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From: INFO [mailto:info@justice.ie]

Sent: 25 January 2018 11:11

To: Maeve O'Rourke [REDACTED]

Subject: Response

Ms Maeve O'Rourke  
[REDACTED]

Minister Reference: 0115144708

Dear Ms O'Rourke,

I am directed by the Minister for Justice and Equality, Charlie Flanagan T.D., to refer to your correspondence of 11 January, 2018 on behalf of the Irish Council for Civil Liberties, the National Women's Council of Ireland, Justice for Magdalenes Research, Sage Support and Advocacy Service and Amnesty International Ireland in relation to the Department's administration of the Magdalen Restorative Justice Ex-Gratia Scheme.

As you will be aware the Scheme remains open. To date 686 applicants to the scheme have received their ex-gratia payments at a cost of over €25.7m.

The terms of the Scheme recommended to Government by Mr Justice John Quirke in his Magdalen Commission Report (May 2013) included the payment of "lump sums" ranging from €11,500 to €100,000, special access to health care, upgrading of pension entitlements to the full State Pension for those who had reached retirement age and payment of a weekly sum of €100 inclusive of other State payments to others. Each successful applicant is advised to seek legal advice before signing the legal documents for which the Department pays up to €500 maximum plus VAT.

The situation in relation to the specific issues raised in your correspondence is set out below:

## Memorialisation

The site of the Gloucester Street Magdalen Institution on Seán McDermott Street, Dublin 1 is owned by Dublin City Council (DCC) who announced in December, 2017 that it will carry out a significant commercial redevelopment of the now largely derelict site as a broader economic regeneration of the area. DCC also stated that there will be a Magdalen Memorial at the site and that it will consult with Magdalen representative groups early this year. As part of this consultation process officials from this Department will meet with DCC officials to discuss issues related to the memorial.

## Implementation of the Ombudsman's Recommendations

The Department is giving full and detailed consideration to each of the 4 recommendations in the Report. The current status of these is set out

below:

### Capacity

The Department has written to the Courts Service seeking assistance and advice in relation to releasing the ex-gratia payment to applicants who lack the mental capacity to sign up to the scheme. We understand that 3 women are already in the application process to be made Wards of Court. We are of course aware of the implications of being made a ward of court and continue to examine other options. The Decision Support Service to be established under the Assisted Decision Making (Capacity) Act 2015 is the most effective option, a budget of €3m has been provided this year for the establishment of this Service.

In your correspondence you also raise the issue of advocacy services for such women. In this respect, Justice Quirke made a very clear distinction between what is required for most women and what is required for those lacking full mental capacity including those women that are in an institutional setting. Magdalen women are covered by section 21 Nursing Home Support Scheme Act 2009 which makes provision for persons to act as care representatives in respect of any person applying for support under that Act. A personal advocate has very limited powers with regard to a person who lacks capacity. A personal advocate does not have power of attorney to make a decision or otherwise to manage the affairs of the person whereas the Assisted Decision Making (Capacity) Act 2015 provides for a range of options available for decision making which will be of benefit to the Magdalen women who have capacity issues. For women who do not lack capacity each relevant

department has nominated contact people to assist the women in accessing their entitlements and advising them in a professional, confidential and sensitive manner.

#### Disputed duration of stay

The Department is currently making arrangements to provide for an independent person(s) to review applications where there was a dispute over the length of stay.

#### Eligibility for admission to the Scheme

The Department requested clarification from the Ombudsman on a number of issues relevant to this recommendation. His response has just been received and the recommendation is being considered further in the context of this clarification. As you will appreciate it will also be necessary to carry out a full assessment of the administrative, resource and legal implications of the recommendation, including an estimation of the numbers involved.

#### Developing Future Schemes

This recommendation was not specifically addressed to this Department and is also relevant to a number of other Government departments who are being consulted.

#### Health and Community Care

The Magdalen women are provided with an enhanced medical card which allows them access to a range of medical services and to primary and community health services. These services are free of charge and include GP services, prescribed drugs, medicines, aids and appliances, dental, ophthalmic and aural services, home support, home nursing, counselling services, chiropody, podiatry and physiotherapy. This is the same range of services as provided to HAA cardholders, the exception being Hepatitis C specific medicines and treatments which for obvious reasons do not apply.

Provision has also been made through administrative arrangements for medical support for women residing abroad.

Judge Quirke made no mention of alternative therapies in his report nor are they mentioned in the Health (Amendment) Act 1996 or the Redress for Women Resident in Certain Institutions Act, 2015, which made specific medical provision for Hepatitis C and Magdalen women respectively. The question of alternative therapies has been raised before, including in a Dáil Question on 24 March, 2015 and again on 23 February, 2017. If a case were to be made for the provision of effective and

proven alternative medical therapy services for Magdalen women, such provision being on an administrative basis outside of the aforementioned legislation, I would consult with my colleague the Minister for Health on the request.

#### Back-dating of pension payments

The Government decision in relation to the terms of the Scheme provided that the it commenced with effect from 1 August, 2013. This is the date which must be applied for calculating benefits such as pensions, weekly payments, etc.

#### Advertising of the Scheme abroad

Over 24% of applicants have been from women residing outside of Ireland.

The announcement of the scheme received extensive coverage and in late 2014 the Department of Foreign Affairs and Trade circulated an information note on the Scheme through their embassies around the world to the local Irish communities.

#### Original estimate cost of scheme

Reference is made to the fact that the original estimated cost of the scheme was €58m and that €25.7m has been spent to date. At the time the scheme was set up it was not possible to give a precise figure of the number of applicants and it was estimated that it could be up to 1,000 women at a cost of between €34.5m and €58m. It is also important to be aware that the cost of the lump sums (€25.7m to date) is not the only cost.

Each successful applicant receives a pension type payment - €100 per week if under 66 years of age and the value of the contributory State pension if

66 years or over. In addition, applicants whose lump sum exceeds €50,000 receives the balance of the lump sum by way of weekly instalments. These two payments are paid by the Department of Employment Affairs & Social Protection and are not included in the figure of €25.7m. In addition, each successful applicant also receives an enhanced medical card issued by the HSE which is for life and has significant costs.

Yours sincerely

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Alan McGreevey

Private Secretary to the

Minister for Justice & Equality

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Is le haghaidh an duine nó an eintitis ar a bhfuil sí dírithe, agus le haghaidh an duine nó an eintitis sin amháin, a bheartaítear an fhaisnéis a tarchuireadh agus féadfaidh sé go bhfuil ábhar faoi rún agus/nó faoi phribhléid inti. Toirmisctear aon athbhreithniú, atarchur nó leathadh a dhéanamh ar an bhfaisnéis seo, aon úsáid eile a bhaint aisti nó aon ghníomh a dhéanamh ar a hiontaoibh, ag daoine nó ag eintitis seachas an faighteoir beartaithe. Má fuair tú é seo trí dhearmad, téigh i dteagmháil leis an seoltóir, le do thoil, agus scríos an t-ábhar as aon ríomhaire. Is é beartas na Roinne Dlí agus Cirt agus Comhionannais, na nOifigí agus na nGníomhaireachtaí a úsáideann seirbhísí TF na Roinne seoladh ábhair cholúil a dhícheadú.

Más rud é go measann tú gur ábhar colúil atá san ábhar atá sa teachtaireacht seo is ceart duit dul i dteagmháil leis an seoltóir láithreach agus le [mailminder\[ag\]justice.ie](mailto:mailminder@justice.ie) chomh maith.

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