rights and Equality Commission

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Substantive Outstanding Human Rights & Equality Issues in the *Mother and Baby Institutions Payment Scheme Bill 2022*:

- **Recognition of harm:** The Bill does not specify whether the payments have a symbolic meaning or are a recognition of the specific harms and trauma experienced by survivors. We call for it to be clear within the legislation what the purpose of the payments are and what the payment and Payment Scheme aims to achieve. 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. We advise that guidance on the list of harms, which should be explicitly set out in the legislation can be taken from our advisory paper to the Interdepartmental Group,¹ the views of participants in the OAK consultation,² and the November 2021 communication of the UN experts to the Irish Scheme³.

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.

² Survivors involved in the consultation process on the design of the Payment Scheme identified seventeen harms and human rights violations experienced by them which require reparation. The harms identified are: Loss of Mother Child Relationship; Psychological Abuse; Lack of Proper Vetting; Withholding of personal Information; Work undertaken without payment; Physical/Sexual Abuse; Unspecified abusive treatment; Lack of Education; Arbitrary detention/coercive control; Stigma and discrimination; Loss of Father/Sibling/Extended Family Relationships; Violation of Human Rights; Racial Profiling/Suppression of Ethnic Identity; Health Issues related to Lack of Info; Neglect; Non-Consensual Participation in Vaccine Trials; Loss of Nationality and Heritage. See OAK, [Report of the findings of the consultation with survivors of mother and baby homes and county homes: March-April 2021](#) (May 2021, submitted to the Interdepartmental Group) p. 29

³ United Nations, [Communication from UN Special Procedures to Ireland](#), IRL 2/2021 (5 November 2021).



- **Eligibility criteria for a child:** The Bill provides that a child who was resident in a relevant institution for a period less than 180 days is not 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. 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 are eligible to apply to the Scheme.
- **Eligibility for health support payments and health services:** The Bill provides that a person must have been resident for 180 days to be entitled to a health support payment or eligible for the provision of health services without charge. We see no rational connection between the potential harm suffered and the length of stay requirement. 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:** The Bill provides that a person is only eligible for a work-related payment if they were resident in a relevant institution in Part 1 of Schedule 1 and were resident for more than 90 days. We are of the view that the nature of the Mother and Baby Homes institutions means that the work undertaken by women has to be regarded as compulsory as they could not derive the benefit from their work. We recommend that all people who were resident in a relevant institution under Part 1 and Part 2 of Schedule 1 of the Bill 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.
- **Waivers:** The Bill provides that a person must sign a waiver of any right of action before accepting their award. Requiring survivors to choose between receiving



redress through a scheme or retaining their right to access court places survivors in a difficult position, which may lead to re-traumatisation and re-victimisation. We recommend that this provision be removed from the legislation.

- **Provision of independent legal advice:** The Bill provides that a person may only be financially supported to seek legal advice when accepting a payment or in providing an affidavit. Due to the complex nature of navigating redress schemes and the potential for the initial engagement to lead to re-traumatisation, we are of the view that appropriate legal protection should be provided to survivors throughout the application process. 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.
- **Duration of the Payment Scheme:** The Payment Scheme will close after five years. The deadline of five years may not be adequate for all survivors due to the practical and emotional barriers to making an application. We recommend that there should be no deadline to close the Scheme, and that it should remain open for new applicants.
- **List of institutions included in the Payment Scheme:** The list of institutions in the Bill is based on the list of institutions investigated by the Commission of Investigation. The Commission of Investigation's report was limited in terms of the institutions, which were investigated and the Scheme cannot be bound by the significant limitations of the Commission of Investigation's findings and recommendations. We call for reparations to not be limited to those resident in institutions which were investigated by the Commission of Investigation, and for consultation with survivors on the list of institutions to be included under the Payment Scheme.



- **Ex gratia nature of the Payment Scheme:** The Payment Scheme is to be established on an ‘ex gratia basis’, where no liability is accepted by the State or private actors. International human rights standards on redress recognise that redress schemes, which fail to acknowledge responsibility for wrongdoing, do not provide full and effective reparations. 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.