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**Mother and Baby Institutions,
Magdalene Laundries and
Workhouses
in Northern Ireland**

**Truth, Acknowledgement
and Accountability**

REPORT

**Deirdre Mahon, Maeve O'Rourke and Phil Scraton
Truth Recovery Design Panel**

Report for the Northern Ireland Executive

October 2021



Mother and Baby Institutions, Magdalene Laundries and Workhouses in Northern Ireland

Truth, Acknowledgement and Accountability

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for the Northern Ireland Executive

Deirdre Mahon, Maeve O'Rourke and Phil Scraton
Truth Recovery Design Panel

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Acknowledgements

Appointed in late March 2021, the Truth Recovery Panel was scheduled to deliver its findings in six months following close collaboration with victims-survivors of Northern Ireland's Mother and Baby Institutions, Magdalene Laundries and Workhouses.

The Panel's work could not have been conceived of or completed without the dedicated participation of the many victims, survivors and relatives who were directly involved in developing, spreading awareness of and co-designing the research, the findings of which are at the centre of this Report. Their persistence in seeking access to information that is their right, their resilience, and their determination to realise a lifelong commitment to truth has challenged powerful institutions and revealed realities of violence, discrimination and ongoing injustice. Their commitment to truth serves a society whose State must now act to uphold human rights by initiating a comprehensive investigation supported by information access and redress measures.

The Panel's research was commissioned by the Northern Ireland Executive. We acknowledge the previous work of the Inter-Departmental Working Group and the extensive research by the University of Ulster/ Queen's University Belfast team, whose Report informed our work and who offered advice to us in the early stages. We thank Eilís McDaniel, Director of Family and Children's Policy at the Department of Health who has been a constant support throughout our work. We are grateful to Marion Coyle, the project's Administrator; to Darcy Rollins, the project's Researcher; and to Chris Curran, our Communications and Media Manager. Thank you to Professor Patricia Lundy at the University of Ulster and Patrick Corrigan of Amnesty International for convening the Learning the Lessons seminar series and for the ensuing report. Additional thanks are due to the legal representatives who made submissions on behalf of their clients, to the other interested groups and individuals who provided information, and to the numerous state and public representatives who showed interest in the Panel's work and offered their insights.

“my mother gave birth to a beautiful daughter who she probably only caught a glimpse of. Two days later, my mother is lying on a thin mattress in the workhouse surrounded by the destitute and mentally ill. She is distraught and bereft.

Meanwhile, just a ten-minute walk away, a happy, decent family has gathered in the church and they are cooing over my mother's baby, who looks lovely in her white christening gown. The baby strains to hear her mother's voice amongst the babbling strangers but she cannot pick her out. She screams in distress.

When the ceremony is over the name of the person baptised is entered into the register. The baby is given two surnames. Her mother's surname is in brackets and a stranger's surname is elevated to prime position. The process of stripping the baby of her identity has begun.....”

Contents

Foreword	06
Recommendations and Actions Required	09
Chapter 1: Introduction	18
Part One: Context	
Chapter 2: A Human Rights Framework	26
Chapter 3: Consulting the Literature	41
Part Two: Research	
Chapter 4: Developing the Research	54
Chapter 5: Truth, Disclosure and Accountability	58
Chapter 6: Access to Records	67
Chapter 7: Adoption and Separation	74
Chapter 8: Future Investigation and Inquiry: Status, Scope and Participation	80
Chapter 9: Beyond Inquiry: Delivering Justice, Memorialising Truth	92
Chapter 10: Further Submissions	101
Part Three: Conclusion	
Chapter 11: An Integrated Investigation, Information and Reparation Process	110
Bibliography and Additional Readings	
Appendix 1: Project Brief	126
Appendix 2: Ethical Protocol	128
Appendix 3: Public Appeal	130
Appendix 4: Questionnaire	131
Appendix 5: Independent Submission	133
Panel Members / Team Profiles	139
Bibliography and Sources Consulted	142

Foreword

The independent Truth Recovery Design Panel was established in March 2021 following all-Party agreement within the Northern Ireland Executive, on the advice of an independently chaired Inter-Departmental Working Group (IDWG) jointly sponsored by the Department of Health and Executive Office. The Panel's formal start date was 4th April and the completion date for its work was 30th September 2021.

The Panel members and authors of this Report are: Deirdre Mahon (seconded from her post as Director of Women and Children's Services and the Executive Director of Social Work in the Western Trust), Dr Maeve O'Rourke (National University of Ireland, Galway) and Professor Phil Scraton (Queen's University, Belfast).

The Panel's Project Brief required it to work closely with victims-survivors to make recommendations to the Northern Ireland Executive via the IDWG, co-designing a preferred option for the promised independent investigation/inquiry into Mother and Baby Institutions and Magdalene Laundries in Northern Ireland. Soon after its appointment, and following representations from victims-survivors, the Panel added Workhouses to its scope.

Prior to the Panel's appointment, victims-survivors, individually and in established groups, had campaigned relentlessly for truth and accountability regarding the operation of Mother and Baby Institutions, Magdalene Laundries and Workhouses in Northern Ireland. Their work was essential in informing the Panel's research and provided a foundation for the participation of other victims-survivors.

In the development of the Panel's research, victims-survivors co-designed the international call for participation in the research, the focus of the research questions and, via online meetings and telephone consultations, the development of the Panel's work. Throughout the process, victims-survivors were in regular contact with the Panel and regular on-line meetings were held. The Panel carried out documentary and legal analyses while progressing the research with victims-survivors. It presented its findings and recommendations to victims-survivors ahead of finalising this Report.

The Northern Ireland Executive and IDWG are to be commended for their insight and conviction in placing victims-survivors at the centre of designing the forthcoming independent investigation. This demonstrates sincere commitment to respecting and fulfilling human rights, following many decades in which victims-survivors have suffered and been silenced.

The Panel was required by the Project Brief 'to establish the Terms of Reference of the investigation'. Central to the Panel's recommendations is the proposal for an integrated investigation by an Independent Panel and statutory Public Inquiry.

The Panel's recommendations also include supporting measures that, in the view of victims-survivors and the Panel, are essential for the success of the forthcoming investigation. Human rights law establishes that an investigation is only one element, albeit crucial, of the required response to grave and systematic abuse.

Victims-survivors are clear in prioritising access to information, both personal and regarding the institutions' operation, and to redress and reparation. These measures are vital to enabling their full participation in

the investigation. Full recognition of victims-survivors' rights is necessary to ensure that the investigation does not waver from meeting the range of their justice needs.

The Panel recommends the following supporting measures, each of which requires urgent implementation:

- Measures to ensure access to records: a statutory preservation requirement; data protection law implementation guidance; and legislation to establish a permanent, dedicated, independent truth-telling archive; and
- Measures to secure redress, reparation and compensation, including: automatic redress payments; assistance to access the courts, criminal investigations and inquests; health and well-being services; support for researching personal and family history; restoration of citizenship; and memorialisation and apologies.

The complexity inherent in the creation, design and development of the recommended response, which has neither precedent nor blueprint, is ambitious but essential. The proposed process and its context are developed in detail throughout the body of this Report.

In the development of the research a communications and media strategy was prioritised which included the establishment of the Truth Recovery Strategy website. Within the first weeks of the Panel's work, widespread contacts including emigrant support services had been reached worldwide alongside an advertising campaign in major newspapers, and on radio and television news channels.

Establishing the most effective and efficient methodological approach to representing the breadth of victims-survivors' views was a key priority. The Covid-19 pandemic imposed restrictions on face-to-face contact. A semi-structured questionnaire, co-designed with victims-survivors, was developed. It was used alongside online and telephone interviews to ensure participation of individuals and groups, and to form the foundation of the Panel's recommendations. Some victims-survivors also made additional written submissions.

One hundred and eighty-six victims-survivors registered interest in actively participating in the Truth Recovery Design process; others stated that they did not want direct involvement but requested that they be updated on progress. Online meetings were held with larger groups together with multiple telephone conversations with individuals. Group meetings and one-to-one discussions were an opportunity to share and consult on the Panel's research as it progressed. A 'constant contact' mailing list enabled regular updates to be sent to victims-survivors, and the Panel and its administrator received frequent emails and phone calls from victims-survivors. Three weeks prior to concluding its Report, the Panel held a final online meeting, and individual phone conversations where preferred, to share the proposed structure of this report and its recommendations with victims-survivors, enabling further refinement.

During the process, submissions were received from legal firms on behalf of their clients, by Amnesty International/University of Ulster, and by the Independent Living Movement Ireland, the Restorative Practices Forum NI, a journalist, social workers and a former priest among other interested parties. Their contributions have further informed this Report.

While developing a recommended framework of investigation/inquiry, at the request of victims-survivors the Truth Recovery Design Panel also facilitated other interventions. At the survivors' request, the panel via the Health and Social Care Board (HSCB) asked Adopt NI (an independent agency that provides adoption support to adults whose lives are impacted by adoption) to establish a peer support group.

Throughout the Panel's work the Victims and Survivors Service (VSS) also offered support to victims-survivors where requested. The Truth Recovery Design Panel met online with the CEO of VSS to help inform the development of the services they offer. VSS recently concluded a parallel co-design process to

identify with victims-survivors their ongoing needs for health, wellbeing and ancillary services.

The Truth Recovery Design Panel further supported the establishment of a working group chaired by the HSCB involving: victims-survivors who self-nominated from those participating in the Truth Recovery Design process, and social workers from all five Health and Social Care Trusts and two adoption agencies. The working group's purpose is to develop practice guidance to encourage and enable consistent, fair and lawful access to adoption-related records. The working group is now engaged in a Data Protection Impact Assessment facilitated by an independent legal adviser funded by the Department of Health. It is anticipated that the practice guidance will be finalised by the end of November 2021.

This Report is in three parts. The first part, in three chapters, provides an introduction to the Panel's work, an overview of the applicable human rights law framework and a targeted literature review. The second part is the core of the Report, conveying victims-survivors' extensive submissions. Seven research chapters reflect the range and complexity of their participation, through written responses and group and individual online and telephone consultations. This extensive body of primary evidence provides the foundation to the Panel's recommendations for an integrated investigation, access to records and reparation process. It realises the commitment to co-design established in the Panel's Project Brief. The final part of the Report draws together the research and analysis contained in previous chapters, explaining the rationale for the Panel's extensive recommendations and required actions for their realisation.

The Truth Recovery Panel
Deirdre Mahon • Maeve O'Rourke • Phil Scraton

Recommendations and Actions Required

The independent Truth Recovery Design Panel ('the Panel') was appointed to make recommendations to the Northern Ireland Executive, with the aim of progressing an independent investigation/inquiry into Northern Ireland's Mother and Baby Institutions and Magdalene Laundries. Following consultation with victims-survivors, the Panel's remit was expanded to include Workhouses. Its Project Brief stated that its recommendations should identify a preferred option for an investigative framework, supported by a robust rationale and developed through a 'co-design' process with victims-survivors of the institutions.

The Panel's recommendations have been developed following extensive consultations and interviews with victims-survivors, and written submissions by victims-survivors and other stakeholders. They are contextualised by consideration of the State's human rights law obligations and by international research regarding the effectiveness of previous investigation and reparation frameworks.

The Northern Ireland Executive is to be commended for its insight and conviction in placing victims-survivors at the centre of designing the forthcoming independent investigation. This demonstrates sincere commitment to respecting and fulfilling human rights following many decades in which victims-survivors have suffered and been silenced.

The Panel's recommendations include measures that, in the view of victims-survivors, are required for the forthcoming investigation to be a success. The Panel acknowledges that its Project Brief required it to focus specifically on the forthcoming investigation's Terms of Reference. However, victims-survivors are clear that they must have access to information and to redress and reparation to enable their participation in the investigation.

Further, human rights law is clear that an investigation is only part, albeit a crucial part, of the response required in circumstances of grave and systematic abuse. Comprehensive recognition of victims-survivors' rights is essential, otherwise the investigation process risks being misinterpreted as a deflection from the full range of victims-survivors' justice needs.

The Panel's five core recommendations focus on:

1. **Adoption of Guiding Principles**
2. **Responsibilities of the Executive Office**
3. **An Integrated Truth Investigation**
4. **Access to Records**
5. **Redress, Reparation and Compensation**

What follows is a detailed framework for implementing the recommendations and a summary of the Panel's rationale.

A note on terminology: These recommendations and the accompanying report refer to 'victims-survivors'; however, the Panel acknowledges that not everyone affected identifies with the same terminology. While recognising the limitations of such a term, the Panel intends 'victims-survivors' to be inclusive of all those personally affected by the institutions in question, their related practices and the adoption system.

RECOMMENDATION 1:

Adoption of Guiding Principles

Key priorities raised by victims-survivors amount to six integrated Guiding Principles:

- a. Funding and resources should be sufficient to ensure effective and sustainable implementation of all recommendations;
- b. The human rights of victims-survivors and relatives should be central to all recommendations and their realisation;
- c. Securing full access for victims-survivors and inter-generational relatives of the deceased to information regarding their personal and family histories and the work of future investigations is a fundamental priority;
- d. In progressing implementation and ensuring accountability, policies and practices should be trauma-informed, identifying and responding to the needs and preferences of victims-survivors;
- e. Future investigations should be accessible to all victims-survivors and relatives, particularly ensuring participation by those with disabilities;
- f. Inclusion of victims-survivors and relatives affected by cross-border practices and in the Diaspora, and relatives of the deceased, is essential.

RECOMMENDATION 2:

Responsibilities of the Executive Office

- a. The Executive Office should take responsibility to ensure the implementation and sustainable funding of all of the Panel's recommendations.
- b. The Executive Office should cooperate with the Government of Ireland to achieve maximum possible access to information regarding the operation of cross-border practices: to vindicate victims-survivors' rights to identity and accountability, and to facilitate future investigations.

RECOMMENDATION 3:

An Integrated Truth Investigation

An integrated truth investigation should be prioritised, comprising an expert Independent Panel and a statutory Public Inquiry. An Independent Panel should be established without delay, bearing in mind the advanced age of many victims-survivors and relatives. Its appointment and operation is not dependent upon dedicated legislation. However, legislation will be required to establish the Public Inquiry including its Rules of Procedure and this should be progressed urgently.

Why is an integrated process necessary?

The need for an Independent Panel arises from:

- the potential of a non-adversarial, truth-telling first phase to gather documentary and other primary evidence, as an end in itself and informing a statutory Public Inquiry of the issues raised in victims-survivors' testimonies;
- the stated desire of many victims-survivors and relatives to present their testimonies in a non-adversarial forum, with confidentiality as an option;
- the potential of the testimonies to educate and inform the general public;
- the priority of immediate gathering and cataloguing of records accessible under existing legislation, pending the Public Inquiry's use of powers of compulsion;
- the need for a coordinated, fully resourced, expert mechanism to assist victims-survivors and relatives in accessing personal information enabling their participation in the investigation and identifying barriers to access.

A statutory Public Inquiry, informed by the periodic findings and recommendations of an Independent Panel and by its archival work, is required because:

- independent panels do not have statutory powers to compel the production of evidence; given the extent and diversity of involvement of state and non-state actors, statutory powers will be necessary;
- holding identifiable individuals, institutions and organisations to account is an essential function of any truth-telling investigation into serious and widespread human rights violations; an independent panel can investigate and hear testimonies regarding systemic abuses but only a statutory public inquiry has the powers to establish individual and institutional responsibility.

Independent Panel: Terms of Reference

An Independent Panel will be guided by the following principles:

- respect for the human rights of victims-survivors and relatives and a commitment to protecting and fulfilling human rights;
- full access to information for victims-survivors and relatives of the deceased;
- central involvement of, and accountability to, victims-survivors and relatives;
- accessibility, particularly to persons with disabilities;
- inclusion of victims-survivors and relatives affected by cross-border practices and in the Diaspora, and relatives of the deceased.

An Independent Panel will:

- gather, preserve, catalogue, and digitise relevant records and archives, engaging with authorities and institutions, organisations and individuals in Ireland North and South and across jurisdictions;
- provide archival, genealogical, advocacy, and any other necessary assistance, to victims-survivors and relatives to seek and obtain information from records and archives relating to the institutions and practices under investigation, including information about the fate and whereabouts of deceased children and women;
- commission geophysical surveys and archaeological investigations at former institutional sites to ascertain the presence or otherwise of unmarked graves;

- record testimony through a non-adversarial, disability-aware and trauma-sensitive process, ensuring informed choice in giving testimonies (confidential/ in public; oral/ written) and how testimonies are used (restricted to the Independent Panel/ forwarded to the Inquiry/ preserved in a permanent independent archive);
- ensure personal support enabling participation in the Independent Panel’s investigation, including psychological services, independent advocacy, disability-related support services, and access to a legal information service;
- investigate and publish findings regarding human rights violations experienced by individuals and families in Mother and Baby Institutions, Magdalene Laundries, Workhouses and their pathways and practices (including the adoption system, related institutions such as ‘baby homes’ and private nursing homes, and cross-border and international transfers of children and women). The investigation should include in its examination:
 - i. the harms suffered at the time of the institutions’ operation and those continuing to the present, including gender-based harms and harms recognised in international human rights law;
 - ii. how violations were inflicted and persisted;
 - iii. the institutional and societal causes of the violations;
 - iv. the impact and consequences of the violations and harms experienced;
 - v. the responses of involved institutions, organisations and agencies to individuals and families affected.
- make recommendations regarding measures necessary to respond to, and prevent recurrence of, the human rights violations experienced, including periodic recommendations to the Public Inquiry, Ministers or any other state authority;
- secure the maximum possible publication of records and documentary material while protecting human rights, including the publication of personal testimonies with informed consent;
- establish and publish a protocol for discharging its duty to disclose certain information for criminal investigation;
- preserve its archive in full to be deposited in a permanent independent repository, ensuring informed consent for the deposit of witness testimony and compliance with data protection law;
- contribute to the drafting of legislation to establish a permanent independent archive of historical institutional and adoption records, and other records relating to children in state care (see Recommendation 4);
- review and analyse: implementation of the Truth Recovery Design Panel’s recommendations; victims-survivors’ and relatives’ access to civil proceedings, criminal justice investigation and inquests; and implementation of data protection and freedom of information laws;
- publicise its work widely to encourage participation, including of people with disabilities and those across the Diaspora;
- initiate events to encourage public engagement in its work.

Independent Panel: Timeframe, Membership and Consultation

An Independent Panel should be appointed as soon as possible after the publication of this Report, within a maximum of six months. Given the complexity of accessing and analysing documents, hearing testimonies and receiving written accounts from victims-survivors the Independent Panel’s main report on its evidence-gathering process should be completed within two years from its appointment (with periodic

reports in the interim). The Independent Panel should continue thereafter to perform residual functions including archival support to the Public Inquiry, recommendations as appropriate to the Public Inquiry, and information access services for victims-survivors and relatives pending creation of the permanent independent repository (see Recommendation 4).

Membership of the Independent Panel should include victims-survivors’ representatives, between them having experience of institutionalisation and the adoption system; and senior researchers/practitioners in: the sociology of discrimination and gender-based violence; international human rights law and domestic law; social and oral history; trauma-informed practice; genealogy; and archiving. It should be supported by a research team with complementary skills. In particular the research team should have sufficient resources and technical expertise to assist victims-survivors and relatives in a prompt and timely manner to seek and obtain information from records and archives relating to the institutions and practices under investigation.

The Executive Office should seek nominations from victims-survivors for a list of potential Independent Panel members including the Chairperson, from which appointments will be made.

The Independent Panel should consult regularly with a Forum of victims-survivors and relatives, including those in the Diaspora. It should be supported by a small administrative and secretarial team seconded from the Northern Ireland Civil Service.

Public Inquiry: Terms of Reference

The Public Inquiry will be guided by the following principles:

- respect for the human rights of victims-survivors and relatives and a commitment to protecting and fulfilling human rights;
- full access to information for victims-survivors and relatives of the deceased;
- central involvement of, and accountability to, victims-survivors and relatives;
- accessibility, particularly to persons with disabilities;
- inclusion of victims-survivors and relatives affected by cross-border practices and in the Diaspora, and relatives of the deceased.

The purposes of the Public Inquiry will be:

- to exercise powers of investigation equivalent to those of a Public Inquiry under the Inquiries Act 2005;
- to gather, preserve, catalogue and digitise relevant records and archives that the Independent Panel was unable to access, including records concerning personal and family histories and information regarding the whereabouts of deceased relatives;
- to commission geophysical surveys and archaeological investigations at former institutional sites with the aim of ascertaining the presence or otherwise of unmarked graves;
- to consider the recommendations of the Independent Panel regarding issues requiring investigation;
- to investigate issues of individual, institutional, organisational and state departmental/agent responsibility concerning human rights violations experienced in Mother and Baby Institutions, Magdalene Laundries, Workhouses and their pathways and practices (including the adoption system, related institutions such as ‘baby homes’ and private nursing homes, and cross-border and international transfers of children and women);
- to investigate the financial operations of the institutional, forced labour and family separation system;

- to include in its investigation such additional institutions, organisations, agencies or practices as the Independent Panel recommends;
- through its procedures to seek to enable maximum possible participation in its investigation by victims-survivors and relatives;
- to establish and publish a protocol for discharging its duty to disclose certain information for criminal investigation;
- to provide comprehensive reports on the operation of each of the institutions specified by the Independent Panel;
- to publish interim reports and make interim findings and/or recommendations as necessary and appropriate, including, if warranted, in relation to the functioning of other justice mechanisms and to Ministers regarding the need for amendment of its Terms of Reference;
- to publish an overarching, comprehensive report on its findings making recommendations in accordance with its findings.

Rules of Procedure

The Public Inquiry will:

- establish a presumption that a victim-survivor or relative of a person affected by an institution or practice under investigation has a significant interest in the entirety of the Inquiry and should be given core participant status accordingly;
- allow for the admission of anonymised evidence and of evidence submitted in writing, providing assistance for swearing a witness statement;
- provide support for victims-survivors including those with particular healthcare needs, such as facilitation of oral evidence by live-link and other special measures;
- ensure that in location, facilities and counselling support the venue will be sensitive to the physical and psychological needs of victims-survivors and relatives;
- safeguard the welfare of victims-survivors by questioning their oral testimonies through the chair or counsel to the inquiry;
- ensure that victims-survivors and their lawyers are provided with access to all relevant evidence gathered by the inquiry well in advance of giving evidence.

The Inquiry Panel

- the Chairperson should be appointed from outside the jurisdiction and should have established expertise in institutional and/or gender-based human rights abuses;
- the Chairperson should work with an Inquiry panel that includes a victim-survivor representative and others with specialist expertise in institutional, gender, class or ethnicity-based human rights abuse and intergenerational trauma;
- the Executive Office should seek nominations from victims-survivors for a list of potential Chairperson and Inquiry panel members, from which appointments will be made;
- the Chairperson and Inquiry panel should be assisted by independent researchers with all necessary expertise to enable the Public Inquiry to achieve its purposes; expertise acquired in the Independent Panel's work should be shared with the Public Inquiry;
- the Solicitor to the Public Inquiry should be an independent appointment.

RECOMMENDATION 4:

Access to Records

For those who have suffered abuse, the denial of information about their experiences and their identity is an ongoing injustice. The secrecy imposed by a range of State and non-State organisations and personnel violates victims-survivors' and relatives' rights to truth, identity, non-discrimination and freedom of expression. A rights-based approach to information disclosure is imperative.

Without access to information, victims-survivors and relatives would be unable to participate fully in the truth investigation. Further, without a permanent repository to gather, preserve and provide long-term access to information the truth investigation's impact would be temporary and insufficient.

Statutory Preservation Requirement

The Truth Recovery Panel recommends immediate action by the Northern Ireland Executive, supported by the Northern Ireland Assembly, to create a statutory requirement on all relevant records holders to preserve and not destroy any information relating to Mother and Baby Institutions, Magdalene Laundries, Workhouses, adoption-related institutions and 'baby homes', and their policies and practices, including personal records. This requirement should extend to all State and non-State institutions and agencies, officials, representatives and professionals that serviced them.

Data Protection Guidance

Guidance is necessary to instruct personal data controllers on how to implement their obligations under the Data Protection Act 2018 and the UK General Data Protection Regulation, paying due regard to the rights to identity, freedom of expression, non-discrimination and truth of victims-survivors of serious human rights violations in the construction of such Guidance. In particular:

- The Department of Health (DOH) should continue its support for the Data Protection Impact Assessment (DPIA) currently proceeding with the involvement of victims-survivors who participated in the Truth Recovery Design process. The aim of this DPIA is to develop non-statutory Guidance for both state and voluntary adoption agencies responding to adoption-related subject access requests. The Guidance should be implemented immediately upon its completion;
- Following publication and implementation of the DOH Guidance, the Executive Office should take responsibility for overseeing the development of a statutory form of guidance binding all personal data controllers regarding the administration of historical institutional and adoption records. This statutory guidance should be created in consultation with victims-survivors;
- Communication should be established with the Government of Ireland regarding the similar need in that jurisdiction for data protection law implementation guidance.

Archive Legislation

In consultation with the Independent Panel, the Executive Office should take responsibility for progressing legislation to establish a dedicated permanent independent repository of all personal and administrative records relating to historical practices within a range of social care institutions and the adoption system. A similar independent repository has been promised by the Taoiseach and Government in the Republic of Ireland. Further, the potential for cooperation in the establishment and operation of these repositories should be explored.

It is envisaged that the legislation would, at a minimum:

- Create a permanent, comprehensive independent repository of historical institutional and adoption records, and other records relating to children in state care;

- Guarantee sufficient resourcing and technical expertise to enable the effective functioning of the permanent repository, which could be housed in the Public Records Office of Northern Ireland;
- Institutionalise cooperation between the permanent independent repository and a parallel repository in the Republic of Ireland;
- Establish a dedicated advisory committee, including victim-survivor representatives, to provide ongoing guidance on all matters affecting the repository and its use by victims-survivors and the public;
- Require the preservation and production of all relevant records, including administrative as well as personal information, whether currently held by state or non-state personnel, and including the archives of truth-telling investigations;
- Permit the voluntary deposit of additional testamentary and other relevant evidence;
- Provide the maximum possible access to information for those personally affected, including relatives of the deceased, thus protecting and vindicating their human rights, including their rights to identity and to truth;
- Establish procedures to enable victims-survivors to exercise their personal data protection rights, including their right to rectify inaccurate personal data by way of annotation;
- Establish rules and procedures for access by the general public in a manner that protects the privacy and other human rights of those personally affected;
- Require the provision of research, genealogy, family tracing and personal advocacy and support services to those personally affected by the repository's holdings;
- Require the independent repository to provide support for education and ongoing and active memorialisation initiatives.

RECOMMENDATION 5:

Redress, Reparation and Compensation

In their interviews and submissions to the Panel, victims-survivors were clear that human rights-based redress is required urgently. Formal apologies, compensation payments and access to rehabilitation services *before* and *during* the truth investigation would enable participation in the Independent Panel and Public Inquiry. Victims-survivors of institutionalised forced labour and family separation have been denied their right to redress. Further delay would prolong the violation of their human rights. It is neither humane nor necessary to delay compensation payments until completion of an investigation.

The Panel welcomes the DOH's support for the commissioning of services from the Victims and Survivors Service (VSS). This has resulted in an initiative, co-designed with victims-survivors of Mother and Baby Institutions, Magdalene Laundries and Workhouses, to provide health and wellbeing and ancillary services. The planned services, however, do not extend to the provision of a financial redress scheme.

The Executive Office should ensure that the following measures are implemented to meet victims-survivors' and their relatives' right to redress and reparation:

- VSS should be adequately resourced to fund comprehensive services as recommended by victims-survivors and relatives, for the duration of the truth investigation *and* the longer-term;
- Funding should be available for voluntary DNA testing, voluntary support services to assist family reunification, the establishment and maintenance of gravestones and markers, and victim-survivor-led artistic and other forms of memorialisation;

- Funding is required to enable victims-survivors and relatives to seek and obtain free legal advice and representation for the purpose of exercising their rights to access the civil courts, criminal justice investigation procedures, and inquests;
- A financial redress scheme should be prioritised, comprising an automatic standardised payment and the entitlement to a further individually assessed payment. The scheme should include all women who spent time or gave birth in a Mother and Baby Institution, Magdalene Laundry, Workhouse or other related institutions such as private nursing homes, and all those born to girls and women while institutionalised;
- The financial redress scheme should not be means-tested, should not compromise existing social welfare supports, and should not require waiver of legal rights;
- A dedicated consultation with victims-survivors is required as a priority to establish the procedures for the financial redress scheme's administration and the content of any legislation that may be required. The Executive Office should engage with non-state institutions, organisations and agencies implicated in the institutional practices of forced labour and family separation to establish their contributions to the scheme;
- Citizenship should be granted to those who lost their entitlement due to removal from Northern Ireland as a child;
- State authorities in collaboration with the churches and other involved institutions should establish a prominent memorial, following a dedicated consultation.

Apology

The Truth Recovery Strategy Panel together with victims and survivors urge all state, religious and other institutions, agencies, organisations and individuals complicit in the processes of institutionalisation and forced labour, family separation and adoption to act without delay in issuing unqualified apologies. These should clearly: specify their role in the institutional, forced labour and family separation system; accept responsibility for harms done; demonstrate sincerity in their apology; and demonstrate the safeguards now in place to ensure there will be no repetition of the inhumanity and suffering to which they contributed.

Chapter 1

Introduction

Chapter 1: Introduction

In March 2021 the Truth Recovery Design Panel was appointed by the Northern Ireland Executive to work with victims-survivors of Mother and Baby Institutions and Magdalene Laundries to recommend the most appropriate method of investigation into the operation of those institutions. Soon after its appointment, and following consultation with victims-survivors, the Panel's focus was extended to include Workhouses. Given the significance of previous disclosures regarding the suffering endured by girls and women within the institutions, the forced adoption of new-born babies and questions of infant mortality in the institutions, the Panel prioritised consideration of three established methods of inquiry: a statutory inquiry; a non-statutory inquiry; and an independent panel. A further, significant issue for examination was the urgent necessity of accessing all relevant documents held by the institutions and those held by State departments and agencies. This introductory chapter places the appointment of the Panel and its Project Brief in the recent context of survivor-led campaigns and Government responses including commissioned research.

Recent Context

Following publication of the 2013 McAleese Report into the State's involvement in the Magdalene Laundries in the Republic of Ireland (ROI), Amnesty International was approached by women campaigners to support their call for justice following their experiences in Northern Ireland's institutions. Noting the 'obligation to respect, protect and fulfil the right of victims of human rights violations to an effective remedy', Amnesty published a briefing that prioritised three key objectives:

Truth: establishing the facts about violations of human rights that occurred in the past; Justice: investigating past violations and, if enough admissible evidence is gathered, prosecuting the suspected perpetrators; Reparation: providing full and effective reparation to the victims and their families, in its five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. (Amnesty International, 2013: 1)

To ensure thorough investigation of systemic violation of victims' rights Amnesty called on the Northern Ireland Executive to consider broadening the scope of the ongoing Historical Institutional Abuse Inquiry (HIAI). Should that not be possible, Amnesty contended, a 'new inquiry mechanism' should fully examine the ill-treatment of women and girls in the Magdalene Laundries which would lead to 'apology and redress'. Recognising the long delay in acknowledgement of the suffering inflicted on mothers and adopted people, Amnesty considered the 'right to justice and reparation' a priority.

The Amnesty submission stated that, in breach of international standards and law, 'women and girls were detained without proper authorisation or review' and 'even those not transferred on criminal convictions – were de facto detained in these institutions' (Amnesty International 2013: 3). The regimes under which they were held amounted to incarceration in degrading conditions, the submission argued:

They were forced to work without remuneration, had a rule of silence or prayer imposed on them, and were deprived of their identity through imposition of 'house names' and numbers. Their right to private correspondence was interfered with, many complained of a lack of food and heat, and they were denied adequate rest and leisure opportunity and suffered some physical and emotional ill-treatment'. (Amnesty International 2013: 4)

In May 2013 the UN Committee Against Torture (CAT) published its periodic report on the UK, including Northern Ireland (CAT 2013). It welcomed the appointment of the HIAI, established the previous year to inquire into the abuse of children in Northern Ireland's institutions between 1922 and 1995. The

Committee was concerned, however, that the experiences of women over 18 who had been held in the Magdalene Laundries and other institutions, and also those who had survived clerical abuse, would not be investigated by the HIAI. It recommended that all institutional abuse, regardless of the age of women and whatever the status of the holding institutions, should be investigated and those responsible for criminal offences, if still alive, should be prosecuted and punished accordingly. The Committee also recommended that redress, compensation and rehabilitation should be assured for all survivors.

Two months later, CAT's findings and recommendations were reiterated by the UN Committee on the Elimination of Discrimination Against Women. The Committee expressed concern that by limiting its scope the HIAI would perpetuate 'a climate of impunity' while denying women an appropriate 'remedy' (CEDAW 2013: para 24). It recommended no age restrictions on the HIAI mandate and, further, that redress should be secured for all women who had been detained (CEDAW 2013: para 25).

In June 2017 the Birth Mothers and Children for Justice NI group (BMCJNI) launched a campaign for a public inquiry into former Mother and Baby Institutions. Its priority was to raise awareness of the abuses, maltreatment and illegal adoptions by religious organisations and state institutions. At the time of its launch the group's solicitor, Claire McKeegan, stated that initial focus was on 'twelve Mother and Baby Homes or Magdalene-type institutions which operated in Northern Ireland in the last century by various Church orders, both Catholic and Protestant' (Press Release 14 June 2017). She continued:

We are instructed by our clients that they suffered a catalogue of abuse both physical and emotional, were detained against their will, forced to undertake unpaid labour in unacceptable environments and suffered the removal and, in many cases, forced adoption of their babies ... Documents that have come to light suggest that infant mortality rate of 'illegitimate children' was as much as 100% higher and a high percentage died of malnutrition. It is now time for these institutions to be publicly scrutinized and forced to open their filing cabinets to allow for an independent investigation to be conducted. The victims demand truth and justice.

Noting that the Irish Government had established a commission of investigation, the campaign demanded an equivalent inquiry in Northern Ireland with compensation claims remaining an 'active possibility'.

At the time of the BMCJNI campaign's launch the Northern Ireland Executive had established an Inter-Departmental Working Group (IDWG) to consider evidence of abuse in Mother and Baby institutions and Magdalene Laundries and historical clerical abuse that had been outside the HIAI's scope. Responsible to an Inter-Departmental Group and chaired independently its members were drawn from the Executive Office and six Government departments. An independent research team was appointed from the University of Ulster and Queen's University, commencing its work in March 2018. Its brief was to review relevant literature, analyse records held by institutions and by Government departments, and hear testimonies from survivors and others directly involved. A Department of Health scoping exercise had named fourteen institutions.

The research team's focus included: the circumstances in which women entered the institutions; living conditions and the provision of care; deaths of women and babies, comparative mortality rates, post-mortems, recording deaths and burial; and consultation with mothers regarding the removal of their babies, removal of babies from mothers, adoption and consent. The research methodology involved analysis of oral and written evidence including testimonies from women who had endured the process, their families and former employees.

While the research was in progress, in June 2019 CAT published concluding observations on the sixth periodic report of the United Kingdom. The Committee stated that it was a 'principal subject' of concern that the State had failed to implement the January 2017 recommendations made by the HIAI. The HIAI had revealed extensive physical and sexual child abuse in children's homes and other residential institutions run by religious, charitable and state organisations in Northern Ireland between 1922 and 1995. The Committee concluded that as a consequence of the State's failure to respond, 'victims of ill-treatment identified by the inquiry' had 'not obtained compensation or other forms of redress' (CAT 2019 para 44).

Noting the necessity of official inquiry, CAT called for 'an impartial and effective investigation into the

practices of the Magdalene laundries and mother-and-baby homes in Northern Ireland that is capable of promptly identifying victims of ill-treatment inflicted at those institutions and providing them with redress' (CAT 2019 para 45). Referencing CAT's proposal, the following year Belfast City Council passed a motion regretting Northern Ireland's 'refusal to conduct a human rights compliant public inquiry into near-identical institutions in this jurisdiction' (Belfast City Council 2020). Its statement was endorsed by other Councils and Amnesty International, the latter condemning systemic human rights abuses.

The Ulster University/ Queen's University Report

On 5 August 2019 the Ulster University/Queen's University Belfast (UU/ QUB) research team submitted its draft report to the IDWG. Four months later the IDWG requested further work on the report. It was resubmitted in February 2020 and reviewed for factual accuracy by organisations involved with the research. The final report was resubmitted in December 2020 and published a month later (McCormick and O'Connell 2021). Its findings were based on sixty oral testimonies reflecting lived experiences of the institutions and related adoption system. The institutions were: four Magdalene Laundries (three Roman Catholic, run by the Good Shepherd Sisters; one Protestant, run by the Salvation Army); seven Mother and Baby Institutions (three Roman Catholic, two run by the Good Shepherd Sisters, one by the legion of Mary; four Protestant including one by the Salvation Army); and three Health and Social Services or charitable institutions including Barnardo's.

The UU/QUB Report notes the difficulties in making findings and comparisons on the operation of the institutions due to inconsistent record-keeping. Yet, from the data available, between 1922 and 1990 approximately 10,500 girls and women were confined in Mother and Baby Institutions. An estimated 3,515 girls and women were institutionalised in Magdalene Laundries. As the records are incomplete these figures are considered to be significant under-estimations – and they do not include Workhouses or other institutions. The peak period for admissions to Mother and Baby Institutions was the late 1960s/early 1970s. Eighty-six per cent entering these institutions were from Northern Ireland, 11.5% from ROI. Almost two-thirds were aged 20 to 29, a third under 19, the youngest aged 12. Contrary to what was indicated in the HIAI Report, 43% of entrants to Magdalene Laundries were between 10 and 17 years of age; 37% were aged 18 to 28. The UU/QUB Report details: entrance pathways; referrals; living conditions (particularly as experienced by the women interviewed); rates of mortality; what happened to mothers and their children post-release; living conditions; deaths and burials; and the legal process regarding adoption focusing particularly on cross-border adoption.

The extensive report does not make recommendations. However, the primary research chapters 'provide the first historical assessment of Magdalene laundries in the Northern Ireland context' (McCormick and O'Connell 2021: 324). They detail the harsh realities of life in institutions that operated authoritarian, judgemental and cruel regimes. Pregnant girls and women were put to work in inhumane conditions, providing a supply of new-born babies for adoption. Regarding daily life in the Laundries, the Report records women's accounts of their exploitation, particularly unpaid labour, in the context of their long-term incarceration and the failure by the State to intervene. The Report concludes that State institutions – welfare, probation, police – together with girls' and young women's parents and their priests, gave legitimacy to a process of punitive, economic exploitation. Those who previously had been subjected to sexual abuse or incest endured humiliating punishments without appropriate care or counselling. Forty-five per cent of those held in the laundries remained for over a year. Some became institutionalised, finally buried in unmarked communal graves.

The Report stresses the importance of further research into the adoption process, including a focus on cross-border transfers. Regarding infant mortality, 'public interest in the historical treatment and well-being of these children' would necessitate 'further research on a number of homes' (McCormick and O'Connell 2021: 347).

Towards Truth Recovery

Following publication of the UU/QUB Report, Patrick Corrigan, NI Amnesty Programme Director stated the need, 'for a properly-empowered, independent investigation' and 'the commitment today by the

Executive to an inquiry to be designed in partnership with survivors'. He continued:

It's time for the women and girls forced into the homes, and the children born there, to have their voices properly heard. They have been failed in countless ways for so many years and so it's vital the inquiry gets to the truth and delivers the justice they deserve. (Amnesty International, Press Release, 26 January 2021)

Northern Ireland's First Minister, Deputy First Minister and Health Minister accepted the UU/QUB Report's findings without qualification (Executive Office, Press Release, 26 January 2021). Acknowledging the 'pain' and 'hurt' inflicted on 'women and girls' and the 'shameful' treatment they endured which had left a 'terrible legacy', First Minister Arlene Foster continued:

Many unanswered questions remain and we want to work with victims and survivors to ensure they are supported in the right way. In moving forward, we must recognise the sensitivity of these issues and respect the rights and wishes of each individual. But today we give a commitment to survivors, that you will be silenced no more.

Deputy First Minister Michelle O'Neill considered the Report 'an important step towards addressing the harm caused to survivors and the pain they have endured'. The conditions in which they had been held were 'cruel, unjust and inhumane' denying their rights and forcing removal of their babies. They had been 'failed on every level and we cannot allow them to be failed any longer'. She continued:

...we must do all we can to ensure that survivors' voices are heard, to support them and where possible, give them answers, information and recognition ... We now need to move swiftly on with a further independent investigation. We recognise how sensitive this issue is and how raw the pain still felt by all who suffered. We must move forward carefully and respectfully and ensure that at all times the voices of those survivors and their now adult children are at the centre of this process. They will shape how it progresses.

The Northern Ireland Health Minister, Robin Swann, welcomed the Report. It gave a 'sorrowful insight' into the lives of mothers and informing 'our understanding of the devastating impact their treatment had on the rest of their lives'. Women were 'stigmatised' and 'often endured harrowing, emotionally-damaging experiences; their voices were silenced and their wishes ignored'. Consequently,

... the Executive has agreed to undertake a further independent investigation into these institutions in partnership with survivors. This will be a further step towards meeting survivors' needs. To any survivor, woman or child, who is experiencing trauma or emotional distress, help is available and I would urge you to reach out and get support if you need it.

With all-party support in the Assembly, the Northern Ireland Executive agreed to an IDWG proposal to commission an independent process focusing on the experiences of victims and survivors. Scheduled for six months, a Panel was appointed to work together with victims and survivors to co-design a future investigation.

The Panel's objective was to, make 'recommendations to the NI Executive via the IDWG, setting out options for an independent investigation/inquiry into Mother and Baby Homes and Magdalene Laundries in Northern Ireland', identifying 'a preferred option, providing a robust rationale ... developed in conjunction with victims and survivors of the institutions through a co-design process' (Department of Health 2021, para 19). The research methodology would be determined by an appointed panel, but the 'process should be inclusive' of 'participants with experiences of, or directly affected by, all forms of institution, which fall within the broad definitions of Mother and Baby Homes and Magdalene Laundries' (Department of Health, 2021: para 20). The Panel agreed with a submission from several families that the brief should include those incarcerated in Workhouses.

Birth Mothers and their Children for Justice NI Position Paper

In February 2021 lawyers for BMCJNI, representing the Group's 250 women and adopted people, drafted a Position Paper calling for a statutory public inquiry. It noted that pregnant girls and women, 'were given

no other option by social workers, their families and by the Church than to enter a Mother and Baby Home' (BMCJNI 2021: 1). Women and girls who had been referred to social services were offered no alternative provision. Many babies were adopted without the mothers' consent and there was a failure to give appropriate advice on which mothers could make an informed decision. Many of those adopted were transferred out of the jurisdiction. An undisclosed number of babies were stillborn or died soon after birth.

The Position Paper noted that throughout girls' and women's detention in Mother and Baby Institutions there had been no ante-natal treatment. They were compelled to work in the later stages of pregnancy without consideration of their health or welfare, and they endured verbal and physical assault. Some were rape or incest survivors who, at the time of their pregnancy, were below the age of sexual consent. Although this was known, these crimes were not investigated by the authorities. Persistent institutional refusal to allow access to information relating to their incarceration had 'exacerbated the effects of the trauma they have suffered' (BMCJNI 2021: 2). Failures to investigate criminal offences that had led to pregnancy and to provide housing, welfare support or medical care for young mothers neglected their fundamental needs. Further, their treatment in the institutions included harsh, cruel or demeaning treatment, forced removal of new-born babies and the denial of information on their children's destiny. Beyond the institutions, State and non-State actors played a significant, seemingly non-accountable, role within a State-sponsored adoption and family separation operation.

The Paper presented a compelling case for a full statutory inquiry under Section 1 of the 2005 Inquiries Act 'on the basis that the practice of placing women in Mother and Baby Homes is a recognised matter of public concern' (BMCJNI: 3). Further, the Paper contended, despite the alleged abuses occurring before 1999 the State has a duty to pursue investigations regarding breaches of Article 3 of the European Convention in Human Rights (ECHR) – Freedom from Torture and Inhuman or Degrading Treatment. According to BMCJNI, an inquiry 'must ... compel the preservation and production of relevant records and the attendance of witnesses'.

The Terms of Reference should include the investigation of: how and why the abuse occurred and was sustained without prevention; systemic failures at all levels within the Health and Social Care Board, police and other servicing institutions; compliance with statutory obligations; regulations and policy; and gaps or omissions within those obligations, regulations and policy which enabled the abuse and failed to hold perpetrators to account. Further, an inquiry should make detailed recommendations, including the requirement of acknowledgment, redress and potential criminal prosecutions.

The BMCJNI Position Paper also addressed the powers of, and measures to enable participation by victims and survivors in, a future inquiry. They included: the power to compel evidence and preserve records; rules of disclosure; the conduct of the inquiry including transparency and reporting and the creation of a public archive; sensitive facilitation, care of survivors and a 'trauma informed approach' throughout the investigation and in hearing evidence; and independent legal representation to ensure effective participation in the inquiry. Finally, reflecting the complexity and diversity of the relevant issues, it recommended the appointment of an inquiry panel rather than an inquiry conducted by a single chairperson. The person chairing the panel should be independent and have judicial experience. Collectively, the panel should have, 'a solid understanding of public administration, significant experience with governmental or health bodies and proven experience of investigating disputes at high level' (BMCJNI: 10).

Following the appointment of the Truth Recovery Design Panel lawyers for BMCJNI made a revised submission on behalf of their clients. The Panel received this in July 2021. The key issues raised are considered in detail later in this Report.

Truth Recovery Design Panel – Appointment and Methodology

In March 2021 the three-person Truth Discovery Design Panel was appointed by the Department of Health to complete its work by 30 September 2021 (Appendix 1). A full-time administrator and a full-time legal researcher were also appointed. The Panel was accountable to the Northern Ireland Executive via the IDWG. However, it retained full independence. Its brief was: to identify the purpose and objectives of a future inquiry or investigation; to make recommendations for its process, membership and support;

to consider its status - statutory or non-statutory; and to consider whether, in addition to making recommendations at its conclusion, the future inquiry or investigation should be able to make evidence-based recommendations to Ministers at any stage of the investigation. In realising these objectives, the Panel was committed to ensuring close association with victims and survivors, a number of whom – as noted earlier - had campaigned for years.

The Panel developed its work, therefore, in consultation with those who had campaigned for access to their personal files while seeking to establish the full extent of the operation of the institutions, holding to account those responsible for their management and identifying external agencies and individuals who serviced them. To progress such sensitive work, an Ethical Protocol was required, establishing the key principles of privacy, confidentiality, informed consent to information gathering, and access to information (Appendix 2). A Privacy notice, including operational guidelines, was also necessary. To ensure knowledge of the process, and how it could be accessed, a Truth Recovery Strategy website was launched: <https://truthrecoverystrategy.com/>. Each element was developed while initiating a national and international media information campaign encouraging people to register their interest.

The website included video-recorded presentations by Panel members exploring the strengths and weaknesses of contrasting forms of investigation and inquiry. To encourage wider participation of victims-survivors, a consultation process was established, initially inviting registration of interest. It was followed by distributing a detailed research questionnaire to all who contacted the Project by mail, telephone or on-line, thus prioritising victims-survivors' experiences and views (Appendix 3). Panel members used their knowledge and experience, gained from working on previous investigations and inquiries, to support and address victims-survivors' expressed needs and demands in the context of international human rights standards.

The Panel also welcomed written submissions from legal representatives or organisations already engaged, most notably Amnesty International. In March and April 2021, Amnesty International and Ulster University collaborated to produce a four session seminar series entitled Learning the Lessons resulting in a Report: *Co-designing the Inquiry / Investigation into Mother and Baby and Magdalene Institutions in Northern Ireland* submitted to the Panel in June 2021 (AI/UU 2021). The key issues raised are considered in detail later in this Report.

Victims-survivors contributed significantly to the initial work of the Panel. They ensured that the Project Brief, initially limited to Mother and Baby Institutions and Magdalene Laundries, should also include Workhouses. Their suggestions regarding publicity and its content, including an advertising campaign extending to international media, posters in public facilities and broadcast appeals, raised the profile of the work. This gave others, previously silent, the confidence to contact the Panel. Most significantly, the research questionnaire, in the first instance devised by the Panel, drew a considered response from victims-survivors. Its final structure was co-designed by victims-survivors and the Panel (Appendix 4). Written submissions were particularly important given that the Covid-19 pandemic removed the opportunity to conduct face-to-face individual or group meetings. In addition to questionnaire responses and other written and email correspondence from victims-survivors, three victims-survivors sent a joint submission with a detailed proposal for an investigative framework, extracts of which are reproduced with permission (Appendix 5).

The content of victims-survivors' written submissions, together with issues raised in individual and group listening sessions and follow-up interviews, underpin the Panel's recommendations as set out in this Report. This Report's recommendations to the Northern Ireland Executive, therefore, are derived from victims-survivors' and relatives' submissions and final commentaries. Given the number and diversity of contributors' submissions and the tight timeframe for the production of this Report, the Panel is responsible for the final draft. Yet, the expressed needs and preferences of victims-survivors remain paramount.

Part 1

CONTEXT

Chapter 2

A Human Rights Framework

Chapter 2: A Human Rights Framework

Introduction

This chapter discusses the human rights violations that victims-survivors and relatives have suffered and continue to suffer due to the gender-based institutional, forced labour and family separation system that operated in Northern Ireland (NI) with cross-border and international movements during the 20th Century. As part of this discussion, the chapter explains the requirements of a human rights-based investigation according to European and international law.

The chapter draws on a detailed background research report by Dr Maeve O'Rourke, available to view and download on the truthrecoverystrategy.com website. The background research report, entitled *A Human Rights Framework: Background Research for the Truth Recovery Design Process* (O'Rourke 2021a), provides comprehensive legal analysis and references to support this chapter's contentions.

Part One of this chapter notes the key European and international human rights treaties that applied to the United Kingdom (UK) and NI authorities throughout the period of the institutions' operation, and continue to apply today.

Part Two refers to the Ulster University/Queens University Belfast (UU/QUB) Report to illustrate that abuses are continuing: disappearances, denial of identity, unlawful State intrusion into private and family life, unjustified restrictions on freedom of expression, and discrimination. It is essential that the forthcoming investigation and other redress and reparation measures address and end these ongoing abuses.

Part Three explains the circumstances in which there exists a right to an investigation into serious human rights violations, both historical and contemporary. Such circumstances include where there is evidence to suggest the occurrence of: unlawful deprivation of life; torture or other forms of cruel, inhuman or degrading treatment or punishment; servitude or forced labour; and grave violations of the right to liberty or of the right to respect for private and family life. This part of the chapter draws on the UU/QUB Report and the submissions of victims-survivors to the Panel, demonstrating the existence of such evidence.

Part Four outlines the blueprint provided by European and international human rights law for a human rights-based 'effective investigation'. A key requirement of an effective investigation in situations of gross and systematic human rights violations is that it forms part of a broader set of redress and reparation measures. A transitional justice approach and a human rights-based approach are similar as both demand a holistic response to gross and systemic violations. Those affected by systemic abuse must be at the centre of investigations and the response must involve truth-telling, access to justice, redress and reparation, guarantees of non-recurrence and memorialisation. No element may be traded for another. All must be implemented to restore respect for human rights.

The NI Executive is to be commended for its decision to give victims-survivors the role of co-designing the forthcoming investigation. It demonstrates commitment to implementing a human rights-based approach. As the UN's *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* (Orentlicher Principles) state:

To the greatest extent possible, decisions to establish a truth commission, define its terms of reference and determine its composition should be based upon broad public consultations in which the views of victims and survivors especially are sought. (Orentlicher Principles: Principle 6)

It is also notable that, in responding to the UU/QUB Report in January 2021, the First Minister, Deputy First Minister and Minister for Health acknowledged that in the institutional, forced labour and family separation system, ‘rights were ignored’ and the treatment experienced by many ‘was cruel, unjust and inhumane’ with ‘devastating impact’ (Executive Office, *Press Release*, 26 January 2021).

Human Rights Law Obligations of the UK and NI Authorities

Since 1932, after the *International Labour Organization Forced Labour Convention* entered into force, human rights law obliged the UK authorities to prevent, suppress and respond to key forms of abuse that women and children suffered in Mother and Baby Institutions, Magdalene Laundries and Workhouses. Further human rights treaties followed during the period of the institutions’ operation, including:

- the *European Convention on Human Rights* (ECHR) (ratified by the UK in 1951, entered into force in 1953);
- the *Abolition of Forced Labour Convention* (ratified by the UK in 1957, entered into force in 1959);
- the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (ratified by the UK in 1957, entered into force in 1957);
- the *International Covenant on Civil and Political Rights*, and *International Covenant on Economic, Social and Cultural Rights* (both ratified by the UK in 1976, entered into force in 1976);
- the *Convention on the Elimination of All Forms of Discrimination Against Women* (ratified by the UK in 1986, entered into force in 1981); and
- the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (ratified by the UK in 1988, entered into force in 1987).

The State’s present-day actions are also subject to the requirements of the *Convention on the Rights of the Child* (entered into force in 1990, ratified by the UK in 1991) and the *Convention on the Rights of Persons with Disabilities* (entered into force 2008, ratified by the UK in 2009).

Only State authorities were bound by these treaties. However, the treaties did, and still do, place significant responsibility on the State to prevent and respond to abuse by non-state actors where the State has, or ought to have knowledge of, the abuse.

Some victims-survivors asked the Panel whether human rights law applies to events that happened before 1953 (when the ECHR entered into force). The Panel’s view is that it does, because: important human rights law was in place before this date; the State must avoid discriminating against any category of victims-survivors today; and many people who suffered prior to 1953, or their relatives, continue to experience human rights violations today as a consequence of historical events.¹

A related question raised by victims-survivors was whether the Human Rights Act, 1998 (HRA 1998), which incorporates the ECHR into domestic UK law and came into effect in October 2000, applies to events prior to October 2000. The HRA 1998 obliges all public authorities, including a public inquiry, as far as possible to act compatibly with the ECHR. The Panel notes the UK Supreme Court decision, *Re McCaughey* [2011] UKSC 20. The Supreme Court held that, following the HRA 1998 coming into effect, where the State decides to establish an investigation into a potentially unlawful death that occurred decades previously, it must comply with ECHR standards. It is reasonable to assume that the same principle applies to other serious historical human rights violations requiring investigation.

Continuing Situations of Human Rights Abuse which must be Ceased

Where human rights abuse is continuing, the state must end the abuse while it is under investigation. As the *UN Basic Principles on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (Basic Principles) state: ‘Effective measures aimed at the cessation of continuing violations’ are a fundamental component of the right to a remedy for serious violations of international human rights law (Basic Principles: Principle 22).

Disappearances

An abuse that affects many who have experienced institutionalisation and/or forced family separation is the disappearance of their relative. An ‘enforced disappearance’ is defined in international human rights law as occurring when a person is ‘arrested, detained or abducted against their will or otherwise deprived of their liberty’ by state authorities or with the state’s support, consent or acquiescence, following which the state refuses to disclose the person’s fate or whereabouts to their relatives (UNGA Res 47/133). Notably, the European Court of Human Rights (ECtHR) has found a ‘disappearance’ to exist in a case where a woman’s new-born baby was taken from her in a state-run hospital, and 32 years later her baby’s body had not been released to her and she did not know the cause of death or burial place (*Jovanovic v Serbia*, App no 21794/08 (ECtHR, 26 March 2013)).

The UU/QUB Report demonstrates that, for some families, disappearances are an ongoing concern. For example, ‘JM’, who was confined in Thorndale Mother and Baby Institution, stated that after giving birth in hospital her baby boy was taken away and ‘she did not see him, despite asking to do so’ (McCormick and O’Connell 2021b: 195). JM was told that her son was christened but ‘she was not allowed to attend the ceremony’ and ‘[h]er son was dead within five days, without her seeing him’. JM explained: ‘*I went to the funeral, and it was a little white box, and I tried to open it to hold him, and two social workers physically restrained me from going near the box. They held me back by my arms*’. JM expressed her need to know whether her son in fact died and was buried: ‘*I’d like the grave exhumed ... I want to know that, that was my baby that I buried, that he is in there, and I wanna hold him. So I know it’ll be bones in a box, but I want a DNA [test] to prove that’s my child, and I wanna hold him*’ (McCormick and O’Connell 2021b: 196).

The UU/QUB Report contains significant evidence that girls and women frequently did not provide informed consent to their separation from their child (as discussed further below). Thus the inability of many mothers to discover their adult child’s fate and whereabouts, and the inability of many adopted women and men, and other adult children who were placed in long-term institutional or foster care, to discover the fate and whereabouts of their mother, is a grave injustice collectively amounting to disappearances.

The UU/QUB Report notes:

It was rare that birth mothers had not made some attempt to locate their children, usually as soon as it was possible for them to do so...Along with the adoption process, this was one of the most difficult parts of the interview, with interviewees succumbing to tears and revealing their frustration with the process or disappointment with the outcome. (McCormick and O’Connell 2021b: 359)

The Report describes the testimony of BC, a mother, as follows:

Like a number of interviewees, BC reported encountering unnecessary difficulties when trying to trace her son. She feels that her trauma was exacerbated by this. The process was “*like a puzzle*” and she felt that the Catholic Adoption Agency “*ran me a merry tune because I didn’t actually realise and still don’t know if I have any rights in terms of ... freedom of information of getting my file now*”. BC found it such a difficult process, that she gave up on it and is upset that despite the fact that “*obviously I’m very damaged by what happened, you know, psychologically ... they didn’t give any support whatsoever and ... just made life very difficult for me*”. (McCormick and O’Connell 2021b: 126)

The Report relays the experiences of IA, an adopted person, and other adopted people thus:

IA has a lot of unanswered questions because there are irregularities in the documentation she has in relation to her early life. For example, she has been notified of one recorded birth date in December and another in April ... IA’s testimony is similar to elements that appear in many others collected during the research project, she has been forced to speculate on what really happened in her case because of what she feels are gaps in the information about her birth and early life. Many individuals have experienced a similar sense of dissatisfaction about their quest for information about their birth mother, which has increased rather than decreased their anxieties. (McCormick and O’Connell 2021b: 134)

In relation to several Magdalene Laundry Institutions, the UU/QUB Report notes that the religious orders' records do not fully demonstrate who died in the institutions and where they were buried. Burial lists provided by nuns to the UU/QUB researchers do not fully match the records of women who lived and died in the institutions; and many women who died in Magdalene Laundries are interred in unmarked graves (McCormick and O'Connell 2021b: 39).

In international and European human rights law a disappearance not only violates numerous rights of the disappeared person, but also violates the relatives' rights to respect for their private and family life. In fact, human rights law recognises that a disappearance can constitute inhuman or degrading treatment of relatives due to the immense suffering caused by their prolonged search for the truth of what happened to their loved one. Such suffering was conveyed by a respondent to the Panel, who wishes the forthcoming investigation to consider: *'the traumatic experience of being made to physically hand over my baby against my wishes and the entire duration from then to now where information and answers have been actively hidden and kept out of reach'*.

Denial of Identity

A further form of continuing, widespread abuse is denial of identity. Under human rights law, the right to access information regarding both identity and personal history as a child in state care is fundamental to the right to respect for private and family life. Although in certain circumstances the state may interfere lawfully with private and family life, an interference is permissible only if it is based on clear legal rules which prevent abuses of power, and it is necessary and proportionate in a democratic society for a legitimate public interest purpose such as protecting the rights and freedoms of others. The ECtHR has found interferences with the right to respect for private and family life to be disproportionate where the state could use a less restrictive method to achieve the relevant public interest, or where the interference did not represent a fair balance between competing interests.

Over the past three decades, NI adoption agencies, including Health and Social Care Trusts, have used the Adoption Agencies Regulations (Northern Ireland) 1989 to guide their information disclosure practices. Regulation 15(2) gives adoption agencies full discretion to 'provide such access to its case records and the indexes to them and disclose such information in its possession, as it thinks fit: for the purposes of carrying out its functions as an adoption agency; and to a person who is authorised in writing by the Department to obtain information for the purposes of research'. As a result of this discretion, victims-survivors and adopted people continue to experience inconsistent practices dependant on the views of the person or agency responding to their information access request. There is lack of transparency regarding adoption agencies' disclosure policies. Beyond adoption agencies, there are no Regulations to specify the disclosure obligations of the religious and other non-state organisations that operated and interacted with Mother and Baby, Magdalene and Workhouse institutions.

Since 2018, the Data Protection Act 2018 (DPA 2018) and the General Data Protection Regulation (now UK GDPR) have overridden the Adoption Agencies Regulations (Northern Ireland) 1989. The DPA 2018 and UK GDPR now apply to the information disclosure activities of all state and non-state controllers of adoption-related records in NI, except for the courts and the Registrar General (Data Protection Act 2018: Schedule 4). This new data protection legislation creates a right for every person to obtain all of their personal data. Personal data means 'any information relating to an identified or identifiable natural person' (DPA 2018, section 3; UK GDPR, Article 4). It includes information relating to more than one living identifiable person (*B v General Medical Council* [2018] EWCA Civ 1497; *Nowak v Data Protection Commissioner* Case C-434/16, CJEU, 20 December 2017).

Information, therefore, may be the personal data of two or more people and this does not affect the existence of the right of access. However, as previously mentioned, privacy rights including data protection rights are not absolute. It is permissible under European human rights law for the state to engage in restricting, or to allow the restriction of, a person's data protection rights *if* there is clear and precise law permitting this and the restriction is demonstrably necessary and proportionate in a democratic society.

Section 45 of the DPA 2018 states that data controllers may restrict the rights of personal data subjects where such action is 'necessary and proportionate' to 'protect the rights and freedoms of others'. In the Panel's view, this is not a clear and precise enough legal rule to prevent arbitrary or inconsistent behaviour by controllers of adoption-related and institutional records. In a similar vein to the discretion provided for in the previous Adoption Agencies Regulations (Northern Ireland) 1989, the DPA 2018 leaves it entirely up to the data controller to decide what information may be 'necessary and proportionate' to withhold.

The importance of personal records regarding birth, adoption, care and family separation cannot be overstated. The state authorities' failure to clearly and precisely regulate disclosure, and to ensure respect for the rights of people formerly institutionalised and/or affected by adoption or other care arrangements, appears to breach the State's human rights law obligations. Institutional, adoption and other child care-related records are profoundly personal; their access is essential for understanding a person's identity and history, and also for discovering the truth about apparent disappearances and other serious human rights violations.

Article 8 of the Convention on the Rights of the Child states: 'Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity'. Article 9 further requires the state to provide parents and children with information about each other's whereabouts (unless contrary to the child's well-being) where 'separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death' of one or both parents.

Other Persistent Violations of Human Rights

In addition to disappearances and denial of identity, other human rights abuses that appear to persist today, and that are evidenced in the UU/QUB Report and submissions from victims-survivors to the Panel, include:

- violations of the right to respect for private and family life on account of mothers' and other family members' inability to retrieve remains, or mark the burial place, of their loved ones;
- violations of the right to freedom of expression as a consequence of unlawful and unjustified barriers to accessing information about the institutional and adoption system, in turn hampering the ability of those affected to contribute to public knowledge and discussion; and
- discrimination in the form of information barriers applied to people who were institutionalised and/or separated from their family on grounds of gender, family status, socio-economic status and/or disability.

Past Human Rights Violations Requiring Investigation

European human rights law places a specific obligation on the State to establish an 'effective investigation' wherever there is an arguable claim that a serious human rights violation has occurred. Several international treaties impose a similar obligation. The ECtHR has held that the investigative duty arises in relation to suspected unlawful deprivation of life; torture or other cruel, inhuman or degrading treatment or punishment; servitude or forced labour; grave violations of the right to liberty; and grave violations of the right to respect for private and family life.

Death

The State must investigate when it appears that a death has occurred in suspicious circumstances, even when no State agent has been involved. In addition, the State must investigate deaths in custody, and deaths that the State may have contributed to by failing to intervene to protect life. The State must also establish an investigation into deaths in contexts where only the State authorities 'have sufficient relevant knowledge to identify and establish the complex phenomena that might have caused such incidents' (*Oneryildiz v Turkey* (2005) 41 EHRR 20: para 93).

The UU/QUB Report presents information to suggest that some children born to mothers confined in a Mother and Baby Institution may have died unlawfully. The absence of publicly available information regarding infant deaths is highly concerning. The Report's authors were able to assess records for only one 'baby home' which received children born to institutionalised mothers. Religious organisations did not provide the researchers with death certificates or full death records for children who died in the Mother and Baby Institutions, making analysis of these deaths impossible (McCormick and O'Connell 2021b: 89).

Regarding St Joseph's 'baby home' in Belfast, the research found: 'it is evident that mortality rates were alarming in this home between the 1920s and 1950s. Death rates may have been as high as 50% of those admitted at some points during the 1920s' (McCormick and O'Connell 2021b: 27). Further, the available data suggests that a far higher proportion of babies born outside marriage, including babies born in Mother and Baby Institutions, were stillborn or died shortly after birth when compared to babies born within marriage in NI during the 20th Century (McCormick and O'Connell 2021b: 26).

The UU/QUB Report also presents evidence of a woman dying in a Magdalene Laundry following 25 years' incarceration. She was placed in the institution after giving birth to her youngest child. Her son states that he was refused any information about his mother until after her death. He was unable to find her grave until realising that the nuns had incorrectly named her (McCormick and O'Connell 2021b: 309). As noted above, the religious congregations' records do not fully disclose the identities and whereabouts of all women who died in their institutions (McCormick and O'Connell 2021b: 39).

These significant gaps in information, together with the minimal information available, indicate the necessity of a thorough investigation into the circumstances of death, identities and whereabouts of all girls, women and children who died in the Mother and Baby Institutions, Magdalene Laundries and Workhouses and other institutions.

Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment

The State is obliged to investigate alleged or apparent torture or other cruel, inhuman or degrading treatment or punishment, whether perpetrated by a State official or a non-State actor. Torture is defined in human rights law as the intentional infliction of severe pain or suffering, physical or psychological, for the purpose of punishing a person, intimidating or coercing them, or for any reason based on discrimination of any kind.

While claims of forced adoption based on marital status, or for other gender discriminatory reasons, to date have not been ruled on by the ECtHR, it is important that the full impact of such abuse is acknowledged. The UU/QUB Report contains the following testimony of 'GT', who was placed in a Mother and Baby Institution by Social Services aged 17, and whose child was taken immediately after birth without her seeing him:

Just for having a baby my life has been a mental health issue from the day I went in there. And before I went in there I was a normal person, and I came out there with a mental health issue which was driven into me. It was driven into me. The nightmares that I have, that I waken up with every day, it's like a maze trying to find my way out ... It affects your whole body. It affects your mind. It affects your concentration and everything you go to do. But I don't think we're being taken seriously. It's like a root that has grown inside me. It's a nasty root that has come from my toes right up to my head, and it has branched out even to my fingers. It has caused pain in every joint in my body, and that pain doesn't stop. In fact I, you know, the experience that I, I go to bed and think is this a nightmare? This is a nightmare. This is just a complete dream. This is something like, you know, I feel like I'm still sleeping and I'm going to waken up. It, it's hard to believe that you actually went through something like that. No, these things actually happened in Northern Ireland. (McCormick and O'Connell 2021b: 121)

Cruel or inhuman treatment is understood to involve very serious physical or mental suffering, without the intention to punish or discriminate that torture involves. Child abuse, the suffering caused to relatives by the disappearance of their loved ones, and unlawful detention in degrading conditions, are examples of abuse that may constitute cruel or inhuman treatment.

Degrading treatment or punishment has a particular connection with discrimination and denial of human dignity and agency. The ECtHR often finds that degrading treatment has occurred when behaviour towards a person, 'was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance, or when it was such as to drive the victim to act against his will or conscience' (*Jalloh v Germany*, App no 54810/00 (ECtHR, 11 July 2006) para 68). Violence against women regularly has been found to constitute degrading treatment, and also inhuman treatment, extending to torture when it involves rape. The testimonies in the UU/QUB Report provide copious evidence of what amounts to degrading treatment, at least. Examples include:

- the subjection of children as young as 12, girls and women with disabilities, and girls and women who were victims of abuse to institutionalisation, denial of education, forced labour and in cases of pregnancy coercive separation from their child in the guise of consensual adoption;
- the punishment of girls and women who became pregnant outside marriage through institutionalisation, forced labour, ritual humiliation, forced or coerced separation from their child in the guise of consensual adoption and, in some cases, transfer to a Magdalene Laundry;
- the punishment of victims of rape and incest through the above sanctions;
- the subjection of children, now adult-adopted people and others who experienced foster care or institutional child care, to separation from family based on birth status, possibly interacting with other forms of discrimination;
- the unlawful, indefinite detention of girls and women in conditions of forced labour or servitude; and
- non-consensual gynaecological examinations and other forms of sexual harassment and abuse.

In human rights law, people are understood to suffer more severely from mistreatment when they are in a vulnerable position—for example, as a detainee, or as a child, or as a member of a societally discriminated-against group. The human rights treaty bodies are more likely to find that a person has suffered torture or other cruel, inhuman or degrading treatment where they have been powerless and therefore unable to escape or resist their abuse. Experiences of powerlessness are illustrated by the contributions of victims-survivors to the Panel's research. For example, one woman described the effects of abuse in a Magdalene Laundry thus:

The decisions made by so called professionals, where I didn't have a say. The lack of empathy, the insulting way the nuns treated me and left me with a lifelong complex and inferior feelings of myself.

Adopted victims-survivors explained the impact of their discriminatory separation from their mother as follows:

Someone took away my life and put it into the hands of others for no other reason than in their words my birth mother brought shame on the family, how dare she have sex and not be married.

I want someone to look me in the eye and explain how they thought that taking me away from my mother was right. Did they not consider that a lifelong connection can be formed in the moment of birth and that the forced separation has destroyed both lives?

Servitude or Forced Labour

An obligation to investigate arises under Article 4 ECHR where the State is aware, or ought to be aware, of information giving rise to a credible suspicion of servitude or forced labour, whether perpetrated by a State or non-State entity. Forced labour is defined in international law as 'all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily' (Forced Labour Convention, 1930, Article 2). The ECtHR understands servitude to mean a 'particularly serious form of denial of freedom' which includes 'in addition to the obligation to perform certain services for others ... the obligation for the "serf" to live on another person's property and

the impossibility of altering his condition’ (*Siliadin v France*, App no 73316/01 (ECtHR 26 July 2005): para 123).

Analysing the *Report of the Inter-Departmental Committee to Establish the Facts of State Interaction with the Magdalen Laundries* (McAleese 2013), the Irish Human Rights Commission (IHRC) in 2013 found that girls and women in Magdalene Laundries in the Republic of Ireland (ROI) had been subjected to forced labour in violation of European and international human rights treaties (IHRC Follow-Up Report 2013: 77-91). In the Panel’s view, the UU/QUB Report provides significant evidence of forced labour or servitude in the institutions under consideration in NI.

The UU/QUB Report acknowledges that while institutionalised in Magdalene Laundries: ‘[g]irls and women carried out a full week’s work in the laundries without payment between the 1920s and the 1970s. From the 1970s, modest amounts of “pocket money” were paid to the women’ (McCormick and O’Connell 2021b: 36). A woman who was transferred to Thorndale House laundry shortly after giving birth described the working conditions as ‘Victorian’; the UU/QUB Report continues: ‘A week after birth, she was washing sheets by hand amongst the steam and heat. Eventually she began to bleed heavily because she had haemorrhaged and, at that point, she was returned to the maternity unit’ (McCormick and O’Connell 2021b: 198). As the UU/QUB Report authors note, the HIAI found that the Good Shepherd Sisters used punishments in the Magdalene Laundries, including ‘making the offender kneel, or making an offender stand to eat her meal’ (McCormick and O’Connell 2021b: 37). Magdalene Laundry survivors also recalled ‘being slapped’, ‘having her hair cut off as punishment for a transgression’, being ‘hit across the knuckles’ and ‘being locked in a dark room, being slapped for “giggling” and being beaten with a cane’ (McCormick and O’Connell 2021b: 286).

In *Mother and Baby Institutions* girls and women received no wages despite being forced into unpaid labour for the entirety of their stay or detention. In addition to cleaning the institution, some girls’ and women’s work included full-time care of others such as ‘servicing the needs of the private patients who were also residents’ (McCormick and O’Connell 2021b: 237), being sent out to work without pay in private homes (McCormick and O’Connell 2021b: 141), or feeding and hand-washing the nappies of others’ children (McCormick and O’Connell 2021b: 213-214). The UU/QUB Report also records the use of forced labour to make items for sale (McCormick and O’Connell 2021b: 143-144). One woman’s testimony recalls ‘a rewards system by less work’ (McCormick and O’Connell 2021b: 125). The use of forced labour to humiliate mothers is evidenced further by testimonies explaining how girls and women were required to work without modern equipment:

HS has strong memories of cleaning a big marble hall “with a nail brush that size, very heavily pregnant.” She felt this was to help her “repent for your sins” basically. HS remarked that cleaning floors “would have been OK with a mop bucket and a mop. But when you’re down on your flipping hands and knees doing it with a nail brush and a ***** cloth, it’s a different story like.” (McCormick and O’Connell 2021b: 123)

We had to clean corridors, we had to do that on your hands and knees ... Right up to nine months pregnant, right up till our babies were born. (McCormick and O’Connell 2021b: 198)

...with the nursery being so big and so many children there – I had to do their washing as well, you see? ... This is the bit that really gets me – at that time most people had them twin-tub washing machines? They had come into being then. So we had them, obviously, at home. And when I went there, there were two twin-tubs – but they were for use of the staff. We weren’t allowed to use those. My facilities for washing were out the back, you know? (McCormick and O’Connell 2021b: 214)

Arbitrary Detention

Unlawful detention in an institution constitutes not only a violation of the right to liberty, but also a serious infringement of the right to respect for private and family life. The ECtHR has held that an ‘effective investigation’ is required where it appears that a person has disappeared in violation of the right to liberty or where another very serious violation of the right to respect for private and family life has occurred.

Whereas criminal justice detention is the most commonly recognised form of detention, the ECtHR has made clear that a deprivation of liberty will exist in a social care context where the person is ‘under continuous supervision and control and not free to leave’ and has ‘not validly consented to the confinement in question’ (*HL v United Kingdom* (2005) 40 EHRR 32: para 91; *DD v Lithuania*, App no 13469/06 (ECtHR, 14 February 2012): para 146; *Stanev v Bulgaria* (2012) 55 EHRR 22: para 117). Having entered a place voluntarily does not mean that a deprivation of liberty cannot later arise.

The ECtHR has found deprivations of liberty to exist in a social care setting even where premises are not locked and where a person has left the institution on visits or outings. Individuals are considered ‘not free to leave’ where one of the following situations exists: permission to leave the premises is required; the person’s guardian is required to consent to the person leaving; there are restrictions regarding the length of time and destination to which a person may go; an institution restricts access to a person’s identity documents or finances which would enable them to travel; a person is returned, for example by the police, when they leave; or it is clear that a person would be prevented from leaving if they tried, or would be returned to the institution if they left.

If deprivation of liberty has no basis in domestic law, its imposition violates the right to liberty. Even when there is a domestic legal basis for detention, it breaches Article 5 ECHR if: it does not extend to the entire period of detention; the use of the legal power is in bad faith; or the detained person does not have access to a court. Further, Article 5 ECHR does not permit detention for ‘care’-related reasons other than the ‘detention of a minor by lawful order for the purpose of educational supervision’, and the ‘lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants’ (ECHR: Article 5(d), (e)). Article 5 ECHR requires state authorities to refrain from unlawfully detaining people *and* to protect people from such abuse in non-state settings.

In 2013, regarding Magdalene Laundries in ROI, the IHRC found that ‘it is hard not to come to the conclusion that many, though certainly not all, of the women who entered the Laundries were deprived of their liberty’ and that such detention breached Article 5 ECHR in many circumstances (IHRC Follow-Up Report 2013: 47, 51, 60, 66). In a similar vein, the UU/QUB Report notes: ‘Until the late 1960s, the Good Shepherd Sisters discouraged those in the Order’s care from leaving their premises. The HIAI described this as “a practice of containment”’ (McCormick and O’Connell 2021b: 37). The UU/QUB Report continues: ‘Oral testimony offered to the researchers by the Good Shepherd Sisters and others indicates that some of the women in the St Mary’s homes reached the status of auxiliaries and were entrusted to take other laundry residents, who were not permitted to leave the convent alone, to hospital or other medical appointments’ (McCormick and O’Connell 2021b: 37).

The UU/QUB Report describes the testimony of a nun as follows:

S1 was asked about the process by which a woman could leave the St Mary’s home, revealing that it was not straightforward. She explained that they had to discuss this with “the Mistress” [Sister in charge] in her office and she “would decide whether she could go straightaway or, you know, that she’d have to find employment or what she wanted”. The social worker and/or family would also be consulted if they had been involved in the woman’s referral to the St Mary’s home. (McCormick and O’Connell 2021b: 292)

A woman, ‘ID’, incarcerated in a Magdalene Laundry, explained:

I was twenty-two by then. Ah, and there was no end date, no release date, I was just told I was going to be kept there until my mother decided otherwise, and I had no say in the matter. (McCormick and O’Connell 2021b: 298)

From the available records, the UU/QUB Report found that ‘Often girls who absconded were returned to the St Mary’s home by the police’ (McCormick and O’Connell 2021b: 39). The researchers found further ‘evidence of girls/young women being sent to a St Mary’s home without their consent (seemingly at the direction of parents or a parish priest)’ (McCormick and O’Connell 2021b: 319). One woman described the Good Shepherd Magdalene Laundry to the HIAI as ‘worse than a prison’ (McCormick and O’Connell 2021b: 319).

285). The UU/QUB Report describes the testimony of another woman as follows:

SC ... discussed the unease she felt on her arrival when seeing the advanced age of some of the other laundry workers and her concern that, like them, she would be kept in the St Mary's home for the rest of her life. (McCormick and O'Connell 2021b: 300)

Regarding Mother and Baby institutions, the UU/QUB Report contains testimonies of 'locked doors' (McCormick and O'Connell 2021b: 117) and constant surveillance. The restrictions on movement were described to the researchers by 'HS':

HS recalls that ... The pregnant women were allowed to leave the home at pre-arranged times, but only in pairs and "you were limited as to where you were allowed to go to". At other points, HS observed that "all doors, all everything was locked down" ... HS explained that she did not feel able to challenge any rules and regulations because of the "fear that you were going to be put out on the street" and have "nowhere to go". She felt "totally vulnerable, totally powerless to do anything". She felt "very isolated". (McCormick and O'Connell 2021b: 123)

Another woman explained that she 'felt incarcerated as she recalls "bars on the door. And you were really locked up all day. The only time I ever remember going out was when my sister called"' (McCormick and O'Connell 2021b: 145).

The Panel received a similar account:

I discovered I was pregnant...then a social worker came and drove me to Marionville. I thought I was going home...She dropped me off and left me there. I was completely traumatised, I was frightened and confused. I ended up with and still suffer from PTSD. It was hell on earth, they told me as soon as I went in that my child would be given up for adoption, and they gave me a false name. When I refused to be called by their name, they told me my father signed me over to them (I was 19 years old, I was an adult). I thought, this can't be happening to me. I was treated like filth, prison would have been better. I wasn't even allowed to talk, I had to scrub and shine wooden floors.

Serious Violations of the Right to Respect for Private and Family Life

The denial of parents' informed consent to so-called 'voluntary' adoptions and other permanent placements of their children in state care is a key issue requiring investigation. Forcible or coercive separation of children from their parents under the guise of consensual adoptions—therefore without the legal due process that a non-consensual separation would require—constitutes a combined violation of the rights to freedom from torture or ill-treatment, liberty, and respect for private and family life of parent and child. The ECtHR has held that the state must establish an 'effective investigation' in cases of disappearance and other grave interferences with private and family life.

The rights violations discussed above played a crucial part in coercing and forcing mothers into separating from their children. Degrading institutionalisation, arbitrary detention, and the denial of a wage for full-time labour deprived girls and women of power and agency. The testimony in the UU/QUB Report reveals additional forms of coercion, such as:

- midwives refusing or being instructed not to engage with 'unmarried mothers' (McCormick and O'Connell 2021b: 26);
- the 'secrecy instilled in everyone in the homes' (McCormick and O'Connell 2021b: 122);
- that, according to a social worker, 'there wasn't counselling involved, there wasn't real support, so in their eyes and experience they had no option at all' (McCormick and O'Connell 2021b: 115);
- the prejudice and discrimination inflicted on girls and women, as explained by a social worker: they were 'completely isolated. Nobody on their side, as it were. Because, again, there was very much a culture of presumption, that if you had a baby outside marriage then the baby should go to – quote – "a good home" – unquote' (McCormick and O'Connell 2021b: 115);

- the practice whereby, according to a social worker, 'in the past social workers often made a judgement for a mother: "Look, you're better off, that's how it is ... And sure, look, the baby's going to a lovely home and they'll be very well to do ... We're the adults here and we're telling you you're better off"' (McCormick and O'Connell 2021b: 116);
- humiliation and psychological pressure (McCormick and O'Connell 2021b: 132). One woman explained that '*the Good Shepherd Sisters' attitude was that "what you've done is a sin and you'll have to repent for what you've done" ... brainwashing you into, like making you feel that, you know, that you weren't worthy to raise your child'* (McCormick and O'Connell 2021b: 121). Another woman recalled: '*the social worker used to come to where I worked and sit outside all the time and say to me: "You have to sign these papers. You have to sign these papers". Just, you know, just really hassling me all the time'* (McCormick and O'Connell 2021b: 145);
- a mother's child being taken immediately after birth without providing the opportunity for mother and child to spend time together (McCormick and O'Connell 2021b: 120); and
- as several mothers recall, other people signing documents on their behalf (McCormick and O'Connell 2021b: 121, 144).

Further, the UU/QUB Report finds that major questions remain unanswered regarding the legality of cross-border and foreign adoption arrangements. An investigation of this system, and the provision of full information to those personally affected, is imperative.

Other serious violations of the right to respect for private and family life arguably also give rise to an investigative obligation. These include: non-consensual gynaecological examinations, relatives' inability to ascertain the resting place of their loved ones, non-consensual performance of medical procedures or medical experimentation on children or mothers, and non-consensual administration of medication.

A Human Rights-based Investigation

An 'effective investigation'

ECtHR case law, together with a range of international human rights law instruments, sets out a series of elements that must be present in the State's investigative effort in order for it to be 'effective'. The *Background Research Report* supporting this chapter explains these elements in substantial detail (O'Rourke 2021a). In summary, the requirements of a human rights-based 'effective investigation' are the following:

Promptness

The State is obliged to establish a prompt and timely investigation where it has knowledge of facts indicating serious human rights violations; it must not wait for express complaints. The *UN Minnesota Protocol on the Investigation of Potentially Unlawful Death* (Minnesota Protocol) provides, however, that: 'The failure of the State promptly to investigate does not relieve it of its duty to investigate at a later time: the duty does not cease even with the passing of significant time.' (Minnesota Protocol: 7)

Purposes of the investigation

According to European and international human rights law, the purposes of a human rights-compliant investigation are: establishment of the facts and comprehensive truth-telling; imposition of state, institutional and individual accountability for serious human rights violations including gender-based human rights violations; individualised investigation of the circumstances of a person's death and their whereabouts, and the fate of disappeared persons; archival preservation and access; contribution to the effective functioning of other justice procedures and measures of redress; and the identification of reforms needed to prevent abuse in the future.

Characteristics and powers

- Investigators must be impartial, competent and independent (institutionally and practically)

from those implicated in the events in question. They must have access to all necessary technical expertise. The *Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Istanbul Protocol) states that a ‘single commissioner should in general not conduct investigations into torture’. It continues: ‘The objectivity of the investigation and the commission’s findings may, among other things, depend on whether it has three or more members rather than one or two’ (Istanbul Protocol: para 110);

- There should be gender balance and knowledge of gender issues among the investigators, and gender sensitivity training for all staff including teams that collect statements is essential;
- The investigation must have full powers to compel witnesses and be capable of securing evidence. The Istanbul Protocol adds that the investigation must also have the authority to conduct on-site visits (Istanbul Protocol: para 108);
- Archives must be protected for the purpose of the investigation; the Orentlicher Principles state that ‘Technical measures and penalties should be applied to prevent any removal, destruction, concealment or falsification of archives, especially for the purpose of ensuring the impunity of perpetrators of violations of human rights and/or humanitarian law’ (Orentlicher Principles: Principle 14);
- The state’s provision of resources must be adequate to ensure that the investigation’s independence and credibility are never in doubt.

Responsiveness to those affected

The investigation must centrally involve victims-survivors in its design, implementation, monitoring and evaluation. It must comprehensively address gender-based and other forms of discriminatory abuse. This includes adopting an intersectional perspective sensitive to the compounding and particularised effects of multiple forms of discrimination. The Istanbul Protocol states further that the investigation’s terms of reference must: ‘provide flexibility in the scope of the inquiry to ensure that thorough investigation by the commission is not hampered by overly restrictive or overly broad terms of reference. The necessary flexibility may be accomplished, for example, by permitting the commission to amend its terms of reference’ (Istanbul Protocol, para 107).

Procedural fairness

- Victims-survivors must be involved in the investigation to the extent necessary to safeguard their legitimate interests. They, and their legal representatives, must have access to all hearings and to all information relevant to the investigation, and they must be entitled to present evidence and to submit questions to be asked of other witnesses;
- All individuals named in the archives gathered by the investigation must be entitled to access information relating to them, and to exercise a right of reply by annotating the archive. The Orentlicher Principles clarify, however, that: ‘Access to the files of commissions of inquiry must be balanced against the legitimate expectations of confidentiality of victims and other witnesses testifying on their behalf’ (Orentlicher Principles: Principle 17);
- The investigation should establish guidelines for access to its records, providing unhindered access for those affected and maximising public access while respecting applicable concerns regarding privacy;
- The rights of alleged wrongdoers should be protected by ensuring: they are not compelled to self-incriminate; there is an opportunity for effective questioning of witnesses by the commission; parties to the inquiry are allowed to submit written questions to the commission; and before a commission identifies perpetrators in a report it must attempt to corroborate information, and afford them an opportunity to provide a statement either at a hearing or through submission of a ‘right to reply’ for inclusion in the commission’s file;

- The inquiry’s terms of reference must be framed neutrally to guard against any suggestion of a predetermined outcome. In order to maintain neutrality, the terms of reference must not limit investigations where they might uncover state responsibility for serious human rights violations;
- The inquiry must assess all information and evidence it receives to determine reliability and probity; the evaluation of evidence must be thorough, objective and impartial.

Protection of the rights of victims-survivors - further requirements

- Written statements should be sought as a first step in evidence-gathering. Such sources of evidence may be crucial if their authors are afraid to testify, cannot travel to proceedings, or are otherwise unavailable;
- While proceedings of a commission of inquiry should generally be conducted in public, private proceedings may be necessary to protect witness safety and welfare. Occasionally, total secrecy or anonymity may be required to encourage testimony;
- Risks of re-victimisation must be taken into account when designing hearings. Informed consent of those who testify is essential and effective measures must be taken to ensure the security, physical and psychological well-being and, where requested, the privacy of victims and witnesses who provide information;
- Psychosocial support must be guaranteed before, during and after the hearing. Those who testify must be supported in preparing testimonies and anticipating questions. Mental health-care practitioners should be authorised to assist victims, and all expenses incurred by those giving testimony must be borne by the state.

Public scrutiny

The investigation must be open to the public to guarantee accountability and to meet the right of citizens to access the truth about gross and systemic human rights violations. Limitations on transparency should be imposed only for a legitimate purpose such as protecting the privacy and safety of affected individuals or ensuring the integrity of ongoing investigations. The investigation must be advertised widely, and those affected must be proactively encouraged to participate in a manner sensitive to their experience of stigmatisation or ostracism, and their experiences of previous state failures to investigate or hold perpetrators to account.

Cooperation of third countries

The Orentlicher Principles state: ‘Third countries shall be expected to cooperate with a view to communicating or restituting archives for the purpose of establishing the truth’ (Orentlicher Principles: Principle 18). The ECtHR also has found that the investigative obligation may apply to other Council of Europe member states that are in a position to supply relevant information (*Cummins and Others v United Kingdom*, App no 27306/05 (ECtHR 13 December 2005)).

Investigation, Redress and Reparation: A Transitional Justice Approach

According to international human rights law, an investigation is only a part, albeit crucial, of an effective remedy for grave human rights abuses. The Basic Principles clarify that, additional to meeting its investigative obligation, the State must provide equal and effective access to justice and adequate, effective and prompt reparation for harm suffered.

Equal and effective access to justice requires dissemination of information about all available judicial and administrative remedies, and the provision of proper assistance to victims-survivors seeking access to justice. Adequate, effective and prompt reparation, meanwhile, involves five key elements:

Restitution

Where possible, restoration of rights and return of what was taken, such as identity, family life, citizenship, the proceeds of one’s labour;

Compensation

In proportion to the gravity of the human rights violations suffered;

Rehabilitation

Including medical and psychological care, legal and social services;

Satisfaction:

Involving, where applicable:

- Effective measures aimed at the cessation of continuing violations;
- Verification of the facts and full and public disclosure of the truth to ensure that disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- A search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
- An official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- Public apology, including acknowledgement of the facts and acceptance of responsibility;
- Judicial and administrative sanctions against persons liable for violations;
- Commemorations and tributes to victims; and
- Inclusion of an accurate account of the violations that occurred - in international human rights law and international humanitarian law training and in educational material at all levels.

Guarantee of non-repetition

Reparation should further include institutional reforms, including the strengthening of accountability mechanisms and human rights education throughout all sectors of society. Human rights archives are considered by several UN human rights experts to be crucial in preventing future abuse through education. They are also a tangible element in the process of memorialisation.

Chapter 3

Consulting the Literature

Chapter 3: Consulting the Literature

The first part of this chapter, *Breaking the Silence*, draws on the growing research literature on the Mother and Baby Institutions, Magdalene Laundries, Workhouses and related adoption system in Ireland North and South. Notwithstanding the partition of Ireland, it is clear that the experiences of girls and women who became pregnant outside marriage or were perceived as being ‘at risk’ of becoming so, and their children, were similar on both sides of the Irish border during the 20th Century.

Significantly, the relevant church institutions and religious organisations operated on an all-island basis. Compared to Northern Ireland (NI), a greater number of investigations and reparation mechanisms have been initiated in the Republic of Ireland (ROI), from which lessons can be drawn. The literature considered in the first part of this chapter relates to the experiences in the past and present of victims-survivors of similar institutions and connected forced labour and family separation practices in both NI and ROI.

The second part of the chapter reviews a selection of the literature on official inquiries and reviews, considering their statutory/non-statutory status, their strengths in accessing evidence and examining witnesses, and concerns that have been raised regarding their terms of reference, scope, membership and process. This is followed by consideration of the emergence of independent panels established to draw on a range of professional skills and experience relevant to the issue/s under review.

Breaking the Silence

Shame

The consignment of girls and women to institutions during the 20th Century in Ireland, North and South, amounted to a policy and practice of incarceration. Whether directed by welfare agencies, churches or families, and whatever the processes of apparent consultation with girls and women, the context of referral to a Workhouse, Magdalene, or Mother and Baby Institution was punitive. It reflected condemnation within communities (perpetuated by the State and churches) that becoming pregnant outside marriage, especially child pregnancy, was aberrant and shameful. Class prejudice, whereby poor girls and women were considered deserving of institutionalisation, was a powerful force. Women, particularly young women and girls, were condemned as ‘temptresses’, morally unrestrained, guilty of leading men astray. Rarely were men, often older and regularly a family member, who exploited girls and women held to account. Abusers remained silent, their lives seemingly untouched by the pregnancies and adoptions inflicted on girls and women. Fathers who may have wished to raise a child with their partner outside of marriage had little power, legally or otherwise.

In their inception Mother and Baby Institutions, and the Workhouses that predated them, were a direct consequence of the power implicit and explicit in gendered relations. At every level the social system reflected dominant gender assumptions explicit in church-state ideology. As Garrett (2017: 362) notes, it was ‘designed to serve male interests and reinforce the power and social advantages of men’. While pregnancy was hidden from view by relocating girls and young women from their homes to institutions, and denying their motherhood through enforced adoption, the reputation of many fathers remained faultless. Further, Fischer (2016: 831) states ‘the act of hiding the blemish of pregnancy out of wedlock was seen as a service to, in the first instance, wronged or foolish first-time offenders, who wished to cover their transgression’.

Fischer (2016: 822) considers that the representation of Irish women’s ‘identity’ was bound to ‘themes

of purity, chastity and virtue’, their ‘domain’ being the home, ‘symbols of the fledgling nation’. Pregnancy outside marriage represented the absence of ‘purity’; the consequent ‘shame’ was hidden through a process of physical containment within the institutions. The painful reality inflicted by shame within families, and the hidden realities of pregnancy, childbirth and adoption, impacted on all girls and young women. Their suffering and silencing was exacerbated by collaboration between Church and State, Ireland’s most powerful institutions. Catriona Palmer’s memoir challenges the imposition she experienced of shame and secrecy: shame ‘cannot survive if it is spoken aloud’ as ‘truth-telling and honesty strip away its power’ (Palmer 2020: 313).

The guilt imposed on young women enduring a ‘politics of shame’ created a constant ‘fear of exposure’ amounting, for example, to a ‘lifelong need to hide one’s shame of having been a penitent in a Magdalene laundry’ (Fischer 2016: 836). For some young women, this led to emigration as an escape from exposure and condemnation. Fisher continues: ‘The alleged sins committed by women and girls confined in Magdalene laundries were read as stains upon their very characters and bodies, stains that could be removed (though never quite) through repentance and the backbreaking work of washing away stains from dirty laundry’. For girls and women subjected to forced separation from their child, fear of disclosure and the reality of living as condemned women exacerbated the perpetual sense of loss beginning from the moment their babies were taken. In these moments of profound bereavement, Enright and Ring (2020) argue that the Irish Republic, for its part, manipulated shame to place full responsibility for pregnancy on women.

Hogan (2019) movingly contends that in institutionalising pregnant girls and young women, advertising their new-born babies for adoption, and burying those who died in mass graves, ‘their remains comingled like everyday waste’, Ireland created a ‘shame-industrial complex’. As Fischer (2016: 824) affirms, shame was the ‘corollary of Irish women’s purity, administered by the State and the Church, ‘by hiding and physically containing women in institutions throughout the twentieth century’. McAlinden (2021: 5) notes that shaming ‘became integral to both the self-image of the Church and to national identity wherein the violation of moral norms *by women* was regarded as an assault on ‘mother church’ and ‘mother Ireland’.

Embedded within a culture built on twin supports of state and religion, shaming was an unrelenting, lasting process, ‘used by religious figures in positions of authority to both punish and purge the stigmatised identities of women and children within the institutions’ (McAlinden 2021: 5). Drawing on accounts from ‘adult survivors of residential care homes and industrial schools in particular’ in ROI, McAlinden (2021: 5) notes ‘the use of numbers or pseudonyms head shaving and severe corporal punishment, often dispensed openly in front of peers’. The purposeful administration of such inhumane forms of punishment lay at the heart of ‘dehumanisation’, expelling ‘any vestiges of their former identity’.

Voice

Central to critical academic analyses and investigative journalism concerning Ireland’s gender-based institutional and family separation system is the proposition that the severity and range of injustices experienced by survivors, families and adopted people have been marginalised. While there is no implicit hierarchy of suffering, women already silenced by shame experienced the impact of systemic condemnation. The historical absence of stories untold, their collective voice unheard, deepened the trauma of survival and perpetuated the internalisation of pain. ‘Survivors,’ comment Enright and Ring (2020: 82) ‘remain ... objects to be administered’. More recently their marginalisation was exacerbated when, encouraged to give testimonies to inquiries in ROI, the reliability and accuracy of their experiences were individually and collectively brought into question.

In 2020 the *Éire/Ireland* journal published fifteen in-depth academic articles focusing on ‘legacies of harm’, the theme of an international conference in 2018 on recognition, truth-telling and institutional abuse in Ireland. Central to the project’s ‘research and activism on the subject of Ireland’s class, race, disability, and gender-based abuses, so evident in Irish carceral institutions’ was the principle, derived from the survivors’ motto, ‘nothing about us without us’ (O’Donnell, O’Rourke and Smith 2020: 10). The collection affirms ‘that state-led efforts to address this legacy of abuse have been inadequate, and as a result the harms experienced are not “historical” but continuing’.

The recent ‘plethora of inquiries into twentieth-century institutional and gender-based abuses’ have ‘frequently hampered or excluded other avenues of accountability ... largely operated in private’ and denied survivors, adopted people and families access to the inquiries’ archives (O’Donnell, O’Rourke and Smith 2020: 11). Abuses in Magdalene Laundries and Mother and Baby Institutions have not led to criminal cases, and ‘survivors’ access to the civil courts has been stymied by myriad procedural barriers’ not least blocks to accessing evidence and the denial of necessary legal aid. In addition, through placing of conditions on financial awards, survivors of Magdalene Laundries were silenced. Finally, the state apparatus in ROI ‘still denies adopted people statutory entitlements to their own identity and early life and adoption files’ (O’Donnell, O’Rourke and Smith 2020: 11).

The editors of the *Éire/Ireland* special issue present the principles of transitional justice as the means to accountability and reconciliation situating survivors and their families as central to the process of ‘truth-telling, accountability, redress and reparation, and guarantees of non-recurrence’ (O’Donnell, O’Rourke and Smith 2020: 12). Eight moving personal testimonies open the journal special issue (Harney et al. 2020: 17-34). Mary Harney demands memorialisation of the ‘children and mothers who died in the institutions’, and through education to ‘keep the memory alive so that it never happens again’. Caitríona Palmer argues for the ‘basic human right to know where you come from’ and the imperative of opening to scrutiny ‘Ireland’s closed, secret adoption system’. ‘We are faceless, nameless, voiceless. But not anymore’, states Terri Harrison, ‘Now we have a place on the platform’. For, ‘everything that happened, happened *to us*, not by us’ and ‘every woman in the institutions was told the same thing: if ever I tried to find my son, I would be arrested ...’

Rosemary Adaser states that for industrial-school survivors the redress schemes in ROI amounted to ‘blood money – and in exchange ... we’ll give you a gagging order so you can no longer tell your stories ... a lifetime sacrifice of silence’. With little to no access granted to records, the State deflects ‘blame onto the mothers, onto the children’. Addressing the various layers of truth, ‘held’ by families, by mothers, by the State and by the Church, Conrad Bryan raises the institutions’ practice of preventing the adoption of ‘mixed-race children’. He concludes, ‘we have to move on from hate and contempt [of others] and actually listen to us ... because we are the truth-tellers’.

Susan Lohan concludes her personal testimony with the assertion: ‘what actually happened to our mothers amounted to a sort of ethnic cleansing ... women who were deemed not to be following the rules of the bureaucratic state’. Marginalised by politics and class, ‘massive human rights abuses’ were inflicted and the export of babies amounted to a form of ‘extraordinary rendition’, she contends. Connie Roberts, who passed through the industrial-school system in ROI alongside her fourteen siblings, recognises the progress, however limited, made by commissions and reports while highlighting the insufficiency of their outcomes.

As Enright and Ring (2020: 68) state:

Women and children in industrial or reformatory schools, psychiatric hospitals, county homes, and Magdalen laundries were burdened with a stigmatized identity that meant total exclusion from society. By beginning to speak publicly about their experiences, victim-survivors have forced the state and Irish society to acknowledge this history. Their testimony of neglect, beatings, forced labor, sexual assault, and imprisonment is an indictment of the sovereign state’s claim to protect its most vulnerable and to detect and punish crime within its territory.

Apology

As the inhumanity, exploitation and suffering endured by girls, women and their children has become public knowledge, and the scandals of large-scale post-natal deaths and forced adoptions gradually have emerged, academic and political attention has turned to how state and religious institutions should be held to account. In terms of state responses, in both ROI and Australia, a ‘coherent pattern’ has developed ‘including political apologies on behalf of the state; the establishment of statutory redress schemes; (limited) criminal prosecutions; and the creation of public inquiries’ (Gleeson and Ring 2021: 3-4). Throughout the 2000s, the Irish Commission to Inquire into Child Abuse (CICA) developed its work

following a public apology made by An Taoiseach, Bertie Ahern, for the abuse of children held in state care and religious institutions. His apology was made on behalf of the State *and* its citizens for a ‘collective failure to intervene’. The State’s ‘legal and moral responsibilities for children in its care’, therefore, was recast as ‘a failure of intervention shared with every citizen in the land’ (Gleeson and Ring 2021: 5).

Gleeson and Ring note that Ahern ‘situated child abuse in a distant past’, his ‘rhetoric’ also failing to ‘recognise the state’s responsibility for violating children’s rights to life, dignity, privacy, care and education’. Yet, throughout the 20th Century successive Government reports had provided extensive evidence of abuse. Gleeson and Ring (2021: 20-21) map the decade-long journey of the CICA through to its conclusion and, as a consequence of the ‘force of testimony of so many survivors’, the ‘strength of feeling, of shock, disgust and horror it evoked in Ireland’. They conclude, however, that ‘the map was incomplete’ not least because of how the Irish Government consigned systemic abuse to history.

McAlinden considers the ‘role of apology as a vehicle for shame management in the aftermath of historical institutional abuse’. She proposes ‘that “shame” in the aftermath of the HIAI (Historical Institutional Abuse Inquiry) is effectively managed when apology is optimised to facilitate: (a) truth for victims; (b) accountability of offenders; (c) leadership of institutions’ and what she terms, ‘the re-imagining of national identity’ (McAlinden 2021: 4). She focuses on ‘three inter-related categories’ of institutionalised abuse: ‘past abuses of women and children in residential care, including care homes, industrial schools, mother and baby institutions and “Magdalen laundries”; past abuses by members of religious institutions ...; and the forced removal of children from their families where many suffered abuse and neglect whilst in institutional care’.

What is the role of apology in responding to this profound level of abuse, entrenched throughout institutions? McAlinden addresses the problematic notion of ‘apology’, noting inconsistencies in definition and how apology is framed; particularly by states attempting to come to terms with past wrongs in which their institutions were deeply implicated, both in policies and in practices. Acknowledging and accepting that past acts involving state and religious institutions were inhumane, degrading and torturous, together with a formal apology and a commitment to ensuring there would be no repetition, raises the significant question of reparations. Is ‘apology’, however profound and well-intentioned, sufficient?

Optimistically, McAlinden (2021: 6) notes that apology, ‘may restore dignity and alleviate psychological harm for *both* victims and perpetrators, facilitating emotional and moral *rebalance* at the individual and collective levels’ (emphases added). The issue here, of course, is that excessive and routine acts of suffering were inflicted by those holding personal and collective discretionary power within non-accountable institutions. There was no equivalence, no balance. Further, once dignity is stolen and destroyed can it be retrospectively restored? Can the burden of lost years and silent suffering ever be recovered?

Recognising the complexity of apology, McAlinden (2021: 6-7) considers four elements that have emerged from research: apologies delivered in criminal or civil actions ‘to facilitate early settlement or mitigate legal action completely’; apologies following ‘high profile tragedies or political crises’; apologies ‘as part of symbolic reparations within transitional justice discourses’; and apologies made in ‘restorative settings, such as mediation ... thought to offer a “safe space” ... and a means of repairing the emotional dimension of harm’. Referencing the recent substantial international literature, McAlinden (2021: 8) affirms, that in these settings, ‘shame can be “managed” and used in a positive context’ with ‘collective apologies’ potentially restoring the ‘dignity of victims as well as societal trust between communities and institutions’.

Reparations

As campaigns for recognition of the severe harms inflicted on women incarcerated in Magdalene Laundries in ROI gathered momentum, the State’s initial response to the call for redress ‘was to deny knowledge regarding what had occurred’ (Gallen and Gleeson 2017: 53). This denial drew a severe response from the United Nations Committee against Torture. It recommended that the State should institute ‘investigations into all allegations of torture and other cruel, inhuman or degrading treatment or punishment’ and prosecution and punishment of those responsible. Further, the State should ‘ensure that all victims obtain redress and have an enforceable right to compensation, including the means for as full rehabilitation as

possible'. As Gallen and Gleeson (2017: 54) conclude, the punitive, unaccountable regimes within the Laundries were 'a discriminatory and gendered system of detention' operating exclusively 'for women and girls who shared economic dependence, poverty and social exclusion'.

In 2013 in ROI, the Magdalen Commission Report recommended an *ex gratia* scheme to grant survivors of Magdalene Laundries payments, pension top-ups, a health and social care package, advocacy support, and memorialisation measures (Magdalen Commission 2013). Gallen and Gleeson (2017: 55) conclude, however, that the scheme 'fundamentally fails to frame the question of state legal responsibility for the harm experienced, including acknowledgement of unpaid wages; nor does it address the broader question of the mistreatment of women while detained'. An Ombudsman's report entitled *Opportunity Lost*, found the Department of Justice to have 'maladministered' the *ex gratia* scheme on account of failing to ensure decision-making assistance for women whom it deemed to lack capacity, and refusing to afford evidentiary value to survivors' testimony in cases where religious records were incomplete or disputed (Ombudsman 2017). McGettrick and others (2021) argue that Magdalene survivors never obtained the full suite of health and social care services that were promised, and that memorialisation is still absent. The key issue is that without full reparation the Taoiseach's public statement of apology, however sincere in words, is found wanting in its material outcome.

Inquiry

As stated previously, the commonly-held assumption is that public inquiries into complex issues, where state and other institutions are under scrutiny for systemic abuses of power, will reveal truth and deliver accountability. Enright and Ring (2020: 74), however, demonstrate that the CICA 'prioritized religious orders' respectability over accountability to victim-survivors and the public'. Those accused of abuse, 'whether they had been convicted or not', were given anonymity and evidence gathered could not be taken forward to prosecutions. They argue that it amounted to a 'cloak of anonymity and effective immunity' resulting in 'partial history', leaving 'many victim-survivors feeling exposed and ignored by the state'.

Returning to the discussion above regarding the campaign for justice for Magdalene survivors in ROI, the McAleese Report preceded a State apology and a reparation scheme (McAleese 2013). Yet as, Enright and Ring (2020: 80) conclude, the Report also 'produced a supposedly authoritative "official history" of the laundries that minimized state liability'. Established 'as an alternative to the "prompt, independent, and thorough" investigation twice requested by the UN Committee Against Torture' it 'was not independent of the government, had no statutory powers to compel evidence, and it commissioned no public testimony'. Thus, once again, 'victim-survivors' voices were marginalized ... an archive that they had created to inform the process was ignored' and 'women's accounts of the Magdalen laundries' were presented as 'mere "stories"', in contrast to the authority attributed to State, professional and religious witnesses.

Enright and Ring (2020: 800) state that following publication of the McAleese Report survivors were further silenced; 'discouraged' from pursuing claims 'by contractually requiring them to waive their right of action against the state or state agencies as a condition of their participation in the redress scheme'. They note, 'the operation of the waiver meant that even those few cases that were not already stymied by the statute of limitations could not be brought to court' (Enright and Ring 2020: 81). In this way, victims-survivors were trapped by a scheme that 'had the effect of denying access to a state forum in which alternative accounts of women's experiences might be shared in public and reframed as legally cognizable wrongs'.

The potential harm done to survivors by public inquiries, and the intense media attention they receive, is well illustrated by Lundy's research into Northern Ireland's HIAI. It was in two parts: an acknowledgement forum which heard detailed accounts from adults, who as children, experienced residential institutions; and a statutory inquiry. Lundy (2020: 265) states that in giving evidence to the HIAI over half of those interviewed considered that the experience left them feeling traumatised or abused. While the Inquiry's acknowledgment forum had 'therapeutic aspirations', less than a fifth considered the experience healing or cathartic. Over a third felt 'exposed' or 'vulnerable' with some suffering longer term emotional consequences.

Referencing Stover (2004), Lundy (2020: 265) states that the "glow quickly fades" once survivors return

home'. Drawing on contemporary research 'on the psychological effects of giving testimony to tribunals, and similar bodies' Lundy notes that the experience, rather than being 'therapeutic' can leave survivors 'with a traumatic sense of abandonment'. Lundy's empirical research with survivors found that those who attended the HIAI reported that they had not received briefings on the formality of the process or the surroundings in which the Inquiry was being held. Further, they were given 'insufficient information or understanding of the public-hearing procedures' and, finally, they contended, 'their voices were not listened to' (Lundy 2020: 266).

Lundy's research demonstrates the structural and processual inadequacies of an approach that claimed to be 'victim-centered' but, in reality, 'constricted' survivors' voices:

I felt this sense of being cheated. I did not know why. Until I realized ... we only got to answer counsel questions. So I felt that I'd been silenced ... I'd come to give my evidence and then you're not allowed to give your evidence – you're only allowed to answer the questions. (quoted in Lundy 2020: 266)

Prior to the Inquiry, assurances were given that the HIAI would not be an adversarial process, and that its inquisitorial purpose would ensure that witnesses would be protected from 'inappropriate or unnecessary cross-examination'. That, however, was not the experience of survivors, many of whom felt that, in response to their profoundly distressing testimonies, the questioning was 'deeply intrusive and unnecessarily hostile to their integrity' (Lundy 2020: 268). Certainly, they did not expect negative details of their lives before and since their time in the institutions to be exposed in public.

Worse still, several witnesses had previously unknown sensitive and troubling information about their personal histories disclosed to them immediately before giving evidence. Further, documentary records of their lives were revealed in public yet not disclosed to them before giving evidence. Survivors 'on the stand without prior knowledge or control over the content and timing of such disclosures felt disempowered – sometimes traumatized at hearing casual introductions of often-unknown personal episodes from the past' (Lundy 2020: 270). Previously experiencing difficulties in accessing personal information, such revelations in a public setting had a profound impact on survivors: 'the HIAI's stated principle of "do no further harm" appears to have been undermined, exposing many survivors to re-traumatization' (Lundy 2020: 71).

As Gallen (2020: 53) notes, the process through which 'survivors interact directly with the inquiry' must guarantee their safety and protection to ensure 'the success of the inquiry'. It is crucial, therefore, that in consultation with survivors and their families their interests are established, and their needs prioritised in the location of hearings and the organisation, accommodation, facilities and interpersonal support provided. The responsibility for ensuring that the inquiry process is appreciative of, and sensitive to, the personal and familial context of survivors ultimately lies with those leading and administering the inquiry. It also extends to the conduct of all legal representatives, regardless of their clients' interests.

Lundy (2020: 278) deals with the issue of responsibility in asserting that the 'fundamental principle in developing a model [of inquiry] is the full participation of survivors from an early stage in the development, design and implementation of justice responses and their involvement in the negotiation of settlements'. More broadly, truth recovery requires the realisation of eleven inter-connected 'needs': 'voice, acknowledgement, vindication (including validation), apology, redress (monetary and symbolic), rehabilitation measures, intergenerational needs, access to records, authoritative historical records, offender accountability and taking responsibility, and prosecution' (Lundy 2020: 260).

McAlinden and Naylor (2016: 292) identify a significant limitation of public inquiries is their 'paradoxical aims and potentially competing functions – they encompass both an inquisitorial and adversarial component; and have elements of truth-telling, as well as apportioning blame with possible criminal sanctions'. Consequently, they often fail to receive full co-operation from those who, in giving evidence, seek to protect personal or institutional interests. Further, they are 'limited in their potential to deliver other forms of procedural justice that victims want such as giving "voice" to victims and ensuring genuine offender accountability'.

Engaging a ‘restorative paradigm’, state McAlinden and Naylor (2016: 297), has the potential to hold ‘perpetrators’ to account while ‘giving victims a voice or an element of control over the process’ emphasising ‘victim empowerment and active participation’. The authors’ suggested solution to the conflictual element within public inquiries is a ‘hybrid model’, incorporating public inquiries within a restorative justice framework. Returning to McAlinden’s empirical research into the role of apology, her concluding commentary notes that within academic analysis there exists a ‘broad consensus ... that meaningfully engaging with the complex rubric of the past is unlikely to emerge from apologies on their own’ (McAlinden 2021: 19). Apologies ‘need to be offered in conjunction with a tranche of justice mechanisms such as truth-telling, prosecutions, other forms of tangible reparations and institutional reform’.

Finally, Enright and Ring (2020: 90) propose a reform agenda prioritising the survivors’ collective narrative as it is to be anticipated that the primary aim of the institutions alleged to have done wrong will be to deny or limit liability thereby lessening the responsibility for redress. They argue that a state committed to reparation, ‘would recognize that efforts to impose closure on its engagement with the past have been premature’. Commitment to reparation should extend beyond financial settlements to ensure ‘support for the recovery and dissemination of survivor testimony’ specifically through a national archive (Enright and Ring 2020: 91). As O’Rourke (2019) has proposed, a dedicated archive is an important element of validation; a source of truth for those directly affected; a public place of learning and understanding endemic historical abuse and survival; and a site of remembrance.

Ireland’s historical abuses (North and South) were profound, widespread and systemic. They warrant an equally profound, widespread and systemic reform of how the state authorities engage with victims-survivors, a reform embracing the challenge of transitioning from a society that marginalised those deemed ‘other’ to one that meaningfully recognises, protects, and promotes the dignity and value of all (Gallen 2020: 67).

Inquiries, Reviews and Independent Panels

When a catastrophic event occurs or when, over time, recurrent institutional malpractice demonstrates systemic failures in operational regimes, campaigners invariably demand an ‘official inquiry’. It is an understandable response based on assumptions that it will be independent and will leave no stone unturned in revealing the context and circumstances of the specific event or the systemic malpractice. Given that most people will never be involved directly in circumstances that might lead to such calls, it is understandable that there is minimal public awareness of how inquiries function, their potential for thoroughness of investigation, or their effectiveness in holding institutions to account and securing systemic change.

Alongside official inquiries, other forms of state-sponsored investigations are: non-statutory commissions; inquiries under specific legislation (in Northern Ireland, for example, the inquiries into Historical Institutional Abuse and Hyponatraemia-related Deaths); *ad hoc* non-statutory inquiries; inquests; and, most recently, independent panels or reviews. As the campaigns for official recognition of the long-term and contemporary harms caused by the regimes and practices of Mother and Baby Institutions, Magdalene Laundries and Workhouses gained traction, focus turned to the form of investigation most appropriate to meet victims-survivors’ and relatives’ needs.

Public Inquiries

Responding to the question, ‘What are Inquiries for?’, Howe (1999) identified six objectives: to establish the facts through a full and fair account of the circumstances and causes of an event/s; to learn from events to prevent their recurrence; to provide catharsis enabling interpersonal reconciliation or resolution; to give reassurance to the public; to ensure accountability, responsibility and retribution in holding people to account; and to inform political action thus securing change. Written over twenty years ago, Howe’s objectives have been repeated regularly albeit in slightly amended form.

It is accepted that when serious events occur, either in an instant or over time, there will be conflicting accounts of what happened depending on institutional roles and individual perspectives. How those

differences are resolved depends on an acceptance of institutional responsibilities, including culpability and on whether appropriate processes are in place to secure accountability and redress.

Survivors and families committed to seeking truth from public and private sector agencies whose policies and practices are under scrutiny, regularly are stonewalled. Invariably, this results in demands from those directly affected and their lawyers for a judge-led public inquiry to investigate, access and analyse all relevant documents, receive written submissions and hear oral testimonies which are then examined by interested parties. Distinct from the determination to prove guilt or innocence in a criminal court, public inquiries are ‘investigative and inquisitorial rather than prosecutorial and adversarial’ seeking ‘to establish and interpret “facts”, apportion responsibility, propose remedies and make recommendations’ (Rolston and Scraton 2005: 552). This representation of public inquiries reflects an enduring assumption that they are both independent of state or institutional interests and objective in accessing evidence and making their determinations.

In contrast, there is an established body of research questioning the authority and legitimacy of official inquiries. It notes that they are constrained by limitations set by discretionary Government appointments thereby reflecting and upholding the *status quo*. Initiated in response to issues of serious public concern, they are expected to function ‘to restore public confidence in a service or organisation, or even government as a whole’ (MacLean 2001: 5). Funded from the public purse, usually they are chaired by judges, their terms of reference prescribed by government departments. Invariably, the inquiry chair is supported by professional ‘experts’ providing specialist advice, and civil servants administering the process.

In what became a defining text, Burton and Carlen (1979) published a definitive critique of public inquiries. They proposed that inquiries are a ‘routine political tactic directed towards [affirming] the legitimacy of institutions’, established to respond to crises in public confidence particularly regarding the impartiality of state institutions and other authorities (Burton and Carlen 1979: 13). Further, in confronting ‘particular crises’ the ‘task of inquiries is to represent failure as temporary, or no failure at all, and to re-establish the image of administrative and legal coherence and rationality’ (Burton and Carlen 1979: 48).

Challenging the assumption that public inquiries function to expose the underlying causes of, and responsibilities for, failures in state or private bodies, Burton and Carlen’s research into their appointment and operation found that they were limited in scope and often protected institutional interests. When institutional practices were found wanting by public inquiries, and serious criticisms were made, they were viewed as exceptional aberrations that would be corrected thus restoring public confidence. In his analysis of public inquiries, Thomas (1982) concluded that public inquiries, in their terms of reference, key appointments and civil service support staff were neither independent nor autonomous.

Whatever the aspirations for public inquiries as fact-finding, instructive and cathartic and whatever the criticisms made against them, the demand from those directly affected by the systemic failures or negligence within the operation of private or public institutions remains strong. They provide the sole opportunity for survivors and others to gain disclosure of evidence that can then be examined in public. The expectation is that they are agencies for change, particularly their potential for achieving substantial law or policy reform. In late 2017 the Institute for Government analysed the outcomes of 68 public inquiries held in the UK between 1990-2017. While noting that in establishing inquiries ‘much attention’ is focused on what happened and who is responsible, the research found that less consideration is given to ‘preventing recurrence and identifying lessons that can be cast forward to improve institutions, regulations and behaviours’ (Norris and Shepherd 2017: 3).

The Institute’s report concludes that ‘formal checks’, to ‘ensure’ that recommendations are enacted to reform procedures and practices, ‘are inadequate’. No procedures are in place to ‘hold Government to account for promises made in the aftermath of inquiries’ (Norris and Shepherd 2017: 3-4). These concerns are well-founded given its evaluation of 26 inquiries held under the Tribunals of Enquiry Act 1921 and the Inquiries Act 2005. Twenty-one were non-statutory and twenty-one appointed under specific legislation. Collectively they cost £639m. Typically, public inquiries took 2.5 years to complete (Chilcot, 7 years; Bloody Sunday, 12 years). The forty-five inquiries analysed published 2,625 recommendations for change. Yet,

only six received public scrutiny by a Select Committee in consideration of the Government's response to recommendations. Between 2018 and 2020 five further public inquiries were established together with six non-statutory commissions of inquiry, four privy counsellors' inquiries and three under specific legislation.

Statutory public inquiries are established by government ministers whose departments determine their terms of reference. Held in public, although evidence can be heard behind closed doors, their Chairs are ministerial appointments. They can engage specialist panellists, compel evidence and ensure public access to documents. Evidence is heard under oath. In contrast, non-statutory inquiries do not have powers to compel evidence nor hear evidence under oath. A statutory public inquiry, therefore, provides the only route to realising expectations for full, thorough interrogation of the facts through rigorous examination of written and oral evidence.

An inquiry's terms of reference are established by ministers in consultation with the Chair. The terms should identify specific issues requiring urgent reform and also, more broadly, matters of concern particularly the determination of facts and whether recommendations will follow on from findings. In response to campaigns, it has become more usual to extend consultation to those most affected by the issues and victims, survivors, other affected parties and the wider community have been included at the opening stage of inquiries. Most notably, this occurred in the Grenfell Inquiry when survivors and bereaved families presented their testimonies in public, without examination and live-streamed.

Complex public inquiries into issues spanning a long time period, or focusing on multiple sites, institutions and organisations involving a range of professions and many individuals, require a complex structure. While they have discretion to provide preliminary findings on issues requiring immediate attention, on occasion it has been necessary to progress discrete investigations inquiring specifically into the institutions involved. For example, the ongoing Independent Inquiry into Child Sexual Abuse (IICSA) in England, established in 2015, conducted fifteen investigations inquiring into specific institutions or types of institution, and held thematic hearings into issues involving several institutions. In session for a total of 323 days, they heard evidence from 648 witnesses and digested 24,565 documents.

In their analysis of the CICA in ROI, Enright and Ring (2020: 72) argue that 'the state seeks to dictate the terms on which the shame of the past is cleansed'. Gallen (2020: 35) concurs, noting that the purported 'transitional justice' approach of the government in ROI has amounted to 'claiming the legitimacy of serving survivors' needs' while neglecting 'meaningful transition in how they are treated by the state, churches, or society'. He contends that the State 'designs mechanisms and engages in practices that marginalize victim-survivors in the present and thereby risk creating new forms of harm and distress'.

Independent Panels

Public inquiries have been criticised for lacking scope and impartiality. The main concerns are: lack of transparency regarding how terms of reference, evidence gathering and witness selection are determined; failure to consult those most affected by the matters under investigation; and governments' failure to act on recommendations. Held in formal settings, with legalistic conduct and procedure and multiple lawyers representing statutory and non-statutory institutions, survivors' and civilian witnesses' evidence often is portrayed as emotional, experiential and, therefore, subjective. Invariably, the evidence of witnesses representing institutional interests, through their training, experience and preparation, are given greater credence in their testimony. Dissatisfied with the failure of governments to initiate public inquiries into a range of community-based issues, independent, unofficial inquiries filled the vacuum. They provided a model for accessing (voluntarily produced) documentary evidence, taking personal statements and hearing oral evidence.

In 2010 their potential was recognised when the UK Government appointed an independent panel to review and evaluate all available documents relating to the 1989 disaster at Hillsborough Football Stadium that had claimed the lives of 96 football fans. The Hillsborough Independent Panel (HIP) was the result of a long-term campaign sustained by bereaved families and survivors dissatisfied with the previous public inquiry, the inquest verdicts and the criminal investigations. Unique in format, HIP's terms of reference

included: overseeing public disclosure of all relevant information held by government departments, local authorities and public institutions; ensuring that the views of those most affected by the disaster would be given prominence; managing the process of public disclosure of the documents and the Panel's findings; preparing options for establishing a public archive of all relevant documentation. Its core objective was to present a detailed report to government analysing how the disclosed information added to public understanding of the disaster and its aftermath including the conduct of previous investigations, inquiries and inquests.

Panel members were established specialists and their work was supported by independent researchers, archivists and administrators. They accessed two million documents from eighty-four institutions and officials. Two years after its appointment the HIP published a detailed report, presenting 153 significant findings. It resulted in: an immediate Government apology to the bereaved families and survivors; the quashing of the previous inquest verdicts and ordering of new inquests; a new criminal investigation; an Independent Police Commission (now Authority) inquiry; and revision of all emergency service and hospital provision following a major incident. The new inquests ran for two years and the jury dismissed the original accidental death verdict, finding that all who died had been unlawfully killed. Twenty-five riders criticised all authorities involved, particularly the police. The verdict explicitly exonerated those who died and survivors.

HIP provided a model for governments to investigate matters of profound public concern by bringing together established professional expertise to progress in-depth, independent documentary analysis. Funded by the State and supported by civil servants, its independence in defining scope, agreeing research priorities and accessing, reviewing and evaluating evidence, gained the confidence and support of bereaved families, survivors and the wider public. It offered a unique process through which all documentary evidence held by authorities and their senior personnel could be accessed, reviewed and evaluated. In scope, detail and outcome, where previous inquiries and reviews had failed, it pioneered a powerful process through which 'truth' could be accessed, official 'apologies' delivered and 'justice' progressed.

Following its success, a range of other Panels extended beyond documentary analysis to hear oral evidence. These include the Morecombe Bay Investigation and the Gosport Independent Panel. Between January 2004 and June 2013 twenty serious failures in clinical care led to the deaths of mothers and babies at Furness General Hospital, Morecombe. The Independent Panel investigated all available documentary material relating to the deaths and heard evidence from medical practitioners, administrators and bereaved families. It found serious failures in clinical care, and avoidable harm caused to mothers and babies including unnecessary deaths (Kirkup 2015). The Gosport Independent Panel concluded that between 1989 and 2000, at least 450 patients at the War Memorial Hospital had their lives ended prematurely as a consequence of unnecessary prescription of opiates. It found that there had been a 'disregard for human life and a culture of shortening the lives of a large number of patients' (Gosport Independent Panel 2018: 316).

In contrast to independent panels reliant exclusively or mainly on documentary analysis, late in 2013 the Independent Jersey Care Inquiry was established to inquire into historical child abuse in Jersey's children's homes and fostering services. The three-member Independent Inquiry was appointed in the wake of public controversy regarding apparent police ambivalence in pursuing criminal investigations, inadequacies in the police investigation between 2007 and 2010 and a public statement in 2008 by Jersey's Bailiff that the 'real scandal' was 'the unjustified and remorseless denigration of Jersey and her people' (Independent Jersey Care Inquiry 2007). Against this background of controversy and hostility towards disclosure of systemic abuse of children throughout children's homes and fostering services in 2013 the Independent Panel adopted fifteen detailed terms of reference and began its work in April 2014.

The Panel was in session for 149 days hearing evidence from over 200 witnesses. Over 450 former residents and others directly involved in the care system also gave evidence. It examined 136,000 documents and consulted with agency personnel, child care specialists and other public contributors. The Panel found ten 'fundamental failings' including failures to: 'value children in the care system'; 'adopt and

adequate legislative framework'; 'establish a culture of openness and transparency'; and 'fulfil corporate parenting responsibilities'. Demonstrating the depth of systemic neglect, it made 600 recommendations. The strength and depth of the Jersey Care Inquiry reflect the written and oral evidence given by former residents unhindered by the fear of public examination.

Summary

In recounting the violence inflicted on children and women incarcerated in Mother and Baby Institutions, Magdalene Laundries and related institutions, the literature reviewed in this chapter reveals how they and the (now adult) children from whom they were separated were silenced by inhumane practices that combined State and Church power. By paying attention to the contemporary voices of mothers, adopted people and relatives it becomes clear that anticipated processes of investigation and inquiry must place their experiences at their centre. Acceptance of the validity of victims-survivors' experiences must be the precursor to formal apologies from the State but also from all institutions directly or indirectly involved in what amounts to incarceration and forced adoption.

Apologies alone, however, are insufficient. The literature demonstrates that they must be followed by disclosure of birth, adoption and all other institutional records, material reparations and thorough investigation and inquiry into the entire abusive system. The second part of this chapter considered the potential of a statutory public inquiry in meeting the needs, expectations and rights of victims-survivors, be they women who were incarcerated indefinitely and forced into unpaid labour, those who were impelled into relinquishing their child for adoption or into other long-term care, or those who were adopted or otherwise separated from family.

Recognising the limitations of public inquiries, the chapter also considered the potential of an independent panel, comprising members with complementary expertise, to gather voluntarily produced records and hear the testimonies of survivors, adopted people, their families and others willing to give evidence regarding the operation and servicing of the institutional and family separation system.

Lundy (2020a; 2020b) and McAlinden (2021) recognise the imperative of ensuring that survivors' testimonies lie at the core of formal processes of investigation and inquiry. Their findings are informed by the negative and debilitating experiences of survivors who gave evidence to the HIAI. Given these profound concerns, echoed throughout the literature reviewed in this chapter, an integrated (McAlinden) and participatory (Lundy) approach to future inquiry is necessary. As Lundy contends, albeit in relation specifically to child abuse:

Fundamental to developing a model to address the legacy of historical child abuse is the full participation of survivors from an early stage in its development, design and implementation ... Survivors bring knowledge, resilience and resources. But capacity-building, resources, and appropriate support should be put in place to enable genuine survivor engagement. The development of a model (or strategy) that could embrace survivors' justice needs would require political will, resources, and paradigm shift towards a victim-led approach to historical institutional abuse. *A single mechanism is unlikely to address all of the survivors' needs.* (Lundy 2002b: 4 emphasis added)

Part 2

RESEARCH

Chapter 4

Developing the Research

Chapter 4: Developing the Research

As outlined earlier, the strength of commitment to pursuing truth and accountability regarding the suffering of girls and women who were incarcerated, and of mothers and their children who were separated, underpins all recent developments and initiatives. It extends to families and communities across the island of Ireland. Increasingly, they have been the focus of documentary films, investigative television and press journalism, academic analyses and publications. The impact of this work was significant, revealing in depth the violence and denial of dignity that has confronted those who experienced Mother and Baby Institutions, Magdalene Laundries, Workhouses and related institutions and practices including forced adoption.

Survivors state that often when an article is published, or a television or radio programme broadcast, they experience - and appreciate - an outpouring of sympathy. Invariably, however, what follows is silence 'until the next time'. For them, the experience never fades. Further, the consistent response in the media and in public conversation is that a full investigation and acceptance of responsibility by the institutions and agencies involved will bring 'closure'. Only those without personal knowledge of the abuses would make such a comment. Public recognition of truth and institutional acceptance of responsibility, alongside restitution and memorialisation, are primary objectives, but accountability cannot bring 'closure'. While such measures can deliver a form of public justice they cannot restore the losses suffered nor erase decades of denial.

As outlined in the introductory chapter to this report, following grassroots campaigning by victims-survivors and their supporters, the Ulster University/Queen's University (UU/QUB) Report, *Mother and Baby Homes and Magdalene Laundries in Northern Ireland, 1922-1990*, was published. It paved the way for the independent Truth Recovery Design Panel, appointed to work closely with victims-survivors and relatives to provide a comprehensive report, informed by a 'robust rationale' that would: identify the purpose and objectives of a future inquiry or investigation; make recommendations for its process, membership and support; consider its status - statutory or non-statutory; and consider whether, in addition to making recommendations at its conclusion, the future inquiry or investigation should be able to make evidence-based recommendations to Ministers at any stage of the investigation.

There was neither precedent nor blueprint for the research process. Protocols for information gathering, privacy, collaborative work and data analysis, including analysis of previous academic research, had to be written, proposed and agreed. As stated previously, this involved a website, in part with closed access to ensure confidentiality, together with regular group meetings and individual telephone calls where preferred with survivors. Group meetings and individual responses contributed significantly to the initial work of the Panel. Raising the profile of the work, survivors advised on publicity, an advertising campaign across international media, posters in public facilities and broadcast appeals. The research questionnaire was co-designed between victims-survivors and the Panel's experienced researchers.

In the midst of a global pandemic ascertaining the experiences, views and objectives of survivors meant that written responses and online listening sessions and interviews, either individually or in groups, became the foundation of the research. Over four months, oral and written submissions were collated, analysed and themed. This process, using a detailed questionnaire negotiated with victims-survivors, was essential in seeking and identifying their expressed needs and preferences. Given the wide range of victims-survivors' responses and the submissions made by legal representatives and others, the Panel decided against instituting a selective reference group of survivors.

In developing a communications and media strategy, the Panel's publicity campaign included extensive international contacts. Within Ireland, North and South, newspaper advertisements were commissioned alongside feature articles carrying interviews with survivors. Their testimonies and the Panel's work were covered by BBC and UTV documentaries. Within two months of the broadcasts many survivors had registered interest in making a submission to the Panel.

The Panel also responded to other requests and initiatives. These included the establishment of a working group whose participants included victims-survivors' representatives, social workers from the five Health and Social Care Trusts and others from voluntary adoption agencies. The group's main objective is to develop practice guidance for social workers throughout Northern Ireland, ensuring consistency and lawfulness in responding to requests for access to adoption records.

In their early representations to the Panel victims-survivors proposed meeting together to establish a support system through which experiences could be shared. Following negotiation with Adopt NI, an agency providing general adoption support, the Panel reached agreement to establish a support group for victims-survivors of Mother and Baby Institutions, Magdalene Laundries and Workhouses to identify and meet their particular needs. Further, the Victims and Survivors Service (VSS) agreed to provide a 'listening ear' service, extending to in-depth psychological interventions administered by trained and accredited therapists. This service was available throughout and beyond the duration of the Panel's work. Additionally, in consultation with survivors VSS has developed a distinct co-design process to identify future need for specialist services and support.

As stated previously, the questionnaire was central to the Panel's research, both as a standalone submission from individuals or as the foundation for semi-structured interviews. Its reliance on relatively open-ended questions collected qualitative data, enabling participants to elaborate on their replies. Structured by the Panel in first draft, it was shared with victims-survivors who made significant changes and additions covering the range of issues they considered a priority. It comprised seventeen focused questions and the opportunity to make a final statement on further information considered relevant. Respondents were informed that there was no obligation to answer every question.

The opening question focused on what victims-survivors wanted to achieve by an official inquiry or investigation. While broad in scope, its purpose was to establish the range of objectives held by survivors. This was followed by a more focused and direct question on the answers sought by survivors from an official inquiry or investigation. The third question concerned access to personal documents and information held by institutions regarding victims-survivors or their family members. In the campaigns, in the broader public debate and in media coverage, documentary access has been a universal issue and one that has caused immense frustration and distress. Victims-survivors were also asked to explain what information they were seeking, recounting any difficulties they had experienced previously in accessing their own or their family documents.

Given the Panel's remit, victims-survivors and family members were asked if they would be content to have their documents and/or records made available to any subsequent official inquiry or investigation. In addition to access to information directly concerning their identity and family history was the question of access to all relevant administrative files and records concerning the operation of organisations and individuals including those who managed the broader operational processes of referral to institutions, adoption and release. The examples given in the questionnaire, derived from previous consultation with victims-survivors, were: financial records, inspection records, correspondence between the institutions and State departments, social workers, doctors, priests, and any other professionals.

Questions also focused on evidence-gathering by a future inquiry or investigation. It was important to establish victims-survivors' priorities regarding contributors or participants to ensure that the range of questions to which they sought answers would be fully addressed. To establish the range of information previously denied to them, survivors were asked to expand on their reasons for inclusion. This was followed by a question regarding whether those running institutions should be required to give evidence in public to an inquiry or investigation. Further, the questionnaire asked who else involved in facilitating the operation of institutions should be compelled to give evidence.

The Panel is aware that those who gave evidence to the Historical Institutional Abuse Inquiry, and also to Republic of Ireland inquiries, have been critical of their treatment during the process and the personal consequences they have endured. In that context, victims-survivors were asked whether or not they would be willing to share their personal experience and testimony in a formal public setting and what measures should be put in place to safeguard their health and well-being. Related to this, victims-survivors were asked if they would be willing to be questioned publicly at an Inquiry by lawyers representing the institutions and State departments and agencies.

Given recent criticisms levelled against public inquiries regarding the appointment of Chairpersons, survivors' views were sought on the range of expertise they considered essential to the success of a future inquiry and its investigation team. Bearing in mind the impact of institutional, forced labour and family separation abuses on victims-survivors and on others, they were asked to identify potential harms that should be addressed in the Terms of Reference of an inquiry or investigation. This would include harms endured before and during time in an institution, and also in the longer term, suffered by mothers and their babies.

The questionnaire's third section concerns the broader context. Victims-survivors were asked to identify the cross-border and international issues to be addressed by an official inquiry or investigation. Throughout the campaigns and in earlier submissions this issue has been a consistent concern given the apparent ease with which mothers and babies were moved between jurisdictions in Ireland but also, with regard to adoptions, internationally. Victims-survivors were also asked to consider issues beyond the institutions that they considered should be priorities for examination by a subsequent inquiry or investigation.

While it is difficult to anticipate or project the outcomes of a future inquiry or investigation, victims-survivors' priorities were sought regarding the discovery of individual, institutional and State responsibilities. The range of potential outcomes, as identified by survivors in constructing the question, were listed for their comments: apology; health care; compensation; recovery of relatives' remains; family reunification; civil or criminal proceedings.

Addressing victims-survivors' and families' wishes beyond these desired outcomes, the Panel asked if they would support a permanent archive facilitating their access to personal and administrative files but also holding voluntarily deposited testimonies as a public education resource. In the Panel's online meetings this was explained as a facility consistent with other international human rights archives. Finally, drawing on the Panel's experience of other inquiries and investigations, victims-survivors were asked to consider supports that should be put in place to facilitate their participation in the process. These include: legal assistance, independent advocacy, counselling services, disability support, genealogy services, and emigrant outreach.

In addition to individual responses from victims-survivors the Panel received a substantial collective submission from three victims-survivors which has been incorporated into the forthcoming research chapters. Key elements of their submission are reproduced as Appendix 5.

As noted in Chapter One, the Panel received substantial written submissions from Amnesty International/ Ulster University, KRW Law and Phoenix Law. While these submissions are not structured to align with the Panel's research interviews or questionnaires, they are a significant contribution to the Panel's research and comprise the sixth research chapter.

Summary

- There was considerable discussion with victims-survivors and relatives in establishing the scope of the research questions, co-designing the questionnaire, and making adjustments accordingly.
- In presenting the findings in Chapters Five to Nine, written responses to the questionnaire and the interviews conducted online or by telephone have been integrated to provide coherence and to organise the primary research.

Chapter 5

Truth, Disclosure and Accountability

5

Chapter 5: Truth, Disclosure and Accountability

This chapter focuses on victims-survivors' priorities for a future investigation/inquiry. It includes the range of objectives identified in the research and the questions that victims-survivors consider to be central to their quest for justice. While priorities varied according to personal circumstances, some of which victims-survivors were considering for the first time, there was clear consistency in the broader concerns raised. These were evident in addressing the first five core questions and are integrated in this chapter under the themes of: truth and accountability; institutional responsibility; dehumanisation; acknowledgement and redress.

Truth and Accountability

When asked to prioritise their personal needs and collective expectations of a full investigative and revelatory process, victims-survivors' most common response is 'the truth'. They remain aware that truth is both profoundly personal in terms of precisely what happened to themselves and, if they experienced family separation, their child or mother. Beyond the personal, however, is the campaign for wider truth in terms of the operation of the institutions but also the practices of those professionals and agencies that were part of the operations of incarceration, forced labour, forced family separation and adoption. Thus, revealing truth - that '*the truth be known*', and acceptance of institutional responsibility - that '*full transparency*' is achieved, must be primary objectives of the Northern Ireland Executive's promised investigative process:

I think that it is important that the truth is uncovered, no matter how uncomfortable. These organisations, regardless of how powerful they are, need to make amends for the damage they caused and not to be allowed to deny it, nor cover it up any longer. Failings of the state policies and social services procedures at the time need to be addressed. In simplistic terms some children were stolen and sold. This was covered up by religious organisations and social services discrediting the women, in order to remove the children with accusations of immorality, instead of supporting them to look after their children.

Recognition/recording history of institutions and of behaviours used to shame vulnerable girls and women.

Central to the search for truth is the impact of stigmatisation to this day:

I want society to understand that everyone had a part to play in these actions and how the Church and State controlled everyone's life. I want the stigma that surrounds adoptees to be removed. I want people to stop saying 'Sure you have a good life with your adopted parents'. That's not the point, the point is that someone took away my life and put it into the hands of others for no other reason than in their words my birth mother brought shame on the family.

The 'truth', therefore, is rooted in the relationship between religious organisations and state agencies and their cooperation in denying the rights of girls, women, mothers and their babies (now adults):

I would want the inquiry to reveal the extent and nature of the human rights violations - of women who became pregnant and who were placed in sponsored accommodation prior to, during and

following the birth of their babies - the practices used by state, religious organisations or others in relation to the birth, care and where appropriate, adoption of these babies including the legalities around registration of birth, death and adoption - the issue of consent including the manipulation of individuals and records where consent was not informed consent.

As another survivor stated, *'the public will want to know from an inquiry why a punitive regime prevailed in some institutions especially inappropriate for pregnant women and girls'*. This would provide a comprehensive account focusing, *'on why mother and baby homes existed and what happened in them, how they operated and who benefited from them'*.

This broader search for truth regarding how the process of family separation became institutionalised across the jurisdiction and accepted as common practice by state agencies, religious bodies, non-governmental organisations, and some families of children and young women, underpins profoundly personal objectives:

As a birth mother, I want the enquiry to achieve an understanding of my own lived experience in dealing with forced separation after giving birth, denied information about access, and consent given under duress.

I want the church and state to explain to me why they stole my life, I want them to explain how they saw themselves best placed to determine that my unmarried mother was unsuitable to raise me.

Accessing the details of policy decisions and how they were interpreted to inform policy decisions and institutional practices is considered by victims-survivors the key to holding agencies to account, to *'understanding ... why these homes were set up'; 'why it happened, why women like me were put into these places'; 'why this system was allowed to operate as it did'*.

State policies, which supported religious doctrine and institutions, must be acknowledged:

The State privileged religious institutions over the rights of individual citizens, enabling an unequal and undemocratic ethos to exist in society... Women left in a terrible bind—denied access to contraception and then denied the ability to keep their babies. State laws that privileged the churches over the rights of women.

Institutional Responsibility

Throughout the research victims-survivors raised the question of how the process was *'allowed to happen'* alongside the motivations and justifications for pressurising girls and young women to lose the right of access to their babies. Why was, *'such sustained abuse permitted over such a long period of time?'* The following questions are repeated throughout the interviews and questionnaires:

Why did these institutions exist and why were they allowed to operate in the way that they did unregulated?

Why did social services facilitate the practices of these institutions by agreeing with them and abusing their access to court powers to back them?"

Why were there no other options to allow mothers to keep their babies?"

In their search for answers, victims-survivors emphasise their commitment to knowing the full extent of the involvement and sanctioning by UK and Ireland Governments, their departments (in Northern Ireland under Direct Rule) and local government, including social work. A key element would be to probe and reveal, the *'extent of the agreement, whether legally binding or not, whether in written or verbal format between any of the following parties, state, religious or secular organisations or individual providers related to the lives of pregnant girls and women'*.

Further:

What Government Department had overall responsibility for these Institutions?

What Government Department was responsible for the payments of benefits to these Institutions?

Why were there no inspections of these Institutions by anyone e.g. Fire Brigade Health and Safety or their equivalent at the time?

Who in Government sanctioned them and who audited their operations? How the selection process for adoptions was enacted and what records were kept:

- *Were these institutions investigated or audited during their operation and, if so, were their recommendations acted upon? Was a blind eye turned? Did the Government know of abuses?*
- *Why did social services facilitate the practices of these institutions by agreeing with them and abusing their access to court powers to back them?*
- *What ownership shall the State and Church authorities take of harm that was caused?*
- *Who had the duty of care responsibility? Who had oversight, which government department? Why was there a dereliction of care from NIO/ UK Government/ Ministers?*
- *The obvious one is about state and church involvement on an all-Ireland basis.*
- *What did Westminster and the UK government know about the system in NI and what was going on?*

An investigation or inquiry, therefore, should *'identify the failings within the Health and Social Care Board, Police and the Private and Church Organisations that permitted these abuses to take place'*.

Beyond the specifics of each institution, its policies and practices, are dynamics concerning cross-border transfers of women and children. Primarily, this involved the island of Ireland's two jurisdictions, but also extended to international jurisdictions.

Why did social workers take babies over the border and place them in institutions in the different jurisdictions?

How was adoption facilitated both sides of the border? Was that legal? Are we talking about some form of trafficking?

Who was responsible for the facilitation of movement of babies across the Irish border and international borders?

Who were in charge and laying down the law that wasn't the law, some church religious thing? They made the rules for us and took children across the Donegal border. I think they broke the law of the land. Did they break the law and how did they break the law? How did they get away with it?

One survivor notes how the process which involved the *'movement of mothers and children into different countries'* sometimes seemingly *'occurred without the authority of the state'* while on other occasions was legitimated by *'the authority of the state'*. Whether or not this dual process occurred or was typical can be resolved only through a thorough investigative process. This would focus on the *'role of Catholic Rescue Society and their ilk in the trafficking of babies between the UK, Northern Ireland and Ireland'*.

Inevitably, therefore the legality of the adoption and *'consent'* process – *'Was my adoption legal?'* - lies at the heart of victims-survivors' justice needs, expressed as follows:

What procedures were followed by professionals when obtaining a signature from a Mother agreeing to the adoption of her child? Was coercion, closed/forced adoption practices happening outside Mother and Baby Homes?

Did Marianville operate within the law at the time i.e. adoptive procedures?

Catholic adoption services ... What was the training involved in becoming a social worker for Catholic adoption services? What was their code of conduct?

Was there any protocol on treatment/dealing with birth mothers?

Why were Catholic adoption services able to take babies straight from hospital without permission from mothers and to a destination unknown to mothers?

What was the oversight of the adoption process? Which body was responsible for any compliance of rules?

These questions relate to a further issue raised by victims-survivors in group sessions, interviews and written responses - financial gain from the process. The following comments and questions are typical:

I want to know how much did the mother and baby homes gain financially from this system.

I would like to know did the church receive any money for organizing adoptions.

Did institutions make money from adoptions?

Did anyone, or any institution, benefit financially from these practices?

Were there any financial incentives at play?

Did religious orders benefit financially from the adoptions, either from direct payment for babies or indirectly as donations from adoptive families?

A further issue, raised by survivors, concerns both the ostracisation of fathers who were blameless, and the failure to hold abusive men to account, leaving girls and young women to carry full responsibility for their pregnancies, childbirth, adoption and the loss of their children, including bereavement:

One thing that feels left out is there's never enough pursuit of the father. It never feels like father are held to account for what they done.

What about the 'unmarried fathers'?

For every pregnancy and adopted baby there was a man who was grateful that he escaped his responsibilities.

A lot of these mother and babies homes, where's the father?

A Dehumanising Process

From the moment of referral and institutionalisation, women's agency, and if they were pregnant their capacity to make informed choices about their lives and those of their unborn children, was removed. It amounted to a literal denial of their ownership of their physical bodies and mental capacity. The removal of babies soon after childbirth raises the issue of the rights of mothers regarding consent and was identified by many women as a central focus for an inquiry:

Issue of consent, informed consent and coercion to be examined.

The issue of consent, including the manipulation of individuals and records where consent was not informed consent.

Legal challenge regarding the issue of consent – forced, under duress, no alternate choice etc.

Closely aligned to consent, is the issue of legality in the adoption process:

I would envisage that this inquiry will include an investigation into the cruel and unethical adoption practices, which occurred inside AND outside Mother and Baby Homes throughout Northern Ireland.

Legality of individual adoptions, cross border movement of babies, private adoptions, third party adoptions.

The context in which women were held – before, during and after birth – comprising a difficult psychological and physical period often was marked by exploitation and abuse. Victims-survivors, including of Magdalene Laundries where children were not born, raise profound concerns regarding institutional responsibility for the inhumane and cruel treatment they suffered including 'sexual and physical abuse that occurred'.

Why were these vulnerable women treated with such cruelty?

Who instructed staff to treat mothers and babies in the manner to which they were repeatedly subjected?

Did anyone ever report abuses during the period these institutes were open?

Why were birth mothers forced to scrub floors and undertake other ill-advised manual work in their third trimester of pregnancy?

Why were these women treated so inhumanely and which senior church and state officials knew about such treatment?

Accountability by the Roman Catholic Church and the relevant government [is necessary] as to why vulnerable ladies were treated so cruelly and dehumanised at the lowest point of their lives.

Medical treatment, or lack of it, and the role played by doctors were identified as significant issues in holding institutions to account:

Why did medical professionals for decades accept as normal practice that women and girls were sent to hospitals from mother and baby institutions?

What relationship did [Name, Doctor] have with Malone Place?

To what extent was the state, doctors, social workers, hospitals etc. complicit in pressurising women to give up their babies?

I want to know why medical and healthcare professionals agreed to act in ways that segregated these women and denied them their rights.

Many survivors emphasise a collective institutional failure to apply even minimum standards of care:

Why were birth mothers not given proper medical care, antenatal classes?

Who was responsible in these Institutions for advising on their Code of Practice? A system that allowed heavy physical labour even in the Third Trimester. Minimal time with their babies. Totally inadequate Pre and Post Natal Care and allowed the demoralising and demeaning treatment of these women and girls.

Women's struggle to come to terms with the experiences of having been institutionalised, the enforced removal or death of their babies and the uncertainty of a future in which they were shamed, was exacerbated by a lack of appropriate social welfare support. The provision of social welfare advice and resources could also have enabled girls and women to keep their babies.

Why did Social Services not offer advice on benefits housing?

Did the benefits system at the time mean that women would have had zero resources to help them in their role as mothers?

Victims-survivors and families were also concerned about mass or unidentified graves. This has been an issue of national shame and profound personal distress not only across Ireland but also, more recently, throughout the UK. It raises significant questions regarding the care of new-born babies and their mothers, and also those girls and women whose babies were still-born or died in childbirth.

How will those deceased children that are buried in unmarked graves be properly identified and properly interred?

Institutional silence and the apparent paucity of records are issues for further investigation and inquiry:

I want to know why children were buried in mass graves in un-consecrated ground with no dignity.

Acknowledgement and Redress

The scale of human suffering as a consequence of being shamed for becoming pregnant, being held in a punitive environment, losing a baby to death or adoption, and returning to a judgemental environment is evident in the personal testimonies now receiving public recognition – ‘*I feel like I’ve grown up as a non-entity in a shadow*’.

Most responses received by the Panel express the importance of a formal apology for the circumstances and conditions imposed on women, girls and their babies – ‘*a failure by all involved in their duty of care*’. While religious institutions and the State are the central focus, victims-survivors also seek acknowledgement from the police, doctors, priests, ministers, nuns and social workers for their participation in the process:

Acknowledgement that systemic malpractices were allowed to take place unhindered.

I would like to see an acknowledgment of the wrong done to mothers, children and indeed fathers and other family members.

Extent and nature of the human rights violation to be fully acknowledged and ‘laid bare’.

I want the suffering of women like myself to be acknowledged. I want this society to acknowledge what was done to us and our children. I want the Church to acknowledge the role it played in the destruction of women’s lives.

I want the religious orders and the N.I Government to acknowledge that we were imprisoned, without leave to address and that no outside supervision was given to our situation.

Survivors were also clear that acknowledgement should be accompanied by a formal apology:

I would like the organisations involved to acknowledge the inhumane treatment that we survivors suffered at their hands. I would also like an apology for the treatment and the abuse both physical and mental that we endured during our time with them and in the many years that have since past.

Ownership and accountability and recognition of the damage caused to people’s lives to be clearly placed on those who inflicted it.

Genuine Full Comprehensive Public Apology acknowledging the lifelong trauma.

I want an explanation of how our civil rights were ignored, exposure of those responsible and a full public apology.

A formal apology from the Catholic Church, the state and any other associated organizations who were involved in removing and pressuring mothers to give their babies up for adoption.

I would like an apology in writing personally to me from anyone in Marionville.

The inquiry/investigation should result in an official apology, similar to that of the Australian Prime Minister in 2013, along with an official ‘apology day’ that Mothers, adoptees, siblings, and families, can attend.

For many victims-survivors, redress in the form of compensation without means-testing and without inhibitions on existing social welfare supports, is an essential objective.

Compensation for the hurt caused to mothers and their children over the years.

Redress to be put into place at start of Inquiry. Not means tested. No impact on Benefits. Early Interim Payments.

Full compensation to be made available to include deceased mothers and deceased adoptees, and

not be means tested. Early/ interim payments scheme – no impact on benefits.

Women and children involved to be properly compensated for what happened to them. In the absence of a parent being alive I feel that her surviving child/ren should benefit from whatever is made available as the generational grief is still palpable now.

Full redress for those affected including deceased adoptees and birth mothers. This redress, if financial, should NOT be means tested.

For some victims-survivors, where evidence exists of illegality, redress should extend to criminal prosecutions. Whatever the legal outcomes, counselling services should be permanently in place, ‘*at no cost to survivors*’. This could be extended to provide a ‘*safe place or organisation ... in Northern Ireland, funded fully by those organisations and institutions who are to be held accountable, where victims and survivors can visit to privately and safely talk to each other, access counselling services*’. Further, ‘*every effort should be made to reunite mothers with their children*’. Such provision would include, ‘*facilitation of meetings between separated mothers and children that are mutually agreed by both, and done in a way that will not cause further damage*’.

While the overwhelming response to the Panel’s research has been profoundly critical of the process and experience of institutionalisation, four survivors considered it important that a future inquiry or investigation should acknowledge that survivors’ experiences had to be placed in context:

Above all I want the inquiry/ investigation to be a fact-finding mission and it is really important to me that it tells all sides of the story and is fair and balanced. It should not list just the negatives but the positives as well ... We also have to acknowledge that the role religious orders played was in providing a service because the State did not have any alternatives and because there was a need for these services at that time.

A fair and balanced enquiry looking at the positives and examining the positive impact that mother and baby home had as well as the negative.

Marianville and Marianvale [should] be separated and not reported on together under the head ‘Good Shepherd Homes’ as was the case in the Ulster University/QUB report. The good work that Marianville did in providing a safe haven for my confinement. I want an investigation to be fair and acknowledge that there are many women out there who know of the loving, kind individuals who ran Marianville.

Want to tell the experience that I had in the Good Shepherd Convent. Which is not what people are expecting.

Summary

- Victims-survivors emphasised their commitment to accessing the truth regarding the circumstances of their personal lives and also having publicly revealed and acknowledged the truth regarding the policies and practices that operated across the institutions and adoption system.
- Accessing truth extends to all agencies and individuals involved in servicing and supporting the regimes within Mother and Baby Institutions, Magdalene Laundries and Workhouses and in their related institutions and pathways.
- The process and arrangements between the institutions and the states involved raise serious concerns regarding the legitimacy of cross-border and international adoption.
- Interment in unmarked graves of babies that were still-born, died during or soon after birth and the lack of records associated with their deaths remains a matter of profound concern;
- The institutionalisation of girls and women, including pregnant girls and women, and the living and work conditions imposed, including the lack of appropriate social and medical care, were cruel and degrading.

- There has been a systemic failure to acknowledge the long-term impact of silencing and shaming women whose physical and mental health 'best interests' were neglected by State agencies and the institutions.
- There has been no formal, official apology from the State or the institutions, neither has there been financial redress, for the inhumane treatment endured, the lifelong impact of institutionalisation and forced adoption.
- Institutions and individuals have not been held to account and, where appropriate, their operations require further investigation with a view to criminal prosecutions and civil actions.

Chapter 6

Access to Records

6

Chapter 6: Access to Records

Of all issues raised by victims-survivors, including adopted people and their relatives, access to their personal records and, more broadly, those revealing the policy context in which the institutions operated, drew the most consistent response:

As an adoptee I would like to have access to my records.

Full, complete, un-redacted access to all records from all institutions and organisations involved for all who request them.

Those women whose babies were taken from them in the cruellest of ways should have access to all records ... or at the very least to provide information that would reveal what happened to the children after they were taken from their mothers.

Data on all the NI homes/adoptions – transparency of records, or at least an acknowledgement of when/ if they were destroyed.

Personal Records

The persistence, over decades, of the harm caused by State and religious institutions' refusal to allow access to records, undoubtedly compounded the physical and psychological damage inflicted on victims-survivors:

I feel like I constantly have to fight 'professionals' as I have nothing to base my findings on ... When you are asked about your medical history and you sit blankly and have to declare, 'I have no clue', it is awful. It gets harder as you get older. As I can't determine a history I'm told to monitor symptoms. Again, I feel like I have to justify myself

Consequently, victims-survivors consider it imperative that legislation should be introduced, 'to allow unrestricted access to records' and 'to allow children unrestricted access to the records of their deceased Mothers and Siblings'.

Examples of the detail sought by victims-survivors are:

The question I would most like answered, is why those in authority of the Salvation Army at Thorndale House, have no records.

How the selection process for adoptions was enacted and what records were kept.

Why are records not being openly shared with those investigating? The Church are notoriously adept at record keeping.

Were there any formal State records or inspections of these homes/ laundries?

The denial of access to personal and familial records is a universal cause of long-term suffering and of ongoing degradation and discrimination. With varying degrees of success, some victims-survivors have attempted to obtain their records. Institutional responses are inconsistent and fragmented. They operate

as a discretionary process, dependent on who deals with requests and the arrangements they put in place to enable access. Further, victims-survivors state that the information they require often is 'filtered' or 'interpreted', reflecting a social worker's decision and resulting in disappointment, confusion and frustration.

The following quotes illustrate the widely-shared demand by mothers, adopted people and other relatives for access to files:

I want all paperwork pertaining to me and the birth of my daughter. Not the social workers' or Director's impression of what I wanted to hear. I want the actual transcripts.

I want to have full access to all documents regarding my birth, my time at the home and my adoption. In addition, I want full access to all records of my mother's stay at the home including any pre admission and post admission information, all free from redaction.

In submissions and interviews, victims-survivors conveyed their personal objectives:

I feel that it [access] would join the circle for me, my birthmother is a photograph, I never met her to ask the simple questions afforded to my children. It is 20 plus years that I began my search, to find my birth family, I got a brief page from family care society, I got my birth cert original and my mother's death certificate and that was it. Found it not too difficult to access these but I feel there is more out there and in view of press and documentaries on this subject it has left so much more unanswered.

Would like copies of the postcards that were used on arrival, I saw them years later, they still have them, with my details on, I would like to read them. I revisited in 2015, at that time the building was being used for retired nuns. Is this still the case? Are any of them still there who terrorized me and the hundreds of girls who ended up in there? I need answers.

I wish to have full un-redacted access to my adoption file, Full un-redacted access to records held about me and my, now deceased, birth mother from her and my time in Marionville and any information regarding my, now deceased, adoptive parents ... including whether or not payment/donation was made for my adoption. I wish to see the court records, un-redacted and in full, that relate to my adoption. I wish to have full un-redacted access to the social worker reports written during/after the visits made to my adoptive family home about me and my circumstances before the finalisation of my adoption. I wish to see the actual consent documents for my adoption signed by my birth mother and witnesses. In addition to my own and my birth mother's information, I am trying to find information on my now deceased adoptive brother who I know to have been born in Northern Ireland but collected by my now deceased adoptive parents from Fahan Children's home across the Irish border in Co, Donegal and subsequently adopted by them in Northern Ireland.

The impact of not knowing the details of institutionalisation and the detail of early upbringing is well illustrated by the following quote:

My key question, which I am also following up in the Republic, is where I was and who was caring for me between when my BM [birth mother] left the nursing home, and when I was given to my adoptive parents about 6 weeks later. I believe that there has to be more information out there and it needs to be made easily accessible and the different pieces joined up into a central repository if possible.

Secrecy, discretionary access and professional obstruction are repeatedly reported in the victims-survivors' accounts as they endeavour to secure access to files:

We have been obstructed by an Adoption Act from 30 years ago which is totally out of sync with today's society. We have also been obstructed by many Social Workers' interpretation of that Act. We have a right to know where we came from and need access to any relevant Medical History. These records are shrouded in secrecy and even when we do obtain them they are severely redacted.

Institutional responses to victims-survivors requests for records, particularly concerning the circumstances of adoption, are not only discretionary but also often unfeeling. One survivor's attempt to discover details of the sequence of events relating to their own case was thwarted when, on opening the files, they discovered that workhouse records covering a three-year period were missing. When viewing the records that did exist, 'I found it quite unnerving in the Courthouse and am not sure I took it all in'. The impact can be overwhelming:

Reading records can be a very emotional experience. Just seeing my mother's signature on the court adoption records left me stunned for a few minutes, so I would say there is a need for a nice calm, therapeutic room to retreat to, with at least a drinks machine.

Dismissive and demeaning responses by professionals tasked with facilitating access to files is demonstrated in the following written statement to the Panel:

I would like my notes from catholic social services, from social services in the Trust and from where I gave birth. I went to [a voluntary adoption agency] a couple of years ago after talking to someone there over the phone. After talking with me, the social worker there gave me a folder which I was led to believe were my notes. She had, in talking, tried to minimise my experience: 'It was 79/80, Depeche Mode were out, it couldn't have been that bad'. When I told her that I'd worked in the laundry she stated that I couldn't have as they were closed. I insisted that I had worked there and she said 'That's funny, you are the first one to have said that'. I called into a nearby cafe and saw that it wasn't my notes but a summary of them and that they'd got my date of birth wrong and my daughter's weight wrong also. I rang her [the social worker] back and she was more than rude, saying that she summarised what she thought was relevant and she'd left bits out 'to protect my daughter'. I was very upset at this stage and was on my way back to Derry when she rang back sounding anxious and asking me to come back so that she could rectify mistakes in what she'd handed me. I refused. I can't explain just how upset I was that day, I thought that I was going to part of [the] Health Trust to get my notes and it only dawned on me when she started grilling me that it was aligned to catholic services. Her attitude towards me, and the shoddy 'notes' that I got, made feel so disrespected and very hesitant to get involved with this [Truth Recovery Panel] initially.

While access to records is clearly an issue for mothers and for adopted people, submissions were made by other family members seeking information about their loved ones:

During my father's life, he never sought his adoption file, out of respect for his adoptive parents. We now believe as a family, that now is the right time to access and receive an un-redacted copy of his adoption file, as all parties that are concerned with his adoption including his mother, adoptive parents have now all passed away many years ago. This will help us gain information, about a husband, whose wife is now 79 years old and father for whose birth we know nothing, except he was born in Thorndale House, run by the Salvation Army.

We would also like access to my late full brother's adoption file. Brother tragically died in 2018, however, he had expressed a great desire to obtain his own file when we were first reunited. We have not attempted to access this information.

I would like to gain access to information about my sibling who was in the care of St. Josephs and then died in the City hospital. I would like his medical records. I have scant records regarding the dates that he was admitted to the home etc. but have never been able to get anything else and as his sister I should be entitled to have these and any other notes available about his care or lack of it. I also feel that adopted children should be able to access the medical records of their birth mothers especially if they are deceased. My birth mother died of cancer and for myself and my children I think we should have the right to access such information for our medical history.

I have been refused ANY information about my adoptive brother. I wish to gain full un-redacted access to my brother's statutory welfare file held by social services, court records about his adoption and institution records regarding him and his birth mother's circumstances from his time in Fahan

Children's Home, Donegal. I am his only LEGAL living relative and I am denied any information.

... we are seeking all information pertaining to my deceased mother's file and ourselves. All and any information relating to my mother and ourselves is a basic human right. I have sought information on myself and received nothing. My brothers have received basic information from a local adoption society. We have no information on our mother at all relating to her time spent in mother and baby units, and how she was supported, if at all.

Growing up my mum never knew her birth details and I am led to believe she never knew her birthday as well. This was never shared with us and still to the day we don't even know her birthday day. Yes, I would love to see all her and my sisters' personal documents as I feel we have the right to know this. My mum must have sisters or brothers that we don't even know about and my mum not knowing her daughter has 6 kids of her own.

Victims-survivors and their families were also consulted about having their personal records shared for the purposes of further inquiry or investigation. Their responses were mixed, the majority stating they would not be concerned provided they had the opportunity to read and comment on them before they were released. This would ensure that unexpected open disclosure, as occurred in the Historical Institutional Abuse Inquiry, could be avoided.

I am happy to share documents with the inquiry. I will need to see them in advance. [This is] non-negotiable. I will need access to these long before an inquiry. This is my evidence, my story, my life.

I would want to see what is to be made available first but otherwise, in the pursuit of truth, I wouldn't have any issue but it should remain only on a need-to-know basis.

For some survivors balancing the importance of disclosure of documents with ensuring their anonymity is important, 'so that lessons can be learnt'.

... it was like a prison, and the GP [family doctor] was involved. I don't think I would like my records made public unless my identification was redacted from public view.

I have no issue making them available, but only if they remained STRICTLY CONFIDENTIAL.

Yet not all survivors are concerned that their records remain confidential:

I am happy for my records or any statements or comments I have made to be made available to an official inquiry. I am not concerned about confidentiality. I am concerned that the true story can be told and if anything I can contribute can further that goal, I am happy for it to be made available.

I have no problems with the official inquiry or investigation having access to and the use of documentation or records relating to myself to further any official inquiry or investigation.

Concerns about confidentiality are more complicated when decisions about the release of documents relate to other family members.

I'm unsure. Prior to her death we as a family (with her permission) made her story known in the community so that her son, my half-brother, could be with her when she was dying and to allow him to be recognized and attend her funeral as her son. So in essence there is no secret now but I don't think she would like the circumstances/ reasons she was sent there in the first place to be made known publicly - she was raped repeatedly.

I appreciate it will include information about others so there's a sensitivity there and it depends on the detail and sensitivity towards others. It will affect my family at the moment and birth family. If it was put straight into the public realm that would be one thing, but if filtered through an inquiry that would be another.

While the majority of victims-survivors and close family members considered access to records to be their primary objective, three respondents were 'undecided' or were 'not at present' seeking access. Three survivors stated:

I think it would be too painful, but the enquiry team can.

... for some this is applicable. In my own personal circumstances, I believe that if my mother found out what was written, or recorded about her during this time it could cause further damage to her well-being and possibly not in her best interests to see that.

... it's just too painful at the moment. This is very difficult to deal with and I'd prefer not to see any paper work associated with it. I'm happy that this investigation is being done, as it's affected me all my life. It's like opening a cess pit ... I consent to all information held about me, if it helps with this inquiry.

Institutional Records

Victims-survivors and family members were asked about access to and disclosure of all relevant administrative files held by independent and State institutions and personnel regarding their operational practices. This includes individuals who, in a professional capacity, worked in or with institutions. As the following comments reflect, full disclosure is a priority:

Unequivocally, yes - access to all relevant documents, full transparency. Access to all or any documents which may provide further information regarding how institutions operated, financial transactions and other persons, departments or organisations who were involved.

I feel strongly that all records which are not subject to legislative protection, namely those held by the religious orders and other non-governmental institutions should be seized in a timely manner. This is to avoid the potential destruction and misappropriation of the evidence

Full disclosure of all practices by the religious orders, social workers, and medical staff.

Awareness of the range of records held on the lives of victims-survivors, their families and the adoption process, is evident in the following responses:

I would like to see the records, I was taken to Belfast when I was very young and placed with a pile of strangers, it was at the height of the Troubles, I had no support, I was very scared. I was put out to work right up until my child was born, I was 14 years old. I had to travel across the Falls and the Shankill, I lived in fear. I worked in a shirt factory but all the money went to Thorndale. I was also in a mother and baby home ... I would also like to see the standard procedures the Social Workers and Welfare authorities were following back then.

All files must be made available for scrutiny. Public Records, Records held by the Mother and Baby Institutions, any Police Records, Financial Records, Journals Notes, Diaries, Medical Records, Health and Social Care Records and any other relevant documents held by individuals or organisations. Every document from when the decision was taken to place the mother in the Institution through to her departure and to include all relevant information regarding her baby. Parish Records, Baptismal and Death Records. Maternity money was paid to these Institutions - Financial Records to be disclosed by the Institutions and Government Department responsible for these payments.

All records kept relating to: Administration - Financial records, inter-agency communication. Documentation that has been held on all the mothers and babies that passed through these institutions.

Full institutional disclosure, while a personal issue, is considered by many survivors to be a matter of societal concern and public interest:

The activities of these institutions have been concealed for too long and survivors deserve to know the truth about how they were operated and what took place in them and what part other agencies played in the referral of women and the adoption of children.

[Disclosure should extend to] (a) Midwifery records, (b) Third Party adoption administration records held by the Good Shepherd Sisters, (c) Cross border movement of babies' information held by Tusla in the Irish Republic, (d) Related Police records, (e) Ward/Day books kept by hospitals, (f) Parish notes in relation to parish priests' involvement in placing birth mothers in the institutions.

As much as is available and relevant to Salvation Army and the individuals involved in my personal case. The amount of coercion and pressure applied from all institutions involved at the time was immense including social workers.

Although accepting the significance of institutional disclosure, a minority of survivors were clear that personal information remained their priority because of their experiences:

I am coming at this as an individual. I would like to see information held by both Church and State, I would not be interested in financial records or such documents rather in documents pertaining to cross border communication. I want to see how social workers or others chose what baby went where, and why wasn't I followed up post adoption because I really suffered in that home. My adoptive mother was cruel in so many ways. I still am traumatized by it. I was let down by everyone from conception onwards and the pain goes on.

Personally, I'm interested in the bits that relate to me. However, I think that it is very important that the wider records about the institutions, how they were run and who benefitted are put into the public domain. Again the question is: Who turned a blind eye, who benefitted, and who exploited and why?

However, as this chapter demonstrates, access to records is consistently denied or arbitrarily limited:

The inappropriate use of General Data Protection Regulation by Northern Ireland Social Services and Health Trusts, withholding vital information from Birth Mothers and their Children.

The conduct of the information gatekeepers e.g. Social Services, Adoption agencies, Religious Organisations when dealing with requests for personal/ related information. There does not appear to be a standardized response to requests.

Summary

- Full access, without redaction, to personal records and access extending to full disclosure of the operational policies and practices within the institutions are priorities for victims and survivors.
- Denial of access to personal and familial records has compounded the long-term pain and suffering inflicted on victims-survivors and their families.
- Victims-survivors reported dismissive, demeaning and intrusive responses by professionals whose role was to facilitate access.
- There was a mixed response regarding sharing personal records to a future inquiry, emphasising the importance of safeguarding the right to confidentiality.

Chapter 7

Adoption and Separation

Chapter 7: Adoption and Separation

Asked what harms should be prioritised in the terms of reference of an inquiry or investigation, ‘before, during and after time in an institution’, the overwhelming response from victims, survivors and families was adoption and separation. Adoption, and its process and consequences, have had lasting impact on mothers and their now adult adopted children.

The Impact on Mothers

As the earlier chapters note, it is difficult for those who did not witness the practices within the institutions, shrouded as they were in secrecy and operational autonomy, to comprehend the alienation and suffering entrenched in the process. Judgemental responses inflicted on young mothers, often by relatives and by their communities and in the institutions, left them to carry a lifelong burden of stigmatisation. The shaming of these girls and women was compounded by the loss of their babies, through death, adoption or placement in long-term foster or institutional state care. It appears that such shaming did not extend to men - including family members – responsible for rape, incest and other forms of abuse.

The regimes to which pregnant girls and women were subjected, operated as places of shaming, rejection and punishment:

The cruelty of the nuns, the strictness, having to get up at 5.30am for mass even if you didn't feel well, the horrible food ...You felt like you'd done something really bad - the shame they made you feel.

The brutal treatment of women in these institutions before and after they had their babies. The trauma of having their babies removed from them at birth or sometimes months later. The years of emotional trauma that many of these women and their children suffered as a result of the treatment they received at the hands of those who operated homes.

Consigned to institutions where their every action was timetabled, monitored and judged, girls and women were deprived of privacy or agency. They were subjected to physical examinations by staff whose medical training was not always guaranteed. Survivors recall being told that because of their ‘sin’ they had forfeited the opportunity to enjoy any future ‘normal’ relationship.

The fear, and personal shame of still being labelled as ‘Fallen Women’, which is now being remembered, because of large media interest, and regarded by certain sections of society today, as ‘dirty little secrets’.

The impact this has had on my life and the difficulties I have had dealing with my emotions on such a delicate part of my life. The lifelong loss of my mother, my brothers and the endless hours of my own worry on where I belonged in life.

In their accounts, victims-survivors and their family members reflect on the long-term impact on the mental ill-health of mothers compelled into giving up their children for adoption. It was expressed by one survivor as: ‘the traumatic experience of being made to physically hand over my baby against my wishes’.

Trauma is the biggest harm that's been caused. Imagine yourself giving birth being let feed and wash the baby then people coming and taking him/her then 40/50/60/70 years of questioning yourself what are they doing now who are they like wondering if they had good life ... a void that can never be filled. Always being afraid what if they come take my other kids?

My mum is many things e.g. ruthless and very outspoken and I think this has a lot to do with her upbringing.

My mother because of what had happened to her became an alcoholic.

Psychological harm which has lasted decades and does not diminish over time.

The harms caused to girls and young women extended to the 'physical trauma of giving birth' and 'physical harm due to neglect of necessary pre-natal care'. The quality of medical care was, at best, inconsistent. Concern was also raised with the Panel about the use of the drug DES – Diethylstilboestrol. This was a synthetic form of the female hormone, oestrogen, administered to women until the 1970s as a preventative to miscarriage and premature labour.

Significant controversy remains regarding the circumstances in which mothers, particularly young mothers, were chastised and bullied into giving 'consent' for adoption of their babies against their will. The conditions under which adoptions took place were often hurried, occurring in the immediate aftermath of childbirth with no regard paid to the mother's physical or psychological health and welfare. The prevalent language was judgemental. They were 'sinners', denied social welfare support and labelled within their community: 'my mother was judged a 'fallen' woman and came to England'. Rejection was not confined to the immediate community: 'Society and my family caused harm to me at a difficult time in my life'.

Impact on Adopted People

While some adopted people reflect on positive childhood experiences, the adequacy of the assessment process by which adoptive parents were recruited and selected was questioned by others. They recount emotional cruelty and physical chastisement which had serious consequences for their sense of identity, their well-being and physical health, self-esteem, and the ability to form meaningful relationships.

[They] made me feel that they done me a big favour by taking me in.

I only took you in because I felt sorry for you.

You weren't the prettiest baby and no one else wanted you.

Being taunted by saying your mother never wanted you.

Several adopted people wrote lengthy accounts of the lasting impact and 'lifelong hurt', as a consequence of their adoptions:

I have long term mental health issues, requiring specialist input from mental health services and on long term anti-depressants. Diagnosed by them as having dysthymia [persistent depressive disorder] and borderline personality disorder. I have struggled for as long as I can remember forming relationships and I also have attachment issues and a profound fear of abandonment and have always had a fear of loss and emptiness, never feeling worthy. My world has always been dark or grey with only snippets of colour. Joy or happiness has and continues to be in very short supply. My adoption was the single most traumatic event that has shaped every area of my very life, the decisions and lack of care given to my placement was neglect in the most extreme that decision ruined my childhood, my spirit was quashed stamped out.

For me, the harm is mental. I'll never get past things my adopted mother said to me. She took me out of bed at night and drove me back and threatened to drop me off. It was not what a nurturing being does. That memory is ingrained in my soul. In the car my adopted mother telling me she would bring me back. The impact of me has been lifetime. I'm 50 years of age and I still struggle

with it. Psychologically it's devastating. So many types of harm – physical, mental, psychological, sexual. The harm of adopted children placed in harmful, abusive homes.

My adoptive mother once told me she rescued me from the scrap heap and I think this can define the way adoption has made me feel since childhood. I hadn't realized until later life the traumatic effect adoption has had on my life. It can't be underestimated. The belief that, 'the child will be better off', is often simply not true and this narrative needs to be challenged.

For some adopted people, the consequences of experiencing 'denial, rejection and abandonment' include physical ill-health, 'alcohol and drug abuse, suicide'. Adoption was described as leading to 'a lifetime of doubting your worth and paranoia' with 'no point of reference in your life'. A recurrent theme was that, for some, the full realisation of the traumatic impact of their adoption became evident only later in their lives. Not only was this a source of anxiety and depression for those who conveyed this experience, but also it inhibited the potential for developing tactile, loving relationships with their children.

This raises the significance, only being realised recently, of intergenerational trauma:

The impact on my life has been immeasurable, the ripples have seeped into my wife and children and into my work life and ability to function fully in it, because of my history, many chances regarding career progression has been sabotaged by me because of my self-loathing.

I so wanted to be a good parent but it wasn't in my power, and they lost out in so much emotionally because of my state of mind. I have always been sensitive and hyper vigilant fear has gripped my life. I have trust issues, feeling paranoid and not worthy.

Mental health impacts of mothers, adopted children and also future children [are experienced] by both the mothers and adoptees. Effects of family life and stability both following the institutionalisation and in their futures.

Harm adoptees suffered – carrying that with you your whole life, it's always there, it's the sense of being plunged into a situation of not knowing where you are. It brings with it its own degree of insecurity and so forth. This is part of the rights' violation.

Many adopted people noted that their desire to access their personal history became prevalent as they grew older.

The loss of identity, lack of confidence, feelings of abandonment and the brick wall of silence and uncooperative nature of those gatekeeping records also need to be examined. Barriers to the human rights of the mother and child also need to be examined in terms of forced adoptions and a lack of care towards the children once they were removed from their mothers.

As noted earlier, knowledge of personal history has significant consequences regarding health, the possibilities of hereditary illness and the potential for affecting children and grandchildren. The difficulty experienced in gaining access to medical history itself became the cause of significant anxiety and for some the process was traumatising, 'triggering an enormous feeling of loss'.

For some adopted people, increased awareness of the abuse and degradation endured by mothers became profoundly painful, strengthening their resolve to seek information about the circumstances of their adoption:

The trauma of realizing late in life as an adoptee that the adoption may not have been freely entered into by one's birth mother, adding to the sense of guilt and pain at being given up without the true consent of one's own mother.

It also informed the challenges, tensions and harms relating to family relationships, specifically concerning siblings:

Sibling re-unification, can be a traumatic and tragic experience, which in my own family's case lead to death ... after receiving a telephone call from a brother he had not known existed all his adult life.

Harm [caused by] adults who adopt children not telling them they were adopted, for many reasons, and how some of these children found out they were adopted. The adopted families were given no help or support just left to get on with it as best they could.

Carrying that with you your whole life, it's always there, it's the sense of being plunged into a situation of not knowing where you are. It brings with it its own degree of insecurity and so forth. This is part of the rights violation.

The effects on future children or 'kept' children who grew up not knowing they had a sibling ... the subsequent effects of this secrecy within a family.

I do wish to stress that the impact of what happened did not only just affect the Mothers, adoptees, even fathers, but the other children those mothers went on to have.

Finally, the following extended testimony reveals the experiences faced by adopted people in their navigation of their daily lives. It illustrates the persistent challenges they are forced to confront. Regardless of positive experiences growing up in an adoptive family, having to explain incomplete personal histories to relatives, friends and public officials are constant reminders of being 'other'.

If we all had a magic wand to wipe away the pain that would be a start. The whole system is/was corrupt, society is not understanding of our pain. I'm adopted, growing up was not easy, I don't talk to my adopted family about how I feel, as I have guilt, which I know is stupid but that's how I feel. There are so many issues that need to be dealt with, and it's hard to talk about them because when you really sit down and think about it all, it just makes me sick and I want to run away and hide. As I am writing this one memory comes back and it's something so trivial but it hurts. I had always been good keeping my birth certs but just after I was married we had moved house and I lost them, so I had to go to the register office to get a full birth cert and I remember asking the girl for a form, this was about 1998/99, and she gave me the form and I had to tick a box on it that I was adopted. The next day I had to go down and pick it up, I noticed that in very big writing it stated Certificate of Adoption. I wanted to cry, just standing right there in the office. I felt like I have a big label on me and that everyone knew, it hurt so much. All I could think about was having to send this form off to get a passport or ID and everyone knowing. And then thinking of those people who didn't know they were adopted and that how they found out. Years later when my kids had grown up, my eldest asked why my birth cert was different from hers. At this stage I haven't told them and again, my world felt like it was falling apart. It's the lies and secrets that just spiral into everyday life, from those who were forced to go to a mother and baby home, from those who held the secrets of having to give away the babies, it's for those adoptees who hide their background from loved ones ... and the story continues when I had to tell my children that their grandparents, uncle and aunts aren't their blood family. The cycle never seems to stop. We are told we are lucky, we were spared the shame of birth mothers, but this is life, a life sentence. Every time I have had to go to dentist, doctor, hospital and they ask about your family medical history and you say you don't have one as you are adopted, they ALL just give you that look, the look of 'God love you what did your birth mother do? or 'Aren't you lucky you got 2 lovely parents?', and all I want to say is 'Fuck off'.

Summary

- Prior to and after the birth of their babies, girls and women endured condemnation while in the institutions that imposed long-term shaming and societal ostracism.
- Many women recalled the profound, emotional suffering caused by having their babies taken from them soon after giving birth.
- In their accounts, there is clear evidence that mothers were compelled to give their 'consent' for the adoption of their babies.
- While some adopted people emphasise positive relationships with their adoptive parents, others record the long-term physical and psychological impact of their adoption and the consequences

for their subsequent familial relationships.

- Discovering the history of abuse of mothers in the institutions has led to considerable distress for adopted people in later life.
- A common issue raised by adopted people is the persistent pressure on them to explain their status both in official settings and in personal relationships.

Chapter 8

Future Investigation and Inquiry: Status, Scope and Participation

Chapter 8: Future Investigation and Inquiry: Status, Scope and Participation

The issues of status, scope and participation were central to the Panel's work with victims-survivors and family members. As previously noted, establishing the most appropriate means to meet the diversity of needs voiced by individuals at different stages on complex journeys towards establishing truth, accountability and resolution is not straightforward. Co-designing the scope and focus of the questions with victims-survivors enabled the collection of a wide range of evidence revealing the complexity of priorities to be addressed by a future inquisitorial process.

Asked to consider the range of expertise required to conduct an inquiry or investigation, victims-survivors and families prioritised independence, impartiality and knowledge of the issues. Understanding of the legal process and agencies involved were considered essential: *'a multidisciplinary team, with some specialism'; 'someone with an investigative criminal background, a legal expert, and someone with Counselling and Conflict Resolution skills, perhaps a Trauma Specialist or a Family Therapist'.*

The issue of the independent personnel, both leading and contributing to a future inquiry or investigation, was considered essential and is well-illustrated in the following comment:

There is no doubt the power of the institution will play a big role in this. I don't know. Maybe a person outside the country who is reading it as a completely independent person. I don't think there should be anyone from this country that could be influenced. I'm not sure where you would get an unbiased judgement. I think there needs to be opinions and views sought from psychiatrists, psychologists, mental health experts etc. who have an unquestionable understanding and expert opinion on this type of separation trauma and the early childhood effects.

Several survivors considered it essential that an inquiry team should have *'experience with dealing with high level inquiries'*, particularly regarding human rights violations.

We need human rights experts and those who have experience of putting together other inquiries along with others who may have dealt with war crimes or other travesties of justice that have led to large numbers of people being imprisoned against their will and suffering intolerable conditions. We also need those who have knowledge of how the institutions worked who can provide expertise but remain impartial. We need organisations who can offer crisis management who will support victims and survivors and advocate for their rights so that this is never forgotten about again. Primarily, however, we need the voices of experience who have been silenced for far too long – that is the experiences of birth mothers, their children and others who looked after them who knew that what was happening was totally wrong.

There needs to be people who understand adoption law and the legal issues. Legal expertise – who understand the law then and how it evolved. People who understand what people will be going through now (with psychiatric background, sociological).

People from a legal perspective. People from an academic perspective au fait with the relevant field. Somebody in there from an adopted background.

I would like a doctor, a social worker, someone who has given their baby up and an adoptee maybe, a solicitor/lawyer. To try to cover every aspect that will come up as a result of this inquiry.

The list of potential appointees to an inquiry or investigation which victims-survivors suggested included: human rights specialist; oral historian; psychologist; community support worker; medical doctor; lawyer; historian; social worker. The following quote reflects a commonly held commitment to a diverse, knowledge-based membership:

Those involved need to be properly trained, have no conflicts of interest, and have sufficient experience in their respective field. Should include an expert in social care, mental health, family law expert, a judge/senior police officer, corporate governance specialist, historian, and accountant, someone who has conducted a similar investigation.

Survivors also emphasised the importance of appointing a 'birth mother' and/ or an 'adoptee':

I think there has to be rational voices who represent everyone impacted by what happened. To me as a mother in 2021 it is often surreal that this was my lived experience. Whilst expertise is vitally important for research, those who can truly understand need to be included also.

Lived experience. The actual people who are affected most; the people themselves, mothers and those born in those institutions, it starts with them and builds from there. I would welcome the opportunity to work with this process. Genealogists, Psychologists, Legal specialists, People skilled in Life Story work and writing.

People who understand what has happened and who know about getting the truth and justice in what has happened to young girls over the past years. People who lived this nightmare will have everything the team will need to get what's right for them, and everyone involved.

Institutions' Participation

Many of those involved in the organisation, management and staffing of the institutions have died. Consequently, a public inquiry would not have access to a significant body of primary evidence from those directly involved in the regimes' operation. Evidence on the operation of institutions' regimes, however, is not confined to interviewing those directly involved. Staff currently in senior positions within institutions can be required to attend hearings to be questioned on the operational policies and practices that prevailed at the time.

Accountability is not reducible to personal or individual practices but, crucially, is concerned with establishing institutional responsibility. The desired outcome would be a formal apology for the harms done, and financial compensation. Holding individuals to account - even if dead - alongside institutional responsibility, is a significant objective of survivors', and their families', campaigns.

Regarding the significance of accountability:

Where they are still alive, regardless of age or condition, evidence should be sought in pursuit of the greater truth. However, it may be unfortunate that some of the worst behaviour took place in the earlier days and improved over time. This may mean that some of the persons who could give evidence to the earlier issues may have already passed away.

They have to demonstrate accountability for their operation, philosophy, ethics and actions because they represented the moral and social high ground. Whether this status was conferred upon them or whether they adopted it as their due is immaterial for the purposes of this inquiry.

Just as my legacy is to find out the truth of what happened to my loved ones ... the people who represent these institutions need to recognize that this is the legacy of what they have now inherited and take ownership of it so that steps for redress can be taken towards victims. They also need to ensure that they make the necessary changes to learn from their mistakes and provide the information required to survivors so that they can gain closure and peace.

Everyone has to be accountable for their actions, the decisions made, the ways in which 'professionals' treated the mothers and babies.

...a full robust and time-efficient inquiry with authority to compel all parties involved in running these institutions so that all of the parties involved can be held to account.

They need to be compelled to give evidence under oath and compelled to reveal documents. They need to be held to account and subject to the full legal rigour of a statutory enquiry with a possible independent panel running concurrently. Let's get them on the stand and subject to rigorous cross examination to expose the truth, the whole truth, and nothing but the truth.

I want oral evidence given. I want them cross-examined, this is important to me. I want the head of the organization as well, as they were ultimately responsible as head of the organization.

The following statements demonstrate a clear understanding of the relationship between personal accountability in the past and the unresolved issue of institutional accountability in the present:

[Many] participants are dead or incapable of giving evidence. These Institutions must be held accountable for the misery and long term trauma that they have caused.

We can't expect the current leaders or for example a Mother Superior or similar to be responsible for their forefathers' actions or omissions. I do however feel they should be open and transparent with records and documentation. Resistance will only cause more hurt. Bringing it back to me, I know social services today can't undo practice in the late 60s and 70s, but I would like full cooperation and above all honesty.

I'd say most of the people working in Thorndale House in 1946-7 are long dead and gone. But the organisation needs to account for its stance and practices then ... albeit in very different times. So files need to be opened up, and present safeguarding practices examined. Moreover, the disparity between the standard and the practice of Christian principles must be examined and reflected upon by all the religious bodies concerned, not only then but now. An ongoing process for all who purport to be Christian!

Survivors and their families recognised the problems inherent in establishing direct liability, but also are determined to have the full range of responsibilities revealed and examined:

First problem, I assume most of the individuals are dead. How good was the record keeping? How much was destroyed in the interests of confidentiality? If representatives are available, they should be made to appear.

They are a critical component of these Institutions. I'd like the brief to be as wide as possible and especially nuns, priests, doctors, hospitals (can't emphasize that enough).

Everyone involved in any way - clergy, catholic adoption services, social workers from the Board, nurse management, nurses and midwives.

I believe most that would have been involved in my late mother's case would be dead, retired or maybe suffer memory loss due to age ... The Statutory Bodies concerned as well as the Church Officials should be questioned about their practices at that time ... Lessons need to be learnt so that these experiences are kept in the past. Never to be repeated.

Compelling testimonies to an inquiry was identified as an essential element of revealing how the institutions functioned, typified by the following statement that the inquiry, 'must have the powers to compel people to testify and for documentation to be preserved and surrendered'. However, several survivors were concerned about the potential negative impact of an adversarial inquiry or investigation that used its powers to compel evidence.

I think that depends on whether they [religious orders] have evidence to give. I'm not sure that what could be perceived as a witch hunt of elderly women could achieve a lot. However, if the institutions profited from the abuse and exploitation of the women and children, those institutions should be called to account as to their conduct in the past. An openness of documents right across the organisations would be extremely useful.

Given their past reticence to participate, it is doubtful that institutions would be willing to provide information without a formal process of disclosure compelling evidence. Others also questioned the 'benefits' of pursuing institutions: 'I'm aware the Catholic church have now agreed to share all information they have, I trust this will be the case'. Further, that given it is an issue of historical abuse: 'I do not believe that it would do any good ... just ensure that nothing happens like this again ... it won't, as society has changed' and, for another survivor, 'most of the guilty ones are dead'.

One individual was 'conflicted' regarding what was perceived as a dichotomy between seeking 'information' and hearing 'evidence':

I'm a bit conflicted. Two things here, one is getting the information and one is getting legal evidence. Someone may be more open in a non-legal setting and may give different information and be less defensive without the threat of thinking about 'How it would be used against me?'. -For me it's a difficult one. Whatever this process does it not should not prevent redress in other means, but get as full a picture as possible. I think that compulsion needs to be there. Also support in the separate processes, legal / restorative is essential. This will bring to the surface very painful things and must consider how that can be addressed for each individual.

Because of the 'danger of survivors' being 're-traumatised' by the process another suggested a 'survivor-centred' inquiry in which they 'would be able to tell their story, each with a supporter, in a safe listening environment'.

Named institutions and their representatives would present their cases based on their individual evidence. Both parties would be allowed to address each other and acknowledge, explain and come to a respectful understanding. An adjudicator in place would have the authorization to identify a historical wrong doing and recommend further investigation, handled in a way that is satisfactory to all parties. Criminalizing outcomes, I feel, should be avoided.

There was one submission that rejected an inquiry, defending the role of religious orders:

The religious orders were providing a service because the State did not. They should not be penalized for doing so. Many of the nuns and others would be older now themselves and I don't believe it is fair on them to have to participate in an open forum. I have met some of those nuns charged with looking after my mum during those times and I cannot speak any more highly of their obvious love and kindness having witnessed their reunion first-hand. Mum had told me how the nuns had operated a closed order and were not allowed to speak during those times but she also attested to the lovely warm bed, good food and clean clothes. Things she would not have had in her own home as her mother had died. I don't believe compelling them to take part in a public forum will lead us to the truth and think it may well have the opposite effect. Let's face it, the religious orders do not get a fair hearing in the media anymore and so I don't think that they would fully participate or provide any detailed information if compelled to take part publicly against their will.

Victims-survivors were asked if others involved with servicing, maintaining or working with, or for, institutions should be required to give evidence to an inquiry or investigation. The response was universal:

Clergy, Policy Makers. Civil Servants, any other source within the Department of Health ... Gardeners, Tradesmen, Doctors that examined babies prior to adoption, Solicitors that signed off adoptions, Taxi Drivers, Nurses, Midwives, Obstetricians, people who made use of the laundry services, Gravediggers. The Butcher, the Baker, the Candlestick Maker. In other words, anyone with any involvement with these Institutions.

I think anyone who was involved should be required to give evidence from lay people who delivered goods to the laundries or mother and baby homes to caretakers, gardeners etc. as well as nurses, midwives, social workers, priests and the religious orders. People knew what was going on and no matter how small or insignificant their contribution it might make some difference for those who were impacted. Hospital staff who received infants from the homes as well as undertakers and grave diggers should also be asked to give evidence. I have spoken to a gravedigger who was employed in Milltown Cemetery in the early Seventies and he was able to tell me about the 'pits' the babies were put into, how they were brought there and how long the graves lay open for before they were closed.

The Church. The Social Services. The D.H.S.S. The Education Authority. The Government. All involved in the application of policies that allowed young girls to be removed from their homes, placed in care, made to work all day and be neglected and abused and mistreated in such an unforgivable way.

I want answers from anyone involved. Social workers, catholic social services, hospitals, pharmacies who would give pregnant women sleeping tablets, and anyone who knows anything.

Civil servants connected with funding and administration. Adoption agencies, heads of relevant churches etc. and ALL who could see what was going on and who turned a blind eye to it e.g. funeral directors, cleaning firms, food suppliers.

I think there should be an appeal for anyone who worked for or who witnessed anything that concerned them (could include delivery people, builders etc. who dealt with these institutions) to come forward and make statements.

I was treated like a slave, they should be made to apologise to me, I have never been the same [since] ... they allowed a man who worked in a park nearby to come into the house every day and he was having sexual relations with many of the girls ... When I told the staff they told me to stop telling lies ... No one cared or protected me. There was serious flaws and big mistakes made in the care and health of my upbringing. There has been a lot of things where teachers, social workers, doctors, minister's neighbours and family overlooked issues in my upbringing.

Survivors' Participation

Other than an overwhelming commitment to securing and accessing personal files and institutional records, as considered in the previous chapter, questions about participation in a future process drew significant and detailed responses. Many victims-survivors and family members provided personal and profoundly moving accounts in support of their replies. These have been edited to ensure anonymity and protect the interests of those who selflessly revealed the depth of their anguish and loss.

Three issues form the foundation for researching personal participation in a future inquiry or investigation. These are the willingness of survivors or family members to participate in person, to share their personal experiences and testimonies in a formal setting, and to be questioned publicly by lawyers representing the interests of institutions and State departments.

The majority of victims-survivors and close family members expressed their commitment to participation, many stating that they wanted to ensure the voices of loved ones unable to participate through illness or death are heard:

My mum is getting old and, being a very proud woman who is finding it hard to talk about this and has lived most of her life a lie, will find it hard to speak out. I feel I would be there if that was ok. Also, my sister who was taken away will have a say on this as well and as a family we all need to speak up even if my mum can't do this.

I would be happy to contribute if it gave me answers. For me this is not a witch hunt, I just feel that I need to represent not only myself but my mother who never had a voice.

We expect to be front and centre of any inquiry and have Core Status. We expect full transparency and to be kept informed of the progress of the Inquiry.

Clarity is essential. It is essential I have input. Has to be a two-way process.

A full and robust process with powers to compel people to co-operate fully.

I would like to be involved in an official inquiry into unethical and cruel treatment of Mothers and adoptees outside Mother and Baby Homes. I would also like to be involved in an investigation into the long term impact of these practices/ill treatment on Mothers, Fathers, adoptees, siblings, and entire families, and how this has resulted in generational trauma for many families as a result.

Understandably, there is significant concern regarding an adversarial process in which victims-survivors and family members would be compelled to give evidence and be subjected to questioning by lawyers representing institutional interests:

I would have no problem contributing in a confidential manner but in terms of cross-examination and giving evidence under oath I'm not sure why they would want/need to do this. I've said everything I know.

Having noted the much-publicised adverse experiences of those giving evidence to the Historical Institutional Abuse Inquiry (HIAI), victims-survivors were troubled by the potential negative impact on their mental health and well-being:

At the moment I'm unsure, but with the support group being set up and if I can get counselling, I hope that maybe I could remove the guilt I feel and be confident enough - not sure.

It's a part of my life I have had to box away so I would need assistance with the process. Although educated and intelligent I have an issue with being adopted and do not feel I have the capability or strength to keep fighting for something I should be automatically entitled to. I'm tired of having to justify myself to the world and this is just going to be another long drawn out process. I would need someone like you [Panel] to sit through this with and hold my hand through this. So in theory, yes' but I will have difficulty if I have to do it alone.

I would love to [give evidence] but I don't think I would have the confidence to. I am also afraid that it might be too much for my social and mental wellbeing and take me to a dark place.

[I] don't want to be directly involved, but happy to give my story for archives or for history. I am happy for my testimony to be used but would be unable to give it verbally in a formal/courtroom type setting.

Many victims-survivors and family members considered anonymity to be essential, not least because their experiences were not known to their wider family, within the local community or workplace. There is also considerable concern, publicly articulated by those who gave evidence to the HIAI, regarding the impact on people already under immense long-term stress:

I would like to be informed about the outcome of any investigation, but I suffer from depression and would prefer not to participate as its very upsetting.

This concern extended to the potential negative impact on family members:

I understand that for testimonies to be fully included, the only way that this could be achieved may be to fully participate in an official inquiry.

While I would like to fully participate, I have not reached a decision on this depending on how individual circumstances may impact on confidentiality and the protection of current family members who are not a part of this process.

If my mum's experiences would help an investigation/inquiry, then I could contribute that but I don't think I/we would want to be part of a questioning process.

The Inquiry needs to be alive to the fact that people are still not able to talk about these issues within their own families. It also needs to understand that people have only embarked on their journey since learning of the academic report into the mother and baby homes and therefore received a 'shock' and a 'jolt' that what they had been told about being adopted may not reflect the reality of the situation.

Responding to the possibility of sharing personal experiences in public, the majority of victims-survivors and family members expressed reservations about what that might mean:

It all depends on the venue as it would have to take place in a suitable environment e.g. not a courtroom. No adversarial cross examination. Why cause further trauma? Venue must be easily accessible. All testimony to be copied and presented to my Legal team. Evidence could also be given by written or recorded testimonies. No Victim or Survivor should be compelled to give testimony and cross-examined. Counselling and Support Services to be made available.

I do not specifically seek to give the evidence publicly, but am willing to do so with appropriate anonymity if it helps the panel understand the wider scope, knock-on of the effects of what happened.

I wouldn't be resistant to it, but for me I think in a public arena I would want to be protected from media glare as I have a family and I wouldn't want to hurt them, but yes if protective measures in place I would want to give testimony.

No to giving personal testimony in a public setting ... Huge personal fear of being re-traumatised.

I don't want to, I want to protect my family, I am happy to give evidence, (maybe written) if I can remain anonymous. I do want to tell my story but, more importantly, I want to make sure this never happens to anyone again.

I am happy to provide any information that may be deemed helpful, but would rather not give any public testimony.

Happy to tell my story but not in public. I am happy for my story and experience to be placed on record for future generations.

Several victims-survivors feared that giving evidence in public would have significant adverse consequences for their already poor health:

Due to my health I could not read it in a formal public setting, I would have no problem with someone else sharing it.

I can't say that I want to give evidence as by doing so I would be reliving the trauma again BUT I am prepared to do so to help to chronicle how flawed society and the institutions were.

I am open to my testimony being used to help the enquiry understand the conditions endured and the abuse meted out, physically and mentally but due to the trauma I still suffer 53 years on I would be unable to personally present it or even to have it presented in any form other than anonymously.

Other victims-survivors and family members stated their willingness to engage with a public inquiry or investigation:

If any of my testimony is deemed useful, I have no hesitation to provide this in a public setting.

I would be prepared to share my personal experience in a formal setting either in person, health permitting, or via a link, e.g. Zoom.

I would absolutely like to share my story so that it can be displayed for all the world to see. I am the voice of those who didn't have one. Their experiences deserve to be acknowledged by future generations so that they are never forgotten.

I am willing to give both written and oral evidence both in private and in a formal setting.

I am happy to share my personal experience/testimony in a formal public setting. That includes any way the Tribunal Team wishes to engage with me.

I am 100% willing to give testimony. Oral testimony at the inquiry. Written testimony to be submitted to the inquiry/independent panel. All testimony will be copied and held by my legal team to avoid 'loss' as experienced in the Hart Inquiry.

An important condition of participation was that it should include full practical and personal support throughout the process of hearing victims-survivors' and family members' testimonies. However, as stated above, there is considerable concern regarding potentially hostile questioning by lawyers representing institutions' or State departments' interests.

I strongly believe that where those involved are strong enough to make a public submission and withstand cross examination, then that should be the case. I think that it will be more believable and a greater credit to the inquiry ... However, there will be those who cannot be strong enough to do that and I believe that written submissions should be accepted ... either taken officially as statements, or submitted personally as letters to the inquiry ... different methods should be made available to suit all circumstances of those affected, allowing the opportunity for everyone to be heard without exception.

For those who are unable or unwilling to give testimony in public, they should be facilitated by transcribing their oral testimony, which has been gathered by a trusted and qualified source.

The process of submitting lived experience testimony has to be as flexible as possible and it needs to have a multi-factorial methodology to make this process as easy to engage with and non re-traumatizing as possible.

Some were prepared to give evidence, 'without reference to my identity':

I would be willing to receive questions in writing and respond to them in the same if confidentiality could be guaranteed.

If it benefits the overall process and can help unlock some answers, in a confidential way, I would consider it. However, my goal is not to have 'my day' in court – historical information and context, along with access to relevant records would be a higher priority.

Due to ill-health, the prospect of participation was daunting for many victims-survivors: 'I just don't think that I would be fit to go through with that - deep down I wish I could but it would take too much out of me'. The possibility of an investigation in which experiences could be heard without the formality of an inquiry was suggested as 'an option that should be available'.

Three separate responses reflect the difficulties experienced by many when facing the potential rigours of an official inquiry: 'I regret again I could not cope with this'; 'No, I have a lot of health issues including bi-polar, anxiety, depression and memory problems'.

Finally, one respondent stated a concern shared by others:

Many survivors will be unable to cope with cross examination due to lifelong trauma, progressing age and other factors, and therefore should be able to give their testimonies to an Independent Panel which should run alongside an Inquiry allowing survivors to freely tell their stories without the validity of their experiences being questioned.

Supporting Victims-Survivors and Families

Group sessions with victims-survivors and family members discussed the importance of professional support during a subsequent process of investigation and inquiry, specifically the availability of independent advocates and grief and trauma counsellors. Consequently, the question of appropriate support was asked

of all participants. Examples given were: legal assistance, independent advocacy, counselling, disability support, genealogy services and emigrant outreach. The following responses reflect oral contributions in seminars and written submissions:

Any victim or survivor should receive whatever support is necessary to help them tell their story as they contribute to the investigation. This support should take into account any impact that has been had on their physical, mental and emotional wellbeing. It should be made Free of Charge as no victim who requires help or assistance should be placed under any financial burden while they assist the inquiry.

All forms of support as necessary should be made available to help redress the injustice inflicted on the women who were forcibly separated from their children with no right to know what had happened to those children.

Any support that is required to help individuals should be there as part of the support framework in place for those who are impacted in any way by the inquiry or investigation.

Given the complexity of the legal process, advocacy was considered important:

Independent advocacy and liaison officers should be available for those individuals who will struggle with this process.

All information needs to be very clear and to the point especially in the current climate when we are not meeting face-to-face.

Victims-survivors wanting an official inquiry recognise the inevitability and necessity of legal support. However, to ensure 'equality of arms', 'free legal advice and support', is considered essential alongside 'counselling and disability support and reaching out to families whose children were sent to America and elsewhere'.

Counselling provision throughout the investigative process was prioritised as the most significant factor in their participation not least because of having often silent histories open to public scrutiny and comment: 'the scope of the effect on mental health may be huge'. Its provision, however, should not be limited to the duration of an investigation or inquiry in which victims-survivors would be direct or indirect participants. Given media and public attention, continuing public interest and people making discoveries about their personal histories, it should continue to be available beyond completion of an inquiry.

Counselling needs to make people aware of what's going to happen here and a service to support them if they decide to go down this road.

Counselling is a permanent aspect of healing for survivors of these places of institution.

Counselling by experienced practitioners in the area of adoption-genealogy services

Support for drug and alcohol abuse.

A wide range of psychological therapies would be good including peer support groups. Possibly separate ones for the 3 categories of birth mother, adoptees and close family members.

I think counselling definitely needed. I know my mum would benefit from it greatly, she is in her 70's and has never had the space to talk about it with someone outside the family.

I think my mum would be too proud to say she would require counselling even though deep down this would be of great benefit to her.

Alongside counselling, the potential of 'arts, writing and music therapies' and 'complimentary therapies like Reiki, Reflexology and Aromatherapy', were considered important 'to ease pain, combat stress and allow the survivor some time for themselves in the mist of so much emotional turmoil'.

A further priority concerned the lack of contact between mothers and their now adult children, and

between previously unknown extended families. Tracing family members is not a matter of curiosity but an essential element of self-identity, not least because of how enforced separation became institutionalised and rights were denied to both mother and child. Thus, *'genealogical services are vital to connect families'*. Survivors' and their families' responses were extensive:

DNA services must not be provided alone [but] must be accompanied by genealogists to translate to people what the results mean and go into the archives to see what it means, go into census to get names and addresses. My own experience: It wrecked my head trying to do it myself. I found [the name] and there were many options. I've heard of people going down the wrong route and thinking someone is related to them when they are not, that is traumatizing in itself. I can't stress how important the curation of this service is. Specific counselling accompanying this is also needed ... I had to talk to my kids, not an easy undertaking, and I had to say my own past could come up and possible children. The counselling needs to make people aware of what's going to happen here and a service to support them if they decide to go down this road. People need informed ... they can't just be handed the access to their DNA and sent on their way.

DNA service to obtain information about families free of charge, as depending on what organisation you go to, it can cost £6000 over a variety of platforms, including money to trace relations internationally.

Genealogy services would help for those seeking birth family. On a personal note I am aware of a whole family North and South of Ireland on my paternal side but can only make contact at this moment in time with the DNA connections I have made. To be 100% sure I seek a closer match, we are currently remarkably close. I know who they are and where they are, but I am terrified to reach out to those potential half siblings. I live and pray in hope that I can before it is too late again.

Each person searching for answers requires different expertise at different levels of their research. From experience, carrying out family research can be a long, time consuming and costly experience, knowing what records to ask for, their location and the cost of obtaining copies of records. Any supports which ease this journey would be of benefit.

In securing genealogy services, victims-survivors also considered the need for *'social workers to aid accessibility of records'* and *'intermediary [sic] services for families who wish to contact each other through a third party'*. Recognising the reticence of some adopted people to make contact with parents one victim-survivor commented: *'I think that people trained in reconciliation expertise could make it possible to convince people to meet each other, if even only that once, to give closure to a lot of history'*.

Concern was also expressed regarding the potential of media intrusion to breach *'victims and survivors' confidentiality'* thereby *'re-traumatising those affected'*. Given the dissatisfaction expressed by victims-survivors and families involved in previous inquiries in the Republic and in Northern Ireland it is important that safeguards are in place to avoid media intrusion.

Summary

- In considering the issues of status, scope and participation regarding a future inquiry or investigation process there were differences in emphasis between victims-survivors, including adopted people, and families.
- However, shared priorities for future investigation and inquiry are independence, impartiality, knowledge of the complex issues involved, and the integration of a range of complementary professional expertise.
- In establishing institutional, personal and professional accountability, a future inquiry should be able to secure access to all documents held by institutions and compel oral evidence from the institutions, and all agencies that serviced them, to be examined under oath.
- Victims-survivors were concerned that giving oral evidence to a public inquiry could lead to re-

traumatisation but would welcome a safe forum where they could have their personal histories recognised, accepted and recorded.

- The majority of victims-survivors and family members stated their commitment to participating in a future inquiry or investigation but considered preparation, consultation and protection from adversarial questioning to be essential components of the process.
- In giving evidence, many victims-survivors considered anonymity to be an option.
- Support and counselling for victims-survivors and families before, during and in the aftermath of an inquiry or investigation were proposed as essential prerequisites.
- Given current barriers to accessing information and the complexity of family relationships following forced and secret separation, genealogy and independent advocacy were raised as significant issues for further consideration.

Chapter 9

Beyond Inquiry: Delivering Justice, Memorialising Truth

9

Chapter 9: Beyond Inquiry: Delivering Justice, Memorialising Truth

Calls for independent public inquiries into major events, whether sudden or cumulative, are made frequently and sometimes without consideration of the chequered history of official inquiries and their frequent failure to deliver findings and outcomes expected by campaigners and survivors. As noted earlier, official inquiries are initiated by government departments. Their terms of reference are written, and the Chairperson and advisors are appointed, by Ministers and their senior civil servants. They are usually staffed and serviced by civil servants. Government reassurances that public inquiries are truly independent of State interests have been questioned by campaigners and their legal representatives who consider that powerful public and private institutions with considerable economic advantage are able to hire strong legal teams to represent and protect their interests.

A statutory official inquiry, however, is the only process that can compel witnesses to attend and give evidence under oath. These are significant issues when institutions are reticent in volunteering information that they hold and/or they refuse to comply with requests for information and documents. Aside from this issue, in consultation with victims-survivors, it was clear that many wanted an official inquiry or investigation to address cross-border and international issues and to consider the complexity of potential outcomes in securing justice, memorialising and archiving the truth of their experiences.

Priorities

The issue of cross-border transfer was raised consistently in personal and moving accounts of the consequences endured by mothers and those adopted. In recounting the questions to which survivors seek answers the Panel decided not to publish the details of those accounts, leaving it to victims-survivors' and families' discretion to present them to a future inquiry or investigative panel. The most common questions are:

Why were these babies moved?

How were babies moved across country borders freely for adoption by members of the mother and baby institutions, often without parental consent?

Who transported these babies and removed them from their Mothers?

Was there already 'a market'?

If there was illegal movement (trafficking) of babies how does that affect the legality of subsequent adoptions?

*I would like to know although institutions were cross border, was this a tactic to escape cover ups?
Was it a ploy to avoid detection of illegal or substandard practice?*

The legality of cross-border transfer, and who within Government and local state departments knew and approved the process, was raised by victims-survivors as central in establishing a pattern of movement and adoption. It also raises the issue of what was known by mothers about the process and whether it was sanctioned by their family members.

Babies have been transferred to Fahan in Donegal ... Nuns, and Social Workers were involved in the movement of children across multiple legal jurisdictions. Did mothers who moved their children actually know why?

Which laws were breached by transporting children to Homes over the border and beyond, as I understand it, often without the consent of their mothers?

Which authorities colluded with those who ran these Homes to facilitate these transfers?

Was there money involved and how was this collected, notated, banked and by whom?

Were such books audited and by whom?

The breadth of issues and the integration of the process is illustrated by the following quote regarding information sought:

Questions about the legality of adoptions [informed consent issues, forged signatures, illegal cross border adoption]. Cooperation and common legislation with ROI [Republic of Ireland] with regard to access to records. Questions about UK citizenship for adoptees born in the North and adopted in the South.

Several victims-survivors or family members seek answers to questions regarding the process of international adoption:

Why were they moved to the South [Republic of Ireland] or to the USA and other legal jurisdictions?

How many children were shipped off to Australia?

Any records being kept of children fostered across the border and possibly having to obtain documents from the USA?

Babies were obviously adopted cross-border and to the U.S. without their mothers' consent. Did the state authorities there collude with this?

They should be held accountable and hopefully when legally possible co-operate with this inquiry.

Child trafficking – the external strategic direction and administration of institutions from outside the jurisdiction.

The following quotes provide the detail reflected in many of the written submissions or interviews. They articulate the depth and breadth of concern and truth-seeking regarding a process seemingly institutionalised to facilitate cross-border transfer. Recurrent themes are deep-rooted 'need to know' personal history and holding to account those institutionally responsible by achieving their 'full cooperation'.

Access to all personal records and related material, all un-redacted, so that those placed in cross-border or in international adoptions, can start to rebuild what is left of their lives, find out who they are, where they come from etc. All Cross-Border agencies and International Governmental Departments, who previously played a role in the adoption, whether legal or illegal, of children from these Mother and Baby Homes, must allow access to all material they hold, relevant to all individuals concerned, so that all issues can be addressed in any forthcoming Inquiry or Investigation.

The issues around cross border adoptions and issues of consent or understanding on the part of the birth mother must be looked at along with the difficulties that were experienced in trying to locate each other from two different jurisdictions afterwards. Issues of babies being sent to England, America or Australia need to be looked at also along with the repercussions of this for families.

There should be no borders in the execution of this investigation. Rigorous methods should be used in every country or state where the kind of abuse suffered by women in the mother and baby institutions took place. Borders should not prevent justice being done.

I believe if the full truth is to be investigated then services need to be able to access the information they need across borders. Too many times I have been informed that the law is different in Northern Ireland, I would like that questioned. Services should be able to cross reference.

I would want the inquiry to be given complete access to all files on these Mothers and Babies so that their full story can be told as well and there should be no Cross Border difficulties made to stand in the way of these survivors seeking closure.

It is important that the inquiry should be an all Ireland/all island investigation into these mother and baby homes, given the fact that many babies from the south were adopted in the north. Also there should be an international element to the inquiry as children were adopted outside Ireland too, i.e. Canada and the United States. It feels like children were 'trafficked', sold or given to those in other countries.

An inquiry could establish, for example, whether 'procurement' of babies for adoption happened and/or was lawful:

Was there, as demonstrated in the South, a situation where babies were 'procured' for infertile middle class couples from poor unmarried pregnant women? Can some of these findings be extrapolated to current international adoption practice which seems to me to have all the hallmarks of the same abuses – large donations to orphanages? ...

Unfortunately, the trauma of the MB Homes and Laundries is still being played out across the world, by the rich at the expense of the poor.

Legality of individual adoptions, cross border movement of babies, private adoptions, third party adoptions.

If there was something that said I was adopted illegally, that would have a strong effect on me.

While research questions focused primarily on the Mother and Baby and Magdalene Institutions and Workhouses, as discussed in previous chapters, these depended on a network of other services, organisations and individuals. Survivors were asked to reflect on the extent to which an investigation might need to examine how institutions were supported and who played a significant role in maintaining their operation:

Part played by the Clergy in placing and transporting these girls and women to these Institutions.

For me the Family Care society and social services pre and post adoption; they need to answer what assessment process was used to match babies to prospective parents. What follow up should have been in place.

Mental health hospitals/asylums, where girls/women were admitted under the Mental Deficiency Act 1913 when they got pregnant. Many were there for life regardless of whether they were mentally ill or not. Private maternity hospitals/ladies' clinic whose sole purpose was delivery of babies. Children's homes.

The input/knowledge from record offices, church, catholic social services, welfare system (how were benefits etc. processed), deaths and burials, RUC/PSNI involvement, legal areas, midwifery and nursing services.

What was the relationship between the Stormont Government and the Churches in N. Ireland?

The treatment in workhouses here would also need to be investigated along with cases of corporal punishment in schools by religious organisations.

Were employers including state/government run departments and civil service contributing to the stigma/ out-casting of the use of mother and baby homes/ adoption? Should the responsibility of wrong-doing be shared by families, employers and society at large?

... what happened to the babies after, and the ones that were sent on to the convents, which just made our lives more sad?

Several victims-survivors commented on the need for greater awareness of the long-term impact on their lives alongside a societal commitment to public memorialisation:

The long-term effects that adoption has should be looked at and further research carried out.

Identity loss: Women and Girls placed in the Institutions were given new names, which has led to numerous problems of seeking their identity, of who they really are.

Family history ... People need to be remembered, headstones are really important for those children who have died.

While the impact was profoundly personal, often remaining hidden from public view or scrutiny, the consequences have been far-reaching within families:

The process of being an adopted person and the challenge of finding out about that. There needs to be resources and knowledge in England for the diaspora (and other places) including facilitation of our identities. I cannot declare myself as British and Irish on forms where I live. This goes to the core of who I am and what I know of where I came from. Although not directly related to what happened in institutions it does affect me today.

The impact that it had on relatives as well. The impact that the experience had on my mother and her resulting alcoholism had an impact on my siblings too. This doesn't stop with the mother and baby. I've never really found out who my father was for example.

Given the extent of these consequences, victims-survivors expressed the need for counselling and support services, 'to be developed to meet individual needs and be easily accessed'.

A recommended health care plan for those who need respite, such as a dedicated building set up where individuals affected can access therapies and services to help maintain the mental health and wellbeing of mothers and their children.

Full range of counselling services to be developed to meet ALL individual needs and to be easily accessible.

Compensation should also include health care provision, counselling services without waiting lists.

Trauma and mental health care need to be provided.

Finally, the circumstances in which women and children died in the institutions were raised by several victims-survivors and family members, well-illustrated by the following comment on an issue that has resulted in public outrage across Ireland:

Many workhouses have land attached to them that in the present day hold the remains of many inmates who were buried in unmarked mass graves that haven't been acknowledged and are only discovered when planning permission is sought for that area.

Delivering Justice

In addition to accessing information on the operation of institutions through an inquiry or investigation, victims-survivors and their families were asked to reflect on what outcomes they sought concerning the responsibilities of individuals who worked in State and non-State institutions. What would 'justice' mean in this context? From initial consultations with victims-survivors, from their public statements and from previous research, the Panel identified what appeared to be shared priorities: public apology as an acceptance of wrongdoing; health care provision for those suffering persistent physical illness or mental ill-health; recovery of relatives' remains; family reunification; civil actions to seek compensation and/or criminal prosecutions.

As stated previously, the acceptance of shared responsibility by institutions and individuals for their policies and practices is a precursor to apology:

Homes must admit they are responsible for what happened.

... take responsibility and acknowledgement of what did happen and how young girls were let down by people who should have known better.

There needs to be individual, institutional and state accountability and where possible acceptance of responsibility.

Further, victims-survivors and families sought unambiguous, sincere public apologies from churches, State and non-governmental organisations:

Apology from the relevant organisations and State. Might only be paying lip service and for many it is too late.

My mother to have an apology from all institutions both Church & State for her demonization and treatment by those who were supposed to care for her.

Churches who controlled these institutions need to provide a full and sincere apology. The Government needs to provide a full and sincere apology.

Institutions should be identified and if guilty should make a comprehensive public apology to all involved.

Full, comprehensive apologies from all [institutions involved], acknowledging the failings, the mistreatment of birth mothers, the coercion, forced adoption and the violation of human rights of innocent babies and their mothers and the profound lifelong impact those actions have had to this day.

Taken together, acceptance of responsibility and public apology would amount to acknowledgement, thereby securing a 'satisfactory outcome made public and with full transparency' alongside 'public awareness and recognition of what happened and why'.

In terms of a formal justice outcome, several victims-survivors and family members consider, 'where applicable' or 'where deserved' that criminal prosecutions should be a priority. Others considered criminal prosecutions to be inappropriate given that offences were committed a long time ago. Unless an unambiguous criminal act could be proved against a named individual, however, prosecution would not progress. The passage of time due to the state's delay in investigating, the consequent unavailability of witnesses to a specific criminal act causing death or harm, and the requirement to secure conviction beyond reasonable doubt individually and collectively mitigate the potential of criminal proceedings in many cases.

As discussed previously, financial redress is considered by many victims-survivors and families to be a significant need. They propose that in accepting responsibility for the harms done to girls and women through degrading and often arbitrary detention and forced labour, and to mothers and their babies through the process of internment and compulsory adoption, particularly the cruel circumstances of institutionalisation, redress payments should be made without waiting for legal determination.

Redress with no effect on [social welfare] benefits.

I think that an apology will only be worthwhile if there are actions behind it and some form of compensation coming directly from the institutions.

Compensation to prove that this was an injustice.

Compensation – with an early redress scheme NOW.

Given the long history of obfuscation, avoidance and denial inflicted on victims-survivors and families,

invariably their priorities returned to asserting their 'right' to full transparency, focusing particularly on records held on them or their parents or other relatives:

Burial records need to be made readily available and the cemeteries involved need to take steps to properly lay out these sites so that it is made easier for relatives to find who they are looking for. Access to all records should be made available if a person is deceased. I would like to have access to my birth mother's medical records as it should be the right of myself and my children to know our medical history.

Full, complete, un-redacted access to all records from all institutions and organisations involved for all who request them.

They were clear that records, while laying the foundation of their personal identities, could also provide the means to achieving some form of family reunification:

Where there is a wish for reunification by all parties this should be facilitated.

Family reunification systems are a priority.

The final two priorities raised by victims-survivors and their families concern the recovery, identification and respectful interment of remains and the memorialisation of their loss.

I am deeply passionate about recovering the remains of loved ones.

If it is possible to recover remains of the baby and a marked grave, this would provide some healing.

Remains of dead children who were unceremoniously buried need to be recovered and identified by the appropriate authorities, and buried/cremated in accordance with the mother's or family's wishes.

Memorials erected and financed by local Government, as a lasting legacy to those mothers and the new born children who were placed within the Institutions against their will, perhaps incorporated in a Visitors Centre, where people can listen to testimonies and visually live the experiences of the Mother and babies of what it was like while in the Institutions.

There should be a permanent memorial to the many individuals who travelled through these institutions. Something like a memorial garden, reflecting peace and calm, in many ways the exact contrast to their very difficult, lonely lives.

There are differing views on a Memorial. I personally would like to see three commissioned murals in Belfast, Londonderry and Newry with our consultation.

There should be murals designed by survivors and erected in all standing institutions.

Archiving Truth

In the aftermath of society-wide injustice an important element of coming to terms with the past is the establishment of a truth-telling archive, housing primary documentary evidence retrieved from institutions' records, State and other agency files and, most significantly, survivors' personal accounts of their experiences. Such an archive is both a repository of people's experiences and a library of official records available for victims-survivors, their families, researchers, journalists, historians and the wider community. It confers legitimacy on the written and spoken accounts of those silenced by violence, condemnation, rejection and indifference.

Asked whether they supported the establishment of a truth-telling archive through which their experiences and/or those of close relatives could be gathered with informed consent, and held permanently as a family and public education resource, victims-survivors' responses were unequivocally positive. They emphasised the significance of having their experiences recognised, perceiving an archive as a means of recording and acknowledging the truth while also informing future generations of a violent and discriminatory past. They

also highlighted the importance of a permanent repository of all relevant records to enable their own search and future generations' search for personal and family history.

An historical, truth telling archive or public record, or way of marking and remembering the impact the circumstances have had on families could be a fitting way for all involved to be able to tell their story and have their voice heard. If they were like my family, they remained a secret for many years. A public resource such as this could be of benefit for those still searching for answers, but hopefully also bring some closure. The full truth, context, historical and emotional inclusion of records as a public resource would be a valuable resource.

Absolutely this is needed – a comprehensive and bespoke archive of all the truths and lived experiences be established and maintained. That these be recorded in a multi-modal fashion, using auditory, visual & digital recording of oral testimonies.

I really like this idea, to share these stories through multi art forms, to educate all of society embedding within our educational system to ensure that nothing like this EVER happens again.

As an historian who helped to research events and personal stories for a book of those men who lived locally and served during the Great War, I believe it's very important that a Truth Telling Archive be set up so that the stories and life changing events brought about by these institutions live long in the public's memory, and are never forgotten or repeated. We learn lessons for the future if we look into our past and tell its history truthfully, whether it is pleasant or unpleasant.

I think the experiences of those who have suffered need to be used to not only educate but permanently commemorate their suffering and to ensure that those in authority never collude to be complicit in such activities ever again.

This is what we have to learn from. That's important – education to let people know what damage this did to so many people. It should give insight to social services and courts in the future to read and consider what not to do or what to do. It's the best education for people too from people who've been through it. You could even get an anthropologist to research this stuff. It's a large group of people to delve into.

I believe it could be extremely beneficial as it would show people there is a shared experience and that the road they travelled, where they often felt alone and forgotten, was in fact one that many others were also travelling in similar circumstances.

Some elements of society will always abuse others but we must attempt to improve our behaviours for the next generations and learn lessons.

...there may be survivors who wish to speak openly either by recording or filming. We have already seen how powerful this is in radio interviews and television coverage by programmes like 'Spotlight'. Other mediums to express emotions like art and music might also be appropriate.

The victims and survivors should be the 'authors' of this archive. It should be held by PRONI.

Alongside the establishment of an archive, survivors also raised the importance of public memorialisation:

A memorial should be created including the names of the mothers and children – digital as well.

A permanent memorial should be made at Stormont. A Visitors Centre, where school trips could visit with touch screens to read testimony, photographs. Inspiration should be sought from 'world class' memorials (Holocaust/9-11).

Inspiration could be derived from other world class memorials e.g. Holocaust. A permanent memorial with emblems such as stars to protect anonymity to denote every mother and baby that passed through these institutions like the memorials in Washington.

Summary

- Victims-survivors and families considered a statutory public inquiry to be the only form of investigation that has the powers to compel evidence and to hear those in authority testify under oath, to secure the release of all documents held by the State and the institutions, and to meet their expectations for a thorough investigation.
- Among their priorities for investigation are the legality of cross-border transfer of mothers and babies and international adoption, including details of the process of procurement and the establishment of a comprehensive truth-seeking process.
- A further significant priority is to establish the inter-locking roles played by those running the institutions, the clergy, social work agencies, the police, local authorities and Government.
- In addition to securing public recognition of the violence, stigma and marginalisation suffered by victims-survivors there is an identifiable need for specialised counselling and support services.
- In addition to securing access to personal files, victims-survivors expressed a range of priorities including: a public apology from the institutions involved and the State; financial redress; health and care provision; recovery of remains; family reunification; a forum in which their personal stories could be heard and recorded; public memorialisation; civil actions; and prosecutions, where possible and appropriate.
- Victims-survivors also prioritised the establishment of a truth-telling archive to honour their and their families' histories and provide a public education resource.

Chapter 10

Further Submissions

10

Chapter 10: Further Submissions

As noted in Chapter One, the Panel specifically requested and also expressed its general openness to receiving written submissions from organisations, academic researchers and legal representatives who had established relationships with victims-survivors and family members. While brief submissions were received from a range of sources, and have been considered by the Panel, as explained in Chapter Eleven, substantial and lengthy submissions were made by Amnesty International/University of Ulster (AI/UU), KRW LAW and Phoenix Law. What follows summarises the context and content of the AI/UU, KRW LAW and Phoenix Law submissions and their recommendations for further inquiry and investigation.

Submission from Amnesty International and Ulster University

From 2013 Amnesty International, Northern Ireland, worked with victims-survivors to access the truth and gain full acknowledgement of the human rights abuses institutionalised in the operation of Mother and Baby Institutions and Magdalene Laundries. Soon after the Panel's appointment Amnesty joined with Ulster University to host four online seminars, hearing presentations from participants in previous historical child abuse and institutional abuse inquiries, and from campaigners and academics.¹ The *Learning the Lessons* seminar series resulted in a report: *Co-designing the Inquiry / Investigation into Mother and Baby and Magdalene Institutions in Northern Ireland*. It was submitted to the Panel in June 2021. What follows reflects the 'underpinning principles' established within the report: survivors' justice needs; a human rights approach; and survivor participation (Corrigan and Lundy 2021: 8).

The first principle, Survivors' Justice Needs, particularly the 'ongoing and longer-term impact on survivors and their families', was emphasised throughout the seminars as the 'starting point of any design process'. It was said that although 'complex and wide ranging they are the linchpin that should drive historical abuse investigative processes ... applying transitional justice principles and developing an understanding of wider social [and institutional] context' (Corrigan and Lundy 2021: 8). While noting diversity between contributors regarding their needs, key principles were established: acknowledgement; validation; and vindication combining acceptance of institutional responsibility and accountability. Corrigan and Lundy also note the transformative potential of redress in meeting material intergenerational needs while progressing the possibilities of forgiveness and reconciliation.

The second principle foregrounds Human Rights: rights to life and liberty, to private and family life, to freedom from inhuman or degrading treatment, from discrimination based on sex or social origins, and from servitude or forced labour. Seminar participants criticised the investigations held in the Republic of Ireland (ROI), claiming that survivors had not been fairly treated and their critique of State policy and practice ignored, particularly regarding forced adoptions. This reflected a failure to consider and respond to survivors' rights; 'to provide justice, and to identify systemic issues which allowed the abuses to occur' (Corrigan and Lundy 2021: 10). Such failures had impacted across generations. Finally, the third principle reflects the recurrent theme of survivors' participation. Corrigan and Lundy propose that in the development of inquiries and/or investigations, victims-survivors should be involved in 'design, implementation and monitoring' and be 'appointed as commissioners', holding 'principal roles' in their operation.

Having established core principles, the core of the submission, *Learning the Lessons: Structures, Process*

and Procedures, comprises 17 sub-sections. They draw out 'key issues and lessons of previous historical abuse inquiries highlighted by panellists' (Corrigan and Lundy 2021: 11). Reflecting on the Historical Institutional Abuse Inquiry in Northern Ireland (HIAI), the Ryan Commission and the Mother and Baby Homes Commission of Investigation (MBHCOI) in ROI, the authors note the 'positive experience' of the HIAI's confidential Acknowledgement Forum - 'a step towards breaking the silence and challenging denial' (Corrigan and Lundy 2021: 12). Yet, in the presentation of testimonies and in the HIAI's process of mailing summaries to survivors' homes, privacy was compromised and distress caused. Disturbingly, the MBHCOI in ROI had refused survivors access to their testimonies.

While a majority of those interviewed by Lundy (2020) reported positive experiences of the HIAI Acknowledgement Forum, those presenting to the AI/UU seminars considered the ordinary hearings of the statutory public inquiry a 'frightening and intimidating' process. Held in public, in a court environment, the hearings made them feel 'vulnerable' and 'exposed', leaving them 're-traumatised' and suffering long-term personal consequences (Corrigan and Lundy 2021: 13). The AI/UU submission contends that survivors' marginalisation and re-victimisation could be avoided by ensuring their involvement at all stages of the inquiry process. A 'victim-centred' and 'victim-led' approach was well-illustrated by a presentation focusing on the Canadian Truth and Reconciliation Commission, specifically its guiding principles of 'transparency, forward looking, do no harm' (Corrigan and Lundy 2021: 14). In foregrounding these objectives, the participation of survivors in the process had been achieved, not least their appointment to decision-making roles. A further issue raised in the seminars concerning survivors' marginalisation was criticism of the role of civil servants and potential conflicts of interest thus undermining the independence of the process.

Inevitably, throughout the seminars, how terms of reference for a future inquiry or investigation would be determined was a recurring issue. The scope of the inquiry or investigation, established by the terms of reference should include, 'investigation of harms and abuses ... forced adoption, forced labour, denial of basic human rights and needs ... separation from family, and loss of identity' resulting in 'victimhood, intergenerational trauma, and lifelong impacts on survivors, families and secondary victims' (Corrigan and Lundy 2021: 16). Further, the terms of reference should provide for participation of state agencies beyond the key institutions involved as previous inquiries excluded multiple public and private agencies, and the role played by adoption agencies.

Given that institutions and agencies involved in institutionalising women and children and separating mothers from their children inevitably would have core participant status, the AI/UU submission is clear that, unlike the HIAI, an inquiry's terms of reference should ensure that survivors are defined as core participants. This would enable advance disclosure, legal representation, the opportunity to submit relevant questions to be addressed and prior access to the findings and reports, thus establishing 'equality of arms and protection' (Corrigan and Lundy 2021: 17). These conditions are considered essential, challenging the vulnerability experienced by survivors who gave evidence to the HIAI. They had been 'left vulnerable due to their non-core status and lack of legal representation'. At the HIAI, according to AI/UU, victims-survivors were briefed immediately prior to giving evidence in public, and 'presented with disclosure of personal and often sensitive information about their life history, usually previously unknown' (Corrigan and Lundy 2021: 18). Victims-survivors found such disclosures, 'shattering' immediately before enduring public examination of their evidence.

The AI/UU submission emphasises the necessity of survivors' testimonies to the truthfulness of the inquiry process. Oral accounts are considered essential - they should be given respect, unlike in the MBHCOI process in ROI, where all victims-survivors' were required to be heard in private, and transcripts neither were published nor returned to survivors. Victims-survivors considered that their evidence had been diluted in the final report of MBHCOI. It should be 'an explicit requirement' to foreground 'survivor testimony' as 'paramount to conclusions and recommendations' of an inquiry, according to the AI/UU submission (Corrigan and Lundy 2021: 21).

Further, the submission proposes that ensuring full transparency in the process, and affirming survivors' rights to access records and personal files held by private or State institutions, constitute essential

elements of the discovery process. On the conclusion of the investigative process, ‘documentation should not be sealed, but instead be placed in an official archive and used to inform the public, particularly its educational significance’. Throughout the investigation and inquiry process, victims-survivors should be kept fully informed of progress and given advanced access to findings ahead of the media and general public.

The AI/UU submission maintains that while the investigation or inquiry is in process, a redress scheme should be established to address as soon as possible the systemic ‘abuse, mistreatment and human rights violations’ evident from already available information (Corrigan and Lundy 2021: 23). The submission states that material support, including the use of DNA technology, is a profoundly personal element of a redress scheme. Additionally, and demonstrated by the international panellists to the seminars, a redress process should engage with family issues arising from intergenerational impact of abuse that had been perpetrated.

Public accountability, identifying those personally and organisationally responsible for the mistreatment, deprivations and inhumanity that prevailed in the pre-birth practices and forced adoptions within institutions, was a priority raised consistently within the seminars and in the submission. While a Public inquiry would be a fact-finding process, ‘information gathered by an inquiry should be referred to the Police Service of Northern Ireland and the public Prosecution Service’ with ‘transparency’ guaranteed regarding ‘progress, delays, and decisions’ (Corrigan and Lundy 2021: 25).

The submission presents two models for ‘designing an investigative mechanism’. The first ‘would build on the statutory inquiry model’ starting by ‘identifying survivors’ justice needs’. A ‘Thematic Research and Investigation Unit’ should be established to develop a ‘macro analysis, identifying patterns and policies ... researching and investigating issues identified by survivors and agencies and actors involved ... the state, religious orders, social services and the police’ (Corrigan and Lundy 2021: 25-6). Alongside this initiative would be survivor-led, ‘Independent Implementation and Monitoring Units’ with survivors appointed to key decision-making roles: ‘initiation, design, implementation, monitoring’.

A second mechanism suggests a ‘hybrid model’ using ‘restorative justice processes’, enabling survivors ‘to obtain acknowledgement of harms and offer reparation’. It would facilitate ‘greater voice for victims and potentially greater offender accountability and cooperation as there are no sanctions involved’ (Corrigan and Lundy 2021: 26). In this model, the ‘Acknowledgement Forum’ would be informed by an ‘Investigative Panel’ alongside a process for ‘Restorative Justice Mediation’.

In conclusion, the submission welcomes the co-design process as creating an ‘exceptional opportunity’ to learn from ‘the collective wisdom of ... victim-survivors and others who have gone through or studied previous inquiry processes’. Thus, ‘a bespoke investigation process can be put in place to deliver the truth, justice and redress to which all have a right’ (Corrigan and Lundy 2021: 27).

Submission from KRW LAW

In its submission, KRW LAW states that it is instructed by a mother who had been transferred from a Roman Catholic institution in Northern Ireland to another in the Irish Republic. There she gave birth and her baby was adopted. KRW LAW also made submissions to the Department of Health, the Office of First Minister and Deputy First Minister and the Irish Government, proposing a cross-border, human rights-compliant investigation into violations of the European Convention on Human Rights (ECHR). This was copied to the UN Human Rights Committee, the UN Committee on the Elimination of Discrimination Against Women, the European Committee on the Prevention of Torture, the Human Rights Commissioner of the COE and the Petitions Committee of the European Parliament. In its representations to these bodies, KRW LAW requested a preliminary investigation into institutions that would result in a declaration of responsibility for ‘crimes against humanity’. It also proposed that the Police Service of Northern Ireland and An Garda Síochána should investigate apparent crimes.

KRW LAW’s submission to the Panel followed publication, early in 2021, of the MBHCOI Report in ROI, and the University of Ulster and Queen’s University research report in Northern Ireland. It notes the exclusion

of the Mother and Baby Institutions from the remit of the HIAI, arguing the centrality of significant breaches of the ECHR and highlighting the State’s investigatory duties under Articles 3 and 4 ECHR.

The submission notes that the Article 3 ECHR investigatory duty encompasses minimum standards, namely: the investigation should be independent of those implicated in the matters under investigation; victims and survivors should be granted access to evidence, and be involved in the direction taken by the inquiry and in determining questions for witnesses. To facilitate effective participation, the State is duty-bound to provide legal aid to victims and survivors. To ensure accountability, the submission notes the necessity of public scrutiny.

Regarding the effectiveness of investigation, the submission further states that it ‘must be capable of leading to a determination of whether force used was or was not justified; of ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system; and of identifying the State officials or authorities involved in whatever capacity in the chain of events in [sic] issue’ (KRW LAW 2021: 3). The breadth of investigation should extend to ‘surrounding circumstances’ including ‘planning, management and control of the operations’ and the ‘instructions, training and supervision given to state agents’. To that end, evidence relevant to incidents requiring investigation should be secured.

Connected to the investigative obligation, the submission notes: the ‘right to know has evolved to include instances of “gross” or “systemic” human rights abuses outside of wartime’. Further, states and courts have ‘also recognised the right to truth, either as an implied component of their domestic law in the aftermath of gross or systemic human rights abuses, or as part of international human rights law’ (KRW LAW 2021: 4).

Regarding the inalienable ‘right to truth’, the submission references international case law regarding close links ‘to the right to an effective remedy; the right to legal and judicial protection; the right to family life; the right to an effective investigation; the right to a hearing by a competent, independent, and impartial tribunal ... the right to obtain reparation; the right to be free from torture and ill-treatment; and the right to seek information’ (KRW LAW 2021: 5).

Noting that the organisations responsible for running the institutions operated across Ireland’s border with the North, the submission emphasises a procedural obligation for States to co-operate. Referencing the findings and reasoning of the European Court of Human Rights’ Grand Chamber, it affirms the ‘jurisdictional link between the victim of the alleged violation of Article 2 and the Contracting State concerned’. Further, it notes the significance of ‘collective enforcement’, specifically the obligation on ECHR states parties to work together, deploying all available means ‘to request and afford the cooperation needed for the effectiveness of the investigation and proceedings as a whole’ (KRW LAW 2021: 7).

Regarding central and local government ‘collusion/ complicity’ with ‘Catholic, Protestant and Non-Conformist’ religious authorities, the submission presents four matters for investigation as breaches of Articles 3 and 4 ECHR. These are: ‘failures to inspect and regulate Mother and Baby Care Homes and other institutions including Magdalene Laundries and Workhouses’; ‘institutionalised forced labour and slavery’; ‘enforced disappearance and trafficking’; and ‘forced adoption’ (KRW LAW 2021: 8).

The submission contends that the Panel’s recommended framework of investigation should satisfy four objectives. First, the investigation should comply with human rights standards, specifically Article 3 of the ECHR concerning ‘allegations of systemic abuse amounting to torture, inhuman and degrading treatment’. Second, the investigation should be consistent with the obligation to investigate violations of Article 4 ECHR, ‘regarding slavery, servitude and forced labour’. Third, also regarding Article 3 ECHR, the ‘right to truth/ knowledge’ would be affirmed and pursued. Fourth, an ‘effective remedy’ should be established (pursuant to Article 13 ECHR) including ‘provision of a redress scheme for victims and survivors’ of all institutions involved (KRW LAW 2021: 8-9). The submission concludes that such a model will, ‘ensure that the full facts will be brought to light, that culpable and discreditable conduct be exposed, that dangerous practices and procedures be rectified and the victims [will have] the satisfaction of knowing that lessons

Submission from Phoenix Law on behalf of Birth Mothers and their Children for Justice (NI)

In early August 2021 the solicitor for Birth Mothers and their Children for Justice NI (BMCJNI) submitted her clients' collective 'response' to the Panel's questionnaire.¹ It follows publication of a previous submission paper (Phoenix Law 2021a) and calls on the 'Minister for Health and/or the Minister for Justice' to commission a 'full statutory public inquiry' into the 'practice of placing pregnant girls (some very young indeed) and young women in Mother and Baby Homes from where their babies were forcibly adopted' (Phoenix Law 2021b: 1). While several BMCJNI members have provided additional, personal responses to the Panel, the collective submission sets out:

what the Group wishes a statutory public inquiry to achieve, the questions which should be answered, the records and personal documents to be preserved and accessed, powers to compel evidence, the manner of evidence giving including the reasonable adjustments to made for vulnerable witnesses to give evidence in a trauma sensitive manner, the scope of harm to be considered, the potential outcomes and the necessary supports and protections to be given to the survivors.

The submission affirms the necessity of holding a statutory public inquiry into the 'practice of placing pregnant girls and young women in Mother and Baby Homes' and the enforced adoption of their babies. The death of young women and babies, possibly as a consequence of harsh regimes and poor medical attention, are specified as a matter of profound concern. Such deaths may have breached Article 2 and Article 3 ECHR, according to the submission. The submission contends that although abuses including forced adoption occurred before 1999, new information within the Ulster University/Queen's University Belfast Report commissioned by the Inter-Departmental Working Group gives rise to an obligation on the State to hold an ECHR-compliant inquiry.

Based on analysis of the legal precedent regarding the 'procedural duty established by Articles 2 and 3' of the Convention, the submission presents a strong case for an investigation embodying six key elements: *effectiveness*, particularly in determining whether the actions of those responsible for the institutions and their related practices were justified; *public scrutiny*, as a means to securing accountability and ensuring that victims are involved in the investigation; *thoroughness*, ensuring relevant questions are answered; *promptness*, to maintain confidence in the rule of law; *independence*, in the sense of the inquiry being dissociated from the institutions involved; and the capacity to achieve the *identification of perpetrators*, whether state or private actors. The submission states that, to meet satisfy these six inter-linking elements and Article 2 and Article 3 requirements, the only appropriate process would be a statutory public inquiry.

The most significant issues of concern are: the failure to record or investigate offences; the failure to inform women of appropriate housing alternatives and social support; social workers' failure to provide advice on these issues; the denial of medical treatments and ante-natal provision; enforced unpaid manual work; institutional and individual responsibility for regimes that shamed and blamed women; restricted access imposed on mothers to their new-born babies; government departments' responsibility regarding the institutionalisation of pregnant women and the enforced adoption of their babies; validity of adoptions without consent; the funding of institutions and government involvement; and the failure to conduct appropriate inspections that should have identified and ended institutionalised abuse.

The submission further questions whether maternity guidelines were in place and, if so, how they operated; and what happened to babies who died. It questions whether institutions profited from the unpaid work of young women. A broader structural issue concerns the circumstances and arrangements, including financial gain which facilitated and perpetuated the cross-border transfer of babies.

² Throughout this section referenced as 'the submission'. It confirms that 'the Group' comprises over 250 survivors, 'primarily women admitted to Mother and Baby Homes across Northern Ireland as girls and young women after becoming pregnant, and also includes adults' who at the time were babies taken 'sometimes forcibly' from their mothers.

To respond thoroughly to these key concerns, the submission calls for a 'statutory public inquiry ... to compel the preservation and production of relevant records and the attendance of witnesses', thus meeting the requirements of Article 3 standards (Phoenix Law 2021b: 5). It should focus on the processes and practices that consigned girls and young women to institutions and removed their babies for adoption. 'Open and transparent', it would reveal the 'grave injustices' suffered, establish a scheme for compensation, deliver apologies from state and non-state institutions involved, and contribute to criminal prosecutions. Its recommendations to Government departments would include 'addressing individual and systemic failures' in the processes of institutionalisation and forced family separation (Phoenix Law 2021b: 6).

Regarding the 'scope of harm to be considered by the [proposed] statutory public inquiry', the submission states the terms of reference should include harms occurring 'before, during and after time in an institution' (Phoenix Law 2021b: 8). These include: mental and physical ill-health; trauma; alcohol and drug abuse; psychological issues such as abandonment; deprivation of free will particularly regarding informed consent; bereavement regarding the loss of a child; impact of the ability to form relationships; diminished family history; low self-esteem; deprivation of family life; and lack of information or explanation.

Acknowledging criticisms directed towards the HIAI's failure to acknowledge and facilitate the needs of survivors, the submission emphasises the importance of survivors' needs, quoting Lundy (2020: 1): 'voice, acknowledgement, vindication (validation), apology, redress (monetary/ symbolic), rehabilitation measures, intergenerational needs, access to records, authoritative historical record, offender accountability and taking responsibility, and prosecution'. To meet these needs, ahead of a future inquiry, it is considered imperative to identify and preserve 'potentially relevant evidence ... as soon as possible' (Phoenix Law 2021b: 10). The submission proposes that ahead of any further investigation or inquiry the preservation of Departmental records, and those held by private organisations, should be a discrete Panel recommendation. Records include: parish notes on women; doctors' medical notes; social work notes on referral to institutions; ward/ day books relating to pregnancies; medical records from pregnancy through or post-natal; institutions' financial records; police records. Further, the submission proposes that a statutory public inquiry should use its powers to compel and preserve evidence. Evidence-gathering and disclosure should be managed by an independent research team.

The submission proposes a series of provisions necessary to meet the requirements of a full, thorough and survivor-oriented statutory public inquiry under the 2005 Inquiries Act or its equivalent. It should have powers of compulsion to ensure that an inquiry hears evidence under oath from all agencies involved. In preparing for a statutory public inquiry full access to personal records should be granted to victims-survivors. Access should include details of the process of their incarceration, their time inside institutions and any family information. Following access to medical and social care records, and sufficient time to consider their contents, records could be made available to a statutory public inquiry. This contrasts to the HIAI, where previously unknown, highly sensitive, personal information was disclosed in the course of survivors giving evidence. The submission states that survivors should be 'able to process and engage with disclosure on highly sensitive issues' and that records should be viewed as profoundly 'sensitive' and in the context of prevailing 'societal attitudes of the time' (Phoenix Law 2021b:13).

While a statutory public inquiry should recognise the profound sensitivity of traumatic historical and contemporaneous events facing survivors, the submission affirms that such acknowledgement should not hinder full and thorough investigation by an independent, statutory public inquiry. The submission states, 'the stigma they have experienced has been a consequence of or exacerbated by the failure to investigate the practice and resulting ignorance of what happened' (Phoenix Law 2021b: 14). Thus an inquiry should recognise and accommodate vulnerabilities and provide necessary personal support, enabling appropriate participation and recognising an inquiry's duty of care. Survivors should be involved in decisions regarding: evidence preservation; witness interviewing; venue and facilities appropriate to their needs; conduct of the inquiry; formulation of its recommendations; preservation and accessibility of the evidence and records following the inquiry.

In preparing to give evidence, survivors should be fully informed of the process and have access to their statements in advance, together with counselling provision and legal representation. A significant criticism of the HIAI was that survivors were not generally legally represented which contrasted starkly to institutions whose representatives had documentary access and legal teams. Survivors were denied documentary disclosure until the day of the hearing and had no legal representation: ‘There was a perception amongst survivors that the religious orders, which had the assistance of legal representatives, were given a free run and priority whilst survivors were treated like they were second class citizens’ (Phoenix Law 2021b: 15). Consequently, many had been re-traumatised, ‘isolated, disempowered and unheard ... essentially the experience of most survivors of their abuse and its aftermath’ (Phoenix Law 2021b: 16). Legal representation is necessary to safeguard the interests of survivors, its costs met through non-means-tested legal aid under the 2005 Inquiries Act or its equivalent

The guiding principle for the design of a public inquiry must be that it is ‘survivor-centred’, accommodating victims-survivors’ participation both in the investigation and in the presentation of evidence. Referencing a series of other commissions and inquiries, the submission notes, ‘the development of a range of special measures to ensure that survivors can properly participate, give credible accounts of their experiences and provide their valuable insights’. Measures include, ‘the provision of [survivors’] evidence from remote rooms with the support of counsellors, making available ... live link evidence, anonymity ... approval of questions by the Chair or counsel to the inquiry’ prior to survivors’ examination (Phoenix Law 2021b: 17-18). It is considered essential that best practice learning from other inquiries and mental health organisations should be accessed to protect survivors from re-traumatisation.

The submission references the methodology adopted by the Children in the Care of Lambeth Council Investigation, its report published in July 2021. In that process, survivors were granted core participant status, ‘had funded legal representation, provided oral and written evidence, assisted the Inquiry in the preparation of a summary of experiences and key issues and were invited to provide their views on practical recommendations for consideration by the Inquiry’ (Phoenix Law 2021b: 18). Special measures adopted included: restriction orders granting anonymity; use of audio only for live streaming; redactions; anonymity of identities were appropriate; and advice, support and a helpline.

Recognising the complexity of a public inquiry that focuses on multiple, diverse institutions, and the agencies and public bodies that supported their practices, the submission proposes the appointment of a chairperson with judicial experience from outside the jurisdiction. They would sit with a specialist inquiry panel which ‘should preferably include a female judge with human rights experience, a psychiatrist with experience of working with persons with institutionalised trauma and someone who can provide “lived experience” such as a birth mother who has had a baby adopted or someone who has been adopted’ (Phoenix Law 2021b: 19).

The submission concludes by noting the potential outcomes of a statutory public inquiry: identifying all organisations involved and obtaining an unreserved apology from each; establishing a full redress and compensation scheme ahead of the inquiry’s conclusion; criminal prosecutions where possible and appropriate; and specialist counselling services to meet survivors’ needs. Further, the submission proposes a truth telling archive, a museum exhibition and a public memorial, the latter detailing the full extent of those detained in the institutions. Physical memorials, designed in consultation with survivors, would be constructed in towns across Northern Ireland alongside a digital memorial.

Part 3

CONCLUSION

Chapter 11

An Integrated Investigation, Information and Reparation Process

11

Chapter 11: An Integrated Investigation, Information and Reparation Process

Introduction

This chapter integrates the views of victims-survivors and relatives with the requirements of a human rights-based approach and the lessons learned from past investigations in Northern Ireland (NI) and other jurisdictions. From these combined and complementary sources, the chapter presents an investigation, information access and reparation framework designed to address the needs and rights of all affected by the Mother and Baby Institutions, Magdalene Laundries, Workhouses and related pathways and practices including adoption.

What follows is the rationale underpinning the Panel's recommendations, including the Panel's proposed Terms of Reference for an Independent Panel and statutory Public Inquiry, set out earlier in this report. The chapter explains *why* the Panel recommends an integrated investigation, information access and reparation process comprising:

1. **Adoption of Guiding Principles**
2. **Responsibilities of the Northern Ireland Executive Office**
3. **An Integrated Truth Investigation**
4. **Access to Records**
5. **Redress, Reparation and Compensation**

Recommendation 1: Adoption of Guiding Principles

From the key priorities expressed in consultations and research interviews with victim-survivors, the Panel has identified six Guiding Principles that should underpin the implementation of its interlocking recommendations, and should be stated explicitly in the mandate for each measure. They are:

- a. Funding and resources should be sufficient to ensure effective and sustainable implementation of all recommendations;
- b. The human rights of victims-survivors and relatives should be central to all recommendations and their realisation;
- c. Securing full access for victims-survivors and relatives of the deceased to information regarding their personal and family histories and the work of future investigations is a fundamental priority;
- d. In progressing implementation and ensuring accountability, policies and practices should be trauma-informed, identifying and responding to the needs and preferences of victims-survivors;
- e. Future investigations should be accessible to all victims-survivors and relatives, particularly ensuring participation by those with disabilities;
- f. Inclusion of victims-survivors and relatives affected by cross-border practices and in the Diaspora, and relatives of the deceased, is essential.

In comparative contexts, where similarly complex responses have been required to wide-ranging, grave and ongoing (as well as ‘historical’) human rights violations, explicit statements of and commitment to Guiding Principles have operated to encourage a sustained focus on the individuals and families at the heart of the process. Examples include the mandates of the Canadian *Truth and Reconciliation Commission* (TRC) (Government of Canada 2006) and *National Inquiry into Missing and Murdered Indigenous Women and Girls* (National Inquiry 2019c: 5).

Recommendation 2: Responsibilities of the Executive Office

It is clear that *numerous, widespread abuses* occurred in the past and persist, not least in their long-term impact. Consequently, a *range of responses* is needed to meet the needs of victims-survivors and relatives, and to vindicate their human rights. This range of measures requires action by numerous government departments and state bodies. Thus, a central coordination and implementation role is required, to be held by an entity with overarching responsibility. The Panel’s recommendations are interlocking; the implementation of each recommendation is essential to achieve successful implementation of all others (discussed fully below). It is a fundamental requirement of a transitional justice approach to remedying serious and widespread human rights violations that the constituent elements of truth-telling, access to justice, provision of reparation and guarantees of non-recurrence, and memorialisation are *all* implemented.

The *gravity* of the abuses and *urgency* of survivors’ and relatives’ needs are such that the Panel’s recommendations necessitate the highest level of government commitment. This includes the provision of all resources necessary to implement the recommendations.

Further, the *cross-border* composition of the relevant institutions and the practices in which they were involved means that cooperation will be necessary between the NI Executive and the government of the Republic of Ireland (ROI).

One essential form of cooperation concerns access to information. The ROI Government should use its powers to enable individuals to access their personal records and information about their disappeared and deceased relatives. It should require and ensure the production, to survivors and their relatives, to the investigation mechanisms in NI, and to the general public (while protecting human rights), of all relevant administrative records concerning the participation of organisations and individuals in ROI with those institutions and practices under investigation in NI.

Cooperation should extend to assisting victims-survivors seeking redress and reparation when their suffering was intensified by being moved across borders. Cooperation will also be necessary in establishing permanent archives, and implementing public education and active memorialisation.

Significantly, in October 2020, the the Taoiseach announced the ROI Government’s commitment to:

... work to establish on a formal, national basis an archive of records related to institutional trauma during the 20th century; this will include archiving relevant records and witness testimony by victims and survivors; it will be developed at a suitable site and operated in accordance with the highest international standards; it will be designed in cooperation with professional archivists and historians, as well as with victims, survivors and their advocates. (Department of the Taoiseach 2020)

According to the Ulster University/Queen’s University Belfast (UU/QUB) Report commissioned by the Inter-Departmental Working Group, an estimated 11.5% of girls and women who entered Mother and Baby institutions in NI had home addresses in ROI (McCormick and O’Connell 2021a: 3). Of those institutionalised in Magdalene institutions, an estimated 30% in the Derry institution appear to have come from ROI, ‘many’ through referral by the Sisters of Mercy at the Stranorlar County Home which functioned as a Mother and Baby institution (McCormick and O’Connell 2021a: 14). There is evidence that a magistrate in Donegal used the Magdalene institution in Derry as an alternative to prison (McCormick and O’Connell 2021a: 14).

Approximately 14% of girls and women in the Magdalene institution in Belfast appear to have been transferred from ROI (McCormick and O’Connell 2021a: 14). There is also evidence of transfer of a girl by the Sisters of Mercy in ROI to the Magdalene institution in Newry (McCormick and O’Connell 2021b: 282), and of the transfer of girls and women by the Good Shepherd Sisters from NI Magdalene institutions to the same congregation’s convents in ROI (McCormick and O’Connell 2021b: 294, 297). The *Mother and Baby Homes Commission of Investigation* (MBHCOI, 2021: ch18-26) found that mothers in The Castle Hostel in Donegal, and in the Dunboyne, Denny House, Bethany Home and Bessborough Mother and Baby institutions, had been transferred from NI.

Regarding cross-border adoption, the UU/QUB Report states that ‘a significant number of children, born to mothers resident in Mother and Baby Homes in Northern Ireland’ were adopted in ROI and other jurisdictions (McCormick and O’Connell 2021a: 8). The Report found that between 1957 and 1982, 202 babies were sent from Marianvale Mother and Baby Institution to baby homes in Stamullen (Co Meath), Fahan (Co Donegal) and other institutions in Dublin (McCormick and O’Connell 2021b: 76). From these locations in ROI, many adoptions were arranged, including the transport of children to the USA (McCormick and O’Connell, 2021b: 78-79). The legality of these cross-border and transatlantic adoptions remains seriously in question. The Panel also received correspondence from former journalist and academic researcher Conall Ó Fátharta, highlighting that until 1994 hundreds of children were sent from ROI to NI for adoption and noting that the Adoption Authority of Ireland ‘does not have sufficient information on each child’ to be able to confirm the legality of all adoptions (Ó Fátharta, 2021). The MBHCOI (2021) also confirmed that some children born in the Mother and Baby institutions at Pelletstown, Bessborough, Castlepollard, Bethany Home, Denny House and Dunboyne were transported to NI for adoption.

Recommendation 3: An Integrated Truth Investigation

The Need for Urgent Action

As explained in Chapter 2 and its accompanying *Background Research Report* (O’Rourke 2021a), the State has an obligation to investigate serious human rights violations as soon as it receives relevant information. Promptness is essential to an ‘effective’ investigation. Clearly, there have been major failings over decades to investigate what was known, and ought to have been known, about the institutional, forced labour and family separation system. The consequence of the State’s delay is that access to justice is not a straightforward matter. Many individuals involved are no longer alive and witness evidence is difficult to obtain due to the passage of time. Yet the right of survivors and relatives to an investigation remains, and the need for investigative measures is more urgent than ever given how long those affected have waited for state action. The Panel warmly welcomes the NI Executive’s commitment to establishing an independent investigation. The Panel’s recommendation for the appointment of an Independent Panel must be implemented as soon as possible and no later than 6 months from the date of this report. At the same time, legislation to establish a statutory Public Inquiry, an essential element of the truth investigation, must be an immediate priority for the Northern Ireland Assembly.

Relationship with Other Justice Mechanisms

A specialised truth-telling investigation is required where ordinary criminal justice or inquest mechanisms are not sufficient to meet the need for a full examination of questions of state and institutional responsibility for gross and systemic human rights violations. However, a specialised truth-telling investigation should not operate in isolation from other required forms of justice and reparation. It should make a vital contribution to the effective functioning of existing justice procedures such as the civil courts, police investigations and coroners’ inquests through: the proactive reporting of information to the police and coroners; research and recommendations regarding the functioning of these procedures; assistance to victim-survivors to understand their entitlements in relation to these procedures; and the provisions of evidence to victim-survivors to assist them in using these procedures.

A specialised truth-telling investigation should also contribute to redress and reparation in other ways. It should help to end ongoing abuses such as unlawful denial of identity and the disappearance of

relatives by providing research assistance to those affected, as well as other forms of expert technical investigation. It should also undertake research into the nature and consequences of the human rights violations perpetrated and the ongoing and likely future needs of those affected, in order to support the implementation of a redress scheme. Further, a specialised truth-telling investigation should result in an archive of records, testimony (voluntarily deposited by victims-survivors with their informed consent) and other information which is preserved for public education, contributing to ongoing and active memorialisation for generations to come.

Independent Panel

A Non-adversarial forum

All victims-survivors and relatives interviewed, or who responded to the Panel's questionnaire, want 'truth' to be disclosed; truth about personal and family experiences and truth about how the institutional, forced labour and family separation system as a whole operated, including how it was enabled to operate and how it impacted on girls, women, their children, partners, and subsequent generations.

However, not all victims-survivors or relatives wish to participate in an adversarial process of investigation. Many are acutely conscious of the personal toll that giving oral evidence to previous statutory inquiries in NI and ROI had on those providing personal testimony, not least because of the court-like procedures involved and the entitlement of alleged wrongdoers to challenge them. It is essential to empower victims-survivors and relatives to obtain information and, if they wish, to contribute their accounts to the historical record. Thus, a range of investigative methods must be used.

A non-adversarial process of evidence-gathering and analysis via an Independent Panel should not be viewed as a less important or less credible form of truth-telling. Previous inquiries in NI and ROI have characterised it as such, perhaps unintentionally. For example, both the HIAI and MBHCOI summarised testimonies provided to the non-adversarial arm of their investigations and provided no opportunity to those who may have wished to speak in public. The MBHCOI destroyed all audio recordings of victims-survivors' testimonies without offering a transcript to those who had spoken. Copies of the recordings were retrieved and are now held by the Government in ROI, however, following a public pressure campaign by victims-survivors relying on data protection law.

The UU/QUB Report contains a significant discussion of the false distinction between the credibility commonly attributed to historical documents (often considered particularly reliable), versus that attributed to oral history (sometimes presumed to be less reliable than the contemporaneous written word) (McCormick and O'Connell 2021b: 17-18). The UU/QUB Report authors emphasise the importance of 'taking the oral testimony seriously', making a point repeated by many victim-survivors to the Panel: that historical documents are socially constructed and any given record may have been written to portray a picture that did not reflect reality. Victims-survivors emphasised to the Panel the importance of having the opportunity to annotate inaccurate historical records; the Panel's view is that this is required by the UK General Data Protection Regulation, which establishes a right to rectification.

A non-adversarial truth-telling process via an Independent Panel has different possibilities when compared to the standard procedures of a statutory Public Inquiry, and it can contribute significantly to numerous justice aims as demonstrated by the Canadian TRC (TRC 2015a). A non-adversarial process can analyse and reach conclusions regarding overall *systems* of abuse and the institutional, organisational and state responsibilities arising from systemic failures. A non-adversarial Independent Panel also can examine testamentary and documentary evidence it receives as a whole, identifying corroborating sources and examining information and submissions using diverse expertise.

Further, an Independent Panel can disclose raw information to the general public including voluntarily offered testimony and documentary records, anonymised as legally necessary. The example of the Canadian TRC demonstrates that a non-adversarial truth-telling process can also incorporate powerful public engagement events with the voluntary participation of victims-survivors. Such initiatives facilitate conversation, share information, 'witness' victims-survivors' truth-telling, draw community support and enable the planning

of education and memorialisation activities. The Panel received a written submission from the *Restorative Practices Forum (NI)* recommending consideration of the Listening Circles methodology used by authors of the recent New Zealand Government commission concerning the experiences of surgical mesh survivors (Wailling et al, 2019).

In addition to ensuring a non-adversarial method of truth-telling, different venues and formats are required to meet the needs of those who wish to contribute their testimonies. There are varying opinions among victims-survivors regarding the presentation of their testimonies. Some survivors and relatives would be willing to speak publicly as long as they are unchallenged; some would be willing to provide their testimony confidentially; some would prefer to submit their evidence in writing rather than orally. Others, while not wishing to offer oral testimonies publicly, would be willing to deposit written testimonies anonymously to be held in a permanent archive for the education of future generations. An Independent Panel can meet the requirement for a flexible non-adversarial process of investigation using diverse methods of evidence-gathering, research and public engagement.

A Focus on Human Rights Violations

The findings of a non-adversarial investigation by an Independent Panel can and should address human rights violations that occurred and continue to occur, discussing the forms they took and continue to take, the harms they caused and continue to cause, the structures and processes that enabled and perpetuated their operation, and the measures necessary to address the harm they caused and prevent recurrence. A key function of the recommended Independent Panel is that it would facilitate victim-survivors to inform it, from their personal experience and expertise, about what human rights violations they have suffered, what harms were and are involved in those human rights violations, how they understand those human rights violations to have been caused and facilitated, and what have been the effects of the human rights violations. This would enable public understanding of how human rights violations were caused and facilitated, and their long-term impact; it would further guide the Public Inquiry's focus.

An Independent Panel also should examine the range of practices with which the relevant institutions were involved, including the adoption system and its constituent agencies and organisations, and other institutions which acted as pathways to or from the Mother and Baby Institutions, Magdalene Laundries and Workhouses. A human rights analysis will require a focus on the lived experiences of those affected, extending to all key features and structural causes of their abuse. An Independent Panel's mandate can, and should, be sufficiently flexible to respond to the expertise and evidence provided by those directly affected, rather than being rigidly constrained by investigating only what happened within the four walls of certain pre-listed institutions.

Canada's *National Inquiry into Missing and Murdered Indigenous Women and Girls* provides a compelling example of a thematic inquiry based on human rights (National Inquiry 2019a). It is worth noting that inquiries into institutional abuse in several jurisdictions including ROI have been criticised for siloing their examination of discrete institutions, thus failing to uncover the full truth of the systems that caused human rights violations and state involvement in and responsibility for those systems (Gleeson and Ring, 2021: 11, 22).

Sensitising and Focusing the Public Inquiry's Work

The work of an Independent Panel will be essential in sensitising and targeting the fact-finding investigations of a Public Inquiry, ensuring that the Public Inquiry's focus is rooted in the lived experiences and immense expertise of victims-survivors and relatives. Drawing on the testimony received and on its cataloguing and analysis of documentary records, the Independent Panel should recommend central questions and key issues for investigation by a statutory Public Inquiry to which the Independent Panel's work has given rise. The Independent Panel should consider whether a thematic approach to a Public Inquiry's work could help to establish truth in a deeper and more transformative manner than previous inquiries which explored individual institutions in isolation.

The Independent Panel's work will also result in an important archive to be preserved permanently and made available to the Public Inquiry. This should include witness testimonies provided to the Independent Panel where agreed and with informed consent. The weight given to such testimonies will be at the Public Inquiry's discretion. It is expected that the Public Inquiry will evaluate all evidence it receives.

While the proposed Independent Panel will not have statutory powers to secure or compel the production of evidence, significant cooperation should be forthcoming from State and non-State institutions, organisations and their personnel, including on a cross-border basis. Full cooperation cannot be guaranteed, however, and the Public Inquiry's statutory power to compel production of records will be necessary to access information that was denied or unavailable to the Independent Panel.

Assistance to Access Information

A vital function of the Independent Panel should be to assist victims-survivors and relatives to research their personal and family circumstances and other information they may wish to retrieve concerning the administration of the institutional, forced labour and family separation system. As explained in Chapter 2 and, as is evident from the research chapters in this Report, the harms of interference with identity, separation from family and the denial of information about personal and family histories are central to the abuses of the past and their continuing forms today. The problems concerning information access are deeply ingrained and complex. Addressing them will require a combination of archival, genealogical and legal expertise, for the benefit of both victims-survivors and relatives interacting with the Independent Panel, and the Independent Panel's own ability to present findings and recommendations focusing on past and present human rights violations.

Regarding the Independent Panel's work in relation to deaths and burials, the plan of the Canadian Truth and Reconciliation Commission's *Missing Children and Unmarked Burials Project* is an important comparative example, albeit the work plan was not ultimately realised, resulting in continuing injustice (TRC 2015: Vol. 4). Additionally, the *'Find & Connect'* project, funded by the Australian Federal Government following publication of the *Forgotten Australians and Former Child Migrants* reports, is a crucial example of a resource dedicated to enabling individuals to research and retrieve identity-related and family history information (Find & Connect 2021).

Monitoring and Implementation of Other Justice Measures; Accountability to Victims-Survivors

Finally, as part of its human rights-based analysis of victims-survivors' experiences, an Independent Panel would maintain a watching brief regarding the implementation of all other recommendations of the Truth Recovery Design Panel and the effectiveness of existing justice mechanisms such as civil courts, the criminal justice investigation system, the inquest system, and data protection and freedom of information laws.

Because of the proposed Independent Panel's wide remit and its function to input into and operate alongside the other recommended measures, it is crucial that victims-survivors and relatives would be actively involved in directing and monitoring its activities. Central involvement of, and accountability to, victims-survivors and relatives is one of the Guiding Principles established by the Truth Recovery Design Panel's process.

Membership of the proposed Independent Panel should include victims-survivors' representatives and senior researchers/practitioners in: the sociology of discrimination and gender-based violence; international human rights law and domestic law; social and oral history; trauma-informed practice; genealogy; and archiving. It should be supported by a research team with complementary skills. In particular the research team should have sufficient resources and technical expertise to assist victims-survivors and relatives in a prompt and timely manner to seek and obtain information from records and archives relating to the institutions and practices under investigation.

The Executive Office should seek nominations from victims-survivors for a list of potential Independent Panel members including the Chairperson, from which appointments will be made.

The Independent Panel should consult regularly with a Forum of victims-survivors and relatives, including

those in the Diaspora, and be supported by a small administrative and secretarial team seconded from the Northern Ireland Civil Service.

Public Inquiry

In contrast to the workings of a non-statutory Independent Panel, a Public Inquiry under the Inquiries Act 2005 has legal power to compel the production of documentary and testimonial evidence where individuals and organisations are unwilling to cooperate voluntarily. This power to achieve a comprehensive interrogation of the facts is considered by many victims-survivors and relatives as essential to the thoroughness of an investigation, particularly because the religious and other non-state entities are not bound by information preservation or transparency laws with the exception of data protection law. Indeed, the power to secure and compel the production of evidence is a fundamental requirement of an 'effective investigation' according to European and international human rights law.

Bearing in mind the cross-border nature of the institutional, forced labour and family separation system, it is important to note that a Public Inquiry's power to compel the production of evidence does not extend to individuals or organisations outside the UK legal jurisdiction. However, a Public Inquiry might utilise the cross-border structure of many religious and other non-state organisations to require production of evidence through organisations' representatives in NI. Additionally, a Public Inquiry may at any time *request*, rather than *compel*, the production of evidence by those over whom it does not exercise legal jurisdiction.

A further feature of a Public Inquiry under the Inquiries Act 2005, which distinguishes it from an Independent Panel, is that it can name individuals in its findings of fact and recommendations, although it cannot rule on or determine any person's civil or criminal liability (Inquiries Act 2005, section 2). Previous chapters noted the importance that many survivors and relatives attach to individual accountability. This includes the proposition that, where wrongdoers are deceased, those now responsible for relevant institutions and related practices would account to victims-survivors and relatives for in their responses to past and continuing harms.

Because a Public Inquiry can name individuals, the chairperson has the authority to appoint and finance legal representation for any person likely to be criticised during proceedings or in the subsequent Inquiry report. The person may also seek the chairperson's permission to examine witnesses whose evidence relates to them. Individuals whose interests are affected significantly in other ways (e.g. victims of the alleged abuse under investigation) are entitled to seek 'core participant' status in the Inquiry. Thus the chairperson may also agree to legal representation and allow them to examine witnesses to the Inquiry. The chairperson's decision is discretionary, and as noted in Chapter 3, many victims-survivors of residential schools and children's homes were not given 'core participant' status in the HIAI. This contributed to their marginalisation and to their late receipt of key documents pertaining to their own experiences without sufficient time, warning or support to read and digest their contents.

The failure of the HIAI to afford 'core participant' status to many victims-survivors of residential schools and children's homes raises the question of how to ensure that a Public Inquiry is human rights-focused, survivor-centred and trauma informed. As explained below, there is a need for new legislation to establish a Public Inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses and their related pathways and practices. This presents an opportunity to refine the rules of procedure for a Public Inquiry while maintaining their strength; a comparative example of human rights-focused procedural rules for a statutory inquiry are the Canadian National Inquiry into Murdered and Missing Indigenous Women and Girls' *Legal Path: Rules of Respectful Practice* (National Inquiry 2019b).

The Inquiries Act 2005 places a restriction on the issues that can be investigated in NI under that legislation: section 30 states that a Public Inquiry can take place in NI under the Act only if the inquiry relates wholly or primarily to a 'Northern Ireland matter'. A 'Northern Ireland matter' is defined by section 30 as a 'transferred matter' within the meaning of the Northern Ireland Constitution Act 1973 or the Northern Ireland Act 1998. Therefore, according to the advice received by the Truth Recovery Design Panel, the Inquiries Act 2005 cannot be used in NI to investigate pre-1973 issues. This explains why the NI Assembly

passed dedicated legislation to establish the Historical Institutional Abuse Inquiry (HIAI) as a Public Inquiry. That dedicated legislation—the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013 together with the Inquiry into Historical Institutional Abuse Rules (Northern Ireland) 2013—was similar to the original Inquiries Act 2005 and Inquiry Rules 2006.

Therefore, in order to establish a Public Inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses and their related pathways and practices, dedicated legislation emulating the Inquiries Act 2005 and Inquiry Rules 2006 will be needed. As stated in the Truth Recovery Design Panel’s recommendations, this legislation and the specified refinements to the procedural rules of a Public Inquiry should be progressed urgently.

Recommendation 4: Access to Records

As previously emphasised, the denial of information to victims-survivors about their identity, the circumstances of their separation from family, the fate of relatives, and their treatment in the institutionalised, forced labour and family separation system, lies at the core of the abuses suffered in the past and continuing today. A further element of the abuse is the authorities’ outsourcing of responsibility for social ‘care’ to inadequately supervised religious and other organisations. This persists through the State’s failure to regulate appropriately the information disclosure activities of religious institutions and other organisations.

Urgent measures are required to preserve and guarantee access for victims-survivors and relatives to all relevant documentary records, now and into the future. The Panel recommends: an immediate statutory preservation order guaranteeing the protection of all relevant records until they are gathered; personal data protection guidance; and legislation to establish a permanent repository of historical institutional and adoption records and other records relating to children in state care, which could be housed in the Public Records Office of Northern Ireland (PRONI), operating in conjunction with the equivalent archive promised by the Taoiseach in ROI.

Immediate Statutory Preservation Order

Victims-survivors and relatives are profoundly concerned about the safety and whereabouts of records concerning the Mother and Baby Institutions, Magdalene Laundries and Workhouses and the practices, agencies, and organisations with which they interacted. PRONI has issued a public information leaflet on Mother and Baby institutional records, noting that it ‘holds little in the way of records transferring directly from Mother and Baby Institutions’ (PRONI 2012). PRONI holds various official files relating to State governance of the institutions and correspondence between the institutions and State authorities. However, the Public Records Act (NI) 1923 requires the deposit in PRONI only of court and Government department, authority and office records. PRONI does not have statutory authority to require the deposit of the vast numbers of ‘privately’ held records relating to the institutional, forced labour and family separation system, although it has the power to accept voluntary donations.

The UU/QUB Report attests to the need for an immediate statutory preservation requirement to prohibit the destruction, and require safekeeping, of all records relating to the institutional, forced labour and family separation system. This should be regardless of where they are held, and until they can be gathered for the purposes of the forthcoming investigation and creation of a dedicated archive:

A major concern of the research team was the preservation of some of the records accessed. Many of the records relating to the religious and voluntary organisations are not held in appropriate conditions and this raises potential issues for further research or inquiry. Records are held in basic office filing cabinets and cardboard boxes and are at risk of deterioration. These are extremely important records, which often relate to adoption and it is crucial these are stored in an appropriate way to ensure their preservation and also to ensure that access to them will be possible in the future. It is strongly advisable that steps are taken to preserve the records of the voluntary organisations involved. (McCormick and O’Connell, 2021: 8)

The Panel recommends the immediate creation of a statutory requirement on the institutional and organisational holders of all relevant records to preserve and not to destroy any records relating to institutional, forced labour and family separation system. Non-compliance should constitute a criminal offence.

Personal Data Access Guidance

A further urgent measure required is the creation of Guidance to assist data controllers in responding to victims-survivors’ and relatives’ ongoing requests for personal information. As noted in Chapter 2 and its accompanying *Background Research Report* (O’Rourke 2021a), it is contrary to Article 8 ECHR for the State to deny a person access to any of their personal data, including information relating to them at the same time as relating to another living person, without a legal basis for such action which creates foreseeability and clarity in decision-making. Such a legal basis does not need to be primary legislation but could constitute legally binding Guidance. In addition, the State’s positive obligations under Article 8 ECHR require the creation of a clear decision-making process enabling access to identity-related data, including institutional care and adoption records, to prevent arbitrary denial of access to information by state or non-state entities or individuals.

In September 2021, resulting from victims-survivors’ and relatives’ expressions of concern regarding an overly discretionary and unpredictable system of information disclosure, the Department of Health (DOH) funded a process to create Guidance for NI Health and Social Care Trusts enabling staff to respond appropriately to adoption-related subject access requests. The Federal Australian Government’s *Principles and Guidelines for responding to personal data access requests by Forgotten Australians and Former Child Migrants* provides a significant example of a document designed to ensure a careful, clearly justified and consistent response to similar requests (Government of Australia 2015). A Data Protection Impact Assessment process is currently underway with the aim of creating DOH Guidance. It is being facilitated by the Health and Social Care Board and a steering group comprising social worker representatives from all five Trusts and six victims-survivors who participated in the Truth Recovery Design process, supported by an independent data protection expert.

The purpose of the proposed DOH Guidance is to clarify how the Data Protection Act 2018 (DPA 2018) and UK GDPR (the post-Brexit version of the European Union General Data Protection Regulation now applying in the UK) should be implemented when a person seeks information about themselves or a relative affected by adoption. In England and Wales, and Scotland, adoption records generally fall outside the remit of ordinary data protection law due to explicit exemptions contained in the DPA 2018. However, the legal situation in NI is different. Schedule 4 of the DPA 2018 provides that the only adoption-related records in NI which are exempt from ordinary data protection law are: birth certificate information, disclosed according to the Adoption (Northern Ireland) Order 1987; and court records concerning adoption, access to which is governed by the Family Proceedings Rules (Northern Ireland) 1996, amended by the Family Proceedings (Amendment) Rules (Northern Ireland) 2003.

The restrictions on access to copies of court records concerning their adoption is a problem raised repeatedly by victims-survivors. Notably, according to Rule 4C.7(3)(b) of the Family Proceedings Rules (Northern Ireland) 1996, any party to adoption proceedings may disclose the information they hold when ‘disclosure is necessary for the proper exercise of his duties’ or when a person has been ‘authorised in writing by the Department [of Health and Social Services] to obtain the information for the purposes of research’. This legal provision, and how it is being interpreted or could be interpreted in future, should be considered as part of the DOH Guidance drafting process (in consultation with the Department of Justice).

The Panel recommends that the DOH continues to allocate sufficient resources to ensure the swift production of the Guidance. Once this has been produced and implemented, urgent consideration should be given to creating a statutory form of Guidance which could bind all personal data controllers, not only DOH personnel, in relation to all historical institutional and adoption records. Statutory Guidance which informs data controllers of their obligations and assists the foreseeable and clear application of Ireland’s Data Protection Act 2018 and the EU GDPR also appears to be needed in ROI.

Access to Records Legislation

While an Independent Panel and Public Inquiry will gather records, assist victims-survivors and relatives in gaining access, and disclose information to the general public to the extent possible while protecting human rights, it is essential that information is protected and made available on a permanent basis. An independent repository's long-term functions would include: assistance to those seeking to research personal or family histories; public disclosure of the administrative records demonstrating how the systems operated (anonymised as necessary to protect individuals' human rights); public education initiatives; and support for ongoing and active memorialisation. Examples of human rights-based archives in this vein include Germany's *Stasi Records Archive*, Colombia's *National Centre for Historic Memory* and Canada's *National Centre for Truth and Reconciliation* (NCTR). The NCTR houses millions of records gathered by the Canadian TRC and involves victim-survivors and relatives centrally in its work. Approximately 70% of its staff are victim-survivors, relatives, or other Indigenous people. The NCTR reports to a Governing Circle, the majority of whom are Indigenous; a Survivors Circle guides the Governing Circle.

Once established, the Independent Repository would both take custody of original or copies of records gathered by the Independent Panel and Public Inquiry, and offer access to material not previously obtained. The Independent Panel's archival, genealogical, trauma-related and other expertise might also migrate into the independent repository.

Legislation to establish a dedicated repository of all personal and administrative records relating to historical institutions, adoption, and related practices should be drafted in consultation with the Independent Panel, which through its work with victims-survivors will gain invaluable expertise. In its scoping for this report the Truth Recovery Design Panel was encouraged by an initial conversation with PRONI about its potential to establish a dedicated repository. This possibility should be progressed. A similar independent repository has been promised by the Taoiseach and Government in ROI. The possibility for cooperation in the establishment and operation of both repositories should be explored.

The Panel envisages legislation which would, at a minimum:

- Create a permanent, comprehensive independent repository of historical institutional and adoption records, and other records relating to children in state care;
- Guarantee sufficient resourcing and technical expertise to enable the effective functioning of the permanent repository, which could be housed in the Public Records Office of Northern Ireland;
- Institutionalise cooperation between the permanent independent repository and a parallel repository in the Republic of Ireland;
- Establish a dedicated advisory committee, including victim-survivor representatives, to provide ongoing guidance on all matters affecting the repository and its use by victims-survivors and the public;
- Require the preservation and production of all relevant records, including administrative as well as personal information, whether currently held by state or non-state personnel, and including the archives of truth-telling investigations;
- Permit the voluntary deposit of additional testamentary and other relevant evidence;
- Provide the maximum possible access to information for those personally affected, including relatives of the deceased, thus protecting and vindicating their human rights—including their rights to identity and to truth;
- Establish procedures to enable victims-survivors to exercise their personal data protection rights, including their right to rectify inaccurate personal data by way of annotation;
- Establish rules and procedures for access by the general public in a manner that protects the privacy and other human rights of those personally affected;

- Require the provision of research, genealogy, family tracing and personal advocacy and support services to those personally affected by the repository's holdings;
- Require the independent repository to provide support for education and ongoing and active memorialisation initiatives.

Recommendation 5: Redress, Reparation and Compensation

Chapter 2 explains that redress for serious and widespread human rights violations involves a range of elements, including: support for those wishing to access civil or criminal justice; restoration of rights previously denied; compensation commensurate with the gravity of the violations and harm suffered; the provision of rehabilitation services including medical and psychological care; full disclosure of information concerning the facts of abuse suffered, including the search for and recovery of the remains of the disappeared; official apologies and declarations to restore the dignity, reputation and rights of victim-survivors and their relatives; commemorations and tributes to those who suffered; inclusion of an accurate account of the violations that occurred in educational material at all levels; and institutional and state structural reforms which are designed to guarantee non-recurrence of such abuse.

As explained above, a key function of a specialised truth-telling investigation is its contribution to achieving many of these elements of redress. However, the relationship between redress and an investigation also works in reverse. Providing apologies, compensation and rehabilitation services to victims-survivors *before and during* a truth-telling investigation can enable victims-survivors to contribute to the investigation and, consequently, to the official historical record. The rights to an 'effective investigation' and to participate in public debate are the equal rights of all; the State is obliged to take measures to ensure they are realised, particularly for those placed in a vulnerable situation by abuse at the hands of the State and other powerful institutions. Giving victims-survivors the respect and support of apologies, compensation and rehabilitation services is essential to enabling them to contribute, should they wish, to the truth-telling process.

It is also important to emphasise that victims-survivors of the institutional, forced labour and family separation system have been denied their right to redress for decades and further delay would prolong this human rights violation, exacerbating their suffering. As the UN Committee Against Torture notes, long-term impunity and refusal of redress can exacerbate the effects of so-called 'historical' ill-treatment (CAT 2012: para 40). These effects do not diminish over time. It would be a cruel irony if the NI Executive's human rights-focused decision to establish a specialised investigation into the Mother and Baby Institutions, Magdalene Laundries and Workhouses was to result in a considerably longer delay in providing redress to victims-survivors and their relatives.

Previous practice in ROI demonstrates that it is not necessary to wait until completion of a specialised investigation to issue apologies and provide compensation payments and rehabilitative services. Regarding industrial and reformatory schools, the Taoiseach's 1999 State apology to survivors heralded the *beginning* (not the end) of a specialised investigative process. The Residential Institutions Redress Board operated from 2002 onwards, concurrently with the Commission of Investigation into Child Abuse which reported in 2009 (RIRA 2002).

Similarly in Canada, the *Indian Residential Schools Settlement Agreement* provided for the concurrent establishment of: a scheme of payments, involving an automatic Common Experience Payment and the option to apply for a further Independent Assessment Process payment, and healthcare supports; a programme of commemorative activities; and, a Truth and Reconciliation Commission (Government of Canada 2006). In Scotland, the *Independent Child Abuse Inquiry* continues, having been established in 2015. Meanwhile, an Advance Payment Scheme opened in April 2019 for those diagnosed as terminally ill and those aged 68 or over. A statutory scheme is due to commence in December 2021 which will offer an automatic baseline payment with the option of applying for a further, individually assessed payment (Scottish Government 2021).

Victims-survivors made clear to the Panel that the following forms of human rights-based redress are required immediately:

Support to *understand rights* and to *access justice and redress entitlements*, through:

- free, non-means-tested legal aid where necessary to enable individuals to access the civil courts, criminal justice investigations and/or inquests, and to enable participation in a Public Inquiry where desired;
- independent advocacy;
- disability support;
- wide advertising;
- emigrant outreach;
- assistance to provide testimony to a truth-telling investigation and to process and respond to documentary records and one's transcript of evidence.

Restoration of rights previously denied, and *full disclosure of information*, through:

- the granting of citizenship status in cases where individuals removed from the jurisdiction of NI were denied status;;
- rights to genealogy services, funding for voluntary DNA testing, family tracing assistance, and intermediary services where requested to support family reunification;
- identification of the burial location of each person who died in the institutions, including the children's institutions to which babies were frequently removed, and the return of remains to relatives where possible;
- the construction, rectification and upkeep of gravestones and grave markers.

Compensation commensurate with harm experienced, including:

- an immediate, automatic standardised payment and the entitlement to a further individually assessed payment; the scheme should include all women who spent time or gave birth in a Mother and Baby Institution, Magdalene Laundry, Workhouse or related institution such as a private nursing home, and all those born to girls and women while institutionalised;
- no means-testing nor impact on existing social welfare supports;
- no requirement for those receiving payments to waive legal rights against alleged wrongdoers (instead, the civil courts could be required to take account of an initial payment when determining any future award);
- contribution by the non-state institutions, organisations and agencies implicated in the institutional practices of forced labour and family separation to funding the scheme;

Rehabilitation services, including:

- services for relatives of victim-survivors;
- psychology and counselling services on a permanent basis and at no cost;
- complementary therapies for stress relief, including reflexology, massage, aromatherapy and other therapies;
- art, writing and music therapies;
- disability supports;

- facilitation of peer support groups;
- personal advocacy support and liaison officers.

Acts of *apology* and *commemoration* from:

- state institutions and representatives, religious institutions, nuns and members of the clergy, lay religious and other organisations, and professionals such as social workers, police, doctors, nurses, midwives, lawyers and others.

Public *education and memorialisation*, through:

- memorials to the girls, women and children institutionalised (e.g. using emblems to represent each person, or names with the consent of those living);
- a memorial garden;
- murals, designed by survivors or commissioned at institution sites and at prominent city locations;
- a museum or visitors' centre, modelled on established international examples, using audio-visual components to facilitate public education, in particular the education of younger generations;
- a permanent archive preserving all relevant records, witness testimonies (with victims' and survivors' informed consent) and other educational material.

These elements are reflective of redress and reparation proposals in similar contexts. For example, in September 2021 a parliamentary committee in the Australian State of Victoria published recommendations for a range of responses to historical forced adoption (Parliament of Victoria 2021). They include: a scheme to provide monetary payments, lifelong psychological support services and free legal assistance; amendment of the statute of limitations to facilitate claims concerning forced adoption; statements of responsibility or individualised apologies from the institutions and organisations involved; projects to identify relevant records and enable access to them; a public education campaign 'to promote the rights of parents to access adoption records and information about their children'; the removal of an existing legal requirement of counselling in advance of receiving adoption information, replacing it with voluntary services; the centralisation of the State's Adoption Information Service, removing it from approved agencies; publication of 'the rights of people to access current information from the Births, Deaths and Marriages Register that may contain identifying information about other people'; endorsement of DNA testing and the development of practice guidelines to support its use as a search tool; funding for a range of victim-survivor support services; creation and maintenance of memorials and a permanent exhibition; funding to document oral histories; and, an annual day of commemoration.

The report of the ROI Magdalen Commission (2013) followed consultation with 337 Magdalene Laundries survivors, and recommended that the Government's 'restorative justice' scheme should include: a comprehensive health and social care package including: private health services, lifelong counselling for relatives, complementary therapies, home nursing, home support, and aids and appliances; a weekly payment equivalent to the contributory state pension; lump sum payments based on time spent in a Magdalene Laundry on a scale from €11,500 (where a woman was institutionalised for up to three months) to €100,000; an exemption from means-testing and tax liabilities in respect of the weekly and lump sum payments; funding of a Dedicated Unit to provide advocacy assistance in obtaining housing and educational entitlements, and to facilitate peer support; and memorialisation in the form of a garden, museum or other form of memorial following consultation with an advisory committee including survivors.

The Panel is aware and welcomes that, at the request of the DOH, the Victims and Survivors Service (VSS) has co-designed with victims-survivors of Mother and Baby Institutions, Magdalene Laundries and Workhouses a package of health and wellbeing and ancillary services. These proposed services do not include a financial redress scheme nor some other key aspects of redress and reparation mentioned

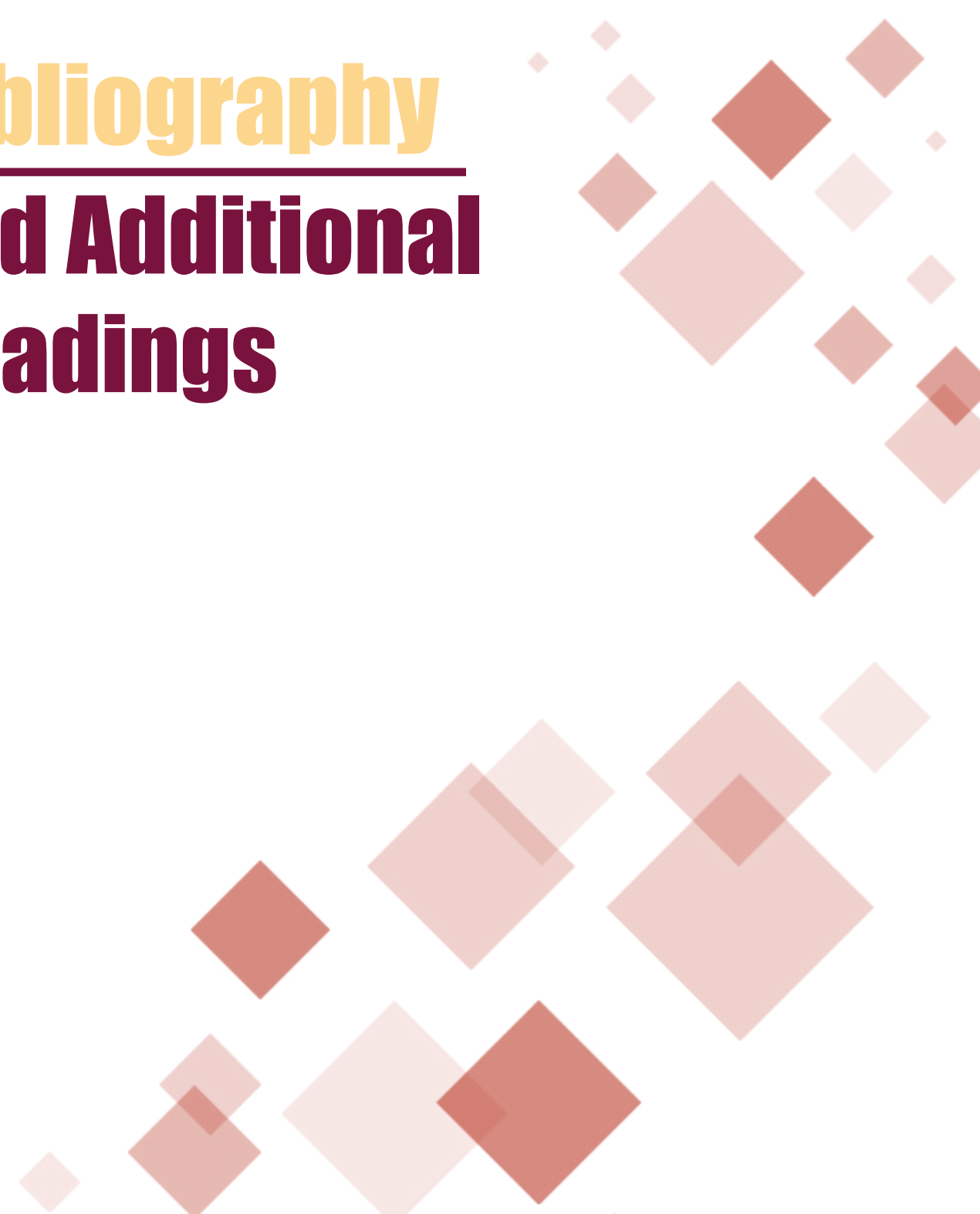
above. The Panel recommends that:

- VSS should be adequately resourced to fund comprehensive services as recommended by victims and survivors, for the duration of the specialised investigation *and* the longer-term;
- Funding should be available for voluntary DNA testing, voluntary support services to assist family reunification, the establishment and maintenance of graves, and artistic and other forms of memorialisation;
- Victims-survivors and relatives should be provided with access to free legal advice and representation for the purpose of exercising their rights to access the civil courts, criminal justice investigation procedures, and inquests;
- A financial redress scheme should be prioritised, comprising an automatic standardised payment and the entitlement to a further individually assessed payment. The scheme should include all women who spent time or gave birth in a Mother and Baby institution, Magdalene Laundry, Workhouse or related institution such as private nursing home, and all those born to girls or women while institutionalised;
- An immediate, dedicated consultation with victims-survivors should be initiated to establish the procedures for administering financial payments and the content of any necessary legislation. State institutions should be required to engage with the non-state institutions, organisations and agencies implicated in the institutional practices of forced labour and family separation to establish their contributions to the scheme;
- Citizenship should be granted to those who lost their entitlement due to their forced removal from Northern Ireland children;
- The state authorities in collaboration with the churches and other involved institutions establish a prominent memorial, following a dedicated consultation.

Finally, the Panel, together with victims-survivors urges all state, religious and other institutions, agencies, organisations and individuals complicit in the processes of institutionalisation and forced labour, family separation and adoption to act without delay in issuing unqualified apologies. These should clearly:

- specify their role in the institutional, forced labour and family separation system;
- accept responsibility for harms done;
- demonstrate sincerity in their apology;
- demonstrate the safeguards now in place to ensure there will be no repetition of the inhumanity and suffering to which they contributed.

Bibliography and Additional Readings



Appendix 1: Project Brief

TITLE CO-DESIGN PROCESS TO ESTABLISH AN INDEPENDENT INVESTIGATION INTO MOTHER AND BABY HOMES AND MAGDALENE LAUNDRIES IN NORTHERN IRELAND

START DATE 1 MARCH 2021

COMMISSIONER DEPARTMENT OF HEALTH (ON BEHALF OF THE INTER-DEPARTMENTAL WORKING GROUP)

OUTCOME BEING SOUGHT

1. The outcome being sought is to make recommendations to the NI Executive via the IDWG, setting out options for an independent investigation/ inquiry into Mother and Baby Homes and Magdalene Laundries in Northern Ireland. The recommendations should identify a preferred option, providing a robust rationale, should be developed in conjunction with victims and survivors of the institutions through a co-design process and should be made public.

THE INVESTIGATION CO-DESIGN PROCESS

2. The co-design methodology is a matter for the Co-design Team. The process should be inclusive, drawing participants with experiences of, or directly affected by all forms of institution, which fall within the broad definitions of Mother and Baby Homes and Magdalene Laundries. Recognising that those who were resident in Mother and Baby Homes were not necessarily resident in Northern Ireland and/ or may no longer be resident in Northern Ireland, participation by those from outside the jurisdiction should be sought, encouraged and accommodated. The Department of Health will assist with the initial call for participants. Victims and survivors will participate in shaping the call for participants. It is acknowledged that the co-design process will be undertaken during a public health crisis, and participation will be accommodated accordingly.
3. Specifically, the co-design process will establish the Terms of Reference of the investigation to include:
 - *What* the independent investigation/ inquiry should achieve, specifically the questions to be answered (purpose);
 - *How* it should be conducted (method);
 - *Who* should be involved, including chairing and those with relevant expertise to assist the chair-person (participants);
 - *Support* for the investigation/ inquiry (researchers/ administrative staff);
 - *How long it might take* (duration);
 - Whether it should be *statutory* or *non-statutory* (status).

In addition to making recommendations at its conclusion, it should be able to make evidence-based recommendations to Ministers at any stage of the investigation

A PARALLEL SUPPORT SERVICES CO-DESIGN PROCESS

4. A process to co-design support services for victims and survivors of Mother and Baby Homes/ Magdalene Laundries ... will run alongside the co-design process. It is essential that each process, while retaining independence, should co-ordinate and minimise what is required of individual participants in terms of time and emotional commitment.

Appendix 1: Project Brief

KEY ACTIVITIES

5. Key activities will include:
 - a. Agreeing the co-design methodology; in part, this will be determined by the number of participants, particularly given current public health restrictions;
 - b. Establishing a timetable of events/activities within the agreed timeframe;
 - c. Undertaking preparatory work, including developing a media strategy;
 - d. Determining the necessity of external advice/ expertise and how this will be sourced. Where this requires additional resource, this should be brought to the attention of the Commissioner;
 - e. Liaising with the lead researchers at QUB/ UU where necessary;
 - f. In line with the agreed methodology, working with victims and survivors throughout;
 - g. Bringing gaps in support service provision to the attention of the Commissioner as soon as they are identified;
 - h. Developing a media strategy to raise awareness of the investigation co-design process, to facilitate participation and to seek views.
 - i. Providing a report on progress to the Inter-departmental Working Group at mid-point (June 2021). This should be provided through the Commissioner;
 - j. Providing advice (options and preferred option) to the NI Executive via the Inter-departmental Working Group by end September 2021. This should be provided through the Commissioner.

CO-DESIGN TEAM

6. Core members of the Investigation Co-design Team are:
 - Deirdre Mahon (Chair)
 - Professor Phil Scraton
 - Dr Maeve O'Rourke
 - Survivors/victims
7. The Team will be facilitated by the Commissioner. This will include the provision of finance, business support and legal and media advice if required. Contractual / Secondment arrangements will be put in place by the Commissioner as appropriate. Any proposed changes to contractual agreements will need to be negotiated with the Commissioner.

Appendix 2: Ethical Protocol

Principles

The Panel recognises that participation in this process is likely to cause hurt and upset to all who recount their experiences in making recommendations for a future investigation / inquiry. Therefore, the process will:

- recognise and guard against the potential harm caused to survivors/ relatives through their participation in the process
- acknowledge Panel members' duty of care towards survivors/ relatives and collectively in group discussions involving survivors / relatives
- ensure that involvement in the process is voluntary and consensual, affirming the right of participants to withdraw at any time
- guarantee participants' right to privacy in all written or verbal contributions, which will be anonymised
- maintain confidentiality, particularly concerning publication of, or discussions about, the Panel's work while it is in progress
- support participants who request personal advice by referring them to the confidential counselling services attached to the Panel's work
- reflect the range of views expressed by participants that will inform the recommendations made to the Executive

Confidentiality

When people are consulted, particularly when disclosing personal information about their lives and their family relationships, it is essential that their confidentiality is protected. This means that they will not be publicly identified and the information they provide will be used only for the purposes of the Truth Recovery Design process. Personal information given on the *Registration of Interest* form and in interviews, group discussions or meetings, will be confidential and will not be shared by the Panel or its administrative support team without consent. The Panel will provide the option of meeting with other survivors in a group consultation, but this will operate only on a voluntary basis. Participants will be expected to respect the confidentiality of others.

Disclosure of criminal offences

An exception to the above guarantee of confidentiality is that, if you choose to name a specific individual who perpetrated abuse, the Panel will be duty-bound to report the information and your name and contact details to the police or other relevant authorities if (1) we believe there is a current child protection concern (in other words, that children may be suffering, or are likely to suffer, significant harm), (2) we believe that a person is at risk of serious harm, or (3) you disclose information about any person who was engaged in a criminal activity that might be expected to attract a custodial sentence of 5 years or more.

Gathering Information

The Panel and its administrative support team will seek participants' consent before making notes of one-to-one interviews or group discussions. Participants may request a copy of the anonymised note of their discussion with the Panel at any time before the conclusion of the Panel's work.

Appendix 2: Ethical Protocol

Data Security

Personal data gathered from survivors and relatives during the process will be recorded and safely stored on password-protected and encrypted secure laptops and computers. Personal data submitted on paper will be kept secure by the Panel's administrator, Marion Coyle.

The Department of Health, as the Commissioner of the Panel's work, has provided the secure laptops and computers which the Panel is using for this process. The Panel members and the Panel administrator alone will have access to this information system. The exception to this is that, in the event of a technological issue, a government technology expert may need to access the Panel's information system but this will be permitted only to the extent strictly necessary and under strict confidentiality obligations.

Personal data gathered in this process will be held only for the duration of the Panel's work, which is due to finish at the end of September 2021.

Before the Panel finishes its work, you will have the opportunity to request that your contact details are passed on to those appointed to develop the next stage of the investigation or inquiry.

When the Panel has fully completed its work and delivered its report and recommendations to the Northern Ireland Executive via the Inter-departmental Working Group, all personal data gathered will be securely destroyed, unless you specifically request otherwise.

Any quotes used in the final report are used with permission and have been anonymised to protect the identity of victims-survivors.

Appendix 3: Public Appeal

MOTHER AND BABY INSTITUTIONS, MAGDALENE LAUNDRIES and WORKHOUSES

in NORTHERN IRELAND

Were you or one of your family held, placed or born in one of Northern Ireland's Mother and Baby Institutions, Magdalene Laundries or Workhouses?

Do you want to be involved with contributing to a proposal to the Northern Ireland Executive for a full inquiry?

We are the independent team appointed to work with survivors and their relatives to make recommendations for a full and thorough investigation into how the institutions operated and the impact this has had on your lives.

We will be carrying out this work from March to July 2021

TO REGISTER YOUR INTEREST: Email: truthrecovery@nigov.net
or telephone 03000200789

or visit the official website:
www.truthrecoverystrategy.com

Thank you
Ms Deirdre Mahon, Dr Maeve O'Rourke, Professor Phil Scraton

The relevant institutions include:

Mother and Baby Institutions

- Mater Dei, Belfast (Legion of Mary)
- Marianville, Belfast (Good Shepherd Sisters)
- Marianvale, Newry (Good Shepherd Sisters)
- Belfast Midnight Mission / Malone Place Maternity Home and rescue Home
- Church of Ireland Rescue League/Kennedy House, Belfast
- Hopedene House, Belfast
- Salvation Army, Thorndale House

Magdalene Laundries

- St Mary's Home, Belfast (Good Shepherd Sisters)
- St Mary's Home, Derry/Londonderry (Good Shepherd Sisters)
- St Mary's Home, Newry (Good Shepherd Sisters)
- Salvation Army Industrial/Rescue Home, Belfast

Other

- Mount Oriel, Belfast
- Deanery Flats, Belfast (Barnardo's)
- Belfast and Coleraine Welfare Flats
- Workhouses

Email truthrecovery@nigov.net
or telephone 03000200789

www.truthrecoverystrategy.com

Appendix 4: Questionnaire

The Questionnaire

(Data Protection Guidelines will be followed in relation to information provided and the information will only be used for the sole purposes of this co-design process)

Any information we collect or is processed by the panel, will only be shared or used as outlined in our Privacy Notice and Ethical Protocol

Please sign or give affirmation by email to confirm you are happy with this

Your Name:

Please note:

This questionnaire is a guide to inform us of your views. You do not have to answer every question if you feel that some are not relevant.

The final question invites you to provide additional information you consider relevant.

Please provide as much information as you wish, adding extra pages if necessary.

You are welcome to contact us to discuss the questionnaire:

phone 0044 300 0200 789 or email truthrecovery.mbi-magdalene@nigov.net

1. What do you want to be achieved by an official inquiry or investigation?
2. What questions do you want answered by an official inquiry or investigation?
3. Do you want to access personal documents and information relating to yourself or a family member? Please explain what information you want to access, and any difficulties you have experienced to date.
4. Would you want your documents or records to be made available to an official inquiry or investigation?
5. Do you want access to all relevant administrative files/records concerning the operation of the institutions, and all related organisations and individuals (e.g. financial records; inspection records; correspondence between the institutions and other state departments, social workers, doctors, priests/ ministers etc.)? Please explain.
6. Do you want to contribute to or participate in a future official inquiry or investigation, ensuring that your questions are fully explored? Please explain.
7. Should those who represent organisations involved in running the institutions be required to give evidence in public to an inquiry or investigation?
8. Who else involved with the institutions should be required to give evidence or supply documentation to an inquiry or investigation?
9. Do you wish to share your personal experience/testimony in a formal public setting? If so, in what way?
10. Would you be willing to be questioned publicly (in other words, to have your evidence questioned at an inquiry) by lawyers representing the institutions and the State?

Appendix 4: Questionnaire

11. What range of expertise should be included in the inquiry or investigation team?
12. Considering the impact that the institutions have had on you and others, what harm should be addressed in the Terms of Reference of the inquiry or investigation (before, during and after time in an institution by mother/baby)?
13. What are the cross-border/international issues that the official inquiry or investigation should address?
14. Beyond Mother and Baby/Magdalene institutions are there related issues that require inquiry or investigation?
15. What do you consider should be the outcomes of an official inquiry or investigation regarding: individual, Institutional and State responsibility; and recommendations for delivering justice (e.g. apology, health care, compensation, recovery of relatives' remains, family reunification, civil or criminal proceedings)?
16. Would you agree to the establishment of a truth telling archive through which your experiences and/or those of close relatives could be gathered anonymously and held permanently as a family and public education resource?
17. What supports do you think should be available during the inquiry or investigation (e.g. legal assistance, independent advocacy, counselling, disability support, genealogy services, emigrant outreach)?
18. Are there other issues you think need to be addressed?

Appendix 5: Independent Submission

In May 2021 Eunan Duffy, Sharon Burke and Sonia Webb submitted to the Chair of the Inter-Departmental Working Group and the Truth Recovery Panel a comprehensive document entitled Project Brief for an Inquiry into Mother and Baby Homes, Magdalene Laundries and pre-1948 Workhouses in NI. It states the case for a full Public Inquiry as the 'only acceptable option'.

What follows is extracted from the submission:

Background

This is not just about the institutions themselves. It is about the unjust separation of mothers and babies. It is about discrimination against unmarried women and their children, who were denied equal rights, subjected to state sanctioned abuse, and deprived of equal access to appropriate health care and social supports.

The issues that have led to the need for a victim/survivor-led Inquiry include:

- Difficulty in finding and accessing information that is widely dispersed and often withheld
- Difficulty and expense incurred in searching for relatives
- Missing, lost, destroyed and even forged records and documents [the impact of this should not be underestimated]
- Lack of legal access to records
- The ongoing denial of access to information about personal identity is an ongoing denial of the right to dignity
- Multiple birth certificates
- Questions about choice and autonomy for women entering the institution
- Enforced incarceration/deprivation of liberty and restricted access to the outside world
- Loss of name/identity after entering home
- Living conditions in the institution
- Forced hard physical, unpaid labour
- Questions about choice and autonomy for women in the adoption process [given traumatic and highly pressurised circumstances]
- Questions about the legality of adoptions [informed consent issues, forged signatures, illegal cross border adoption]
- Lack of emotional support at time of residency [fear, anxiety, loneliness and grief]
- Emotional abuse [made to feel dirty and ashamed, kept apart from baby; isolated from family and friends; treated with contempt, ridiculed, powerless, denied their dignity, no self-worth, no self-determination, incorrectly told that relinquishing their baby was in the baby's best interest]
- No better treatment for victims of incest or rape, including children as young as 12, failure to prosecute perpetrators of these crimes, and a policy of returning such victims to the influence and control of the perpetrators
- Long-term mental health problems
- Sexual abuse
- Physical abuse

Appendix 5: Independent Submission

- Educational disadvantage - Lost educational opportunities/no social skills training
- Patriarchal oppression resulting in the denial of women's basic rights
- Enforcement of perverse religious morality.
 - The State privileged religious institutions over the rights of individual citizens, enabling an unequal and undemocratic ethos to exist in society
 - Women left in a terrible bind—denied access to contraception and then denied the ability to keep their babies. State laws that privileged the churches over the rights of women
 - Unequal treatment of the fathers. No sanctions at all for them
- Lack of cooperation and collaboration of religious orders in telling the truth - need power to compel testimony and documents
- No acknowledgement of the separation trauma suffered by both mothers and their babies
- Adoptees actively and purposely denied their own identity; their records, their biological family, their background and their health information
- Adoptees are over-represented in substance abuse, mental health and addiction treatments; they are more likely to end up homeless or in prison or to attempt suicide. These are clear markers for trauma
- Some babies branded as illegitimate
- Medical neglect of mother and baby – a deprivation of human rights and unequal treatment
- Starvation of babies who had a right to life
- Emotional deprivation of babies possibly leading to failure to thrive
- Babies treated like assets or commodities
- Infant mortality rates and possible irregularities in recording the mortality rates
- Discrepancies between recorded deaths and burial registers
- Many unmarked graves
- Babies buried without identification or registration of place of burial
- Burial in mass graves
- Women were buried under 'house' names
- Concerns about post-mortem practices on women and babies?
- The need for exhumations (and inquests, if needed) to determine causes of death in the homes/laundries/workhouses
- Concerns about drug/vaccine trials
 - There is evidence from Glaxo Smith Kline that the trials did indeed occur. Individuals have written evidence of such
- Incomplete excavation of burial sites
 - There is a need for geophysical surveys of the grounds of former/existing grounds of all implicated institutions prior to any redevelopment work

Appendix 5: Independent Submission

- No justice or redress for wrongs committed by individuals and institutions

Goals

The Inquiry should help victims/survivors reach their goals

- Victim/survivor goals
 - To have their voice, their narrative heard and to no longer accept silencing
 - To break the prevailing culture of secrecy and denial
 - Vindication and restoration of reputation, restoring dignity and self-worth
 - To open closed doors, closed files and closed hearts and find the truth/information/answers that they are seeking
 - To know their identity
 - To know their medical/genetic history
 - To provide an authoritative record of events. This history must be told so that all in NI can understand that the human rights of women and children were violated with the acquiescence and the support of the state. It is important to educate society about human rights and to show that even in democratic states, anyone's human rights can be violated unless we guard against that.
 - To be given the choice to reunited with their biological family and to be assisted if assistance is asked for (education and counselling for families, tracing, etc.)
 - To know their medical/genetic history
 - To better understand the wider long-term psychological impact on victims/survivors and their families
 - To experience therapeutic benefits from connecting with and giving expression to their authentic emotions and feelings
 - To find acknowledgement for their emotional suffering
 - To experience validation and in particular acknowledgement of wrongdoing by perpetrators
 - To be believed
 - To engage others at a high level of conscience
 - To hold individual and institutional perpetrators to account
 - For the State, institutions and individuals as well as families and wider society to take and own responsibility for the wrongdoings as well as accountability
 - To be treated with fairness
 - Equity and equality
 - Recovery/rehabilitation
 - To find a measure of peace
 - To feel empowered
 - To realise their resilience and be able to move forward
 - To ensure no similar violations against scapegoated groups occur again
 - To establish sites of conscience (including reports) that allow us to remember and acknowledge

Appendix 5: Independent Submission

in perpetuity

- To have access to a redress and reparation scheme
- To identify further research needs

Objectives

- To maximise stakeholder participation across the world and elicit their requirements
- To ensure all participants are fully engaged in all the processes and procedures and not sidelined
- To ensure victims/survivors are informed of their options in a timely manner, making sure they understand the process and supporting them as they engage with it, and enabling them to contribute to the design and implementation of any inquiries or redress schemes that may be developed
- To address the issues associated with the current situation - See “Background”
- To find answers to the questions in the “Scope” section
- To choose a model of justice that accommodates multiple needs and offers multiple paths including both statutory and victim/survivor-led restorative elements. See <https://pureadmin.qub.ac.uk/ws/portalfiles/portal/104691097/Reframing.pdf>
- To choose a model of justice paying regard to the latest thinking as may be presented by academics and lawyers. See https://pure.ulster.ac.uk/ws/portalfiles/portal/78477489/Lundy_HIAI_Briefing_Paper_Feb_2020.pdf
- To ensure a non-adversarial approach to testimonials
- To ensure the Inquiry is guided by the elements of procedural justice (Yale Law School definition):
 - Voice: Individuals are given a chance to express their concerns and participate in decision-making processes by telling their side of the story
 - Respect: All individuals are treated with dignity and respect
 - Neutrality: Decisions are unbiased and guided by consistent and transparent reasoning
 - Trustworthiness: Decision-makers convey trustworthy motives and concern about the well-being of those impacted by their decisions
- To ensure the Inquiry is guided by the elements of transitional justice (see link below):
 - criminal justice
 - truth
 - reparations
 - guarantees of non-recurrence/institutional reform.

aiming at attaining the following objectives:

1. Ending impunity for violations of human rights:
2. Providing recognition, healing and redress to victims
3. Fostering trust in government institutions
4. Strengthening the rule of law
5. Contributing to reconciliation and a healthier society

Appendix 5: Independent Submission

Scope

This Inquiry is a victim/survivor-led investigation into Mother and Baby Homes, Magdalene Laundries and pre-1948 Workhouses in Northern Ireland. It should also include baby “homes” and maternity (private) homes

A victim/survivor-led, victim/survivor centred Inquiry is a bottom-up approach that has at its centre a narrative “truth telling” Inquiry. Victims/survivors are encouraged through an interview process or written submissions to share their testimony. Interviews are recorded and transcribed. The verbatim transcripts of the interviews and written submissions provide the data for the study.

This Inquiry should be survivor-centred, guided by human rights principles and standards, comprehensive in its scope and powers and transparent. It should ensure proper and appropriate recording, analysis, archiving and access to the evidence it gathers.

Victims/survivors should be fully involved throughout the development, design, implementation and follow up of a suitable Inquiry. They should be adequately resourced and supported to make their engagement meaningful. Independent facilitators, counsellors, human rights-based NGOs, private, secular & Church-based agents/agencies, legal and academic experts should all be made available.

Survivors/victims needs need to be the engine of how we address previous human rights violations including ongoing deprivation.

State Investigation must include a commitment to reach out beyond NI.

Using the agreed model of justice, the Inquiry should

- Identify what happened (include findings from academic research report)
- Collect information through interview and written submissions
- Analyse documents
- Examine witness testimony
- Probe into identified locations
 - Identify why it happened (research project)
 - Identify who it happened to [not forgetting boarded-out/fostered/nursed-out/farmed-out persons along with those who spent time in mental/psychiatric institutions. married mothers, those on probation/remand, juvenile delinquents, minor offenders, mentally/physically disabled]
 - Identify others impacted (intergenerational research project)
- Inter-generational medical/health impact should be researched
 - Identify parties responsible (including social workers, doctors, other health professionals, police etc)
 - Communicate and publish all findings and recommendations
 - Recommend action based on findings, e.g.
- Secure apology from all identified individuals, agencies and institutions who colluded in shaming unmarried mothers and taking their babies
- Letter of apology signed by all implicated agencies and institutions to include a symbolic coin inscribed with the commissioned statue [coin may also be important for family members not entitled to compensation]

Appendix 5: Independent Submission

- Excavations and exhumations
- Anatomical research
- Commemorative ceremonies
- Prosecutions
- Commission the best sculptor to design suitable statues/memorials.
- Financial and/or symbolic redress

Excluded options:

- All top-down approaches
- All approaches that are not consistent with the principles of procedural justice
- Any approach that is offender centred e.g., unmodified restorative model
- Any approach that can re-victimise or re-traumatise victims/survivors

The full submission is available from.

Author Profiles

Deirdre Mahon: MA, MBA, DipY&CW, CQSW, DipASS, PQCCP, DipPCC is a Director of Women and Children’s Services and the Executive Director of Social Work in Health and Social Care in Northern Ireland, managing both hospital and community services. She has always been a passionate advocate for the unheard and vulnerable.



Throughout her 35 years career in public services, Deirdre has maintained her practice in both Social Work and community frontline services. Deirdre has had extensive experience in both direct work with service users, and management and development of staff. She has developed and led on many innovative practices and leadership initiatives including leading on the development and implementation of the ‘Signs of Safety’, framework in Northern Ireland, which emphasises, ‘Nothing about Families, without Families’. This model addresses the power imbalance between families and statutory social services. She has trained judges, barristers, social workers, teachers and social care staff in this approach. Her expertise and guidance is much sought after, regionally/nationally and internationally, including, England, Scotland, Republic of Ireland, Europe, North America, Gibraltar, Australia and the Middle East.

Deirdre has been a driving force in ensuring trauma informed practice is rolled out in N. Ireland, creating awareness of the impact that Adverse Childhood Experiences can have on children and adults. She chairs a North/South, European funded, MACE (Multiple Adverse Childhood Experiences) project, which is working with local communities to identify need and development of services.

She is a qualified and experienced Social Worker/Youth and Community worker and is a practice assessor for the post graduate child care award and is a guest lecturer at Queens University Belfast and the University of Ulster. She is also a fellow of the Institute of Management.



Dr Maeve O’Rourke: PhD (Birmingham), LLM (Harvard), BCL (University College Dublin) is Lecturer in Human Rights at the Irish Centre for Human Rights, School of Law, National University of Ireland Galway.

Dr O’Rourke is also barrister at 33 Bedford Row, London, and a registered Attorney at Law (NY). Prior to joining NUI Galway in 2019, Dr O’Rourke was Senior Research and Policy Officer for the Irish Council for Civil Liberties and previously an employed barrister at Leigh Day Solicitors (International and Group Claims Department). She has worked as a researcher for Just for Kids Law, Harvard Law School Human Rights Program, the University of Minnesota Law School Human Rights Center, Equality Now, and the UN Special Rapporteur on Torture.



Dr O’Rourke’s academic research and writing focuses on the rule against torture and ill-treatment, and on accountability and reparation for gross and systematic human rights violations in social ‘care’ contexts. Since 2010, Dr O’Rourke has provided pro bono legal research and advocacy assistance to the ‘Justice for Magdalenes’ group (now JFM Research, www.jfmresearch.com), playing an instrumental role in bringing about the Irish State’s apology to and redress scheme for Magdalene Laundries survivors. Dr O’Rourke continues to work with Magdalene Laundries survivors towards obtaining all elements of the promised redress scheme.

Author Profiles

In 2015 with Claire McGettrick, co-founder of JFM Research and Adoption Rights Alliance, Dr O'Rourke established an initiative with global law firm, Hogan Lovells International LLP, entitled the 'Clann Project' (www.clannproject.org). The 'Clann Project' assisted over 80 people to provide full witness statements to the Mother and Baby Homes Commission of Investigation; published extensive legal analysis of the human rights issues raised by Ireland's 20th century system of family separation and its continuing effects; and continues to build a publicly accessible archive for accountability, education and memorialisation purposes.

Dr O'Rourke has received national and international recognition for her *pro bono* human rights lawyering, including being named UK Family Law Pro Bono Lawyer of the Year in 2013 and receiving the University College Dublin inaugural Alumni Achievement Award in Law in 2014 and the Public Interest Law Network's Local Pro Bono Impact award in 2018.



Phil Scraton: PhD, DLaws (Hon), DPhil (Hon), MA, AdvDipd, BA(Hons) is Professor Emeritus, School of Law, Queen's University Belfast. He has held several international visiting professorships. Widely published on critical theory, incarceration and children/ young people his books include: *Law, Order and the Authoritarian State; In the Arms of the Law - Coroners' Inquests and Deaths in Custody; Prisons Under Protest; 'Childhood' in 'Crisis'?*; *Hillsborough The Truth; Power, Conflict and Criminalisation; The Incarceration of Women; Women's Imprisonment and the Case for Abolition.*



Co-author of reports for the NI Commissioner for Children and Young People (Children's Rights) and the NI Human Rights Commission (Women in Prison) he was a member of the Liberty Advisory Committee on deaths in custody. He led the Hillsborough Independent Panel's research team, was principal author of its 2012 Report, *Hillsborough* and was seconded to the families' legal teams throughout the 2014-2016 inquests.

Consultant on, and contributor to, the 2017 BAFTA winning ESPN/BBC documentary *Hillsborough*, he holds a Leverhulme Fellowship addressing the unique work of the Panel and the legal processes that followed. In 2018 he co-convened a community-based international research programme at Sydney University deaths in custody and during arrest.

He was a member of the JUSTICE Working Party into inquests and public inquiries: *When Things Go Wrong: The Response of the Justice System* (2020). He co-authored '*I Am Sir: You Are A Number*': *The Report of the Independent Panel of Inquiry into the Circumstances of the H-Block and Armagh Prison Protests 1976-1981* (2020) and the Irish Council of Civil Liberties study *Death Investigation, Coroners' Inquests and the Rights of the Bereaved* (2021). Having refused an OBE, he was awarded the Freedom of the City of Liverpool in recognition of his Hillsborough research.



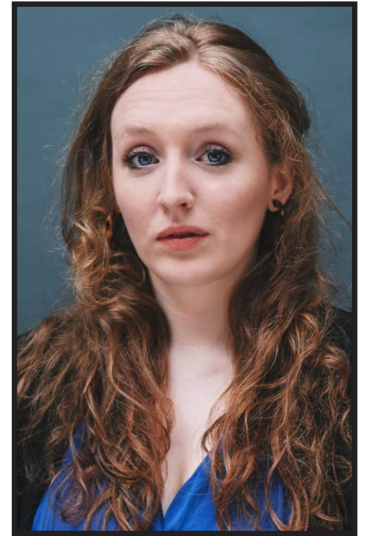
Darcy Rollins: LLB, BL is a pupil barrister at the Bar of Northern Ireland who graduated from the University of Bristol in 2016 where she was Vice-President of the Pro Bono Society and a member of Young Legal Aid Lawyers. Since then she has provided representation and advice in social security tribunals with the Law Centre NI in 2016 and 2018 acting in appeals challenging the Department of Work and Pension's failure to award individuals with physical and mental health problems their correct entitlement.

Darcy worked as a paralegal at a human rights firm, from February 2019 to September 2020 before leaving

Author Profiles

to train to become a barrister at the Institute of Professional Legal Studies. While working as a paralegal, Darcy primarily worked in the civil litigation department assisting partners. She consulted with survivors of historical institutional abuse and clerical abuse on a regular basis taking detailed statements of their story to build their case. She also provided legal advice regarding the Historical Institutional Abuse redress scheme or the alternative route of a civil case. She assisted with establishing over 300 redress claims and setting up cases prior to the opening of the redress scheme and lodged many applications before leaving in September 2020.

Darcy also continued to provide support and advice to individuals challenging their PIP entitlement, particularly HIAI clients who suffered serious mental health issues and had been denied their entitlement. She also consulted on a range of other matters including individuals who required injunctions, individuals challenging the state via judicial review and families whose relatives suffered in institutional care.



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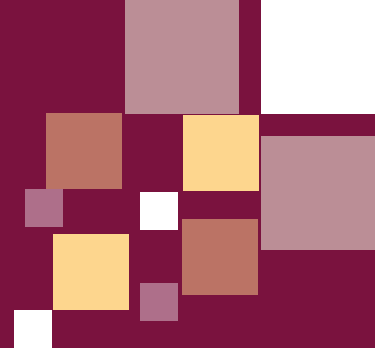
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Four Voices, Multiple Lives



***‘I have lived with this silently all my life
and have felt like I have carried a heavy
guilty burden.’***

***‘The lasting damage done to my mental
health has overshadowed my life and
the lives of my family.’***

***‘It has to end with us as we do not want
to pass this horrible legacy on to the
next generation.’***

‘It is time for truth, and I welcome it.’



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