

**To:** Charlie Flanagan TD, Minister for Justice and Equality  
**From:** Justice for Magdalenes Research  
**Date:** 27<sup>th</sup> March 2018

**RE: Women excluded from Magdalene Scheme**

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1. Having regard to the Taoiseach's apology in February 2013, it was clearly intended that all Magdalene Women would be included in the Scheme.
2. The same intention is true from Judge Quirke's report.
3. The Government publicly accepted all of Judge Quirke's recommendations. Judge Quirke expressly recommended that payments made by the RIRB should not be taken into account. Most of the women excluded received no payments from RIRB for a variety of reasons: they were either abroad and unaware of the RIRB or under the mistaken impression that it was only for victims of sexual abuse. The RIRB closed permanently in 2012.
4. The Restorative Justice Scheme was adopted by the Government in June 2013. The original terms of the Scheme do not exclude women who worked in the Laundries as children.
5. The Department told the UN that the formula 'admitted to and worked in' was adopted over 'worked in' just to exclude the nuns who worked in the Laundries from the Scheme.
6. The Ombudsman's Report *Opportunity Lost* reveals that the footnote in the appendix saying that RIRB institutions are excluded was added in December 2013 by officials in the Department of Justice without governmental authority (p 8). In this regard the Ombudsman told the Oireachtas Joint Committee on Justice and Equality (OJCJE) on 31 January 2018 (<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetak/JUJ2018013100002?opendocument#F00100>) :

*My second point relates to the prohibition on dual funding inserted in the scheme. It was not inserted to the scheme that went before Government. It was put in as an administrative footnote. We believe that the scheme should not have had this prohibition as the two redress arrangements were for different wrongs. We now want to see those women receive the compensation belatedly that they should have received.*

No-one was aware that departmental officials had rewritten the Scheme until the Ombudsman published his report.

7. The Scheme provides for an appeal against refusal of admission to the Ombudsman (para 19). The government intended that the Department would respect the Ombudsman's decisions in respect of these appeals. All other decision-makers and Departments consistently comply with recommendations of the Ombudsman's office.
8. When decisions of the Department to exclude women from the Scheme on the basis that they were not resident in the Laundries were challenged in the High Court in January 2017 in *MKL and DC v. MJE*, the Department sought to have the cases dismissed on the basis that the women had not appealed to the Ombudsman. A Departmental official, Janet Lacey, gave sworn evidence in multiple affidavits that the Department complied with the Ombudsman's decisions. This was not true. At this point, the Department was already refusing to comply with the Ombudsman's appeal decisions to admit women to the Scheme. The Ombudsman informed the women that the Department had misled the High Court and the applicants brought this dishonesty to the attention of the Court, which criticised the department in its judgment of 1 June 2017, at para 35 (<http://www.courts.ie/Judgments.nsf/0/65417F64EFC453FF8025814F00309B9D>) :

*It was incorrect to recite in an affidavit that the respondent considered itself bound by the Ombudsman's recommendation. This should have been clarified as the respondent reserved the right to disregard the Ombudsman's finding if in the respondent's opinion it was outside the criteria of the scheme.*

9. The High Court quashed the decisions on the basis that information relied on by the officials received from religious orders had not been disclosed to the women. It found that the decisions should be remade in light of the information disclosed in the Ombudsman's investigation and on the basis of his recommendations when they became available.
10. Mr Martin told the Joint Oireachtas Committee that the High Court held that 'It is not appropriate that any applicant under the ex gratia scheme should receive compensation, however described from the Redress Scheme and the ex gratia scheme covering the same wrong'. This remark is taken out of context. Reading the full judgment makes clear that this was intended as a hypothetical aside which does not form part of the binding reasoning of the judgment. There is no double recovery in these cases. No-one is receiving compensation twice for the same wrong. The RIRB and Restorative Justice Schemes compensate different wrongs: one is for abuse and denial of educational opportunity, while the other is for exploitation and forced labour. The Ombudsman told the OJCJE that 'the two redress arrangements were for different wrongs'.
11. The Ombudsman's Report reveals the extent to which the Magdalene Laundries and the Industrial Schools were integrated mechanisms of containment and exploitation. The Ombudsman reviewed all of the available material – including the records of the institutions themselves – and independently concluded that decision there was no meaningful distinction between the Laundries on the one hand and the Industrial Schools and Training Units in which the women had been notionally placed as children.
12. The Department was given ample time – three months – to consider the Ombudsman's recommendation that the cases of women excluded from the Scheme on this basis be reviewed with a view to granting them redress. Yet more than four months later they have not been admitted. Jimmy Martin told the Oireachtas Joint Committee that the recommendation 'has administrative, financial and resource implications for ourselves and other Departments. At a minimum, it would at least double the number of institutions in the Scheme. We have started a process to estimate the additional numbers that would be involved. As part of that process, we are consulting with other Departments who have an interest in the running of the scheme.' It is nonsensical to suggest that the Ombudsman's recommendation involves doubling the institutions in the Scheme.
13. Mr Martin's stubborn defence of the indefensible suggests that fundamentally, the person in charge of the Restorative Justice Implementation Unit does not believe that Magdalene Women are entitled to any redress at all. His correspondence with the Ombudsman indicates that he rejects the Taoiseach's apology and the very premise of the Restorative Justice Scheme. On 3 August 2016 he told the Ombudsman( [https://www.scribd.com/document/338642688/SKM-454e17020710550?secret\\_password=TqfQ1IKYKCN2ne3aNczB](https://www.scribd.com/document/338642688/SKM-454e17020710550?secret_password=TqfQ1IKYKCN2ne3aNczB) p 21

*There has been no court ruling that the State has any liability for women who entered such institutions nor have we ever seen any legal advice or factual evidence that would give rise to the belief that the State has any legal liability. We are also not aware of any successful legal action taken against the religious orders concerned.*

*The McAleese Committee was given the task of establishing as far as possible the facts regard Magdalene institutions. The facts they found did not support the popular media accounts of Magdalen laundries.*

Quite apart from the fact that this statement is a mischaracterisation of the remit of the McAleese Committee (which did not have a mandate to investigate complaints of abuse), it makes clear that for Mr Martin, there is nothing for anyone to be sorry for. Mr Martin even disputes the responsibility of the State, rejecting the core finding of the McAleese report. The question, then, is whether Mr Martin's determination to exclude these women is going to override the will of the Government and the People as expressed by the Taoiseach's apology and the Scheme as originally adopted.

14. The number of women excluded is already clear on the basis of the decisions which have already issued. The funds for the Scheme have already been voted and appropriated. €54 million was set aside and €27 million has so far been paid out. Ms Jacqueline McCrum of the Ombudsman's Office told the OJCJE that the sum involved in admitting the women now excluded to redress appears to be in the order of €3-€5 million. These monies do not come from the Departmental vote.

15. All political parties agree that the Department's insistence that the women exploited in the Laundries as children be excluded from the Restorative Justice Scheme is grotesquely unjust. No politician of any party will publicly defend it (e.g. Colm Brophy (FG), Jan O'Sullivan (Lab) and Catherine Ardagh (FF) on RTE's *The Late Debate* with Katie Hannon, interviewing Maeve O'Rourke on 14 February 2018 <http://www.rte.ie/radio1/the-late-debate/programmes/2018/0214/940837-the-late-debate-wednesday-14-february-2018/> ).
16. The Irish Examiner recently reported that seven Magdalene survivors whom the Department deemed to lack capacity died before being admitted to the Scheme. One more of the women excluded from the Scheme, and whose inclusion the Ombudsman recommended by letter dated 20 December 2016, is now in intensive care. Her family say she is dying. We know of another woman in the same position who has been referred to a consultant cardiologist with persistent chest pain and palpitations associated with stress. These women have been failed by the Department of Justice.