

Justice for Magdalenes Research
Crocknahattina
Baileborough
Co Cavan

Minister Frances Fitzgerald, TD
Department of Justice and Equality
94 St Stephen's Green
Dublin 2

By post and email to frances.fitzgerald@oireachtas.ie

cc: Mr Justice John Quirke, by email to [REDACTED]

1 September 2014

Dear Minister,

RE: MAGDALENE RESTORATIVE JUSTICE SCHEME

We are writing with regard to the operation of the Magdalene restorative justice scheme. The core members of our organisation include family members and friends of Magdalene Laundry survivors, researchers and human rights advocates. Since 2009, we have been working to achieve a fair, transparent and efficient restorative justice process for the benefit of women who were abused in Magdalene Laundries and their family members.

We would like to request a meeting with you at your earliest convenience, to discuss the process by which your Department is determining duration of stay in an institution for the purpose of a woman's application to the restorative justice scheme. We enclose a document which outlines our concerns regarding this issue in some detail.

We further enclose our recent letter to the Minister for Health concerning apparent deficiencies in the draft legislation to provide for health and community care benefits and the appointment of personal representatives for women who lack capacity. We are aware that your Department has worked closely with the Department of Health on this legislation.

We look forward to meeting you to discuss these matters. Please do not hesitate to contact us at info@magdalenelaundries.com or on [REDACTED]

Best wishes,

Maeve O'Rourke, Claire McGettrick, Mari Steed, Katherine O'Donnell and James M. Smith

Determining duration of stay

Over the past few months it has come to our attention that numerous applicants to the restorative justice scheme are experiencing difficulties and delays in establishing their duration of stay in one of the 12 listed institutions.

The problem cases appear to fall into two categories: (a) applicants who dispute the records provided by the religious congregations, or (b) applicants for whom no records are available from the religious congregations.

The background to this is of course that the religious congregations' records are, according to the Report of the Inter-departmental Committee to establish the facts of state involvement with Magdalen Laundries, incomplete or non-existent for the majority of women. Our reading of Chapter 8 of the Inter-departmental Committee's Report is that dates of exit are missing for 58% of recorded admissions to the Laundries.¹

We are concerned that the Implementation Unit staff in the Department of Justice may not be implementing fair procedures in determining duration of stay, and we would like to discuss with you the appropriate way forward.

(a) Applicants who dispute the records provided by the religious congregations

We have been contacted recently by two women who have accepted compensation for considerably less time than they claim to have spent in Magdalene Laundries or other listed institutions. We also note Phyllis Morgan's acknowledgement, as reported in July in the Irish Post (available here: <http://www.irishpost.co.uk/news/only-67-british-based-magdalene-survivors-seek-redress-despite-majority-claim>), that "most [of her clients who have applied to the restorative justice scheme] have received less than they think they deserve because the records kept by nuns do not reflect accurately how long they were in a laundry."

In the cases of both of the women who have made contact with us, they state that they notified Implementation Unit staff that they disputed the record(s) or letter provided by the religious congregation regarding their duration of stay as soon as the disagreement became apparent. Notwithstanding this notification, the Implementation Unit refused both women a hearing. Both women state that they requested an opportunity to speak to someone in the Department to prove their case but were told by Implementation Unit staff that this was not possible. They state that they were informed that the only course of action open to them if they wished to dispute the religious congregation's record(s) or letter was to appeal to an officer of a higher grade within the Department.

It appears that the process of appeal to an officer of a higher grade does not, and in these two women's cases did not, provide any opportunity to be heard either. There was no opportunity to provide oral evidence and neither of the women had legal representation in making their

¹ Page 168 of the Report says duration of stay is known for 6,151 women and unknown for 5,047 women. These references to numbers of "women" must actually be to "admissions" because the total of known and unknown durations is 11,198. 11,198 is (a) more than the 10,012 women that are said to have spent time in laundries in the Executive Summary and (b) explained on pages 159/160 as the 14,607 known admissions minus cases of repeat entries, in particular those repeat entries which provided no usable data.

appeal in writing. Both of their compensation offers were confirmed on appeal by an officer of a higher grade.

Both women state that the burden of finding other records which may or may not have helped substantiate their case was entirely theirs. They each attempted to obtain educational records and other official records, with varying degrees of success. One of the women says that she obtained educational records that directly contradicted the dates of entry and exit provided by the religious congregation, but that these had no bearing on the initial decision by the Implementation Unit or the decision by an officer of a higher grade on appeal.

It appears that neither the original Implementation Unit decision-maker nor the officer of a higher grade provided detailed written reasons for having preferred the religious congregation's record(s) or letter over the applicant's claim regarding duration of stay.

We understand that both women were made aware of the process for further appeal to the Ombudsman. However, both women say that they had become too distressed by the time their appeal was refused by the officer of a higher grade to continue with a further appeal to the Ombudsman. One of the women was in debt and was being pursued by loan sharks daily. The other woman had suffered a stroke, which she believes was brought on by the stress of not being believed, as she saw it, by Department of Justice officials who preferred without question the religious congregation's version of events.

(b) Applicants for whom no records are available from the religious congregations

The latest figures provided by your Department demonstrate that hundreds of women are still awaiting an initial compensation offer from the Implementation Unit. It seems that much of this delay is due to the unavailability of any records from the religious congregations.

One of the many examples we are aware of is a lady in London who spent time in the Galway Magdalene Laundry. She was informed that there are no records available for the Galway Magdalene. However, she obtained a letter from the Sisters of Mercy stating that they believed she had spent the time she claimed in the Magdalene. The Implementation Unit staff received this lady's application and accompanying letter in November 2013, yet no offer has been made to date.

As you are aware, the absence of an offer of compensation means that pension benefits under the scheme are also withheld. The women we are in contact with are in desperate need of financial support to help them with illnesses and infirmity and to provide general basic comforts.

The way forward

It is our opinion that the Department of Justice needs urgently to devise a process by which applicants to the restorative justice scheme can prove their own duration of stay in one of the 12 listed institutions. This applies both to women who dispute the records or letters produced by the religious congregations and to women for whom no records are available.

The existence of a final appeal to the Ombudsman does not relieve the Department of Justice from its obligation to implement fair procedures in processing the women's applications to the restorative justice scheme. We are aware that the scheme has been designed to avoid the

need for legal representation. However, we believe that some consideration needs to be given to whether the scheme is in fact functioning fairly and in the spirit of restorative justice in its current form.

Possible solutions to the current problems may include enabling an applicant to swear an affidavit or inviting an applicant for a meeting. Both of these routes would, naturally, require legal representation. The Department must also implement a procedure whereby detailed written reasons are provided at the initial offer stage and on appeal, setting out why the applicant's evidence was/was not preferred over other available evidence.

We understand that the Implementation Unit staff are working to maximum capacity and are doing their personal best to assist applicants. However, it is quite clear that proper implementation of this scheme requires further resources and more transparent and fair procedures.

Justice for Magdalenes Research
Crocknahattina
Baileborough
Co Cavan

Minister Leo Varadkar, TD
Department of Health and Children
Hawkins House
Hawkins Street
Dublin 2

By post and email to leo.varadkar@oireachtas.ie

cc: Mr Justice John Quirke, by email to [REDACTED]

19 August 2014

Dear Minister,

RE: MAGDALENE RESTORATIVE JUSTICE SCHEME

We are writing with regard to Magdalene survivors' health and community care entitlements under the Restorative Justice scheme recommended by Mr Justice John Quirke and accepted in full by the government in June 2013.

We would like to request a meeting with you at your earliest convenience, to discuss (a) the contents of the forthcoming legislation to provide for health and community care under the Restorative Justice scheme, (b) the administrative scheme through which, the government has promised, the HSE will provide equivalent health and community care coverage to Magdalene survivors living abroad, and (c) independent advocates for Magdalene survivors who are still institutionalised.

We have enclosed a document which outlines these issues in some detail and look forward to meeting you to discuss these pressing matters. Please do not hesitate to contact us at info@magdalenelaundries.com or on [REDACTED]

Best wishes,

Maeve O'Rourke
Claire McGettrick
Mari Steed
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1. Redress for Women who were in Certain Institutions Bill

We have reviewed the Bill published on 8 August 2014, which aims to provide for the health and community care benefits recommended by Judge Quirke and for representation of women lacking capacity.

We are aware of – and we would stress ourselves – the urgent need to pass legislation to implement these aspects of the restorative justice scheme. Several women known to us in Justice for Magdalenes Research (JFMR) have passed away since the announcement of the scheme over a year ago and many others have experienced repeated hospitalisations and/or are suffering from physical and mental illnesses. In addition, we are aware that many women who are still institutionalised and living in nursing homes will continue to be denied access to any benefits under the scheme until a representative is appointed for them under the forthcoming legislation.

However, this legislation must comply with all of Judge Quirke’s recommendations. On 26 June 2013, the government promised Magdalene survivors that it would implement all of Judge Quirke’s recommendations in full (see Department of Justice press release here: <http://www.justice.ie/en/JELR/Pages/PR13000256>). We believe that the Bill may need to be amended, or at least clarified, and we would ask that your Department utilise the coming weeks to do so in preparation for the beginning of the new Dáil term.

We are concerned that the draft legislation does not comply fully with Judge Quirke’s very first recommendation regarding health and community care, which he described as “a fundamental element of the Scheme”. The extent of the health and community care coverage which Judge Quirke recommended is clear: it should match the range of services provided under the HAA card scheme. Appendix G of Judge Quirke’s report sets out the full range of services to be provided.

Upon our reading of the Bill, the following services appear to be either missing or inconsistent with Judge Quirke’s recommendations:

- (a) **Complementary therapies:** These are missing from the Bill. According to Appendix G of Judge Quirke’s report, complementary therapies available to HAA cardholders include massage, reflexology, acupuncture, aromatherapy and hydrotherapy. They can be availed of once referred by a GP or consultant, and in a private or public setting.
- (b) **Counselling:** The Bill requires a referral by a medical practitioner to counselling, whereas the HAA card scheme does not require a referral or prior approval from the Liaison Officer, once the counselling is provided by a practitioner on the HSE list. Furthermore, the HAA card provides free counselling to immediate relatives. We would like confirmation as to whether or not you intend the counselling provision under the Magdalene restorative justice scheme to mirror that provided under the HAA card scheme.
- (c) **High Tech Drugs:** These are missing from the Bill.
- (d) **Aids and appliances:** The Bill provides for dental, ophthalmic and aural appliances only. Appendix G makes clear that HAA cardholders are entitled to “any necessary aids and

appliances...prescribed by your GP, Consultant, Occupational Therapist or Public Health Nurse/Clinical Nurse Co-ordinator”. The aids and appliances provided under the HAA card scheme include those used to assist with mobility and movement, such as walking sticks, frames, wheelchairs, grab rails, shower seats, and bath and bed hoists. These do not appear to be included in the Bill in its current form.

We are also concerned that women who make successful applications to the restorative justice scheme should have access to a physical HAA card. We know of at least one woman who received an offer letter from the Implementation Unit in the Department of Justice in February 2014, stating that she would receive a HAA card within 14 days. We also seek confirmation from you that successful applicants to the restorative justice scheme will have access to a liaison officer in the same way as current holders of the HAA card. Judge Quirke stressed the importance of the liaison officer scheme in his report.

2. Health and community care for survivors residing abroad

The Redress for Women who were in Certain Institutions Bill does not provide for health or community care provision for survivors residing outside of Ireland.

JFMR is aware and Judge Quirke acknowledges in his Report that many Magdalene survivors live in the UK and other foreign jurisdictions including the US, Canada, Australia, Germany and Switzerland. According to the previous Minister for Justice, Alan Shatter, TD, by 19 November 2013 applications had been made to the Restorative Justice scheme by women in Australia, Cyprus, Germany, England, Northern Ireland, Scotland, Switzerland, USA and Wales.

Judge Quirke’s report is explicit that his recommendation regarding health and community care should apply to “each of the women who were admitted to and worked in a designated Magdalen laundry” (para 2.07).

On 24 June 2014 the Department of Justice announced that “Given the wide variation of country health system’s organisation, **access to equivalent medical services for participants living abroad will be dealt with on an administrative basis by the HSE** and is, therefore not part of the proposed Bill.” (<http://www.justice.ie/en/JELR/Pages/PR14000170>)

A report in the Irish Independent on 25 June 2014 quoted a government spokesperson as confirming that the State will pay for health insurance for Magdalene survivors living abroad (<http://www.independent.ie/irish-news/health/medical-cover-for-magdalene-survivors-30381975.html>). This seems to us to be a sensible, straightforward option which could be implemented swiftly for the benefit of women currently in need. Consideration also needs to be given to how the government can provide home nursing, home help and complementary therapies – along with traditional medical care – to women residing abroad.

We would be obliged if you could please confirm whether the Department of Health will pay for health insurance for Magdalene survivors abroad, and if so, when. We would like confirmation of what the administrative process to provide health and community care

services for women abroad will entail, how soon it will begin, and how the women will be informed.

3. Independent advocates for women still institutionalised

JFMR has always expressed concern for the wellbeing of Magdalene survivors who are still institutionalised and living in nursing homes run by the religious congregations responsible for the Magdalene Laundries. Many have no family members to care for them; indeed JFMR is aware that some women have been subject to maltreatment by family members and those caring for them. Judge Quirke remarked in his report that “[m]ost of those Magdalen women who are currently within the care of the Orders (more than 100 in number) are fragile and very vulnerable” (para 4.04).

We recommend that in tandem with the health and community care benefits under the Restorative Justice scheme – which include liaison officers similar to the HAA card scheme – an independent advocacy service be provided to women who are institutionalised, to enable them to make use of their entitlements under the Restorative Justice scheme for their personal comfort and their own ends. This would be in addition to the capacity legislation currently being prepared under the Restorative Justice scheme.