



Re: Magdalen Scheme
Moling X Ryan to: James O. Martin

08/07/2013 13:00

Dear Jimmy,

Thank you for that.

As Board approval to the proposed provision of the legal service involved in the Scheme would be needed, the Chairperson canvassed members' views enclosing a copy of my draft paper. This was with a view to the proposal being considered and dealt with at next week's Board meeting.

There was no objection in principle to the proposal but concerns expressed included the following:

- Resources proposed may be underestimated in the light of the urgency involved and the frailty of some of the applicants and potential other issues such as wardship that might arise. Worse case scenario of increasing resources beyond those proposed in the paper would be that the process would be completed more quickly.
- There should at least be the commitment to increase resources should the need become evident.
- The real lack of funding would only become apparent once the process is underway.
- Individual circumstances could give rise to advices not to accept the scheme on offer and the Board may then be faced with the costs of pursuing court action.
- There is always the possibility of connected claims, in particular Judicial Review, by dissatisfied claimants.
- While it is appreciated that the proposed service is specifically with regard to advice on the waiver, that limited service is subject to complicating factors and the prospect of a more protracted and expensive process must be anticipated.
- There must be cognisance of the challenges faced in advising people with diminished capacity.
- It would be prudent to have some information/reassurance on the proposed advice system for women outside of the jurisdiction (recognising that the advice offered would include application of Irish law).
- There is insufficient provision in the paper for the training required.

In summary, the main concern expressed was in regard to the adequacy of resources proposed in my Paper. I would add that one of the members in private practice was clear in his view that the private sector could not match the cost of the in-house service proposed.

I note the various points in your e-mail and that it will take some time to finalise the waiver issue. I am convinced that the Board is highly unlikely to agree to proceed with the Scheme proposed with less than the resources proposed in the Paper - quite the opposite seems the prevailing mood! I feel that proposing a start with a single solicitor is just a non-runner. I fully accept that takeup could be low but having just 3 solicitors available to provide legal advice to up to 600 is also extremely conservative and probably parsimonious.

I am in the office for most of this week if you would like to discuss further (I was on leave on Thursday and Friday).

Best wishes.

Moling

Dr. Moling Ryan
Chief Executive
Legal Aid Board
47 Upper Mount Street
Dublin 2



From: James O. Martin
To: Moling X Ryan
Cc: Gerry A. McDonagh, Therese M. Molyneux, Loretta A. Barrett, Ruth H. Gibney, Deirdre M. Reidy, John J. Roycroft, Seamus M. Clifford
Date: 04/07/2013 15:59
Subject: Re: Magdalen Scheme

Moling,

we discussed the question of legal advice on the waiver at our first meeting of the Inter Departmental Group.

1. It was generally agreed what was proposed by the Legal Aid Board was good value for the tax payer.

2. The AG's office raised a question about a right of choice of solicitor. Others with experience of the Redress scheme said choice of solicitor had been a significant issue. This would be particularly the case, if women in England were able to choose their own solicitor.

3. Various options were discussed. My interpretation of the majority view (including the Department of Public Expenditure and Reform) was that

(i) there should be a "limited" Legal Aid Board scheme put in place but with the ability to expand depending on demand;

(ii) women should be given the choice of choosing their own solicitor if they wished but there would be a cap of €350 inclusive of VAT that would be paid by the State (this would apply to women both inside and outside the State).

There was a bit of concern that with any scheme, women may chose not to avail of legal advice at all and demand for the Legal Aid Board scheme might be low.

4. Would it be possible to start off your scheme for example with just one solicitor and then employ the others if demand justifies it ?

5. Incidentally the AG's office was adamant that a waiver could not be finalised until the full details of the scheme had been worked out. There are a number of complicated issues to resolve about taxation and weekly payments, so no payments or signing of waiver will arise before September.

Sorry for this complication and no decision has been taken either way but I would welcome your observations on the above.

Jimmy



Re: Magdalen Scheme

James O. Martin to: Moling X Ryan

03/07/2013 12:48

Gerry A. McDonagh, Therese M. Molyneux, Loretta A. Barrett,
Cc: Ruth H. Gibney, Deirdre M. Reidy, John J. Roycroft, Seamus M.
Clifford

Moling

Thanks very much for this.

As regards para. 2.4:

- We are not aware of any existing court proceedings. In the unlikely event that the issue does arise we will have to consider the matter on a case by case basis;
- if the applicant chooses not to accept compensation, the normal rules will apply about taking a case - no prioritisation, merits test applies, Board would only take it if they would have had in any event;
- We will do out a breakdown by county of those who have already registered interest.

As regards para. 2.5, yes the service needs to be provided without reference to financial eligibility and without the requirement for a contribution. A draft regulation to that effect would be helpful.

Jimmy

Moling X Ryan

Jimmy, Please see attachment as discussed.

03/07/2013 09:50:18

From: Moling X Ryan
To: James O. Martin
Date: 03/07/2013 09:50
Subject: Magdalen Scheme

Jimmy,

Please see attachment as discussed.

You might be good enough to let me know if you have any thoughts/reservations etc. re any aspect of the content.

As mentioned, you might be good enough to treat it as a draft for the moment.

Best wishes.

Moling



Magdalen Report - LAB Role 3 July 13.docx

Dr. Moling Ryan
Chief Executive
Legal Aid Board
47 Upper Mount Street
Dublin 2



The Magdalen Commission Report

Framework of Process for the Provision of Independent Legal Advice

1. Introduction

1.1 The Magdalen Commission Report authored by Mr. Justice John Quirke was published by Government on 26th June. On the same date, the Minister for Justice and Equality, Alan Shatter TD and Minister of State, Kathleen Lynch announced a scheme of payments as proposed by Judge Quirke, for women who were admitted to and worked in the Magdalen Laundries, St. Mary's Training Centre, Stanhope Street and House of Mercy Training School, Summerhill, Wexford.

The most significant recommendation in Judge Quirke's report is that the women in question should all receive cash payments in the range of €11,500 to €100,000, the amount being dependent on the duration of the stay. If the cash payment due is above €50,000, Judge Quirke recommended that it be paid in the form of a lump sum of €50,000 together with an annual payment related to the notional remaining lump sum and that this be paid weekly.

In terms of possible Legal Aid Board involvement, the relevant section of Judge Quirke's report is 5.22 which states as follows:

"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".

He then framed his subsequent 8th recommendation as follows:

"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.** (bold added)*

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."

1.2 The Minister for Justice and Equality has asked the Chairperson if the Legal Aid Board could manage the provision of legal advice regarding the signature of waivers in respect of those applicants resident in the State. He has also asked that these cases be given priority. Finally, the Department has confirmed that, subject to clarification with the Department of Public Expenditure and Reform, additional ring fenced funding would be provided to the Board to cover the costs involved.

2. Extent of Responsibility Proposed

2.1 The number of people anticipated as coming within the scheme is likely to be between 600 and 1,000. The Department informs us that approximately 600 application forms have issued to date and the first form already returned.

2.2 It is presumed that each applicant will need to be met in person to ensure that the advice provided is appropriate to individuals' particular needs. The Report notes that a significant number of the Magdalen women are frail and that some are very vulnerable. Hence, any such meetings would need to be in locations that are relatively easily accessible to applicants. Judge Quirke also raises the issue of diminished capacity in certain cases as well as the potential of wardship in some instances.

It is noted that the Board's responsibilities would be confined to applicants resident in this jurisdiction.

2.3 The legal advice would address matters such as the consequence of signing or not signing the waiver; the strength of any case against the State or any institution that they might contemplate taking; the process of taking such a case if that option is pursued; legal matters regarding capacity or responsibility if these should be relevant.

It is noted too, as referred to earlier, that the Minister would want the provision of legal services in these cases treated as priority matters. This has significance in terms of resources applied.

2.4 In order to more fully assess the extent of legal advice required, the Department will need to confirm a number of matters:

- Whether there are any existing court proceedings and confirmation on what should become of them e.g. if they are to be discontinued, who will pay the applicant's legal costs in respect of these proceedings?
- Should the applicant choose not to accept the compensation offered and wishes to pursue a claim through the courts does the Board take on the case? Does the merits test apply? Is the case prioritised?
- Need to confirm the geographic whereabouts of applicants in order to plan provision of advice.

2.5 It might be noted that the view of the Board is that the proposed legal advice comes within the provisions of Section 25 of the Civil Legal Aid Act, 1995 and that, consequently, no legislative amendment is required to facilitate such provision. The provision, however, relating to financial eligibility and contributions towards cost of legal aid and advice contained in Section 29 of that Act needs to be addressed. It is to be presumed that the Department wishes all applicants to be passported through

for legal services without reference to financial eligibility and without the requirement for a contribution towards the cost of the service. Section 29(2) provides that the Board may in accordance with regulations under Section 37, provide legal aid or advice to an applicant without reference to his or her financial resources. What this means, in effect, is that the Minister will need to make a regulation in order to provide for this. The Board has experience of this and can speedily produce a draft regulation for presentation to the Minister.

3. Structure Proposed

3.1 In proposing a structure for the provision of legal advice in the present context, the Board is conscious of a number of matters:

- The necessity for the advice and the organisation providing the advice to be independent in the task;
- The wish of the Minister for the service to be provided speedily;
- The capacity and willingness to provide the relevant advice in a location suitable to the applicant and in a manner which is sensitive to individual needs and capacity;
- The need to ensure consistency and quality in the service provided;
- The requirement to ensure value for money i.e. minimise costs;
- To be in a position to regularly update the Minister and Department on all aspects of the service provided.

The Department proposes that the costs of the service be ring fenced to ensure transparency and effective accountability.

3.2 With all of the above matters in mind, the following structure and process are proposed:

- (i) One of the Board's existing Grade II Managing Solicitors with wide ranging experience be appointed to manage the project. His/her position would be backfilled by a Grade III solicitor on contract (initially 12 months). Careful consideration to be given to the competencies and capacities of the solicitor selected.
- (ii) Two further solicitors (entry grade) be appointed on contract (again 12 months) as part of the project. The Board currently has a panel of solicitors in place from a very recent competition run by PAS from which the solicitors might be drawn.
- (iii) Some training be provided to each of the solicitors covering details of the scheme and the key matters anticipated to be the subject of advice sought.
- (iv) The solicitors be located in Dublin in one of the Board's existing premises and be willing to travel to locations nationally to provide the service sought.

(v) A single clerical support be provided (with support as required) to deal with calls, arrange appointments and manage records.

3.3 It is not easy at this stage to assess the extent of time required for the provision of legal advice. In view of Judge Quirke's assessment of the vulnerability of many of these women it is unlikely that appointments with applicants will be of very short duration. There may also be, on occasion, more complex legal matters to be addressed some of which have been referred to earlier.

4. Costs

Initial assessment of costs involved which have been kept to what is perceived to be an absolute minimum would be as follows:

3 solicitors (recruitment level)	€120,000
1 Clerical Officer (with support at 25%)	€35,000
Premises	€0 (cost undertaken by Board)
Training	€1,500
Travel	€6,000
IT	€5,000
Total	€167,500

If costs were confined to this amount and legal advice provided to 600 women the total cost per case comes to €279 which would be extremely modest.

AN ROINN DLí agus CIRT agus
COMHIONANNAIS

Cúirt Mhic Thaidhg
Sráid Mhic Thaidhg
Baile Átha Cliath 2

Teileafón/Telephone: 4768655

Ríomhphoist/e-mail: jmartin@justice.ie



DEPARTMENT OF JUSTICE and
EQUALITY

Montague Court
Montague Street
Dublin 2

Facsimhír/Fax:

Chairperson
Legal Aid Board
47 Upper Mount Street
Dublin 2

Dear Chairperson,

The Government on 25 June 2013 decided to accept in full the recommendations of Judge Quirke for a scheme of payments and benefits for women who were in Magdalen laundries. Judge Quirke's report is available on the Department's website with effect from 26 June 2013.

The Department of Justice and Equality has overall responsibility for implementing the scheme and in particular for determining which women are eligible and for the payment of a lump ex gratia payment (€11,500 to €100,000). Approximately 600 application forms have been issued to date and the first completed form has already been returned to us. This aspect of the scheme is non statutory. Payments are solely based on duration of stay and the scheme is designed to be an administrative scheme without any need for legal assistance with one exception. Before payment of the lump sum, applicants will be asked to sign a waiver and before signing a waiver they should be given access to legal advice to be paid for by the State (the relevant section of the Quirke report is set out below).

Many of the women concerned are vulnerable and poorly educated. We are very conscious of the complaints of exploitation made against solicitors in the context of the Residential Institutions Redress Scheme and we wish to avoid a similar controversy. In that context, the Minister would appreciate it if the Legal Aid Board could manage the provision of legal advice regarding the signature of waivers in respect of those applicants resident in the State.

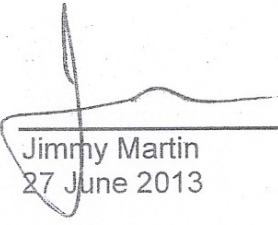
The Government has already been accused of delay regarding the Magdalen laundries. In the light of the advanced age of most applicants, any significant delay in providing advice will be construed as an effort by the Government to minimise payments while waiting for women to die. For that reason, applicants have to be given priority.

Subject to clarification with the Department of Public Expenditure and Reform, we would envisage that additional ring fenced funding would be provided to the Board to cover the costs involved.

As we may be in a position to make the first offer of payment of a lump sum in a matter of weeks and sanction will be required, I would very much appreciate it if you could give us an early indication of whether the Legal Aid Board can take on this task and an estimate of the costs involved.

We are available to discuss the matter if that would help matters.

Yours sincerely



Jimmy Martin
27 June 2013