



**Magdalens - D/Finance obs**

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Cc: "Reynolds, Sinead", "O'Leary, Marie"

History

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1 attachment



Magdalen Recommendations - response to Group Aug2013.docx

Jimmy

As discussed, please find attached the obs I've prepared in relation to the various recommendations this Dept specifically needed to look at, but including also, as per request, the material related to the RIRB.

I've asked D/PER for details/proposals re the Fund to be established as we do need to know that asap, in terms of drafting provisions for the Finance Bill, particularly because there could be drafting issues if, as proposed, the welfare payments aren't discounted for the purposes of income tax calculations, but do come from the same Fund. However, that Dept has not responded to me, so perhaps if you get that information you could pass it on, as we are trying to get ahead of the drafting onslaught here!

Thanks

Brenda

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**Tabhair aire:**

Tá an r-phost seo faoi phribhléid agus faoi rún. Mura tusa an duine a bhí beartaithe leis an teachtaireacht seo a fháil, scrios é le do thoil agus cuir an seoltóir ar an eolas. Is leis an údar amháin aon dearcaí nó tuairimí a léirítear.

Scanadh an r-phost seo le Sophos agus deimhníodh go raibh sé saor ó víoras leis an bpatrúnchomhad atá in úsáid faoi láthair. Ní féidir a ráthú leis seo áfach nach bhfuil ábhar mailíseach ann.



Recommendation 5 – tax, means testing

Tax

Following consideration in D/Finance and discussions with colleagues in the Revenue Commissioners, we feel it is possible to provide an income tax exemption in relation to any moneys paid from a specified fund (to be defined by D/PER), to the successful applicants. Similarly, it will be possible to provide an exemption from CGT for the capital sum awarded and we have begun to draft provisions for this year's Finance Bill to that effect, pending Government Decision on same.

***However, this Department will need clear advice from D/SP and D/PER as to the payment of moneys in relation to the welfare benefits, mentioned below. Are these to come from the same Fund? If so and depending on the decision in relation to means testing, this may require us to draft different provisions than currently envisaged.***

However, to note:

We are drafting provisions that although are closely akin to those pertaining to awards made to Thalidomide victims, do not infer any damages as such, or State liability. Therefore, the draft provisions (if approved by the Minister for Finance and Government) will refer to "*awards made from XXX Fund established for the purposes....*";

This will also provide for the exemption, then, in relation to any periodic payments to be made;

The CGT exemption will apply only to the award made and should not be extended to any gain realised from investment of the capital sum. Potential analogies raised by Justice Quirke, in his references to various sections of the TCA (pertaining to awards made from the Haemophilia HIV Trust and awards made by the Hepatitis C Tribunal) do not apply, as the awards in the instance of the Magdalen ladies are being made in recognition of "wrong done", as opposed to the individuals having suffered permanent and total incapacitation by reason of mental or physical incapacity, ie. being unable to look after themselves, such that a framework needs to be put in place that ensures lifetime care;

Should the Group or Government decide that the CGT exemption should go beyond what is proposed above, that should be advised to D/Finance as soon as possible, to allow for inclusion in this year's Finance Bill. Ofcourse, it should be noted that if decisions in this or other tax matters vary from what is advised here, it should be possible to have a "first cut" at providing for exemptions in this year's Bill and put in place administrative provisions as an interim measure, pending further enactment in any subsequent Finance Bill.

Means Testing

Justice Quirke has made various proposals in relation to pension benefits and the views of this Department are already recorded. It would seem inequitable, that where payments that are, in effect, a contributory State pension and therefore would be/are means-assessed for all other recipients in the State, to have them treated differently in relation to such payments from the Magdalen Fund. As already pointed out, it could even lead to inequities as between recipients of Magdalen awards, in that one recipient who already has a State pension and gets nothing further, is already the subject of means-testing in respect of that pension, yet another awardee could get the



equivalent of a full contributory State pension and not be means-tested. Equity would dictate that anyone in receipt of a State pension should be treated in the same manner and this should apply also to the proposed €100 payment for those under 66 and receiving a Magdalen award.

Furthermore, is it intended that any recipient, even if employed (and disregarding income) should get the extra €100/€230 payment based purely on age, as Justice Quirke says the only thing to take into account, in these, is "*other benefits*" – does that include income? It appears that those, say, under 66 who have an income will still get the extra €100 weekly, but those under 66 who are in receipt of welfare, will get nothing extra – this appears inequitable.

However, this would all seem to be a matter, in the first instance, for the Department of Social Protection, in advance of a Government Decision on the issue.

#### **Recommendation 11 – payments made under the Residential Institutions Redress Board ("RIRB")**

I have already given my view that payments made by the RIRB, to individuals who spent time in an industrial school (or other institution, as per the Schedule to the RIRB Act 2002) and also a Magdalen Laundry, may have already been somewhat compensated for matters that we are again seeking to provide payment for now. Having worked closely with the RIRB, it is my understanding (this can be easily checked for accuracy, however) that awards were valued somewhat by reference to the number of years spent in an institution and this would have included a Magdalen Laundry.

I accept, as I am well aware of it, Justice Quirke's advice that it may be difficult to get the detail of this from the RIRB, as there are statutory provisions regarding confidentiality. However, the Government is already moving to amend the 2002 Act to provide for retention of the RIRB's documents, such that it must be possible to include provisions that would allow for access to information about the awards in these cases. Voluntary disclosure from the recipients might also go some way to addressing this, though I know confidentiality agreements were signed (again, statutory amendments should be possible to address this). As it is, there are anomalies in the 2002 Act anyway, in terms of preventing disclosure, as provisions in that Act require disclosure to the Commission to Inquire into Child Abuse, given the potential for overlap of legal costs between the two organisations. The information-sharing that must occur for those reasons, does necessitate identification of 3<sup>rd</sup> parties and institutions. Therefore this does not seem insurmountable, if the Group thinks it advisable. The sums involved may not warrant it, but as indicated, not taking it into account may lead to accusations of inequity and double reward.

#### **Recommendation 12 – UK tax and means tested benefits**

I am not sure D/Finance can say anything further about this, beyond what is in the material from Justice Quirke and D/Justice. I understand D/Justice has been in contact with the relevant UK authorities, about the possibility of allowing any sums awarded to a UK resident to be tax-exempt and discounted for the purposes of means testing and that the upshot of that is, in anticipation of a Govt Decision accepting the recommendations, that a letter will issue to the UK Minister for Work and Pensions. Presumably, this will be a joint letter from the Minister for Finance and Minister for Social Protection? If this is anticipated, D/Finance will advise the Minister for Finance accordingly.

A point of note is that it may be inequitable anyway. A UK pensioner gets approximately €129 per week, currently. This increases annually. If the proposal is accepted that a UK resident then gets €230 in addition (and non-means tested/tax-exempt), this means the UK resident will receive €359 initially, with increases thereafter, whereas the most the Irish resident can receive is €230.



I note also the proposal, under recommendation 12, that the option be given for an awardee to take the entire sum (if the award is in excess of €50k) at one time, as opposed to allowing for periodic payments. There would be no issue with this in terms of what is proposed for the Finance Bill this year, as the provisions will refer to "any moneys" and make no reference to the frequency or mode of payment.

### Generally

The proposed Scheme appears very generous and more so than others out there, such as the Redress one (and in those cases, the level of award to be given was "tested"). In relation to lump sums, there is no indication or, it seems, rationale for how these are calculated. €11,500 for 3 months spent in a laundry seems very high, including if it is compared with the amount to be allowed in relation to a 10 year period spent. However, this does seem to have been accepted by Government.

The costs of the Scheme would need to be estimated. This Department has already given preliminary views on that, which are:

If there are circa 1,000 awardees, the contingency needed for lump sum is €10m. However, it may be decided a smaller contingency is needed, based on potential awards where individuals spent less time in a laundry. This could be ascertained/estimated from the Quirke Report.

A further Stg£100k is anticipated, it seems, in respect of establishing a trust fund for 1,000 individuals.

Depending on the number of individuals under 66 and the period of time until they reach that age, €100 per week (€5,200 per annum) is required.

Provision for €230 per week, per person over 66 who is not already in receipt of a State contributory pension and then, for the period of her life, is required. This will include, at different stages, those who had been in receipt of the payment of €100 per week. Our estimates are that this (for those under 66 and those over) could cost anywhere between €1.6 – 2.8m per annum.

According to the Quirke statistics, 22% of identified individuals are between 66-70 and the average life expectancy for a woman is 81.6, meaning this would allow for approximately 16 years of weekly payments. If, eg. a 66 year old lady, not in receipt of a State contributory pension, gets an award of €50k and a weekly payment of €230 (pension) for 16 years, the total cost is €241,360.

The cost of the particular type of medical card proposed for each of the 1,000 awardees must also be considered. [Furthermore, it should be noted that the Redress recipients do have the level of award given taken into account in relation to additional, discretionary welfare payments, such as the medical card, rent allowance, family income support etc- has this been considered?]. Again, Redress individuals were not given this, so we run the danger of that being a bone of contention for Government.

DIRT – usually payable on moneys received from such Schemes – should be payable here also?

CAT – there will be no special exemptions made in relation to the estate of a Magdalen awardee.

**Brenda McVeigh**  
**Department of Finance**  
**16 August, 2013**