



**An Roinn Leanaí, Comhionannais,
Míchumais, Lánpháirtíochta agus Óige**
Department of Children, Equality,
Disability, Integration and Youth

Report of the Interdepartmental Group (IDG) on the development of the Mother and Baby Institutions Payment Scheme

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Executive Summary

Background

The Commission of Investigation into Mother and Baby Homes and certain related matters was established by the Irish Government in February 2015 to provide a full account of what happened to vulnerable women and children in Mother and Baby and County Home Institutions during the period 1922 to 1998. The Commission submitted its final report to the Minister for Children, Equality, Disability, Integration and Youth on 30th October 2020 and it was subsequently published on 12th January 2021.

Publication of the Report was a landmark moment for the Irish State and its citizens and resulted in an immediate State apology, delivered by An Taoiseach, Micheál Martin, to those who spent time in the institutions. In responding to the Commission's findings and recommendations, the Government also approved the development of an Action Plan encompassing a suite of 22 specific measures. The Action Plan centres on a number of distinct themes including: access to personal information; archiving and databases; education and research; memorialisation; restorative recognition and dignified burials. These measures are an acknowledgement of the profound suffering experienced by the Irish women and their children in these institutions, and reflects our understanding of the enduring impact these experiences have had on many citizens and their families.

A centrepiece of the Government's response to the recommendations of the Commission is the commitment to develop a Restorative Recognition Scheme. An Interdepartmental Group (IDG) was established and tasked with the development of detailed and costed proposals for a Restorative Recognition Scheme which will entail two broad dimensions:

- ❖ It will provide restorative recognition payments which take account of the recommendations of the Commission relating to redress, but which may not be solely limited to those recommendations.
- ❖ It will provide a form of enhanced medical card to everyone who was resident in a Mother and Baby or County Home Institution for a period of six months or more.

The following Departments and bodies were represented on the Interdepartmental Group at official level:

- Department of Children, Equality, Disability, Integration and Youth (Chair)
- Department of Education
- Department of Health
- Department of Public Expenditure and Reform
- Department of the Taoiseach
- Office of the Attorney General
- State Claims Agency

To support the work of the IDG and in keeping with the commitment to a survivor-centred approach, a national consultation on the design of the Restorative Recognition Scheme was undertaken. This consultation took place in the months of March and April with a very strong response received. The input from those who spent time as mothers and children in Mother and Baby and County Home

Institutions was invaluable to the Group in the development of proposals. A key message from the consultation is that survivors want to be treated with kindness and they want those responsible for delivering this Scheme to be mindful of that important message.

Objective and Grounding Principles for the Scheme

The 22 point Action Plan committed to by Government in response to the findings and recommendations of the Commission includes a number of actions under the theme of Restorative Recognition. A key commitment in this regard is the establishment of a Scheme to provide financial payments and other benefits to defined groups in acknowledgement of suffering experienced while resident in Mother and Baby and County Home Institutions.

Based on consultations with the Irish Human Rights and Equality Commission (IHREC), the IDG proposes the following high level principles to inform the Scheme's development:

- The right to an adequate, effective and prompt remedy
- Fair procedures and accountability
- Equality and non-discrimination
- Proportionality
- Accessibility and support
- Participation
- The 'do no harm' principle

Feedback from the consultation process and IHREC signalled that the name 'Restorative Recognition Scheme' was not considered appropriate. Noting this feedback, the IDG proposes that the Scheme should instead be named the 'Mother and Baby Institutions Payment Scheme'.

Basis for the Scheme and Scope of the Scheme

Given the scale and significance of the envisaged Mother and Baby Institutions Payment Scheme, the IDG considers that the scheme should be placed on a statutory footing by means of a single, comprehensive and integrated piece of legislation which encompasses both elements of the Scheme – the financial payment and the enhanced medical card. This approach has the strongest potential to support a user friendly, 'one stop shop' approach, ensure that gaps are avoided and ensure that there is a clear, consistent and coherent approach. The approach is also essential in terms of providing the necessary legislative basis for lawful access by the scheme administrator to the required institutional records.

In terms of the scope of the Mother and Baby Institutions Payment Scheme, it is proposed that it should encompass the institutions covered by the Commission of Investigation's Terms of Reference, as listed in:

Appendix A – Mother and Baby Homes investigated by the Commission, and
Appendix B – All County Homes.

There would be potential to amend the Schedule of institutions listed in Appendices A and B to include additional institutions at a later time, for example in response to particular circumstances or evidence. However, at this time the IDG strongly recommends that the initial Scheme is confined to those institutions which were covered by the Commission's remit. In this regard, it would emphasise that the scale and scope of the Scheme is already likely to be extremely significant in terms of cost and operational complexity.

Financial Payments

Based on the recommendations of the Commission of Investigation, the following groups should be entitled to receive a financial payment:

- People who were resident as unaccompanied children in a Mother and Baby or County Home Institution for a period of six months or more and who did not receive redress in respect of the institution under the Residential Institutions Redress Scheme.
- Pregnant women who entered a Mother and Baby or County Home Institution before 1974 and spent more than six months there.
- Women who were resident for more than six months and who undertook 'commercial work without pay' in County Homes, in the Tuam Mother and Baby Home or outside a Mother and Baby Institution while resident there.

While cautioning against any expansion that has potential to have substantial additional financial implications, the IDG believes there is a sound rationale for the inclusion of the following two categories in the Scheme also:

- Pregnant women who entered Mother and Baby Home Institutions after 1974 and who spent more than six months there.
- People who were resident as accompanied children in a Mother and Baby or County Home Institution for a period of 6 months or more.

Having carefully considered the findings from the consultation process, and with particular reference to the twin tenets of 'act with kindness' and 'do no harm', the IDG recommends that payments are provided to eligible applicants based on proof of residency for a defined period of time. Payments should comprise:

- A general payment to recognise time spent in the institution, harsh conditions, emotional abuse and other forms of mistreatment, stigma and trauma experienced while resident in a Mother and Baby or County Home Institution.
- A work-related payment (where relevant).

Applicants would qualify based on proof of residency, without a need to bring forward any evidence of abuse or any medical evidence. In limited circumstances, sworn affidavits may be required.

Proposed approach in relation to applications on behalf of deceased people

The IDG recommends that, where a person would have qualified as an applicant but died on or after the date of An Taoiseach Micheál Martin's apology to survivors on 13th January 2021, the spouse or

children of that person or their estate may make an application to the scheme for a financial payment on behalf of that deceased person.

Enhanced Medical Card

A form of enhanced medical card should be provided to everybody who was resident in a Mother and Baby or County Home Institution for six months or more. The card should provide the same full suite of health services and benefits which was provided under the Magdalen Restorative Justice ex-gratia Scheme.

Those who are deemed eligible for the card but who live overseas should have the choice to receive an enhanced medical card or a once-off payment of €3,000 in lieu of the card.

Overall Governance and Operation of the Scheme

The IDG recommends that consideration be given to the Scheme being operated by an independent Executive Office, situated within the Department of Children, Equality, Disability, Integration and Youth. This approach entails strong potential in terms of the benefits to be derived from leveraging and aligning with Departmental structures. It ensures the speediest establishment of an independent office on a legislative basis.

A person should be able to make a single application to the Executive Office in respect of both the financial payment and the enhanced medical card. The Executive Office would be responsible for administration and decision-making in relation to the Scheme. Where it determines an application for a financial payment, it would be responsible for providing the Department's Finance Unit with the applicant's details so that the payment can be issued. Where it determines an application for an enhanced medical card, it would be responsible for providing the HSE with the person's details so that the HSE can issue the card.

The legislation establishing the Scheme should provide a clear lawful basis to allow an applicant, as part of their application and in line with their rights under the GDPR, to request the Executive Office to obtain copies of the applicant's institutional records from the Commission of Investigation's archive and database to facilitate a user-friendly process where the State assists in shouldering the burden of proof between the applicant and the State in a manner that is beneficial for the applicant. Where there is an absence of documentary evidence, it is recommended that affidavits should be accepted, with this cost supported by the Executive Office.

Particular attention should be paid to ensuring the Scheme is accessible and that appropriate measures are put in place for applicants who may lack capacity to apply. More generally, all processes should be designed with the principles of 'kindness' and 'do no harm' in mind and should be trauma-informed. In addition, applications from those who are elderly (and other categories as deemed appropriate) should be prioritised.

Discussions should be undertaken with Revenue, the Department of Social Protection and the Department of Health to ensure that awards and benefits are discounted for the purposes of determining entitlement to social welfare payments and/or income tax liability. There should also be engagement with relevant authorities overseas, where possible, to recommend consideration of

similar provisions in other jurisdictions, while noting that the Irish Government does not have the authority to compel other jurisdictions to make such allowances.

Appeals process

Applicants should have recourse to an internal review where they are unhappy with the decision in relation to their application. Thereafter, they should have a further right of appeal to an independent Appeals Officer. A further appeal on a point of law can be made to the High Court and recourse to make a complaint to the Ombudsman would also be available.

Duration of the Scheme and associated timeframes

It is recommended that a sunset clause is built into the legislation setting out the scheduled end date of the Scheme. The fifth anniversary of the Scheme start day would seem to be a reasonable proposal in this regard. A robust communications campaign, nationally and internationally, should ensure that all those eligible for the Scheme will be made aware of its existence.

Governance and accountability framework

A robust governance framework should be established for the Scheme. It is essential that Terms of Reference are developed for its operation which reflect the requirements and parameters of the Government decision establishing the Scheme. The Scheme's grounding legislation and governance framework should take full account of data protection and records management requirements, consistent with the provisions of the National Archives (Amendment) Act 2018, the Freedom of Information Act, 2014, the Data Protection Acts 1988-2018 and the General Data Protection Regulation (GDPR).

Review and evaluation of the Scheme

Given the proposed timeline of this Scheme, the IDG would propose a first review of its operation commencing 12-18 months after its establishment, and a further post evaluation on completion of Scheme.

Cost Estimates for the Scheme

The estimated costs associated with the potential aspects of the Scheme are set out in Chapter 5 in relation to the:

1. Financial Payment
2. Enhanced Medical Card
3. Administration and Operations
4. Communication and Publicity

There are, however, significant limitations to the data available which unavoidably impact on the accuracy of estimated number of applicants. The IDG has attempted to provide Government with as much information as possible so as to inform its ultimate decisions on the scope of the Scheme.

In overall terms, the estimated cost of the Scheme across a 5 year time period, if grounded in the Commission's recommendations, might be expected to be of the order of €396m, covering 6,500 financial payments and 19,000 enhanced medical cards. If the payment is extended to all those with a length of stay over 6 months, as per the groups identified in chapter 2 of this report, the total

estimated cost would be €673m, covering 19,000 financial payments and enhanced medical cards. Further extensions to the scheme to include groups with lengths of stay below 6 months could give rise to costs ranging from approximately €800m to €1.6bn.

Publicity and Communication of the Scheme

The IDG acknowledges that clear and respectful communications on the Scheme are essential to ensuring there is a survivor-centred approach to the Scheme. A communication strategy should be put in place which delineates communication objectives and identifies appropriate and accessible communication tools. A large portion of potential applicants will be based outside of Ireland (in particular in the UK and America) and this will require an international component to any communications strategy.

At the point when the Scheme is launched all reasonable efforts should be made to ensure that:

- the Scheme is widely advertised.
- the terms of the Scheme are clearly communicated (what it is and is not offering).
- it is clear who is eligible for the Scheme.
- potential applicants are equipped with the information they need to make an informed decision on whether they wish to apply.
- all communications with potential applicants are undertaken with kindness and sensitivity to the nature of the issues involved.

Due to the scale of the Scheme and the potential number of recipients, a major national and international information campaign should be undertaken by way of publicising the Scheme.

It will also be important to ensure ongoing communication in relation to the Scheme and, in particular, to make arrangements to undertake additional publicity campaigns if necessary in advance of the Scheme closing.

Next Steps

Following Government agreement on the Scheme, an important next step is the establishment of an Implementation Steering Group to oversee and drive all aspects of the development and operation of the Scheme.

Acknowledgements

The IDG is very grateful for the support, advice and assistance received in relation to its work in developing proposals for a Mother and Baby Institutions Payment Scheme. In particular, the Group would like to thank the following:

- All those who contributed to the consultation process.
- OAK Conflict Dynamics.
- The Department of Foreign Affairs and Embassy colleagues overseas.
- The Irish Human Rights and Equality Commission.
- The Research and Evaluation Unit, Department of Children, Equality, Disability, Integration and Youth.

- Colleagues in each of the Departments and Agencies represented on the IDG who supported IDG members with advice and feedback throughout the process.

Chapter 1: Introduction and Overall Approach

1.1 Establishment of the Restorative Recognition Interdepartmental Group

The Commission of Investigation into Mother and Baby Homes (and certain related matters) was established by Government in February 2015 to examine the experiences of women and children in Mother and Baby and County Home Institutions. The Commission submitted its Final Report to the Minister for Children, Equality, Disability, Integration and Youth on 30 October 2020 and it was published on 12 January 2021.

The Commission delivered an independent, comprehensive, and factual account of the institutions under investigation, and the experiences of the women and children who resided there for a period. Publication was followed by an immediate State apology from An Taoiseach for the suffering experienced by these most vulnerable citizens. The full Report and Government statement are available on the gov.ie website at the following links: [www.gov.ie/report and www.gov.ie/statement](http://www.gov.ie/report-and-statement). The Commission's full suite of interim reports is also available on the site.

Publication of the Report was a landmark moment for the Irish State. The Report reveals what happened, within the walls of Mother and Baby and County Home Institutions and beyond them, to many thousands of women and children. Importantly, it also captures those journeys in the words of those who experienced them first-hand.

In response to the findings and recommendations of the Commission, the Government committed to a 22 point Government Action Plan. This plan will be advanced in a survivor-centred manner, focused on responding to the identified needs of those who, as adults and children, spent time in these institutions through no fault of their own.

One of the key actions announced by Government was the development of a bespoke ex-gratia Restorative Recognition Scheme to provide financial awards and other benefits to defined groups. This commitment required that an Interdepartmental Group be established to develop detailed policy proposals for consideration by the Minister for Children, Equality, Disability, Integration and Youth and by Government.

1.2 Membership of the Inter Departmental Group

The following Departments and bodies were represented on the Group at official level:

- Department of Children, Equality, Disability, Integration and Youth (Chair)
- Department of Education
- Department of Health
- Department of Public Expenditure and Reform
- Department of the Taoiseach
- Office of the Attorney General
- State Claims Agency

1.3 Role of the Restorative Recognition Scheme Interdepartmental Group

The role of the Restorative Recognition Scheme Interdepartmental Group (IDG) was to develop detailed and costed policy proposals to inform the Minister and Government in relation to the decisions necessary to develop a Restorative Recognition Scheme for former residents of Mother and Baby Homes and related institutions. The IDG understood that its task included the need to scope and present proposals to Government (accompanied by a clear recommendation if appropriate) on the basis of stated assumptions associated with the design and implementation of the scheme. It is essential that the Government be provided with comprehensive data on relevant issues to ensure that well informed decisions can be made with regard to the potential coverage and costs of the scheme and other relevant factors.

This work was underpinned by a human rights focus and informed by strong stakeholder consultation together with an understanding of challenges and criticisms of previous State redress or restorative justice arrangements.

The Group concentrated in the time available on some of the fundamental considerations in this regard, including the lessons learned from previous experience, to ensure that its report can be of assistance to Government's urgent deliberations on the scope and design of the intended Restorative Recognition Scheme. It is recognised that many of these issues will require further and more detailed consideration in progressing the steps necessary to support the establishment and delivery of a functioning scheme.

1.4 Terms of Reference

Interdepartmental Group on Restorative Recognition for Former Residents of Mother and Baby Homes

Terms of Reference

The Government has agreed to establish an Interdepartmental Group to develop detailed and costed proposals for a Restorative Recognition Scheme for former residents of Mother and Baby Homes and related institutions. The Scheme will entail two broad dimensions:

- ❖ It will provide restorative recognition payments which take account of the recommendations of the Commission relating to redress (but which may not be solely limited to those recommendations).
- ❖ It will provide, as agreed by Government, a form of enhanced medical card, i.e., eligibility for a tailored suite of health services similar to those provided to former residents of Magdalen Laundries, to everyone who was resident in a Mother and Baby Home or County Home for a period of six months or more.

The detailed proposals developed by the Group will entail consideration of the following matters:

- Basis for the Scheme, i.e. statutory versus administrative;
- Potential scope of the Scheme in terms of the suite of health services to be provided and the categories of former residents who should qualify for restorative recognition payments;
- Terms and conditions for the Scheme, including eligibility criteria, design and level of financial payments and the burden of proof associated with applying and qualifying for the Restorative Recognition Scheme;
- Duration of the scheme and associated timeframes;
- Governance Framework and operation of the Scheme, including records management, data protection and management of legal costs;
- Sources of funding for the Scheme, including the question of contributions from outside the Exchequer;
- Identification and management of risks related to the proposed scope of the Scheme;
- Publicity and communication of the Scheme;
- Review and evaluation of the Scheme

The Group will report to the Minister for Children, Equality, Disability, Integration and Youth.

1.5 The Overall Government Response

In response to the Final Report of the Commission of Investigation, the Government has published a commitment to a 22 point action plan covering the following eight key themes:

- ❖ A Survivor-centred approach, including counselling
- ❖ Apology
- ❖ Access to Personal Information
- ❖ Archives and Databases
- ❖ Education and Research
- ❖ Memorialisation
- ❖ Restorative Recognition, including health supports
- ❖ Dignified Burial

The Restorative Recognition Scheme is central to the Government's response. However, other important actions have been highlighted by survivors as being of particular importance, including access to information, access to counselling and health services, and memorialisation and commemoration. Notably, in the public consultation process, access to information and dedicated counselling services were identified by many respondents as being more important than receiving financial payments. This highlights the importance of understanding the Restorative Recognition Scheme as one element of the overall Government response, as well as the importance of progressing the full suite of wide-ranging commitments made by Government in order to meet the needs of survivors.

Work is ongoing in relation to progressing all of these commitments in tandem with the development of the Restorative Recognition Scheme.

1.6 What is the objective of the Scheme?

The 22 point Action Plan committed to by the Government in response to the findings and recommendations of the Commission includes a number of actions under the theme of Restorative Recognition. A key commitment in this regard is the establishment of a Scheme to provide financial payments and other benefits to defined groups in acknowledgement of suffering experienced while resident in Mother and Baby and County Home Institutions.

In its reports, the Commission identified systemic failures in the management and operation of the homes over many decades and highlighted the role of the State in the governance and funding of many of the institutions concerned. The State also had a significant oversight role in their regulation and inspection and, while inspectors identified many issues particularly in relation to the conditions which were endured by the residents over the course of the earlier decades examined by the Commission, there was a slow response from the State in addressing them, either by Local Authorities or Government Departments.

The Commission's final report identified three specific groups for whom it recommends redress might be considered:

- (a) People who were resident as unaccompanied children in a Mother and Baby Home or County Home as a child under the age of 18 years and who did not qualify for redress under the Residential Institutions Redress Scheme.
- (b) Pregnant women who entered Mother and Baby Homes or County Homes before 1974 and who spent a longer time period, say more than six months, in such institutions.
- (c) Women who undertook what might be termed 'commercial work' without pay in county homes, in the Tuam Mother and Baby Home or outside a Mother and Baby Institution while resident there.

The Government tasked the IDG with developing detailed policy proposals to take account of the Commission's recommendations but did not limit the IDG solely to those recommendations.

In its work, the IDG was cognisant of the Minister's direction¹ that the Scheme should build on the spirit in which the State apology was made, learn from the experience of previous schemes and take a human rights based approach to ensure an appropriate response to the suffering endured by the women and children who resided in these institutions.

The IDG understands that, in using the term Restorative Recognition as a theme in its Action Plan, the Government intends it to describe a mechanism of responding to failures by the State and other parties, in a manner which focuses primarily on recognition of the suffering experienced and restoring, insofar as possible, the well-being of those involved. It is clear that no financial award or service provision can take back the hurt, loss and distress that has been suffered. Through the development of a Restorative Recognition Scheme, and through the overall Government response, the State is committed to acknowledging the experiences of mothers and children, as well as the

¹ The Minister addressed the IDG at their first meeting on 4th February 2021 and outlined his views on the development of proposals for a Restorative Recognition Scheme and the importance of adopting a human rights based approach.

impacts which these experiences continue to have on many individuals. The primary objective in establishing a Restorative Recognition Scheme is to provide a measure of support for persons who were failed as mothers and children in the context of the institutions, practices, circumstances and experiences investigated by the Commission of Investigation (Mother and Baby Homes and certain related Matters).

The IDG is mindful that the Restorative Recognition Scheme stands as part of a broader Government response to the experiences endured by survivors of Mother and Baby and County Home Institutions. For some, redress is an apology and memorialisation, for others it is access to records. As such, a Restorative Recognition Scheme should be understood as just one of the ways in which the State acknowledges and makes amends for the failures and suffering experienced by mothers and children who were resident in these institutions.

Finally, the IDG notes the feedback from the consultation process and IHREC that the name 'Restorative Recognition Scheme' was not considered appropriate. Therefore, the IDG proposes that the Scheme should instead be named the 'Mother and Baby Institutions Payment Scheme'.

1.7 Methodology

The IDG was chaired by the Secretary General of the Department of Children, Equality, Disability, Integration and Youth. The Group met on six occasions in the course of its work. Due to Covid-19 public health restrictions, all group meetings were hosted with the use of ICT. Minutes of all meetings will be published after the publication of the report.

One of the first tasks of the Group was to agree its approach to the programme of work. The Group worked collectively through this agreed programme to produce its recommendations and report as quickly as possible. Although not yet published, the IDG sought to apply the relevant principles and procedures prescribed in the draft Department of Public Expenditure and Reform "Guidance on Redress Schemes for Government Departments and Offices" in the course of its work.

The views of former residents, their families and advocates informed the development of proposals through the survivor engagement process described in more detail in section 1.11 below. In addition the IDG considered an advisory paper, and had an oral presentation from the Irish Human Rights and Equality Commission which outlined their views on the factors to be considered in the development of the Scheme. This was essential to ensuring that decisions to be taken by Government are informed by the needs and wants of the people for whom this Scheme is designed.

The IDG recognised that a key factor in its deliberations is the intended ex-gratia nature of the scheme and understood this to require the development of a non-adversarial process capable of meeting both the individual and collective needs of people who may wish to engage with the Scheme and the administrative requirement for appropriate controls and procedures to protect the public interest.

This necessitates an alternative approach in the Scheme's design and operation to that typically utilised by the Courts. It requires an "*interest-based dispute resolution process*" which acknowledges the "*blameless*" status of mothers and children and focuses upon present and future needs, interests and underlying requirements.

1.8 Department of Public Expenditure and Reform Redress Scheme Guidelines

The Department of Public Expenditure and Reform (DPER) has developed a draft guidance framework for Government Departments and Public Bodies who are considering the establishment of a redress scheme.

The draft guidance sets out the protocols and procedures for Government Departments and Public Bodies to follow in the event that they need to consider the establishment of a redress scheme. The guidance outlines a process and identifies key milestones and decision points along that process. It sets out high-level principles and a transparent framework that should be applied when establishing a redress scheme. In seeking to standardise procedures, the guidelines are designed to ensure robust oversight, governance, accountability and transparency regarding the development of such schemes in a manner which delivers good outcomes for the State and citizens.

The draft guidance recognises that the process in developing each scheme needs to be adapted to take account of the specific circumstances so that each proposal can be considered on its own merits. Notably, the early decision by Government to establish a Mother and Baby Institutions Payment Scheme in the present case meant that the initial steps envisaged in the guidance were not directly applicable to the work of the IDG.

1.9 Irish Human Rights and Equality Commission

The Irish Human Rights and Equality Commission (IHREC), as the national human rights institution and national equality body, was requested by Minister O’Gorman to make its independent expertise available to assist in developing this Scheme for the survivors of Mother and Baby and County Home Institutions.

IHREC provided an advisory paper on the rights and principles pertaining to arrangements of this kind, as well as recommendations in relation to how these could apply in the development of the Financial Payment. They subsequently engaged with the Group at its meeting on 22nd April to discuss the issues in more detail. In the interests of transparency, the IHREC advisory paper will be published to its website, in accordance with its practice on legislative observations, once this report of the Interdepartmental Group has been provided to the Minister and considered by Government.

1.10 Grounding Principles

Based on the advices put forward by IHREC in their Advisory Paper, the IDG adopted the following high level principles in its work:

The right to an adequate, effective and prompt remedy: The remedy should meet the needs of the survivor and should be capable of being enforced. Redress should be provided within a reasonable timeframe and without delay, a factor that is heightened by the fact that many survivors of Mother and Baby and County Home Institutions are advancing in age;

Fair procedures and accountability: Fair and transparent procedures must be followed and obstacles for people in accessing the Scheme should be removed, including overly burdensome standards of proof and short application times;

Equality and non-discrimination: The Scheme must comply with the principle of equality and non-discrimination in its design and implementation;

Proportionality: Redress should reflect the gravity of the situation and the harm done;

Accessibility and support: Redress measures must be accessible and remedies should be adapted to take account of the “special vulnerabilities of certain categories of persons”. Support mechanisms should be incorporated throughout the process to ensure survivors can engage meaningfully;

Participation: Survivors and their representatives should be meaningfully involved in the design, development and implementation of the Scheme. This will also ensure that the Scheme is accessible and does not exclude or marginalise any particular group;

The ‘do no harm’ principle: The process and the outcomes of the Scheme must avoid the re-traumatisation of survivors and family members. Accordingly a non-adversarial and holistic approach is required.

1.11 Survivor Engagement

The design and delivery of the scheme must be informed by the views of former residents, their families and supporters. The IDG recognised that attention to process is essential when working to assist persons who report experiences of trauma and hurt over an extended period. In giving effect to the Minister’s commitment to an inclusive and survivor centred approach, the IDG organised a facilitated consultation with survivors and their advocates as an integral element of its work.

Following a procurement process, OAK Conflict Dynamics (‘OAK’) were appointed to undertake the consultation process on behalf of the IDG.

The consultation was launched on 10th March 2021. An information campaign was put in place to advertise the process, both in Ireland and abroad. Information on the consultation first issued via a press release to local and national media outlets. Information was also made available on the Department’s website, through its extensive mailing list and was promoted on social media to further broaden the reach of the awareness campaign. A ‘Call for Submissions’ was made in national and local media publications. Analysis shows that, through both online and print advertising, this campaign reached 2.5 million people.

Working with the Department of Foreign Affairs (DFA) and utilising the Embassy and Consular network, the consultation was publicised with Irish community groups in the UK, USA, Canada and Australia. The call for submissions was also advertised in a number of newspaper publications abroad.

As part of the Consultation Process, views were sought under 5 distinct headings:

1. Eligibility for the Scheme
2. Financial Payments and Access to a form of Enhanced Medical Card
3. The Application Process

4. Administration of the Scheme
5. A Survivor Centred Scheme

Given the ambitious deadline for delivering its report to the Minister, the window for consultation was shorter than the IDG would have liked. However, every effort was made to ensure that it was meaningful and inclusive. OAK took a personalised approach to the consultation process and worked intensively in order to facilitate those wishing to participate, accommodating both individual and group needs as requested. They held a number of additional online consultation meetings and accepted written submissions after the closing date of 31st March.

There was a very strong response, with approximately 450 written submissions and 17 online meetings held.

OAK presented their interim findings in a detailed presentation to the IDG at their meeting on 22nd April 2021. This enabled the Group to progress their work while awaiting the final report of the consultation which was submitted to the IDG on 17th May 2021.

While recognising all the findings of the consultation process, the IDG particularly noted the strong calls for a non-adversarial approach and for kindness and sensitivity to be a defining feature of any processes established as part of the Scheme.

1.12 Engagement with religious authorities

Minister O’Gorman has engaged with the religious authorities involved in the operation of the relevant institutions and intends to meet with them when the details of the Scheme are further developed.

1.13 Learnings from previous schemes

In designing this Scheme, the group has been cognisant of experience in the design and operation of previous schemes in Ireland and internationally. The State has already created a number of redress schemes and it is important to be aware of the successes and failures of these schemes and to apply this learning. While the circumstances and approaches taken with each of these schemes varied, and the Mother and Baby Institutions Payment Scheme is very different to any scheme developed previously, there was nonetheless an opportunity to take some key learnings from their findings.

Particular account has been taken of the findings in the Ombudsman Report (*An investigation by the Ombudsman into the administration of the Magdalen Restorative Justice Scheme*) and the Comptroller and Auditor General Special Report 96 (*Cost of Child Abuse Inquiry and Redress*).

1.14 Terminology

The IDG is mindful of the importance of using appropriate language and terminology and strives to be respectful in writing this report. Minister O’Gorman recently announced a joint research project with the National University of Ireland Galway into Language, Terminology and Representations in

institutions known as ‘Mother and Baby Homes’. As this project has just commenced, the IDG will not have the benefit of the outcome of this research before concluding its work. The IDG is conscious that language and terminology was also a recurrent theme in the consultation. It has endeavoured to take the available feedback on board and hopes it has demonstrated sensitivity to survivor wishes in this regard.

1.15 Basis for the Scheme

Given the scale and significance of the envisaged Mother and Baby Institutions Payment Scheme, the IDG considers that the Scheme should be placed on a statutory footing by means of a single, comprehensive and integrated piece of legislation which encompasses both elements of the Scheme – the financial payment and the enhanced medical card. This approach has the strongest potential to ensure that gaps are avoided and that there is a clear, consistent and coherent approach. It is also essential in terms of providing the necessary legislative basis for lawful access by the scheme administrator to the required institutional records, including the very powerful database of resident records developed by the Commission.

The legislation would establish the authority necessary to administer all aspects of the Scheme and ensure consistency and complementarity between the two aspects of the Scheme in terms of a single, robust governance structure with a unified data and records management system. It would provide a single, clear entry point for applicants, thereby providing the most user-friendly approach in which they only have to provide information once in order to be considered for either aspect of the Scheme. By extension, this would also provide the smoothest operational approach for the Scheme administrator. The rationale for this recommended approach is further developed in subsequent chapters relating to each aspect of the Scheme.

The Magdalen Restorative Justice Ex-Gratia Scheme advanced financial payments prior to the provision of health supports and on an administrative basis. It could be argued that, among an ageing population, there is a case for trying to advance at least part of the Scheme as quickly as possible. However, the roll out of a cohesive and comprehensive Mother and Baby Institutions Payment Scheme will ultimately be aided by the adoption of an overarching legislative and operational approach which will provide a “one-stop-shop” for applicants, ensure clearer communication about the Scheme and significantly reduce the potential for any lacunae in the legislation. This legislative basis is particularly important bearing in mind that the number of qualifying applicants is expected to be on a much larger scale than that which was the case with the Magdalen scheme.

If Government accepts this recommendation, the Department of Children, Equality, Disability, Integration and Youth could be expected to lead on the development of this overarching legislation, with input from colleagues across Government, particularly the Department of Health and the HSE.

A careful and strong communication strategy should be developed to explain the benefits of this one access point approach.

1.16 Scope of the Scheme - Qualifying Institutions

There have been calls for the Mother and Baby Institutions Payment Scheme not to be limited to the institutions included in the Commission's Terms of Reference or not to be limited to those who gave birth in a Mother and Baby Home Institution. This would mean extending the scope of the scheme to institutions such as orphanages or to women who gave birth in maternity hospitals or private nursing homes.

S.I No 57 of 2015 sets out the Terms of Reference of the Commission of Investigation and lists the fourteen mother and baby homes covered by the investigation. In addition, the Commission selected four² of the 30 county homes by way of a representative sample, for investigation. This was on the basis that they fulfilled a function with regard to single women and their children similar to the fourteen named mother and baby homes. The Commission's Second Interim Report highlighted that in the process of compiling information for the Social History Report, they had received calls for additional institutions to be investigated and were provided with a list of approximately 160 such institutions. In relation to this list, they found that some were already being investigated by the Commission, some had already been investigated in the context of previous redress schemes and the remainder were mainly private nursing homes, private maternity homes or orphanages.

The Commission found that the named Mother and Baby Homes being investigated by the Commission were *'unquestionably the main such homes that existed during the 20th century. They all received State funding to a greater or lesser degree. The State was directly responsible for establishing a number of them.'*³

While the Group understands the reasons for calls to include other institutions in the Mother and Baby Institutions Payment Scheme, such extensions to the scope of the Scheme would present difficulties. Firstly, the IDG has insufficient knowledge and information in respect of other institutions, to allow for any determination in regard to their inclusion in the Scheme or what that would mean for the Scheme in terms of scale. Secondly, it understands that, in the case of private maternity and nursing homes, records to support applications to the Scheme are highly unlikely to exist. Thirdly, a decision to extend the Scheme beyond the institutions covered by the Commission's remit could give rise to calls to consider the circumstances of unmarried mothers and their children who never spent time in a Mother and Baby Home Institution but may have been subjected to stigma and abuse in their communities over the course of the time covered by the Commission's Report.

The IDG does not wish to disregard or diminish any person's experience and recognises that there are people who suffered stigma, trauma and abuse in other institutions and outside of institutions who will not qualify for this Scheme. However, opening the Scheme at this time beyond the institutions identified by the Commission in the absence of proper assessment of what this would mean in terms of equity, accessibility, administration or cost could render the Scheme, when

² It later transpired that St Kevin's Dublin Union and Pelletstown are the same institution, so essentially there were three County Homes in the representative sample rather than four.

³ Commission of Investigation, Second Interim Report, paragraph 5.6, page 12

introduced, entirely unmanageable. The resulting negative consequences for all applicants would be difficult to countenance and would, ultimately, do a disservice to those whom the Government is making efforts to recompense through this Scheme.

Therefore, for the purposes of the Mother and Baby Institutions Payment Scheme at this time, it is proposed that it should encompass the institutions covered by the Commission of Investigation's Terms of Reference, as listed in:

Appendix A – Mother and Baby Homes investigated by the Commission, and
Appendix B – All County Homes.

As there would be potential to amend the Schedule of institutions listed in Appendices A and B to include additional institutions at a later time, for example in response to particular circumstances or evidence, the IDG strongly recommends that the initial Scheme is confined to those institutions which were covered by the Commission's remit as the scale and scope of the scheme is already likely to be extremely significant in terms of cost and operational complexity.

1.17 Boarded Out Children

The Commission noted that the evidence relating to boarded out children and children placed at nurse was scant and found it impossible to disentangle those that specifically came within its remit. The IDG notes the Commission's findings that children who were boarded out in some cases experienced some of the worst abuses. It is estimated that the total number of surviving children who were boarded out or placed at nurse from Mother and Baby and County Home Institutions is approximately 4,800. It should be borne in mind, however, that exit pathway data is available for only about 50% of total children.

According to its Terms of Reference, the focus of the IDG is the development of a Scheme specifically related to time spent in a Mother and Baby or County Home Institution. Children were boarded out in a range of circumstances, in some instances from their own home when a family no longer had the means to care for them and from institutions other than a Mother and Baby or County Home Institution. The IDG acknowledges the severe and extremely distressing abuse experienced by some of these children, which includes neglect, physical and emotional and in some cases sexual abuse. Such abuses were not experienced by all people who were boarded out as children and could only be fully considered on a case by case basis.

Considering the IDG's terms of reference, the limited information available, the requirement for an individualised approach in relation to boarded out children who suffered abuse and the fact that the circumstances surrounding boarded out children goes far beyond Mother and Baby or County Home Institutions, with many boarded out children never having spent time in these particular institutions, the IDG has not developed specific proposals in respect of children who were boarded out. It is the case, however, that some boarded out children will qualify for payments under the proposed Scheme on grounds of being in a Mother and Baby Institution for more than six months prior to being boarded out.

The Commission recommended that an ex-gratia payment could be made to compensate persons who were boarded out as children and who inherited farms from their foster parents but had to pay taxes on this inheritance for which birth children and adopted children were not liable. This recommendation is being progressed in the Government's 22 point action plan.

1.18 Remainder of the Report

Having outlined the background, objective and the guiding principles in this chapter, the remaining chapters of this report set out a proposed approach in relation to each aspect of the Mother and Baby Institutions Payment Scheme as follows:

Chapter 2 identifies the categories who could be considered eligible for a financial payment, the design and level of financial payments and the eligibility criteria which should apply.

Chapter 3 outlines the qualifying criteria for an enhanced medical card; the suite of health services to be provided as part of the card; eligibility criteria for qualifying for a card and the proposed legislative and operational approach.

Chapter 4 concerns the overall governance and operation of the Scheme, including proposed structure for management and operation of the Scheme.

Chapter 5 presents cost estimates on the basis of the proposals put forward in each chapter.

Chapter 6 outlines the suggested approach to communications and publicity for the Scheme.

Chapter 7 briefly concludes the report.

There are three appendices to the report, as follows:

Appendix A: List of Mother and Baby Home Institutions

Appendix B: List of County Home Institutions

Appendix C: List of IDG Members

Chapter 2: Financial Payments

2.1 Overview

As part of a Mother and Baby Institutions Payment Scheme, the Interdepartmental Group (IDG) was tasked with developing detailed proposals for a financial payment. The payment aims to respond to failures by the State and other parties, which resulted in people experiencing abuse and harsh regimes while resident in Mother and Baby and County Home Institutions. This chapter identifies the categories who could be considered eligible for a financial payment, the design and level of financial payments and the eligibility criteria which should apply. Access to health services for eligible applicants, through the provision of a form of enhanced medical card, is outlined in Chapter 3.

It must be stated at the outset that the development of this aspect of the scheme was a significant challenge for the IDG. The magnitude of the hurt and loss felt by those who spent time in these institutions is recognised by the IDG. It also came across very strongly in the public consultation process. Many expressed how difficult it was for them to participate in the consultation process and how revisiting their past experiences had affected them personally. The IDG is extremely grateful to the participants for their contributions, which have greatly assisted in understanding their needs and concerns.

A key message from those who participated in the consultation process was that they wished to be treated with kindness. Similarly, a key message from IHREC was that the Scheme should 'do no harm'. The Group kept these two powerful messages – to treat people with kindness and to do no harm - at the core of its deliberations when considering options for the Scheme.

Two other considerations which the Group was obliged to keep in mind in relation to the Scheme were the Commission's Recommendations, which are outlined in Section 2.2 below, and the scale of the Scheme in terms of the potentially large number of eligible people.

In this context, the complexity of developing proposals for the financial payment cannot be underestimated. The Group grappled with the enormity of this task and with the need to balance the wishes of people to have their individual experiences acknowledged, with their wish not to shoulder a burden of proof. Importantly, survivors also want the scheme to be operational soon. Many are elderly and are worried that they will not receive recognition for their suffering in their lifetime. The Group kept this practical consideration in focus.

The detailed deliberation of the Group concluded that it would never be possible to compensate for or 'monetise' the suffering or the losses experienced in any scheme of payments. All that can be offered is a payment to recognise the suffering experienced, rather than purporting to offer full redress for the experience of survivors. Indeed, the IHREC Advisory Paper pointed to the advice of Pablo de Greiff, former UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, that a reparations programme should only ever be interpreted as making a contribution to the quality of life of survivors.

With these considerations in mind, an overview of the proposed approach is set out in the box below and further developed in the remaining sections of this chapter.

Overview of Proposed Approach

Eligibility

Based on the recommendations of the Commission of Investigation, the following categories should be entitled to receive a Financial Payment:

- People who were resident as unaccompanied children in a Mother and Baby or County Home Institution for a period of six months or more and who did not receive redress in respect of that institution under the Residential Institutions Redress Scheme.
- Pregnant women who entered a Mother and Baby or County Home Institution before 1974 and spent more than six months there.
- Women who were resident for more than six months and who undertook 'commercial work without pay' in County Homes, in the Tuam Mother and Baby Home or outside a Mother and Baby Institution while resident there.

The residency requirement of six months or more for unaccompanied children and for women who undertook commercial work was not explicitly stipulated by the Commission of Investigation but appears to be consistent with the spirit and intent of the Commission's recommendations and is recommended by the IDG.

The IDG recognises that Government may wish to extend eligibility beyond the groups recommended above but cautions that any expansion has the potential to have significant cost implications, as well as risk creating legislative and equity difficulties that could ultimately derail attempts to provide supports to those who most require them. That said, the IDG believes there is a sound rationale for the inclusion of the following two categories, in addition to those recommended by the Commission:

- Pregnant women who entered Mother and Baby Home Institutions after 1974 and who spent more than six months there.
- People who were resident as accompanied children in a Mother and Baby or County Home Institution for a period of 6 months or more.

Proposed approach to design of, and assessment for, the Financial Payment

The IDG recommends that payments are provided to eligible applicants based on proof of residency for a defined period of time, comprising:

- A general payment to recognise time spent in the institution, harsh conditions, emotional abuse and other forms of mistreatment, stigma and trauma experienced while resident in a Mother and Baby or County Home Institution.
- A work-related payment (where relevant).

Applicants would qualify based on proof of residency, without a need to bring forward any evidence of abuse or any medical evidence. In limited circumstances, sworn affidavits may be required.

Proposed approach in relation to applications on behalf of deceased people

The IDG recommends that, where a person would have qualified as an applicant but died on or after the date of An Taoiseach Micheál Martin's apology to survivors on 13th January 2021, the spouse or children of that person or their estate may make an application to the scheme for a financial payment on behalf of that deceased person.

2.2 The Commission's Recommendations

In its Final Report, the Commission of Investigation stated that it is not possible to provide financial redress for all the wrongs that occurred in the past and further noted that financial redress requires the present generation paying for the wrongs of earlier generations. However, it noted that financial redress has been provided to a number of groups in the past and the State has an obligation not to discriminate between people in similar situations. In this regard, it pointed to relevant comparable redress schemes being the Residential Institutions Redress Scheme (RIRS) (for the children) and the Magdalen Restorative Justice Ex-Gratia Scheme (for the mothers).

In identifying categories for potential redress, the Commission recognised groups who had spent unduly long periods in institutional care; experienced emotional and sometimes physical abuse; and experienced harsh conditions which, in the case of Tuam and the County Homes, were described as appalling. It identified three specific groups for whom it recommended redress might be considered. The groups are detailed below:

(a) People who were resident as unaccompanied children in a Mother and Baby Home or County Home and who did not qualify for redress under the Residential Institutions Redress Scheme (RIRS).

The Commission's Second Interim Report provided detail on the development of the RIRS and pointed to inconsistencies in decisions to include or exclude some institutions from the scope of the scheme. The Commission was strongly of the view that there was no sound basis for the exclusion of the Tuam home from the scheme when it was virtually the same in all respects to Pelletstown which was included. The Commission was also of the view that people who were resident as children in Bessborough, Castlepollard, Sean Ross, Bethany and Denny and all County Homes should have been eligible to apply for the RIRS.

The Commission recommended that children who were resident in the other Mother and Baby Home Institutions without their mothers had a strong case for being considered for redress. It was of the view that all institutions covered by its remit met the criteria for inclusion in the RIRS because a public body had a regulatory or inspection function in respect of the institution. The Commission's reference to the RIRS in this recommendation points to children who spent long periods of time unaccompanied in one of the institutions.

(b) Pregnant women who entered Mother and Baby Homes or County Homes before 1974 and who spent a longer time period, say more than six months, in such institutions.

While the Commission's report described how women who were resident in Mother and Baby and County Home Institutions were not in quite the same situation as the women in Magdalen laundries, they did identify some similarities, particularly in relation to the reality for these women in terms of a lack of choice. While women resident in Mother and Baby Home Institutions were not 'incarcerated' in the strict sense of the word, most had no choice, no money and nowhere to go. They could not leave until alternative arrangements had been made for their children. It was the Commission's view that women who spent lengthy periods (for example in excess of six months) in Mother and Baby and County Home Institutions before 1974 should be considered for redress along

the lines of the Magdalen basic payment related to time spent. The approach reflects the Commission's finding that six months was the average amount of time spent in such Homes in other countries.

(c) Women who undertook what might be termed 'commercial work' without pay in County Homes, in the Tuam Mother and Baby Home or outside a Mother and Baby Institution while resident there.

The Commission identified that there were groups of unmarried mothers who did carry out what might be termed 'commercial work' and recommended that these groups be eligible for redress similar to the Magdalen scheme. The three groups identified were:

- i. Women in County Homes: The Commission found that these women did not just look after themselves and their children, they also looked after other residents of the County Homes. In addition, they carried out unpaid work on behalf of the local authorities which was difficult and arduous and for which they should have been remunerated.
- ii. Women in Tuam: The Commission identified that, as mothers left Tuam several years before their children, the remaining mothers had to care for their own child and a large number of other children and again they should have been remunerated for this.
- iii. Women who worked outside the institution without pay: The Commission concluded that there is evidence that some residents of Sean Ross worked in the local hospital and should have been remunerated.

The Commission's particular reference to County Homes, Tuam and Sean Ross point to those women who generally spent longer periods of time in one of the institutions.

2.3 Eligibility Criteria for Qualifying for Payments

In response to the Commission's recommendations as detailed in Section 2.2, the IDG has proposed the eligibility criteria set out in Sections 2.3.1 (a) to (c) below.

The Government may wish to go beyond those recommendations to also incorporate the eligibility criteria set out in Section 2.3.2(a). This would have the effect of removing the pre 1974 residency requirement, bringing an additional 100 women approximately into the Scheme.

The Government may also wish to go beyond the Commission's recommendations in relation to Section 2.3.2(b) in terms of considering the inclusion of accompanied children who spent longer than six months in a relevant institution. This would bring an additional 12,700 people approximately into the Scheme.

If the Government decides to open the scheme to the categories in Sections 2.3.2(a) and (b), the associated costs are highlighted in Chapter 5.

2.3.1(a) People who were resident as unaccompanied children in a Mother and Baby Home or County Home Institution for a period of six months or more (and

who did not receive redress in respect of that institution under the Residential Institutions Redress Scheme)⁴.

This category should include:

- (i) Any person who is proven to have resided in a Mother and Baby Home Institution listed in **Appendix A** as a child under the age of 18 years and who resided in excess of 6 months without their mother and who did not already receive redress under the Residential Institutions Redress Scheme in respect of that institution.
- (ii) Any person who is proven to have resided in a County Home listed in **Appendix B** as a child under the age of 18 years and who resided in excess of 6 months without their mother and who did not already receive redress under the Residential Institutions Redress Scheme in respect of that institution.

It is estimated that approximately 1,700 people would be eligible under this category.

Evidence of abuse would not be required for people to qualify but a timeframe of six months could be used to differentiate between those who spent a relatively short period of time in a Mother and Baby or County Home Institution as an infant and those who spent a portion of their early childhood and formative years in such an institution.

Furthermore, while the Commission only references those children who spent a period of time unaccompanied in institutions that were not part of the RIRS, it is recommended by the IDG that children in those institutions listed in Appendix A or B that were included in the RIRS, but who did not receive an award from the RIRS in respect of their experiences in that institution, can now apply for an award under this Scheme. The legislation could include a provision requiring an applicant to declare if they previously received a payment under the RIRS.

2.3.1(b) Pregnant women who entered Mother and Baby or County Home Institutions before 1974 and spent more than six months there.

This category should include pregnant women who entered the Mother and Baby Home Institutions listed in **Appendix A** and the County Home Institutions listed in **Appendix B** on or before 31 December 1973 and who spent 6 months or more in such institutions. The IDG estimates that approximately 4,700 mothers would qualify under this category.

⁴ The qualification in brackets refers to St. Patrick's Mother and Baby Home (Pelletstown) which was covered by the RIRS and is included in the proposed Mother and Baby Institutions Payment Scheme. The intention is to ensure that no person would be excluded from applying to the proposed Scheme on the basis that they had received a payment under the RIRS for their experiences in another institution, e.g. The RIRS may have compensated them for experiences in an industrial school, while the proposed Scheme may provide a payment in respect of their time spent in a Mother and Baby or County Home Institution.

2.3.1(c) Women who were resident for more than six months and who undertook ‘commercial work’ without pay in County Homes, in the Tuam Mother and Baby Home or outside a Mother and Baby Institution while resident there.

This category should include:

- i. any pregnant or unmarried mother who was resident in a County Home Institution as listed in **Appendix B**, for more than six months
- ii. any pregnant or unmarried mother who was resident in Tuam Mother and Baby Home, for more than six months**
- iii. any pregnant or unmarried mother who was required to undertake ‘commercial’ work without pay outside the grounds or setting of a Mother and Baby Home Institution while resident there for more than six months. ‘Commercial’ should be understood to include any work undertaken in local institutions (e.g. a local hospital) or in local family homes, other than the woman’s own family home or place of residence. Mother and Baby Home should be understood to refer to the list of institutions set out at **Appendix A**.

**In the case of pregnant and unmarried mothers resident in County Home Institutions and Tuam Mother and Baby Home, the Commission’s report makes clear that all such women appear to have been involved in chores and caring responsibilities over and above what might have been reasonably required of residents and which could reasonably be defined as unpaid ‘commercial’ work. As such, it is recommended that the fact of residence should be sufficient to qualify applicants under these two subcategories without a need for further evidential proof of work. In addition, it is the IDG’s view that the Commission’s particular reference to County Homes, Tuam and Sean Ross point to those women who generally spent longer periods of time in one of the institutions. Therefore, to align this payment with other aspects of the scheme including the enhanced medical card it is recommended that this payment would apply to women who spent at least six months in these institutions. It is estimated that this category will include approximately 3,000 mothers.

2.3.2 Additional categories for potential inclusion

The IDG recognises that Government may wish to extend eligibility beyond the groups recommended above but cautions that any expansion has the potential to be considerably more expensive, as set out in Chapter 5. Such extensions could also risk creating legislative and equity difficulties that could ultimately derail attempts to provide supports to those who most require them. Those who spent the longest time in these institutions and, as a result of that, generally experienced the harshest and most abusive conditions, could face delays and a lower payment if the scheme is extended to other broad categories. Legislative challenges could also arise in relation to defining other specific categories, particularly where these extend beyond Mother and Baby and County Home Institutions. That said, the IDG believes there is a rationale for the inclusion of the following two categories, in addition to those recommended by the Commission, and further considers that their inclusion would not create undue difficulty in terms of establishing and operating the scheme.

2.3.2(a) Pregnant women who entered Mother and Baby Home Institutions after 1974 and who spent more than six months there

The IDG was tasked with developing proposals for a Scheme based on the Commission's recommendations but was not solely limited to those recommendations. Taking account of the overall objective of the Scheme, the grounding principles outlined in Chapter 1 and the feedback from the consultation process, the IDG proposes that the Government may also wish to make the scheme available to pregnant women who entered Mother and Baby or County Home Institutions after 1974 and who spent more than six months in such institutions.

The Commission recommends the cut-off date of 1974 on the grounds that, after that point, the Unmarried Mothers' Allowance was available which provided some alternative for women to the systems of Mother and Baby Homes and adoption. There has been much criticism of the use by the Commission of a 1974 cut-off point related to Unmarried Mothers' Allowance, particularly in relation to the years immediately after the introduction of this allowance where the circumstances for these women, in reality, may not have been much different to that pre-1974. The Commission acknowledged that attitudes changed slowly and access to accommodation, in particular, remained a serious difficulty for mothers until the 1980s. This is echoed in the feedback from the public consultation process.

The IDG recommends that this category should include pregnant women who entered the Mother and Baby Home Institutions listed in **Appendix A** and the County Home Institutions listed in **Appendix B** from 1 January 1974 and who spent 6 months or more in such institutions. As mentioned above, it is estimated that approximately 100 mothers would be eligible under this category.

2.3.2(b) People who were resident as accompanied children in a Mother and Baby Home or County Home and spent more than six months there.

In its Final Report, the Commission of Investigation made particular reference to unaccompanied children and to those children who were not eligible for the Residential Institutions Redress Scheme when making its recommendations. However, the consultation findings argue that there was little distinction in reality between being an accompanied or unaccompanied child in these institutions. The term 'accompanied' seemed to refer to the fact that the child's mother was also resident in the institution and was the child's legal guardian but children were accommodated in communal nurseries, with apparently limited access by mothers to children.

The IDG believes that there is little practical basis for seeking to distinguish between accompanied and unaccompanied children and notes that potential applicants to the Scheme may have difficulty in determining whether they were accompanied or unaccompanied by virtue of the fact that they may have been very young children while resident in one of the institutions. In all the circumstances, the IDG considers that the focus instead should be on the time spent in an institution, regardless of whether the child's mother was also in the institution. On this basis, this category should include:

- i) Any person who is proven to have resided in a Mother and Baby Home Institution listed in **Appendix A** as a child under the age of 18 years and who resided in excess of 6 months.

- ii) Any person who is proven to have resided in a County Home Institution listed in **Appendix B** as a child under the age of 18 years and who resided for in excess of 6 months.

Similar to 2.3.1(a), a timeframe of six months could be used to differentiate between those who spent a very short period of time in a Mother and Baby Home Institution as an infant and those who spent a portion of their early childhood and formative years in such an institution. The IDG estimates that approximately 12,700 people would be eligible under this category.

The potential associated cost estimates are included in Chapter 5.

Finally, having regard to all of the potential categories outlined in Section 2.3, it may be noted that, if the Government were to approve a Scheme covering all five categories, then this would have the effect of simplifying eligibility criteria for both a financial payment and an enhanced medical card so that **both benefits would be available to all people who were resident in a Mother and Baby or County Home Institution for six months or more**. In communications terms, people could be assured that everyone who met the six month criteria would qualify for (a) an enhanced medical card; and (b) a general payment, with some also qualifying for an additional work-related payment, as outlined in Section 2.3.1 (c).

2.4 Proposed approach to design of the Financial Payment

As outlined in the Overview and also in Chapter 1, the Mother and Baby Institutions Payment Scheme is just one way that the State can recognise and make amends for the suffering experienced by the mothers and children who were resident in Mother and Baby and County Home Institutions.

The IDG grounded its work in the principles set out in Chapter 1, namely:

- The right to an adequate, effective and prompt remedy;
- Fair procedures and accountability;
- Equality and non-discrimination;
- Proportionality;
- Accessibility and support;
- Participation;
- The 'do no harm' principle.

Key factors in its deliberations were the development of a non-adversarial process capable of meeting both the individual and collective needs of those who may wish to engage with the Scheme, and the administrative requirement for appropriate controls and procedures to protect the public interest.

Having regard to the above, the following approach to the Scheme's payment is proposed:

Payments based on proof of residency for a defined period of time, comprising:

- A general payment in recognition of time spent in the institution, harsh conditions, emotional abuse and other forms of mistreatment, stigma and trauma experienced while resident in a Mother and Baby or County Home Institution.
- A work-related payment (where relevant).

Applicants would automatically qualify for a payment based on proof of residency, without a need to bring forward any evidence of abuse, any medical evidence or sworn affidavits. The only exception would be in relation to work undertaken other than in Tuam or a County Home, and in cases where records simply don't exist. In these circumstances, sworn affidavits or some other mechanism may be required.

The strengths of this approach include:

➤ *A non-adversarial approach and significantly less risk of causing re-traumatisation*

The consultation process and IHREC found that this was very important and this approach provides the best route to achieving that. By contrast, an approach encompassing an individualised assessment process would likely require the use of oral hearings and potentially involve the testing of evidence or similar. This would have significant potential to re-traumatise and perhaps generate a sense of not being believed.

➤ *A low burden of proof for the applicant*

With this approach, the burden of proof would be limited to proof of residency and even this could be largely shouldered by the State who should be able to provide considerable assistance in terms of accessing relevant records. Expert or medical reports and sworn testimony would not be required in order to demonstrate harm or injury suffered. This requirement for a low burden of proof was also a key issue raised in the consultation process and the IHREC submission.

➤ *Supports straightforward, easy to understand application process and predictability for the applicant*

Good administration of schemes requires certainty and clarity around eligibility so that potential applicants are not put to unnecessary distress or inconvenience in applying for something for which they may not be eligible. The proposed approach represents the best way to achieve that.

➤ *Supports streamlined administration and significantly quicker payment timeframes*

The consultation process and IHREC point to the fact that survivors have been waiting a long time for the Commission's report and many are elderly and anxious for timely action. The proposed approach is notably less complex than an approach encompassing a more individualised assessment process. This supports efficiency and timeliness at two levels: it means that the scheme can be established more quickly with a significantly simpler administrative infrastructure (see Chapter 4 for a more detailed discussion of this important point) and it means that the process of assessing applications and making payments can be notably quicker. The costs of administering the scheme, including legal costs, would also be lower so more money could be available to provide benefits to those who need it.

➤ *Enables a more straightforward and timely appeals process.*

Any scheme of this nature requires the establishment of a corresponding appeals process. A scheme based on the approach outlined would entail a simpler appeals process than one where the original decision-making was based on individualised assessments and oral hearings.

- *Supports more robust cost estimates for the scheme, with corresponding reduction in the degree of risk and financial uncertainty for the Exchequer.*

It would be very difficult to predict with any certainty how many people would apply for an individualised assessment if such an option were available and what the level of awards would be. Costing would only be possible in terms of potential minimum/maximum and average award levels and would have to be based on an estimate of the number of applications.

The Group acknowledges that this approach is not without shortcomings and will not address all of the expressed wishes of respondents to the consultation. In providing an equal payment to all eligible recipients, the proposed approach could be deemed as inequitable in a context where some people suffered more severe consequences as a result of time spent in a Mother and Baby or County Home Institution. In addition, this approach could be viewed as overly simplistic and not sufficiently trauma-focused. It could be challenged as not meeting the needs or expectations of everyone who was resident in one of these institutions. The IDG is mindful that, in the consultation, some respondents favoured a specific individualised payment to take account of specific wrongs and offered examples such as an individual's experience of racism, of being subject to a vaccine trial or of being separated from their child without their consent.

Crucially, however, the approach does give the greater reassurance of causing **no further harm** through the application process, a key consideration in the Group's decision making process. It also takes account of the experience of the Australian *Stolen Generations Reparations Scheme*. This scheme moved from an individualised assessment to a common experience payment on the advice of the Independent Assessor appointed to consider applications. In making this recommendation to the Australian Government, the assessor explained that his role of assessing the level of harm that had been caused to individuals – and by extension the level of reparation to be offered – was problematic as the judgements he would make would necessarily be subjective and risk unfairness. He was also concerned that the process of having to prove the level of harm would be in itself harmful. The assessor further explained the difficulties surrounding “impossible questions” to consider, such as whether it was more painful to have been taken as a baby and know nothing of your family, country and language or to have been taken as an eight year old with memories of family, country and language fading over time. Many *Stolen Generations* advocates were also of the view that a likely outcome of the original procedure would be to create disharmony in families and in the community generally⁵. This experience from Australia resonated with the IDG as it grappled with the question of how to account for a broad range of experiences within the parameters of one Scheme in a manner which would not be damaging or divisive to the mothers and children, either individually or collectively.

2.5 Alternative approach considered

The IDG carefully considered an alternative option, a tiered approach, which involved a general payment and also a payment for severe abuse and trauma, based on individual assessment and evidence. This approach was expressed as a preference in the consultation process. At a high level, it

⁵ Independent Assessor's *Report of the South Australian Stolen Generations Reparations Scheme* (2018), p.14

appears to offer a complete and all-encompassing Scheme. However, when the detail of the approach was teased out by the IDG, including what would be covered in an individualised assessment over a general payment, how the scheme would be operationalised, what would be required of applicants in this context and how long this would take, significant difficulties were apparent, including the complexity and length of time it would take to make payments to applicants, and the fundamental concern that the approach would fail to meet the key test of ‘do no harm’.

The possibility of developing an assessment mechanism to establish bands of payment similar to the Residential Institutions Redress Scheme (RIRS), guided by the Personal Injuries Guidelines, was considered. However, as outlined in these Guidelines *‘not all damage warrants an award of compensation. In the absence of physical injury, recovery is permitted only in respect of recognisable psychiatric injury....For example, upset, distress, grief, disappointment, and humiliation, do not attract compensation.’*⁶ While it is not expected that the burden of proof for payment on such an individualised assessment basis would be on the same terms as the civil standard, supporting medical evidence of injury would be required and a written testimony alone could not be deemed sufficient.

For these reasons, the IDG had a real concern that this would present a difficulty for applicants, particularly those who were resident in the institutions as children, to satisfy any evidence threshold in that regard. The inclusion of an additional Tier such as this, while well intentioned in practice, could ultimately be unattainable for applicants with the risk that they may feel re-traumatised by the process of application and simultaneously deeply upset if their experience did not warrant an award under this Tier. This concern contributed to the recommendation to operate a scheme which facilitated a general payment rather than encompassing individualised assessment.

2.6 Legal Waiver

As has been outlined in Chapter 1, no financial award or service provision can take back the suffering, loss and distress that has been experienced. Rather, the Mother and Baby Institutions Payment Scheme is intended to provide a measure of financial acknowledgement and support for persons who were failed as mothers and children in the context of the institutions, practices, circumstances and experiences investigated by the Commission of Investigation.

It is a common feature of ex-gratia schemes that those who accept financial awards would be obliged to sign a legal waiver which states that they will not then pursue an action through the courts. Part of the logic of this is that a person accepting an award under an ex-gratia scheme usually benefits from less burdensome procedures than those used in the courts, does not risk incurring high legal fees if their case is not successful and has a greater likelihood of success than they would have if they brought a case to court.

In its Advisory Paper to the IDG, IHREC acknowledged that the use of legal waivers is common in redress schemes and that requiring survivors to waive their rights to litigate before accepting an award is not, per se, contrary to international human rights standards. IHREC further pointed to an element of finality which waivers can bring to a reparations programme which may be beneficial

⁶ <https://www.piab.ie/eng/news-publications/news/Personal-Injuries-Guidelines.html>, Section 4

“once a Government has made a good-faith effort to create an administrative system that facilitates access to benefits”.

Notwithstanding these points, the absence of a legal waiver could be attractive for several reasons, namely:

- If the basis of the Scheme is to place the lowest possible burden on applicants and award financial payments which recognise their experiences as part of time spent in one of the institutions rather than attempt to provide recognition for those experiences, there may be a question mark over whether it would be proportionate to require people to sign a legal waiver in order to accept a payment made on that basis.
- Including a legal waiver in the Scheme may cause legal costs related to the Scheme to rise substantially as it would be expected that there would be calls for applicants to then be financially supported to avail of independent legal advice at the point of accepting an award.
- Depending on the final decision of Government on the scope of the Scheme and the eligibility criteria, the legal waiver may not provide any significant protection to the State from a risk of legal cases and only serve to impact negatively the efforts to deliver a scheme which is non-adversarial, as well as the overall reputation of the scheme.

While recognising these important points, there are serious legal implications which stand to be highlighted:

- Not to require the signing of a waiver would be a new departure which carries significant risks and would create precedent for the future;
- Not to require the signing of a waiver could also have implications on the willingness of religious congregations to contribute to the Scheme;
- The inclusion of a legal waiver protects the State from further exposure in a context where a payment has been made on an ex-gratia basis. This Scheme will already have serious implications for the Exchequer and the full scale of this will be unknown until final decisions are made in relation to its scope;
- Legal waivers are normally signed at the point where an applicant accepts an offer under a Scheme, so an applicant has full knowledge of what they are being offered prior to signing a waiver that precludes them from pursuing action in court. Until the point where an offer of redress is actually accepted, an applicant has the right to pursue a case through the courts.

The IDG recognises that the decision on whether or not to include a requirement to sign a legal waiver is a matter for Government. However, it would caution that any such decision needs to be carefully considered in advance and in the context of having a full understanding of what the overall Scheme will entail in terms of its scope and scale.

Regardless of the final decision in relation to a legal waiver, the IDG is not in favour of any type of non-disclosure requirement. Mindful of concerns raised in the consultation, it would also recommend no requirement for an individual to accept the Commission’s report in order to receive an ex-gratia payment.

2.7 Determining the Level of Payment

As outlined above, in opting for a general payment approach the Group agreed that is not possible to ‘monetise’ the suffering or the losses experienced. This financial payment is one aspect of the

overall Government response. It represents a contribution, acknowledging the hurt and suffering endured by those who spent a period of time in these institutions.

Unlike previous schemes administered by the State, the Mother and Baby Institutions Payment Scheme caters for two distinct groups of people – mothers and children. Having regard to the learning from the Australian *Stolen Generations Reparations Scheme*, the IDG does not consider that there is a rationale for differing rates of general payment for mothers and children, and notes that differing rates could have an unintended consequence of being damaging and divisive.

The payment will operate in a similar manner to the Magdalen Restorative Justice Ex-Gratia Scheme comprising a general payment, which rises based on length of stay, and a work type payment. The work type payment would only apply to those in the categories outlined in Section 2.3.1(c) above. It should be noted that the work payment is not intended to reflect loss of earnings but, rather, represents further acknowledgement of the experiences of the women concerned. As with the general payment, only a full investigation as part of an adversarial process could make individualised calculations of entitlements and, in all the circumstances, that is not considered feasible as part of this Scheme.

In considering the work payment, the IDG noted that the Commission was silent on the matter of pension entitlements but recognised that there may be calls for this alongside the work payment. In addition to significant implications in terms of cost and administration, the IDG would question the proportionality of such a measure, having regard to the average duration of time spent working in these institutions. It is noted that the amount of time spent in Magdalen Institutions was, on average, longer than time spent in Mother and Baby Institutions and that they operated in a different context in that they were specifically designed for commercial work to be undertaken by the residents⁷.

The payment rates are set out below commencing on the basis of having spent 6 months in a Mother and Baby or County Home Institution. It is proposed that for those who stayed longer than one year the payment should increase in increments of €5,000 per year with a once off increase of €10,000 for those who stayed over 5 years in recognition of the fact that longer stays were typically associated with the Tuam home and County Homes where undoubtedly the harshest conditions were experienced by children and mothers.

⁷ The IDG also noted that, for the period in question, there was a legislative basis for a local health authority to require those receiving institutional assistance to carry out unremunerated work on their behalf.

Table 1: Proposed Payment Rates for Eligible Applicants

Time Spent in a Mother and Baby or County Home Institution	General Payment for mothers and children	Work Payment (for category 2.3.1(c) only)	Total Amount if qualifying for general payment and work payment
	(€)	(€)	(€)
Between 6 months and 1 Year	12,500	3,000	15,500
1 – 2 Years	15,000	6,000	21,000
2 – 3 Years	20,000	12,000	32,000
3 – 4 Years	25,000	18,000	43,000
4 – 5 Years	30,000	24,000	54,000
5 – 6 Years	40,000	30,000	70,000
6 - 7 Years	45,000	36,000	81,000
7 – 8 Years	50,000	42,000	92,000
8 - 9 Years	55,000	48,000	103,000
9 – 10 Years	60,000	54,000	114,000
10 Years + (MAX)	65,000	60,000	125,000

Length of Stay under 6 months

If the Government decide to extend the general payment to include any time between 0 to 6 months spent by a mother in a Mother and Baby or County Home Institution, payment rates in respect of this might be of the order illustrated in Table 2 below. The estimated costs involved in any such extension are set out in Chapter 5.

As outlined earlier in the chapter, the Group is strongly of the view that the 6 month residency criteria is particularly important when considering children as it does not want to create a circumstance whereby being born in a Mother and Baby or County Home Institution is deemed a basis for redress under the scheme. Structuring the payments in the manner outlined in Table 1 above ensures that children who spent the longest time in these institutions and, therefore, encountered the most potential for harm and loss of opportunity are provided with the highest payments.

Table 2: Illustrative Payment Levels for Mothers if Length of Stay is less than six months

Time Spent in a Mother and Baby or County Home Institution	General Payment €	Work Payment (for category 2.3.1(c) only) €	Total Amount if qualifying for both €
Up to 3 months	5,000		
Between 3 months and 6 months	10,000	1,500	11,500

Multiple Stays in Mother and Baby and County Home Institutions

Some mothers or children may have had more than one stay in a Mother and Baby or County Home Institution. This could arise in the case of a mother who had more than one child born in such an institution. It could also arise where a person was born in a Mother and Baby Home Institution and either subsequently entered a County Home Institution as a child or entered one of these institutions as an unmarried mother. In all such cases, it is recommended that the cumulative length of stay should be calculated and used to determine the level of payment for which the applicant would qualify in accordance with Table 1 above.

2.8 Applications in respect of persons who are deceased

The Residential Institutions Redress Scheme provided that, where a person who would have qualified as an applicant to the scheme dies after 11 May 1999 and prior to making an application, the children or spouse of that person may make an application on behalf of that deceased person. The date of 11 May 1999 was the date of An Taoiseach, Bertie Ahern's apology on behalf of the State and all the citizens of the State to the victims of childhood abuse.

It is proposed that a similar provision would be encompassed within the Mother and Baby Institutions Payment Scheme whereby an application for a financial payment could be made by the children, spouse or the estate of a deceased person. If this is accepted, then the date of An Taoiseach, Micheál Martin's apology on 13th January 2021 is a suggested date for consideration. Further legal advice would be sought on how to implement this provision in the most appropriate manner. The enhanced medical card would not be made available to family members or the estate of a deceased person.

Chapter 3 Provision of a Form of Enhanced Medical Card

3.1 Introduction

As outlined in Chapter 1, included within the Mother and Baby Institutions Payment Scheme is the provision of a form of enhanced medical card to mothers and children who were in Mother and Baby and County Home Institutions where they were resident for a period of more than six months.

At the outset, it is worth clarifying that there is no statutory basis for the term “enhanced medical card”. There is an array of different forms of medical cards available in the health system, which provide various cohorts of people with differing levels of access to healthcare. In all cases, the main legislation on entitlement to the medical card is Section 45 of the Health Act 1970, which has been amended a number of times, and refers to “full eligibility” for health services, rather than referencing a card. It is the health services which are set out in legislation and the HSE then decides on the operational arrangements to be put in place, such as a type of card, in order to ensure that those who qualify can easily demonstrate their eligibility for services under proposed legislation. For ease of reference, the term “enhanced medical card” will be used in this Report to refer to the arrangement for access to a suite of health services for eligible people under this Scheme.

The IDG is conscious that the provision of health supports was regarded as very important in the feedback from the consultation process. It notes that, outside of the Mother and Baby Institutions Payment Scheme, the overall Government response⁸ to the Commission of Investigation also includes the provision of a package of health supports to all those who were in these institutions, including access to counselling support through the National Counselling Service in the HSE and access to a Patient Advocacy and Liaison Service delivered via an expansion of HSE Live. A targeted programme of health research is also being undertaken to assist and inform the development of future service provision and preparatory work on this has already commenced.

Having regard to the initial Government decision on the provision of an enhanced medical card, an overview of the proposed approach is set out in the box below and is further developed in the remaining sections of this chapter.

⁸ <https://www.gov.ie/ga/preasraitis/4f64f-government-statement-on-the-final-report-of-the-commission-of-investigation-mother-and-baby-homes-and-certain-related-matters/>

Overview of Proposed Approach

Eligibility

A form of enhanced medical card should be provided to everybody who was resident in a Mother and Baby or County Home Institution for six months or more. Regard should be had to decisions made on eligibility for financial payments in Chapter 2 to ensure that this approach is equitable.

The suite of health services to be provided as part of the card

The card should provide, as a starting point, the same full suite of health services and benefits which are provided under the Magdalen Restorative Justice ex-gratia Scheme. Potential future development of the services accessible under the card should be informed by the targeted health research study which is being undertaken and which has the aim of assisting in the development of future service responses which may be required.

Legislative approach

An overarching piece of legislation should be developed to encompass both the financial payment and the provision of an enhanced medical card under the Mother and Baby Institutions Payment Scheme.

Operational approach

As set out in Chapter 4, there should be one overarching entity responsible for administration and decision-making in relation to the Mother and Baby Institutions Payment Scheme. That entity will be responsible for providing the HSE with details of successful applicants so that the HSE can then issue those persons with an enhanced medical card.

Supports for those living overseas

Those who are deemed eligible but who live overseas should have the choice to receive an enhanced medical card or a once-off payment of €3,000 in lieu of the card. The option of providing telemental health supports should also be explored if possible, i.e. the use of telemedicine to provide mental health assessment and support at a distance.

3.2 Eligibility for an enhanced medical card under the Mother and Baby Institutions Payment Scheme

3.2.1 Context

In designing an enhanced medical card, and associated eligibility criteria, we need to ensure that it is fair and transparent, while also keeping costs and available funding in mind. For the present purposes, the period of a minimum of six months spent in a former Mother and Baby or County Home Institution has been approved by Government for the provision of an enhanced medical card. This is not a specific recommendation of the Commission of Investigation, which stated:

“The Commission considers that services such as counselling and enhanced medical cards⁹ should be made available to those former residents who need them. It also wishes to make clear that many, probably most, former residents are managing their lives very well and it should not be assumed that they are in need of dedicated State support”.

However, elsewhere in its Recommendations, the Commission stated:

“Women who spent lengthy periods (for example, in excess of six months) in mother and baby homes before 1974 should also be considered for redress along the lines of the Magdalen basic payment related to time spent. Six months has been selected as the cut-off date because it is the average length of time that women spent in mother and baby homes in other countries.”

The Government takes account of these two recommendations in a holistic way through its commitment to provide an enhanced medical card to all those who spent more than six months in a Mother and Baby or County Home Institution.

Notwithstanding the Government commitment to an enhanced medical card for all who were resident for more than six months, there have been calls for this to be provided to all those who spent time in Mother and Baby and County Home Institutions, regardless of the amount of time spent in an institution.

Finally, based on the terms of reference of the IDG, it is clear that the provision of an enhanced medical card could potentially entail different qualifying criteria to any financial payments which may be decided upon. This approach differs from that taken in previous schemes, such as the Magdalen Restorative Justice Scheme, where a single set of criteria was used for the provision of ex-gratia payments as well as for the provision of health and other supports.

3.2.2 Proposed Eligibility Criteria for Qualifying for an Enhanced Medical Card

In line with the Government commitment, it is proposed that an enhanced medical card would be provided to any applicant to the Scheme who was resident for at least six months in a Mother and Baby Home Institution listed in **Appendix A** or County Home Institution listed in **Appendix B**. It is, therefore, estimated that approximately 19,000 people will qualify for the enhanced medical card. It can be assumed that approximately 6,000 of those people may already have a standard medical card and 2,000 may have a GP visit card. The associated estimated costs are included in Chapter 5.

The qualifying timeframe of six months or more would largely encompass those who were residents prior to 1974, who likely experienced harsher conditions and who are more likely to be at the older end of the broad spectrum of survivors. In terms of the age profile of the mothers, this approach would be expected to support those who are largely now in the over 60s age bracket. This is consistent with the health services provided as part of the Redress for Women Resident in Certain Institutions Act 2015 (RWRCI) which are aimed towards the health circumstances that are typical of the over 60s age cohort, having regard to the fact that three-quarters of the Magdalen cohort were reported as being over 60 at the time that the commitment to that card was made.

⁹ As an explanation for its use of the term ‘enhanced medical card’, the Commission footnotes a reference to the Health Amendment Act 1996. This relates to persons who contracted Hepatitis C directly or indirectly from the use of Human Immunoglobulin-Anti-D or the receipt within the State of another blood product or a blood transfusion <http://www.irishstatutebook.ie/eli/1996/act/15/enacted/en/html>

The IDG noted that a broader cross-section of society was resident in County Homes, not just unmarried mothers and children. The Commission's terms of reference were not inclusive of the general population in institutions. However, it is proposed that the approach to eligibility for the enhanced medical card should not distinguish between unmarried mothers and other vulnerable adults who were resident in County Homes. The rationale for this proposed approach is based on the Commission's acknowledgement that the conditions in County Homes were appalling, and that these conditions were endured by children, unmarried mothers and other vulnerable adults alike. As the last County Home closed in the early 1960s, sadly, many former adult residents would now be deceased and, therefore, the numbers that would qualify under this expanded approach are likely to be extremely small. While the argument for this inclusive approach is strong, it does generate a risk that it could set a precedent of providing redress to people who were institutionalised for a much wider variety of reasons.

Qualifying criteria - Burden of Proof

In order to apply for an enhanced medical card, evidence of time spent in excess of six months in one of the institutions listed in Appendix A and B will be required. Where institutional records, specifying the dates of entry and exit, are available these can be verified by the scheme administrator, ensuring a straightforward process with a low burden of proof falling on the applicant. Challenges could arise where records do not exist. The burden of proof for applicants from County Home Institutions could pose a particular challenge as record keeping is known to have been particularly poor in those homes. In such cases, as with the financial payment, a written affidavit may provide a basis for confirming entitlement. If the qualifying criteria for the financial payment and the enhanced medical card remain aligned, then this will allow for the benefit of a straightforward application process whereby the same verification of time spent will allow for the award of both aspects of the Scheme.

Six Month Qualification Criteria

Since the Government announcement, there have been various calls to remove the six month limitation. A Private Members' Motion to extend the term of the Commission sought to include a statement on the provision of an enhanced medical card to all former residents. The Joint Oireachtas Committee on Children, Equality, Disability, Integration and Youth has also informed the Minister of its view that medical cards should be provided to all who spent time in Mother and Baby Homes regardless of the amount of time spent in these institutions. It may also be noted that no six month cut off has been included in other redress schemes to date, although the duration of time spent in a Magdalen institution did have a bearing on the level of award a woman received under that scheme.

In counterpoint to the above, it remains a sad fact that the Mother and Baby Home Institutions provided a particular service in terms of pre and post-natal supervision, and the six month minimum time spent may, therefore, be argued to make sense in a way that it does not for the Magdalen Institutions. According to the Commission, six months was also in line with the international standard at the time.

If the six month qualification is removed, this will result in the provision of an enhanced medical card to much greater numbers of people who were resident in Mother and Baby and County Home Institutions in the final decades of the twentieth century.

In this context, it is important to consider the Commission's accounts of Mother and Baby Home Institutions in the closing decades of the century where women remained for a much shorter time; they were generally free to come and go as they pleased, to meet friends or family or spend weekends away, and visitors were encouraged. Almost all the work was carried out by paid staff. There was also a transition from institutional care to supported accommodation where women were encouraged to be independent. The Commission believes that the flatlets and homes that survived in the 1980s and 1990s provided important supports for single mothers, who had specific medical or social needs that could not be met within the community, because of continuing prejudice on the part of families and the wider society.

It is also fair to say that those who spent six months or more in an institution are likely to have endured more negative impacts on their health and wellbeing than those who spent less time in one, particularly because the vast majority of those who did so were there when conditions were harsher. There is an argument, therefore, that the need for enhanced access to health services is much greater among this cohort and this ties in with the overall concern of ensuring that access to health services is determined based on need. It must also be remembered that the population who spent less than six months in an institution includes a large number of people who were adopted as babies in the final decades of the twentieth century. This would equate to a significant proportion of people acquiring lifetime access to an enhanced medical card at a relatively young age and without clear evidence of need. The year on year costs of this would be substantial and such an expansion of eligibility may not translate into the provision of services in what would be considered a timely manner by those who become eligible.

Notwithstanding these arguments, if the Government wished to provide an enhanced medical card to every former resident of a Mother and Baby or County Home Institution regardless of length of stay, this would equate to an estimated 19,500 mothers and 38,500 children (58,000 in total). An estimate of the associated costs is included in Chapter 5.

Eligibility for Family Members

There may be calls for family members to also receive an enhanced medical card, based on an argument that time spent in an institution could cause ongoing, or cyclical, negative impacts and outcomes for these family members.

Under the Health Amendment Act card scheme for people who were infected with Hepatitis C through the administration of blood and blood products in the State, counselling is available to cardholders and their immediate relatives. In the Magdalen Scheme, services are available only to the person deemed eligible under the Restorative Justice Scheme and do not extend to any dependants or other family members, e.g. spouse or partner.

The cost of an extension to family members would undoubtedly be extremely high in that it would provide lifetime access for large numbers of people, including a significant proportion of relatively young people. It is not possible to provide an estimate of potential numbers who could be eligible if family members were included because this option represents a completely unknown entity and presents incalculable risks to the health service. The IDG is also mindful that any such extension could hamper access for those survivors, and others in the population, in greatest need.

For all of the above reasons, the IDG does not consider that an extension of eligibility to family members would appear equitable or justified.

3.3 Services to be provided through the card

3.3.1 Context

While a financial assessment is usually conducted to determine eligibility for a medical card, there are certain people for whom this is not required and eligibility is automatic, including women affected by surgical symphysiotomy (under the Surgical Symphysiotomy Ex-gratia Payment Scheme) and people affected by the drug Thalidomide.

Packages of targeted health supports have been developed in the past for certain people who were considered to have been adversely impacted by activities carried out in the State. Such schemes apply in respect of people who contracted Hepatitis C through the administration of blood and blood products in the State (via the Health Amendment Act Card), and for those eligible under the Redress for Women Resident in Certain Institutions Act 2015 (RWRCI Act, Magdalen Scheme). Access to the primary and community health services detailed under the RWRCI Act are available to cardholders in Ireland and provided on the basis of assessed needs.

3.3.2 Proposed Services and Benefits

The IDG recommends that eligible applicants should receive an enhanced medical card which provides the same access to services and benefits as the Magdalen Restorative Justice Ex-Gratia Scheme. This involves the provision, without charge, of the following primary and community health services:

- GP services;
- prescribed drugs, medicines, aids and appliances;
- dental, ophthalmic and aural services;
- home nursing;
- home support;
- chiropody/podiatry;
- physiotherapy; and
- counselling services as currently provided by the National Counselling Service

As well as the above health services, it entails the following benefits:

- the ex-gratia payment received from the State will not be included in the assessment of means for a medical card or a GP visit card;
- the ex-gratia payment received from the State will not be included in the assessment of means under the Nursing Homes Support Scheme Act 2009, also known as the *Fair Deal* scheme.
- Cardholders are not be required to pay (i) the €100 Emergency Department statutory charge or (ii) the €80 public hospital statutory charge.

This proposed approach to the provision of an enhanced medical card recognises some of the parallels which can be drawn among the affected groups, although it must also be acknowledged that there may be differences in terms of the amount of time spent in institutions and the levels of

commercial work undertaken. The approach also conveys the benefit that the 2015 Act could potentially serve as a useful template for the timely development of the relevant part of the legislation and the operational requirements should be familiar to the HSE.

The IDG also recognises that some may argue that, instead of mirroring the services provided to those resident in Ireland under the Magdalen scheme, the decision on services and benefits should be based on the specific and identified needs of those who spent time in Mother and Baby and County Home Institutions. It could be argued that such an approach would be more evidence-informed and more in keeping with the vision of Sláintecare in terms of assessing need and providing services on that basis. However, this approach would require a study to be conducted which would take time and cause delays to the roll out of the Scheme. The IDG's proposed approach attempts to overcome these very significant disadvantages while also providing an opportunity to review the suite of services when the results of the targeted research, which has already been committed to, are available. The strained capacity of the health service, particularly in light of unprecedented pressure due to COVID-19, will still pose a considerable challenge in terms of delivering an enhanced medical card that will meet the needs of those who are eligible for it.

Cost implications

The numbers potentially eligible under this Scheme will be vastly greater than the numbers who have received awards under the Magdalen Scheme, which is just over 800. The Government decision in this regard applies to approximately 19,000 mothers and children. The Primary Care Reimbursement Scheme service (PCRS) would require further resources in the face of such large numbers of eligible applicants to be processed.

There are certain difficulties in estimating the costs associated with the provision of the enhanced medical card as not all costs included in the suite of services associated with a medical card are tracked by the PCRS system. This system reports on GP, pharmacy and dental costs. Additional costs such as home nursing, chiropody, physiotherapy or costs foregone are difficult to estimate. A best attempt at estimating costs taking account of the above limitations is included in Chapter 5.

Potential Calls for the Health Amendment Act Card

There has been criticism of the provision of health supports under the 2015 Act, particularly from the Justice for Magdalens Research group which, at the time, claimed that “the services offered merely replicate the ordinary medical card (which 90% of survivors already have)” and fall short of Mr Justice Quirke’s recommendation that the women be provided with services equivalent to those provided to holders of the Health Amendment Act (HAA) Card.¹⁰ Such criticism has continued since then with some reiterating their dissatisfaction with what is provided under the 2015 Act.¹¹

An IDG Health Working Group was established by the Department of Health to undertake an assessment of the Collaborative Forum Report’s health and well-being recommendations, which included seeking access to services provided by way of the HAA card, and to develop proposals for a package of health and well-being supports for former residents of related institutions. The Final

¹⁰ Press Release, 14 July 2015: *JFM Research says Magdalen healthcare provisions are a betrayal of survivors’ trust* <http://jfmresearch.com/wp-content/uploads/2017/03/JFMR-PR-140715.pdf>

¹¹ Report of the Dublin Honours Magdalens Listening Exercise, p. 17-20: http://jfmresearch.com/wp-content/uploads/2020/04/DHM-Listening-Exercise-Report_Vol-1.pdf

Report of the IDG Health Working Group noted that the provisions under the Health Amendment Act card “were put in place in what the Government at that time deemed to be very special circumstances in which the persons concerned had clear health and social support needs as a result of having contracted a very serious and indeed life-threatening condition.”¹²

The IDG considers that this line of reasoning still stands and the provision of the Health Amendment Act card as part of the planned Mother and Baby Institutions Payment Scheme could not be considered equitable in comparison with the suite of services offered as part of the Magdalen scheme. The concept of providing services based on medical need, in keeping with the spirit of Sláintecare, would also not be satisfied by providing the Health Amendment Act card under this Scheme. Furthermore, in responding to calls for the Health Amendment Act card, it should be borne in mind that Government has also committed to a targeted research study which should inform any further enhancement of services, if deemed necessary. That research has the aim of assisting in the development of future service responses which may be required.

Finally, the significant additional costs associated with provision of a Health Amendment Act card to the high numbers of applicants who will be eligible under the Mother and Baby Institutions Scheme cannot be ignored. Further information on this is included in Chapter 5.

3.4 What legislative approach should be taken to the provision of a card?

3.4.1 Context

The IDG has recommended that legislation should underpin the entire Mother and Baby Institutions Payment Scheme, a point supported by the Office of the Attorney General. This approach differs from the Magdalen Restorative Justice Ex-Gratia Scheme which operated on an administrative basis in terms of making financial payments to eligible applicants and, as stated above, provided its form of enhanced medical card on the basis of the RWRCI 2015 Act.

For the Residential Institutions Redress Board (RIRB), financial redress was provided under the Residential Institutions Redress Act 2002, whereas other supports in the area of health, education and housing were provided separately under the Education Finance Board initially (established in 2006) and later by Caranua, which was established under the Residential Institutions Statutory Fund Act 2012. Caranua’s role was to administer cash contributions of €110 million pledged by the religious congregations and the fund was only available to survivors who had received redress through the Redress Board, the Irish courts or settlements with religious congregations.

3.4.2 Proposed Approach to legislation

The IDG understands the wish of Government to “fast-track” the provision of the medical card under the Scheme.

The development of one overarching piece of legislation to encompass both elements of the Scheme has the strongest potential to ensure that gaps are avoided and significantly mitigates the risks

¹² <https://www.gov.ie/en/publication/0d6bb5-report-of-the-inter-departmental-working-group-established-to-examin/>

associated with legislating for an enhanced medical card in a vacuum when additional legislation will, in any case, be required to establish an entity to administer the scheme and to provide the legislative basis for financial payments under the Scheme.

While developing an overall piece of legislation for the Scheme is likely to mean that it will not be possible to advance the provision of an enhanced medical card before financial payments, it has to be taken into account that providing an enhanced medical card will, in any case, not be able to proceed until the relevant administrative structures have been established to assess the eligibility of applicants and to complete the operational steps in the HSE which will be necessary to issue cards. The legislation underpinning the Scheme will also have to take account of interactions with other cards, in particular the 2015A¹³ card due to the fact that the same services are proposed to be offered as part of the enhanced medical card for this Scheme.

The assessment of eligibility for the Scheme will require access to a large amount of data, which will have to be provided for in legislation and effectively shared and managed across various relevant bodies in accordance with strict data protection protocols. The development of a single and robust legislative basis to encompass the establishment of the appropriate administrative structures and careful management of data, therefore, greatly increases the likelihood of the smooth and secure operation of the Scheme in the longer term.

It is acknowledged that a risk associated with this approach is a perception that it will mean slower access to the medical card element of the Scheme, but there does not appear to be any alternative approach which will, in reality, deliver faster access and the recommended approach entails strong benefits as outlined above.

3.5 Operational Approach

The operational approach to the Mother and Baby Institutions Payment Scheme is explored in detail in Chapter 4. In the context of the provision of an enhanced medical card, the following elements and considerations arise.

The existence of a single scheme administrator as a “one-stop shop” is highly preferable for applicants. It should mean that applicants only have to fill out one application for both aspects of the Scheme. In addition to being more user-friendly, this unified approach should ensure consistency and complementarity between the two aspects of the Scheme. Due process can be more effectively managed and lines of communication are likely to be stronger between the relevant parties in the process.

Once eligibility for an enhanced medical card has been established, it is proposed that the scheme administrator would submit the relevant applicant details to the PCRS within the HSE. PCRS would then be responsible for issuing the card to the applicant.

Further engagement with the GP Representative Body with regard to GP capacity in relation to the provision of the enhanced medical card may be required in the context of the 2019 Agreement with the Irish Medical Organisation (IMO). The measure will also have an administrative impact on the HSE in terms of assigning GPs for persons who qualify under the Scheme.

¹³ Medical card provided as part of the Magdalen Restorative Justice Ex-Gratia Scheme

Operational considerations arise in terms of managing the interaction of the card provided under this Scheme with other medical cards. In the case of those who already hold a regular medical card, there is a need to consider the retention of certain “passporting benefits” associated with that card. In the case of those who already hold a 2015A card, it is proposed that they would not receive an additional card under this Scheme on the basis that the same suite of health services will be covered by both cards, and in order to avoid confusion for recipients of the card as well as operational challenges.

More generally, given that the Scheme will be new and will provide eligibility for a significant cohort of people to a particular suite of health services, it will be necessary to design and implement a new system within PCRS to manage the health supports aspect of this Scheme. The planning and operational details surrounding this will be significant and require additional staffing, and will incur additional costs for PCRS in particular. It may also be worth exploring whether there are any third party/contracting opportunities which could be considered to assist in alleviating the initial administrative burden which is likely to face the PCRS on a temporary basis. Estimated costs associated with this additional administrative workload for PCRS are outlined in Chapter 5.

Finally, a dedicated Patient Advocacy Liaison Service is being established within the HSE to act as a direct contact and point of support for former residents of Mother and Baby Homes^{14 15}. There could be potential to utilise this new service so that it supports recipients to understand the services provided through the provision of the form of enhanced medical card and also supports them to navigate and access these services.

3.6 Supports for those living overseas

It is, unfortunately, not feasible to legislate for access to health services in other jurisdictions. As a result, options in terms of what can be provided to those living overseas are somewhat limited.

The IDG recommends that all those eligible to receive an enhanced medical card under the Scheme should have the option to receive one, even if they are not resident in Ireland. This would mean that, while they are visiting Ireland or if they ever move back to Ireland, they can avail of health services here using the card which would be provided by the HSE. Alternatively, they can choose to receive a once-off payment of €3,000 in lieu of a card. This would be in recognition of, and as a contribution towards, their individual health needs. While acknowledging that challenge that health care costs can vary significantly across different individuals and different jurisdictions, a payment of €3,000 would represent a practical measure of acknowledgment for those who are living overseas and choose not to avail of the enhanced medical card.

The IDG acknowledges that there are some shortcomings associated with the option of providing a flat, once-off payment to those living overseas. Firstly, the value of this payment in terms of accessing health supports will vary depending upon the country in which the person resides. In addition, the same potential challenges which arise in the case of the financial payment could also arise with the once-off health contribution in terms of how the payment would be assessed for

¹⁴ <https://www.gov.ie/en/publication/0d6bb5-report-of-the-inter-departmental-working-group-established-to-examin/>

¹⁵ <https://www.gov.ie/ga/preasraitis/4f64f-government-statement-on-the-final-report-of-the-commission-of-investigation-mother-and-baby-homes-and-certain-related-matters/>

social welfare and tax purposes. Furthermore, it could lead to calls in Ireland from those who may already have a medical card to have the option to take a financial “top up” instead of the form of enhanced medical card to which they may be entitled.

Notwithstanding these shortcomings, on balance and given the range of different health systems that operate across different jurisdictions, the IDG considers that the choice of opting for this flat payment in lieu of an enhanced medical card, represents the best available approach of recognising and responding to the health needs of those living overseas.

Telemental health services

In addition, and as a supplementary support, the IDG recommends that the possibility of providing mental health supports for those living overseas, i.e. telemental health supports should be explored. This is an option that could be managed and financially supported from within Ireland, but delivered via an online service to those who require such support but are not resident here.

In this regard, it is noted that the HSE has an existing Service Level Agreement with an organisation in the UK called Immigrant Counselling and Psychotherapy (ICAP), which provides counselling to Irish survivors of institutional abuse on behalf of the Irish State. This organisation is already accepting referrals for former residents of Mother and Baby and County Home Institutions. The HSE also funds ‘Turn2me’¹⁶ counselling which provides online counselling to people resident in Ireland and abroad. While the HSE currently funds counselling for survivors resident in Ireland, service users from abroad pay a fee.

It is recommended that those resources already in place should continue to be supported and that development of additional telemental health resources should be explored for former residents who qualify for the Scheme and live abroad. Engagement with NGO partners abroad could be expanded to support those living outside of Ireland to engage in counselling.

¹⁶ <https://turn2me.ie/>

Chapter 4 Overall Governance and Operation of the Scheme

4.1 Introduction

Following on from the considerations and recommendations outlined in Chapters 1 to 3, this chapter sets out an initial approach to the governance and operation of the Scheme.

While the detailed aspects of the overall governance and operation of the Scheme will be developed more fully after a Government decision on the IDG's proposals, this Chapter sets out a proposed overall approach. An overview of the proposed approach is set out in the box below and further developed in the remaining sections of this chapter.

Proposed approach to governance and operation of the Scheme (dependent on Government Decision in relation to the parameters of the Scheme)

Establishment of an independent Executive Office within the Department of Children, Equality, Disability, Integration and Youth

It is recommended that consideration be given to the Scheme being operated by an independent Executive Office¹⁷, situated within the Department of Children, Equality, Disability, Integration and Youth. This approach entails strong potential in terms of the benefits to be derived from leveraging and aligning with Departmental structures. It ensures the speediest establishment of an independent office on a legislative basis.

Application process and burden of proof

- A person should be able to make a single application to the Executive Office in respect of applying for both the financial payment and the enhanced medical card.
- The legislation establishing the Scheme should provide a clear lawful basis to allow an applicant, as part of their application and consistent with their rights under the GDPR, to request the Executive Office to obtain copies of the applicant's institutional records from the Commission of Investigation's archive and database to facilitate a user-friendly process where the State assists in shouldering the burden of proof.
- Where there is an absence of documentary evidence, it is recommended that affidavits should be accepted. The entity should support the cost of providing affidavits.
- If an applicant is deemed eligible to receive an enhanced medical card under the Scheme, administrators in the Executive Office should inform the HSE Primary Care Reimbursement Service (PCRS) so that they can carry out the necessary steps in providing the applicant with the card.
- Mechanisms by which the apology of the Taoiseach could be reiterated personally to each applicant, alongside provision of their payment, should be considered. An individualised apology from religious congregations could also be considered as appropriate.
- Applications from those who are elderly and other categories as deemed appropriate should be prioritised.

¹⁷ In very broad terms, the Executive Office could be modelled along the lines of the Civil Registration Service (General Register Office/GRO) where the Office and Office holder are situated in DSP but provided for in statute in their own right and deemed to be independent in the operation of their functions.

<http://www.irishstatutebook.ie/eli/2004/act/3/section/7/enacted/en/html>

- Particular attention should be paid to ensuring the Scheme is accessible and that appropriate measures are put in place for applicants who may lack capacity to apply. More generally, all processes should be designed with the principles of 'kindness' and 'do no harm' in mind and should be trauma-informed.
- Early engagement with OGCIIO will be required on the design of a fit-for-purpose IT system/database in order to manage applications to the Scheme and ensure the availability of accurate and readily searchable information for the purposes of reporting, audit and evaluation requirements.

Appeals process

Applicants should have recourse to an internal review where they are unhappy with the decision in relation to their application. Thereafter, they should have a further right of appeal to an independent Appeals Officer. A panel of designated Appeals Officers should be appointed to independently undertake such appeals. A further appeal on a point of law can be made to the High Court and recourse to make a complaint to the Ombudsman would also be available.

Duration of the Scheme and associated timeframes

It is recommended that a sunset clause is built into the legislation setting out the scheduled end date of the Scheme. The fifth anniversary of the Scheme start day would seem to be a reasonable proposal in this regard. All applications to the Scheme should be made at least six months before the sunset clause date. As mentioned above, the sunset clause date should be subject to amendment if there are exceptional circumstances. A robust communications campaign, nationally and internationally, should ensure that all those eligible for the Scheme will be made aware of its existence.

Governance and accountability framework

A robust governance framework should be established for the Scheme. It is essential that Terms of Reference are developed for its operation which reflect the requirements and parameters of the Government decision establishing the Scheme.

Records management

The overarching legal requirements in relation to the National Archives (Amendment) Act 2018, the Freedom of Information Act, 2014, the Data Protection Acts 1988-2018 and the General Data Protection Regulation (GDPR) must be considered and the legislation underpinning the Scheme can also build in safeguards, as required, to protect the data for a period of time, or otherwise.

Data protection

Data protection requirements need to be considered at the outset and built into the legislation underpinning the Scheme, consistent with the provisions of GDPR and FOI.

Measures to ensure that awards and benefits are discounted for the purposes of determining entitlement to social welfare payments and/or income tax liability

Discussions should be undertaken with Revenue, the Department of Social Protection and the Department of Health in this regard. There should also be engagement with relevant authorities overseas, where possible, to recommend consideration of similar provisions in other jurisdictions,

while noting that the Irish Government does not have the authority to compel other jurisdictions to make such allowances.

Review and evaluation of the Scheme

Given the proposed timeline of this Scheme, it would seem logical to have a first review of its operation commencing 12 - 18 months after its establishment, and a further post evaluation on completion of Scheme. Consultation with those who were eligible for the Scheme should be incorporated into any review. The Scheme should be flexible in taking into consideration the findings of the interim review and should be responsive to any findings of inadequacy or under-inclusivity.

4.2 Structure for management and operation of the Scheme

4.2.1 Establishment of an independent entity

As previously outlined in this Report, it is recommended that there should be one overarching and independent entity, responsible for administration and decision-making in relation to the Scheme. That entity will also be responsible for informing the HSE of the individuals who are entitled to receive the enhanced medical card to be provided under the legislation. This approach is consistent with the IHREC recommendation that the Government establish an independent body to administer the Scheme and that grounding a Scheme in statute can promote accessibility and clarity by providing increased legal certainty about the terms of reference and the eligibility criteria.

As outlined in Chapter 2, the decision-making entity will be responsible for conferring benefits on eligible applicants and a non-adversarial, or facts-based, approach is seen as appropriate. It will also be the responsibility of the entity to determine the level of awards and supports to be provided to an eligible applicant, within the defined parameters set out in the legislation.

In terms of the independence of the entity, it is preferable that the entity to be established will make decisions independently rather than in the name of the Minister. However, this does not preclude that civil servants could act as decision-makers for applications to the Scheme. For example, consider that Adjudication Officers in the Workplace Relations Commission (WRC) can be civil servants (AP grade) as well as staff of the Social Welfare Appeals Office (AP grade). Considering the type of Scheme that is recommended, as outlined in Chapter 2, it is reasonable that specialist decision makers, such as those that were required for the operation of the Residential Institutions Redress Scheme, are not required to determine eligibility for supports and awards under the proposed Mother and Baby Institutions Payment Scheme.

As a purely administrative Scheme, the Magdalen Scheme was operated solely by civil servants, who also acted as decision makers for each applicant. Once the interview process was established for that Scheme for applicants who had particular difficulty providing records, each interview was led by a Higher Executive Officer who was supported by an Executive Officer or Clerical Officer. An initial recommendation was then made by the HEO with regard to the case and all information, including a report of the interview, was then furnished to an Assistant Principal who would make the ultimate decision on the eligibility of the applicant and any award to be provided.

Proposed approach of establishment of an independent Executive Office within the Department of Children, Equality, Disability, Integration and Youth

The type of governance structure needed to administer the Scheme is contingent on decisions taken in relation to the design of the financial payment and the associated assessment process. While further scoping will be required on the governance structure, at a preliminary level, it is recommended that the Scheme be operated through an independent Executive Office, situated within the Department of Children, Equality, Disability, Integration and Youth. The consultation process showed that respondents generally envisaged an independent body and/or DCEDIY administering the Scheme, so this approach would likely tally with expectations in this regard. Furthermore, there would be significant benefits in terms of the Office leveraging, and being aligned with, departmental structures, while still maintaining an important degree of autonomy in performing its functions.

Given the strong feedback received from the consultation process and IHREC in relation to the need for the prompt establishment of the Mother and Baby Institutions Payment Scheme, while still underpinned by legislation and operating independently, an Executive Office in the DCEDIY represents the best model to meet these various needs. It would allow for speedier establishment and has strong potential to benefit from being streamlined with existing resources and expertise within the Department. In particular, the development of a bespoke IT system to manage the administration of the Scheme, as outlined in section 4.2.2, could be considerably advanced in tandem with the development of the legislation through this approach, bearing in mind that this is a multi-annual task which could not be commenced prior to the passing of legislation if an entirely separate agency or Board needs to be established to administer the Scheme. Such administrative preparations could reasonably be undertaken without pre-empting the will of the Oireachtas prior to the passing of the legislation.

Access to the HR function in the Department would also be a significant benefit in terms of accessing expertise, reducing duplication of HR functions and enabling some overarching flexibility in responding to demand-driven resourcing needs within the Executive Office. It will be imperative that appropriate staff, who are trained in trauma-informed approaches, are in place to administer the Scheme once the legal basis has been established and that there is capacity to respond to uncertain demand. Similarly, the ability to leverage legal and communications expertise available to the Department would be invaluable.

Access to the Department's Finance Unit (or an expanded version thereof) would also be beneficial as a separation of powers between those who authorise payments and those who administer them is important. The budget for the Scheme, inclusive of the operation of the Executive Office, could be ring fenced via a dedicated subhead within the Vote.

As an independent operational entity, the Executive Office could be overseen by a Director of Mother and Baby Institutions Payment Scheme Operations and staffed by civil servants. An independent appeals function would also be established, which is further discussed in Section 4.3.

Finally, important synergies could also be forged with other aspects of the Department's work in terms of the broader response to the Commission of Investigation's Report, as outlined in the Government's 22 point Action Plan and referenced in Chapter 1 of this report.

Alternative option – Independent Agency

The alternative to an Executive Office would be the establishment of an independent agency, completely separate to the Department of Children, Equality, Disability, Integration and Youth. While such an entity could potentially be regarded as more independent in its functions than an Executive Office within the Department, the significant disadvantage of such an approach would be the fact that very little of the preparatory work required to establish such a body could be undertaken before the legislation underpinning the Scheme was passed. This could result in the need for a significant lead-in time from the passing of the legislation to the opening of the Scheme to applications.

Such a structure would potentially require a Board of its own to oversee operations and the availability of support as outlined above in the form of HR, Legal and Communications would not be readily available. Significantly, the development of the required IT structures could not be advanced to anywhere near the same levels as with the Executive Office approach and the development of that infrastructure would have the potential to cause considerable delay to the formal establishment of the Scheme. This additional time and cost would not be justified, particularly in the context of the proposed non-adversarial, facts-based Scheme which does not require an elaborate Independent Agency overseen by a Board.

Finally, even with such an approach, the Department would likely still have to act as paymaster for the Scheme in order to maintain the required separation between those authorising the payments and those administering them. The Residential Institutions Redress Board relied on the Department of Education in this way.

4.2.2 Application process and burden of proof

Fair procedures and natural justice

In terms of the human rights informed elements of the Scheme, it is important to note that the right to fair procedures is one of the most important aspects of any human rights approach and is guaranteed by the Constitution. The DPER Draft Guidelines on Redress point out that good administration of Schemes requires certainty and clarity around eligibility so that potential applicants are not put to unnecessary distress or inconvenience in applying for something for which they may not be eligible. The consultation process referred to the need for fairness and transparency in setting the burden of proof and IHREC further highlighted how core human rights and equality principles can, and should, permeate the Scheme. The context of the Scheme is also significant in terms of the availability and quality of information available and the ageing profile of many of those affected, meaning that speedy processes, wherever possible, are important. There is an important balancing act to be considered here in terms of having a fast process but also ensuring that all decisions are high quality and made in line with legislative provisions.

While it is not possible to entirely eliminate a burden of proof for applicants to apply to a Scheme such as this, the proposed format of the Scheme as outlined in Chapter 2, should lend itself well to ensuring that the burden of proof is balanced between the applicant and the Executive Office in a manner that is favourable for the applicant. For this reason, it is recommended that the legislation establishing the Scheme should provide a clear lawful basis to allow an applicant, as part of their application and consistent with their rights under the GDPR, to request the Executive Office to

obtain copies of the applicant's institutional records from the Commission of Investigation's archive and database. This could facilitate a user-friendly process where the State assists in shouldering the burden of proof.

While the information in the archive is subject to statutory privilege as set out in the Commissions of Investigation Act 2004, the intention of providing the Executive Office with a lawful basis to access it would be to support applicants to demonstrate their eligibility for the Scheme. Some applicants may not require such assistance, but, where relevant, applicants should be asked to provide their consent for the archive to be searched for information relating to their time in a relevant institution. It would be prudent to undertake a Data Protection Impact Assessment and consult with the Data Protection Commission in relation to this aspect of the legislation to be developed.

It is important to also be mindful that such an approach could mean that the Executive Office may have access to more documentary evidence about the applicant's experience than the applicant themselves might possess. In this context, requirements for fair procedure in terms of the application process and information sharing would have to be carefully developed. The Executive Office would need to be sufficiently resourced to allow staff to undertake due diligence and provide potentially considerable assistance to those who wish to apply for the Scheme in terms of assisting applicants to understand the process and to gather relevant information in determining their eligibility for the Scheme. Robust procedures and protocols for this, in strict adherence with data protection obligations, would need to be established at the outset.

Due process would suggest that applicants should be entitled to see all information which the Executive Office holds on them and may use as the basis for decision-making in their particular case. An applicant has a right to know there is consistency of decision-making and the right to equal access to relevant materials as the decision-maker. The extent to which the sharing of information with applicants is possible for this Scheme should be developed in a manner that is consistent with the forthcoming Birth Information and Tracing Legislation and other data protection obligations.

Given the historic context in which the Scheme will operate, it may not always be possible to find documentary evidence relating to a person's time in a relevant institution. In such cases, and in keeping with IHREC's recommendation that the approach to evidentiary thresholds for the Scheme should give appropriate weight to the testimony of applicants, where there is an absence of documentary evidence, it is recommended that affidavits should be accepted. The Executive Office should support the costs of providing affidavits by reimbursing successful applicants for same.

In the absence of documentary evidence, there may also be calls for the Executive Office to offer people an oral hearing, or interview, so they can provide testimony. Oral hearings are likely to be very resource intensive and, considering the scale of this Scheme, could lead to significant delays in terms of processing applications if used in a substantial number of cases. It should also be the aim of the Executive Office to conduct its business in as informal a way as possible such that decisions should be made on a paper-based basis as much as possible. Considering the need to take every possible step to avoid re-traumatisation and the need to adopt processes that are as efficient as possible for applicants, on balance the IDG recommends that oral hearings should only be considered in cases where they are deemed absolutely necessary. The acceptance of affidavits should satisfy requirements in terms of giving weight to the testimony of applicants where documentary evidence proves to be lacking. The consultation process highlighted the importance of

mothers and children being able to share their experiences if they wished to do so. As noted in Chapter 1, memorialisation actions form part of the broader Government response to the Commission's Final Report and the IDG considers that this could provide an avenue for those who wish to share their experience rather than the application process for the Mother and Baby Institutions Payment Scheme, except when necessary for the purpose of processing an application. Consideration should be given to aligning actions in relation to memorialisation so that people who apply to the scheme will be aware of the truth-telling mechanisms available to them and can be sensitively signposted towards them.

Application for an enhanced medical card

As outlined in Chapter 3, applicants who apply to the Executive Office should only have to fill out one application and provide information once, notwithstanding the fact they may be applying for both a financial payment and a form of enhanced medical card. If an applicant is deemed eligible to receive an enhanced medical card under the Scheme, administrators in the Executive Office should inform the HSE Primary Care Reimbursement Service (PCRS) so that they can carry out the necessary steps in providing the applicant with the card.

Issuing decisions

Successful applicants should receive an assessment letter formally outlining what they have been deemed eligible for under the Scheme. If an applicant has been deemed eligible for a medical card, it is envisaged that the HSE could promptly be informed by the Scheme administrator.

Successful applicants should be given a reasonable amount of time (up to 6 months) to accept an offer made under the Scheme particularly if the scheme includes a legal waiver as it is to be expected that applicants will avail of independent legal advice before accepting an offer.

While it is hoped that the number of unsuccessful applicants would be low by virtue of clearly communicated eligibility criteria and information regarding the Scheme, there may still be a proportion of unsuccessful applicants. The principles of natural justice emphasise the importance of giving clear and adequate information regarding the reasons why an application has been refused. Appeals are further discussed at the relevant section below but it should be noted that a failure to observe the principles of natural justice leave a decision liable to be overturned. Decisions will also be subject to judicial review in the High Court but the appeals process should firstly be utilised by applicants if they are dissatisfied with the decision made by the Executive Office. As per the DPER Draft Redress Guidelines, each decision letter should include signposting information on how to make complaints, request a review or appeal and any timescales applicable.

Issuing of an apology

A mechanism should be considered by which an apology could be issued to each applicant which acknowledges their individual experience and informs them of the status of the broader Government response to the Commission of Investigation's Report in terms of information and tracing, memorialisation etc., as these may also be important to them as elements of redress.

Further engagement with the religious congregations could take place in order to explore the possibility of facilitating a meeting with them for applicants who may wish for this. A similar provision was available as part of the Magdalen Scheme. It would be important to underline that

such a meeting would in no way be required but would solely be arranged if an applicant signals an interest in it.

Awarding payments

In line with the preliminary recommendation to establish an Executive Office in the Department of Children, Equality, Disability, Integration and Youth to oversee and administer the Scheme, it is the intention that payments would be issued to successful applicants via the Department's existing financial systems. Given the considerable scale of the Scheme and the fact that the first year that the Scheme is in operation can be expected to be a particular pressure point, the resource impact on the Finance Unit of the Department would need to be carefully considered.

Prioritisation of certain applicants

The question of prioritising certain applicants by virtue of their age, health or disability status also arises. While such an approach would incur a risk of delays in the overall process due to a need to first conduct a prioritisation exercise before assessing applications, particularly in the context of potentially considerable numbers being eligible for the Scheme, it is an approach that has been used in other Schemes, such as the Residential Institutions Redress Scheme and the South Australian Stolen Generations Reparation Scheme. IHREC has also recommended that such an approach be taken, noting the potentially older demographic in question here. Applicants could be asked to signal on their initial application form whether they wished to be considered for prioritisation and provide reasons as to why.

Accessibility

In its advisory paper for the IDG, IHREC recommends that, in designing and implementing a Scheme, great care should be taken in ensuring the Scheme is accessible to ensure that the right to an effective remedy is protected and fulfilled. The IDG recommends that information should be provided in an accessible format as much as possible. Further information in this regard is provided in Chapter 6, particularly in relation to the potential appointment of a 'Special Advocate' as part of an enhanced engagement model.

The Australian National Redress Scheme provided a number of videos explaining how the Scheme works, including the application process: <https://www.nationalredress.gov.au/resources/national-redress-scheme-videos>. It is recommended that a similar approach be adopted here. Further consideration should also be given to making the Scheme accessible to those who are not digitally literate and people with disabilities.

It is imperative also that applicants who lack capacity to apply are catered for, in line with the Assisted Decision-Making (Capacity) Act once that has been fully commenced, or by making alternative arrangements in the meantime. Particular attention will be paid to this matter in the development of the Scheme.

IT system

Considerations in this regard are touched on elsewhere in the chapter but it is useful to consider them here also. It will be necessary to liaise with OGCIO on the design of a fit-for-purpose IT system/database in order to manage applications to the Scheme and ensure the availability of accurate and readily searchable information for the purposes of reporting, audit and evaluation

requirements. The benefit of the Executive Office approach is that significant preparatory work in this regard should be possible in advance of the legislation to underpin the Scheme being enacted.

As recommended by the C&AG Report on Cost of Child Abuse Inquiry and Redress, the IT system employed should allow for the collection of full relevant information from the outset, and on an ongoing basis, on all data regarding applicants. While legal costs are not likely to play a significant, if any, role in this Scheme (see Chapter 2), the system should also be designed to incorporate such information in case required. The capture of such data provides important information that can be used for reporting and evaluation in an anonymised format to protect the privacy of applicants. It is imperative that strong provisions are in place to ensure the security of the data.

Fraudulent claims

It will be necessary to include standard provisions in the legislation underpinning the Scheme to deal with fraudulent claims. Potential for fraud is potentially only conceivable with regard to affidavits.

It is noted that the Residential Institutions Redress Act 2002 had a provision in its legislation to deal with fraudulent claims in Section 7(6):

“A person who gives false evidence to the Board or the Review Committee in such circumstances that, if the person had given the evidence before a court, the person would be guilty of perjury, the person shall be guilty of an offence and shall be liable on conviction on indictment to the penalties applying to perjury”.

While it is acknowledged that false claims to the Scheme are unlikely, there is a duty to protect public finances from potential fraud and it would, therefore, be advisable to include a similar provision in the legislation underpinning this Scheme.

4.3 Appeals process

Although it is hoped that clarity around the eligibility criteria for the Scheme and its terms and conditions will ensure that most applications to the Scheme will be successful, a proportion of unsuccessful applicants and/or disagreements in relation to the level of award offered must always be expected. For this reason, it is imperative that a robust appeals process is established for the Scheme. When the parameters of this Scheme are decided on by Government, the development of an appropriate appeals mechanism can be considered more fully in line with the potential number of eligible applicants and overall processes required. In the meantime, it is possible to outline a recommended high-level approach.

According to the DPER Draft Redress Guidelines, Schemes should make provision for an explicit right to complain to an independent entity in relation to decisions taken on individual applications. This would suggest that the appeals process should rest outside of the Executive Office established, an approach which would also align with the principles of natural justice. Prior to this step, the IDG recommends that an internal review process first take place, ideally to be conducted at a senior management grade of Assistant Principal or equivalent. If the original decision is not overturned or amended and the applicant still has a grievance, the applicant should then have recourse to an independent appeals process.

The preferred approach would be for the Executive Office overseeing the Scheme to establish and maintain a panel of designated Appeals Officers, to be appointed with the consent of the Minister for Children, Equality, Disability, Integration and Youth to independently undertake appeals. The Appeals Officers would undertake their functions as independent contractors and act in accordance with due process. In recognition of the difficulties of providing estimates of the numbers, and timing, of expected appeals, the establishment of a panel would allow for Appeals Officers to be engaged as their services may be required in a flexible and responsive way while the Scheme is in operation. This is important in ensuring that people receive timely appeal decisions.

To ensure competence in the area, and as was set out in relation to the function of an Appeal Officer in the 2012 Residential Institutions Statutory Fund Act underpinning Caranua, the IDG recommends that Appeals Officers appointed for this Scheme would either:

- a) have a special interest or expertise in or knowledge of matters regarding approved services, administration of Schemes of payments or fair procedures, or
- b) be a practising barrister or solicitor of not less than 5 years' standing.

Appeals should be dealt with as promptly as possible. As is common for appeal mechanisms generally, it would be recommended for this Scheme that the Appeals Officer would make one of the following determinations in relation to an appeal:

- Confirm the Decision Maker's decision;
- Revoke that decision and replace it with a decision he/she considers appropriate; or
- Refer the matter back to the Decision Maker for reconsideration in accordance with such directions as he/she considers appropriate.

An Appeals Officer should have the option of holding an oral hearing to assist in determining an appeal if they decide that it would be necessary, but there would be no obligation to do so in cases where it was felt that it would be of no material value. Where oral hearings are deemed necessary, they should be conducted as informally as possible. In the case of Caranua, for instance, the option of holding an oral hearing was available to the Appeals Officer but was not used in the vast majority of decisions.

As is often commonly the case, it is recommended that the Appeals Officer's decision could be appealed to the High Court by the appellant or by the Executive Office overseeing the Scheme, on a point of law.

Staff in the Department of Children, Equality, Disability, Integration and Youth could provide some basic administrative support to the Appeals Officers so that independence of the appeals function from the Executive Office overseeing the Scheme is more clearly delineated. If an applicant is unhappy following the outcome of an appeal and considers that they have been unfairly treated in relation to the Scheme, they would also have recourse to make a complaint to the Office of the Ombudsman.

4.4 Duration of the Scheme and associated timeframes

It is the intention that both elements of the Scheme, i.e. financial payments and the provision of an enhanced medical card, would commence at the same time. The legislation establishing the Mother

and Baby Institutions Payment Scheme should account for the establishment date of the Scheme. It should be noted that the legislation will authorise the establishment of the Executive Office and certain actions in that context may only be possible to progress once there is lawful authority to do so. Therefore, a lead in time to the formal establishment of the Scheme may be required once the legislation is passed. However, as previously stated, the benefit of the Executive Office approach is that significant preparatory work should be possible to undertake in advance of the formal establishment of the Executive Office. Every effort will be made to progress the work as quickly as possible to ensure the quickest possible commencement of the Scheme after the legislation has passed.

It is a common feature of schemes to have a deadline by which applications must be received, which is often subject to extension in exceptional circumstances. It can be expected that there will be calls for the Scheme to have no deadline for applications, particularly in light of the fact that the Magdalen Scheme remains open to new applications and attempts to close that Scheme have been unsuccessful in the past. The arguments for this are often based on the fear that people will not be aware of the existence of the Scheme and fail to apply for their entitlements in time. In addition, the impact of trauma on people can mean that they need a significant amount of time to process information relating to the trauma they have endured and may not feel ready to participate in processes such as redress Schemes.

To address these calls, it will be imperative to have a very robust communications campaign surrounding the Scheme, both in Ireland and abroad. This is further discussed in Chapter 6. It also has to be acknowledged that the bulk of applications are received around the time that a Scheme is launched, or if amendments are made in terms of eligibility criteria. In that case, the need to have a robust communications campaign if amendments are made to the Scheme would also be required. The absence of a timeframe within which applications to the Scheme will be accepted is difficult to justify in terms of resourcing and, in the case of amendment to the terms of eligibility, the timeframe could be extended as required.

Bearing this in mind, and in line with the DPER Draft Redress Guidelines, it is recommended that a sunset clause is built into the legislation setting out the scheduled end date of the Scheme. The fifth anniversary of the Scheme start day would seem to be a reasonable proposal in this regard. All applications to the Scheme should be made at least six months before the sunset clause date. As mentioned above, the sunset clause date should be subject to amendment if there are exceptional circumstances.

4.5 Governance and accountability framework

In accordance with the DPER Draft Redress Guidelines, a robust governance framework should be established for the Scheme. The legislation underpinning the Scheme will set out the roles and responsibilities of the parties to the Scheme. It is also worth highlighting, as noted by IHREC, that the legislative process itself also provides an opportunity for increased parliamentary and public scrutiny of the proposed Scheme. It is essential that Terms of Reference are developed for the operation of the Scheme which reflect the requirements and parameters of the Government decision establishing the Scheme.

As recommended by the DPER Draft Redress Guidelines, the Executive Office should be obliged to prepare an annual report for the Minister regarding the operation of the Scheme shortly after the end of each financial year. It is recommended that the Executive Office would prepare a dedicated report in this regard, separate to the annual report of the Department of Children, Equality, Disability, Integration and Youth. The Minister should then present this report to Government and lay it before the Houses of the Oireachtas. Matters prescribed for inclusion in the annual report would include the following:

- the number of people who applied for the Scheme in the financial year;
- the number of people who were determined by the Executive Office to be eligible for financial payments in the financial year;
- the number of people who accepted offers of payments in the financial year;
- details relating to payments that were paid in the year, including the range of the amounts of the payments and the total of the payments for the financial year;
- details relating to the provision of an enhanced medical card and the cost of same in the financial year.

In addition to the annual report, DPER outlines that Departments should also ensure that provision is made for the Executive Office to report on an exceptional basis where required. This might arise, for example, where there are factors leading to significant changes in the levels of cost estimates or the scope of the Scheme.

In its advisory paper, IHREC recommended that the Government establish both an independent entity to administer the Scheme as well as an independent oversight mechanism to review decisions of that entity. However the IDG considers that the steps outlined in this section as well as the appointment of a panel of independent Appeals Officers, the possibility of recourse to the Office of the Ombudsman, and firm commitments relating to the evaluation of the Scheme on an interim and final basis, are sufficient to ensure that robust accountability mechanisms are in place. Furthermore, the Director could be called to appear in their own right at the Oireachtas Committee. Recommendations concerning review and evaluation of the Scheme are further discussed below.

4.6 Records management

The DPER Draft Redress Guidelines advise that consideration needs to be given at the outset to arrangements that will be required to hold and safeguard the data collected by any redress Scheme. The overarching legal provisions in relation to the National Archives (Amendment) Act 2018, the Freedom of Information Act, 2014, the Data Protection Acts 1988-2018 and the General Data Protection Regulation (GDPR) must be considered and the legislation underpinning the Scheme can also build in safeguards, as required, to protect the data for a period of time, or otherwise. As further outlined by DPER, legal advice regarding the management and safeguarding of records, and their treatment in respect of GDPR and FOI will be essential. When developing dedicated IT arrangements for the administration of the Scheme, provisions to ensure the security of the data should also be at the forefront of considerations.

In terms of considering how records generated by the Scheme, including those of claimants and decision makers, will be managed at the conclusion of the Scheme, it is important to note that the fact that the Executive Office will be wound up once the Scheme ends means that provisions may be required to formally transfer the data to the Department proper at that time.

4.7 Data protection

As above, data protection considerations need to be considered at the outset and built into the legislation underpinning the Scheme, consistent always with the provisions of GDPR and FOI.

For the Magdalen Restorative Justice Scheme, the application form requested applicants to consent to the provision of personal information to the Department by any Government agency, health or educational institution as well as the congregations for the purpose of verifying their applications. As outlined in Section 4.2.2 above, a similar approach could be adopted for this Scheme given the extent to which those operating the Scheme will likely have to assist applicants in searching for documentary evidence to support their application. It will be necessary to conduct a Data Protection Impact Assessment to ensure that planned procedures and protocols in this regard are robust.

IHREC has advised the Scheme should include measures that will protect the identity and disclosure of the information of applicants, but that it should not have the blanket effect of silencing applicants in all cases. This position is consistent with the intentions concerning the operation of this Scheme.

4.8 Measures to ensure that financial awards or other benefits are disregarded for the purposes of determining entitlement to Social Welfare payments and/or income tax liability

Measures to ensure that financial awards or other benefits provided are disregarded for the purposes of determining entitlement to Social Welfare payments and/or income tax liability are commonly provided for as part of Schemes such as this. It is noted that such awards, together with income from the investment of that money, tend to be disregarded.

For example, payments made in respect of the Magdalen Restorative Justice Ex-Gratia Scheme are disregarded for income tax, capital gains tax and capital acquisition tax purposes, with the exemption applying to payments made on or after 1 August 2013. The Finance Act 2018 also extended the exemption from tax to income derived from the investment of the compensation proceeds received under the Scheme, meaning that the investment of money received under the Scheme does not attract a charge to income tax, DIRT or capital gains tax¹⁸.

Furthermore, as previously outlined in Chapter 3, those eligible for the Magdalen Restorative Justice Scheme are also entitled to the following benefits:

- the ex-gratia payment received from the State will not be included in the assessment of means for a medical card or a GP visit card;
- the ex-gratia payment received from the State will not be included in the assessment of means under the Nursing Homes Support Scheme Act 2009, also known as the “Fair Deal” Scheme.
- Cardholders are not required to pay (i) the €100 Emergency Department statutory charge or (ii) the €80 public hospital statutory charge.

¹⁸ <https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-07/07-01-23.pdf>

The IDG recommends that similar measures be adopted in the case of this Scheme and set out in legislation. Discussions should be undertaken with Revenue, the Department of Social Protection and the Department of Health in this regard. There should be engagement with relevant authorities overseas, where possible, to recommend consideration of similar provisions in other jurisdictions. It should be noted, however, that the Irish Government does not have the authority to compel other jurisdictions to make such allowances.

4.9 Management of legal costs

Given the nature of the Scheme, it may be expected that legal costs should be reasonable and proportionate. Subject to any final decision on the requirement for a legal waiver, the main costs arising would be associated with assisting applicants to provide affidavits. As outlined in Chapter 2, the benefit for all parties of a Scheme such as this over taking legal proceedings, is that ultimately a greater proportion of the total expenditure should go directly to the claimants rather than being spent on legal and professional costs. The DPER Draft Redress Guidelines state that it is critically important that legal costs in respect of litigation being pursued through the Courts and in respect of Schemes should be considered.

It is noted that, for the Residential Institutions Redress Scheme, legal costs accounted for approximately 20% of the redress payments made, or €192 million by the end of 2015. In addressing this issue, the C&AG Report on Cost of Child Abuse Inquiry and Redress recommended that limits should be placed on the adversarial nature of Schemes and advocated general support for the concept of people merely having to prove that they were present in a designated institution, presumably for a particular period of time where relevant, to receive an award. The C&AG acknowledged that, while the level of payment involved in such individual cases is probably low, blanket access of this nature could result in the effort to drive down legal costs being completely quashed by higher overall expenditure on payments.

The C&AG also pointed to the Canadian and some of the Australian Schemes which sought to reduce third party legal costs by the adoption of a more straightforward claims process where an applicant merely had to prove that they were present in an institution to receive a level of award.

It is noted that IHREC recommends that applicants are provided with legal advice and representation when engaging with Schemes, particularly at the point of accepting an award and signing a legal waiver. Given the fact that this Scheme is designed to be as non-adversarial as possible, with a low burden of proof on applicants, it is arguable that it is not proportionate to provide legal advice as part of this Scheme. However, if a legal waiver is a requirement within the scheme, then it is expected that there will be calls for applicants to be financially supported to access independent legal advice.

IHREC also recommended that literacy and digital supports should be provided to those applicants who require them. This is strongly supported by the IDG and ties in with the recommendations in this report relating to the sharing of the burden of proof between the applicant and the State and the recommendation that the staff of the Executive Office would provide considerable assistance to applicants, as outlined in Section 4.2.2. It also aligns with recommendations relating to the accessibility of the Scheme, as outlined briefly in Section 4.2.2 above and in Chapter 6.

4.10 Review and evaluation of the Scheme

Considering the cost and resources that will be provided by the State, as well as the duty to ensure that Scheme beneficiaries and the public are provided with full transparency and accountability for the operation of the Scheme, an evaluation of the Scheme is highly recommended and should be provided for in the legislation. The C&AG Report on Child Abuse Inquiry and Redress made a particularly strong recommendation in this regard. This recommendation was made in the context that the Residential Institutions Redress Board did not have any powers to carry out a post evaluation report at the end of the process as it had no statutory authority to do so under the Redress Act 2002 or in any amending legislation.

The DPER Draft Redress Guidelines advise that an initial review should take place after the first year of operation of a redress Scheme, with a further subsequent review depending on the overall length of the Scheme. Given the proposed timeline of this Scheme, it would seem logical to have a first review 12 to 18 months after the establishment of the Scheme, with a further post evaluation on completion of the Scheme. As drawn from a list in the DPER Guidelines on the expected scope of the reviews, it would seem appropriate to include the following, at minimum, for this Scheme:

- the extent to which persons who are eligible for redress under the Scheme have applied for redress;
- the extent to which redress has been provided to persons who are entitled to redress under the Scheme;
- the application, assessment and decision-making process, including user experiences of the process;
- details of redress payments;
- the extent to which a form of enhanced medical card has been provided to persons who are entitled to one under the Scheme;
- the implications of the Scheme's design for those receiving redress;
- the operation of the Scheme's funding arrangements;
- the extent to which the Scheme has been implemented as originally proposed;
- the views of key stakeholders on the Scheme;
- the administration of any underpinning legislation;
- the results of any other review or evaluation conducted in relation to the operation of the Scheme.

In its advisory paper to the IDG, IHREC noted that the UN Special Rapporteur has set out minimum requirements that a domestic reparation programme should fulfil, including that it be “monitored through processes that include consultation with and the participation of survivors”. These inclusive review and evaluation processes are considered important and it is recommended also that IHREC’s point about collecting and reporting disaggregated data to examine the effectiveness of the operation of the Scheme should also be taken on board.

IHREC further points out the importance of incorporating an element of flexibility into the Scheme and the need to be responsive to any findings of inadequacy or under-inclusivity. It is recommended that this advice be borne in mind in the context of the first interim review so that any necessary action can be taken to address any findings related to deficiencies in this Scheme.

It could be advisable to appoint an independent reviewer, or group of reviewers, to conduct the evaluation of the Scheme to ensure the integrity of the process. For example, the Australian National Redress Scheme has appointed an independent reviewer to conduct an interim evaluation of that Scheme following its first two years of operation, as required by the underpinning legislation. It is the intention there that the reviewer's report will be published, as well as the Government's response to it, as part of an open and transparent process.

Chapter 5 Cost Estimates for the Scheme

5.1 Overview

Previous chapters presented proposals for the design of the financial payment, the enhanced medical card, and the governance and administration arrangements for the Scheme. This Chapter sets out the estimated costs of those proposals, as well as the estimated number of qualifying individuals.

The Chapter is broken down into four sections:

1. Financial Payment
2. Enhanced Medical Card
3. Administration and Operations
4. Communication and Publicity

The Chapter concludes by presenting the total cost of proposals in a series of overview tables. The IDG has taken the approach of providing Government with as much information as possible so as to inform decisions on the scope of the agreed Scheme.

Table 3: Overview of Data – Mothers and Children¹⁹

Residents	Mothers	Children	<i>No. of survivors</i>
			Mothers and children
Total estimated surviving	19,552	38,656	58,208
Mothers under 18	11,226	*	11,226
Mothers who did commercial work <i>of which stayed greater than 6 months</i>	5,739	*	5,739
Children boarded out	2,981	*	2,981
Unaccompanied children	*	4,757	4,757
	*	12,681	12,681
Pre-1974 survivors	9,119	29,341	38,460
Greater than 6 months	4,679	11,011	15,690
Less than 6 months	4,440	18,330	22,770
Post-1974 survivors	10,433	9,315	19,748
Greater than 6 months	99	3,496	3,595
Less than 6 months	10,334	5,819	16,153
Length of stay			
Between 0 and 3 months	9,653	20,411	30,064
Between 3 and 6 months	5,121	3,738	8,859
Greater than 6 months	4,778	14,507	19,285
Age groups			
Under 60 years	6,145	23,694	29,839
Aged 60-69 years	6,523	6,160	12,683
Over 70 years	6,884	8,802	15,686

¹⁹The unaccompanied children figure excludes Pelletstown as it was included in the RIRS.

5.2 Data Limitations and Assumptions

The data contained in this chapter in respect of potential applicants is an estimation, applying current CSO life expectancy information, of surviving mothers and children from the institutions investigated by the Commission. The information was in some cases provided by the Commission prior to the conclusion of their work and was also taken from the Commission's final report. While extensive use has been made of all the data available, it is nevertheless the case that there remains real and extensive data gaps. This presented significant challenges in estimating potential applicant numbers for the Scheme. This means that the estimates used throughout this report are necessarily subject to some qualification for the reasons outlined below:

- There was no data available to the IDG in relation to the number of mothers admitted to and children born in the County Homes that were not investigated by the Commission. This represents the majority of the County Homes included in this Scheme²⁰. The Commission suggests that as many as 25,000 mothers may have been admitted to these County Homes and a larger number of children. These suggestions have been used in developing the estimates contained in this report in respect of County Homes.
- The data available in relation to the number of unaccompanied children in Mother and Baby Homes and County Homes is not available for all institutions with a consequent potential margin of error in the data estimates relating to this cohort.
- There is very little data available about the number of mothers who undertook commercial work in Mother and Baby and County Home Institutions therefore the numbers relating to this cohort should be regarded as broad estimates based on best current thinking.
- The IDG currently have no knowledge of the size of any duplication in the figures supplied by the Commission in its final report. This applies particularly to mothers and children who may have resided in more than one home but also to children who were born in a home and then many years later admitted to another home as an expectant mother. There is a risk of overestimation of survivors as a result of this information gap.

Central Statistics Office Irish Life Expectancy Tables

To assist in estimating the number of former residents of the institutions who have died in the period between their departures from the institution and the present time, extensive use was made of the life expectancy tables available from the Central Statistics Office.

These life expectancy tables are published by the CSO and cover the years from 1925-1927 through to the most recent, which relate to 2015-2017. The tables indicate the life expectancy for males and females born in any particular year set. It is also possible to find for any age the percentage of the cohort who were or are expected to be alive at any particular age and their remaining life expectancy.

In the first half of the last century these tables show that the life expectancy for both genders was broadly similar, with females having a slightly longer lifespan. However, over the latter half of the

²⁰ The Commission investigated a representative sample of four County Homes but there are 30 included in this Scheme.

twentieth century the gap between both genders widened so that by the end of the century female children born then could expect to live more than five years longer than their male counterparts.

In estimating the survivor numbers the female life expectancy figures were used for mothers and for all births. Therefore, there is an overestimation of survivor numbers among the child cohort since it can be reasonably assumed that approximately fifty percent of that cohort were male with a lower life expectancy than that used in the calculations.

5.3 Financial Payment

Based on the recommendations of the Commission of Investigation, the IDG recommends that the following categories should be entitled to receive a Financial Payment:

- a) People who were resident as unaccompanied children in a Mother and Baby or County Home Institution for a period of six months or more (and who did not receive redress in respect of that institution under the Residential Institutions Redress Scheme)
- b) Pregnant women who entered Mother and Baby or County Home Institutions before 1974 and spent more than six months there
- c) Women who undertook 'commercial work without pay' in County Homes, in the Tuam Mother and Baby Home or outside a Mother and Baby Institution while resident there for more than six months

The IDG believes there is a sound rationale for the inclusion of the following two categories, in addition to those recommended by the Commission:

- d) Pregnant women who entered Mother and Baby Homes after 1974 and who spent more than six months there
- e) People who were resident as accompanied children in a Mother and Baby or County Home Institution for more than six months

The numbers and costs associated with each of these five categories are based on payment rates proposed in Chapter 2 and is set out below and summarised in Table 4 below.

Category (a) above should include any person who is proven to have resided in a Mother and Baby or County Home Institution as an unaccompanied child under the age of 18 years, who resided in excess of 6 months without their mother and who did not already receive redress under the Residential Institutions Redress Scheme in respect of that institution.

The estimated total number of children in this category is 1,715. Of those, it is estimated that 405 were resident for between 6 months and 1 year, 385 were resident for between 1 and 2 years, 226 were resident between 2 and 3 years and 699 were resident for more than 3 years. Residency data beyond 3 years was not available to the IDG but it is known that some children stayed in Tuam until they were 7 years old and these children may have experienced some of the harshest conditions.

Unaccompanied Children	Estimated Number of Applicants	Total Cost (€m)
6-12 months	405	5.06
1-2 Years	385	5.78
2-3 Years	226	4.52
Over 3 Years*	699	20.96
Totals	1,715	36.32

*Based on an average payment of €30,000 per person

Category (b) above should include pregnant women who entered a Mother and Baby or County Home Institution on or before 31 December 1974 and who spent 6 months or more in such institutions.

The estimated number of women in this category is 4,679. Of this total, it is estimated that 1,804 spent between 6 and 12 months in these institutions, 1,745 between 1 and 2 years, and 1,130 over 2 years. Data beyond 2 years is not available to the IDG.

Mothers Pre 1974 (over 6 months)	Estimated Number of Applicants	Total Cost (€m)
6-12 months	1,804	22.55
1-2 Years	1,745	26.18
Greater than 2 years*	1,130	33.90
Totals	4,679	82.63

*Based on an average payment rate of €30,000 per person

Category (c) above should include:

- i. any pregnant or unmarried mother who was resident in a County Home Institution, for more than six months
- ii. any pregnant or unmarried mother who was resident in Tuam Mother and Baby Home, for more than six months
- iii. any pregnant or unmarried mother who was required to undertake 'commercial' work without pay outside the grounds or setting of a Mother and Baby Home Institution while resident there for more than six months. 'Commercial' should be understood to include any work undertaken in local institutions (e.g. a local hospital) or in local family homes, other than the woman's own family home or place of residence. Mother and Baby Home should be understood to refer to the list of institutions set out at Appendix A.

The estimated number of women in the above categories is 2,981. The IDG do not have a further breakdown in relation to time spent for this particular group so have made an estimate on this applying the proportions in relation to mothers overall who spent more than 6 months in these institutions.

Commercial Work Payment	Estimated Number of Applicants	Total Cost (€m)
6-12 months	1,162	3.49
1-2 Years	1,113	6.68
Over 2 Years*	706	12.72
Totals	2,981	22.88

*Based on an average payment rate of €18,000 per person

If the Government decides to go beyond the Commission’s recommendations, the IDG is of the view that there is a sound rationale for including additional categories as follows:

Category (d) above should include pregnant women who entered Mother and Baby Home Institutions on or after 1 January 1974 and who spent 6 months or more in such institutions.

The estimated number of women in this category is 99. Of this total, it is estimated that 58 spent between 6 and 12 months in these institutions, 39 between 1 and 2 years and 2 over 2 years. Data beyond 2 years is not available to the IDG.

Mothers Post 1974 (over 6 months)	Estimated Number of Applicants	Total Cost (€m)
6-12 months	58	0.725
1-2 Years	39	0.585
Over 2 Years*	2	0.060
Totals	99	1.37

*Based on an average payment rate of €30,000 per person

Category (e) above should include any person who is proven to have resided in a Mother and Baby or County Home Institution as an accompanied child under the age of 18 years and who resided in excess of 6 months.

The estimated total number of children in this category is 12,792. Of those, it is estimated that 3,023 were resident for between 6 months and 1 year, 2,874 were resident for between 1 and 2 years, 1,684 were resident between 2 and 3 years and 5,211 were resident for more than 3 years. Residency data beyond 3 years was not available to the IDG.

Accompanied Children	Estimated Number of Applicants	Total Cost (€m)
6-12 months	3,023	37.80
1-2 Years	2,874	43.11
2-3 Years	1,684	33.68
Over 3 Years*	5,211	156.33
Totals	12,792	270.92

*Based on an average payment rate of €30,000 per person

The cost of extending the Scheme to all mothers and children regardless of time spent in Mother and Baby and County Home Institutions would be significant and could also impact the speed of providing payments and enhanced medical cards to all qualifying persons.

To ensure that Government has all of the information available to support its decision, the table below sets out the estimated additional costs which could be incurred if the scheme is further extended to all mothers and children regardless of time spent in a Mother and Baby and County Home Institution or if the residency requirement was reduced to 3 months. If the Government decides to reduce the residency requirement to 3 months, this would bring an additional 5,121 mothers and 3,751 children into the scheme. If no residency requirement is included, then a further 10,445 mothers and 19,956 children would be brought into the Scheme.

Table 4: Cumulative Table on Total Former Residents and Financial Payment Costs²¹

Category	Estimated Number of Applicants	Total Cost (€m)
(a) Unaccompanied Children	1,715	37
(b) Mothers Pre 1974	4,679	83
(c) Commercial Work*	2,981	23
TOTALS	6,394	143
(d) Mothers Post 1974	99	1.5
(e) Accompanied Children	12,792	271
TOTALS	19,285	416
Mothers over 3 months residence	5,121	52
Children over 3 months residence	3,738	38
Commercial Work ²²	1,379	2
TOTALS	28,144	508
Mothers less than 3 months residence	9,653	49
Children less than 3 months residence	20,411	102
Commercial Work less than 3 months residence	1,379	0
TOTALS	58,208	659

*Commercial work category is not included in TOTALS for number of applicants as these women are already included as mothers but is included in TOTALS for total cost.

²¹ Cost figures from preceding tables have been rounded up.

²² In relation to the women who undertook commercial work and spent less than 6 months in an institution there is no data available on length of stay > or < 3 months. In order to incorporate this additional cost into the overview table the remaining 2,758 women have been divided by two (1,379 over 3 months and 1,379 under 3 months) and the base payment rate of €1,500 applied.

5.4 Form of Enhanced Medical Card

As agreed by Government, it was decided that the Mother and Baby Institutions Payment Scheme would include a form of enhanced medical card to everyone who was resident in a Mother and Baby or County Home Institution for a period of six months or more.

The available data shows that an estimated 4,778 mothers and 14,507 children (19,285 in total) could be eligible for a form of enhanced medical card if one was to be provided to everyone who meets the six month eligibility criteria.

In examining the available data in relation to all mothers and children still alive who have spent time in Mother and Baby Home and County Home Institutions, approximately 68% of mothers and 39% of children are currently over 60 years of age and 35% of mothers and 23% of children are over 70 years of age.

1. In order to provide estimated costs for the provision of an enhanced medical card the following methodology was used. Data was provided by the Department of Health on the cost per annum by age cohort of the standard medical card, the GP visit card and the 2015A card.²³
2. In respect of the 2015A card, additional services provided with this card and not recorded on PCRS²⁴ were estimated and this was added to the known PCRS costs arriving at a total estimated cost of €3,000. This was set as the cost per person for the enhanced medical card which will be provided as part of this Scheme.
3. CSO data was utilised to make a range of assumptions regarding uptake rates to estimate the proportion of people who may already have a standard medical card or a GP visit card and this cost as an existing exchequer outlay was deducted to arrive at a net estimated cost per person for an enhanced medical card. The costs outlined in the tables below.

	Mothers	Children	Total
Number (over 6 months)	4,778	14,507	19,285
Annual Cost (€m)	13.26	40.38	53.64

If the Government decide to extend the eligibility for the financial payment, it is possible that this extension would carry across to the enhanced medical card. If the enhanced medical card is provided to all mothers and children who spent more than 3 months in these institutions the potential costs are illustrated in the table below.

	Mothers	Children	Total
Including over 3 months	9,899	18,245	28,144
Annual Cost (€m)	27.69	51.03	78.72

²³ Magdalen Restorative Justice Ex-gratia Scheme medical card.

²⁴ E.g. chiropody, physiotherapy, home supports and other fees foregone.

Finally if a decision is taken to extend the scheme to all mothers and children regardless of time spent in Mother and Baby Home and County Home Institutions, the costs are outlined in the table below.

	Mothers	Children	Total
All (no duration)	19,552	38,656	58,208
Annual Cost (€m)	54.64	108.03	162.67

HAA Card

As outlined in Chapter 3 there have been calls in response to previous redress schemes and as part of the public consultation process for the HAA card to be provided as part of this Scheme. It is the IDG's view that this card has a very specific purpose and it is recommending that an enhanced medical card similar to that provided as part of the Magdalen Laundries Restorative Justice ex-gratia scheme is provided as part of this Scheme. The potential costs associated with providing a HAA card are outlined below for illustrative purposes only.²⁵

Table 5: Overview Table for Medical Card- Enhanced Card versus HAA Card

Category	Number of applicants (Mothers and Children)	Enhanced Medical Card Annual Cost (€m)	HAA Card Annual Cost (€m)
All survivors (over 6 months)	19,285	€53.64m	€98.08m
Including over 3 months	28,144	€78.72m	€141.47m
All survivors (no duration)	58,208	€162.67m	€293.11m

²⁵ HAA (2017): €6,633 per person. Note that this does not include some PCRS costs or other costs foregone. Therefore the full cost of the card is likely to be higher.

Cost of providing a once off payment to applicants living overseas

It is proposed that those living outside of Ireland should have the option to accept an enhanced medical card or a once off lump sum payment €3,000.

Based on an average estimate derived from a number of sources²⁶ it is estimated that 27% of survivors are currently living outside of Ireland. This percentage has been applied to the available data to estimate costs.

Category	Total No of applicants (Mothers and Children)	Estimated living outside of Ireland	Total Cost (x €3,000) (€m)
All mothers and children (over 6 months)	19,285	5,200	15.60
All mothers and children (over 3 months)	28,144	7,599	22.80
All mothers and children (no duration)	58,208	15,700	47.15

5.5 Administrative and Operational Costs

While it is difficult to fully estimate operational and administrative costs before the parameters of the Scheme have been defined, the IDG considered that it was important to provide some order of magnitude in relation to administrative costs. Some high-level indicative estimates can be provided based on the recommendations in previous chapters of the Report and by having regard to the costs associated with the management of other schemes and similar-sized organisations.

At a high level, tentative estimated costs for administering the scheme could be in the order of €12 million over the lifetime of the scheme. This is based on a Scheme implementing the Commission and IDG recommendations and it should be noted that administrative costs will increase with expansions to the scope of the scheme. The estimated costs also assume certain efficiencies from aligning the Executive Office with structures already in place in the Department of Children, Equality, Disability, Integration and Youth for example communications, human resources and ICT mechanisms and expertise.

HSE / PCRS Administrative and Operational Costs

As outlined in Chapter 3, this Scheme will have significant implications for the HSE, particularly the Primary Care Reimbursement Service, due to its unprecedented scale in providing eligibility to a large cohort of people to a particular suite of health services. It will be necessary to design and

²⁶ Work done in relation to the Commission of Inquiry into Child Abuse identified that 37% of survivors were living abroad. Approximately 20% of applicants to the Magdalen Restorative Justice Ex-gratia Scheme were eligible for the Restorative Reimbursement Scheme, put in place for survivors living abroad. Finally in the report of the public consultation process for this Scheme, OAK indicated that 24% of survivors who engaged with the process are living abroad.

implement a new system within PCRS to manage the health supports aspects of the Scheme. The planning and operational details in this regard will require additional staffing for PCRS.

Overview of potential administrative and operational costs based on approximately 15,000 applications:

	Total Estimated Costs (€m)	Year 0 (prep work) (€m)	Year 1 (€m)	Year 2 (€m)	Year 3-5 Costs per year (€m)
Executive Office – Staffing including HR and Finance support	8.5	0.5	4.0	2.5	0.5
PCRS - Staffing	0.3	N/A	0.15	0.06	0.03
Development of IT system for Executive Office	0.2	0.2	N/A	N/A	N/A
Development IT system for PCRS	0.1	0.1	N/A	N/A	N/A
General office admin, staff training, T&S, miscellaneous for Executive Office ²⁷	2.1	0.1	1.0	0.40	0.2
Appeals	0.6	N/A	0.2	0.10	0.1
General office admin, staff training, miscellaneous for PCRS	0.05	N/A	0.025	0.01	0.005
Totals	11.85	0.90	5.4	3	0.85

5.6 Legal Costs

Depending on whether or not a legal waiver is included in the Scheme, estimates of legal costs will vary as it would be expected, if including a legal waiver that applicants may be financially supported to avail of independent legal advice at the point of accepting an award. It is noted that the Magdalen Restorative Justice Scheme provided a contribution of up to a maximum of €500 + VAT to applicants residing in Ireland or abroad towards the cost of obtaining their own legal advice. It can also be expected that a proportion of applicants may need to provide affidavits to support their applications if the records available are not sufficient to determine their eligibility for a financial payment or enhanced medical card under the Scheme. Finally, it could be expected that miscellaneous legal expenses may also arise over the course of the lifetime of the Scheme and provision should be made

²⁷ Based on approximately 25% of staff costs

for these. On that basis, the table below provides an estimated overview of potential legal costs which may arise in the context of administering the Scheme.

Overview of potential legal costs based on approximately 15,000 applications:

Costs	Estimated Total Legal Costs (€m)	Year 0 (prep work) (€m)	Year 1 (€m)	Year 2 (€m)	Year 3-5 Costs per year (€m)
Affidavits ²⁸	0.75	N/A	0.4	0.15	0.06
Independent legal advice on signing a waiver ²⁹	9.0	N/A	4.5	1.80	0.90
Miscellaneous legal expenses	1.75	0.15	0.6	0.40	0.20
Totals	11.5	0.15	5.5	2.3	1.2

5.7 Communication and Publicity Costs

To undertake meaningful communication and publicity of the Scheme, the associated costs will be significant. For instance, the Residential Institutions Redress Board spent almost €1 million advertising that scheme between 2003 and 2011.

The Department of Children, Equality, Disability, Integration and Youth spent approximately €160,000 ex VAT publicising the consultation process undertaken to inform the development of proposals for this Scheme. This money was spent with Local and National Irish newspapers (including NI) and on various Social Media platforms via the Department’s Media Agency.

It is estimated that costs in the region of €3 million could be anticipated in respect of communication and publicity over the lifetime of the Scheme. It can be expected that most investment in advertising will be required around the launch of the scheme and in the event that any amendments are made to the terms and conditions of the scheme.

²⁸ Assuming 25% of total applicants are required to provide an affidavit to support their application at a cost of €200 each.

²⁹ Assuming all applicants for financial payment seek a contribution towards the cost of independent legal advice.

5.8 Summary of Costs for the Mother and Baby Institutions Payment Scheme- Overview Tables^{30 31}

The summary tables below outline the estimated total cost for a range of scenarios incorporating a financial payment and an enhanced medical card. While a broad range of scenarios are presented, the cost of a Scheme encompassing the groups referenced in chapter 2 of this report is set out in Table 7.

The IDG acknowledges the Government decision to provide an enhanced medical card to anyone who spent more than 6 months in a Mother and Baby or County Home Institution (estimated 19,000 people). Some of the scenarios presented below set out the cost associated with providing financial payments to mothers and children who spent less than six months in these institutions (Tables 8, 9 and 10). In these cases the additional cost of also providing a medical card to these cohorts is set out in Tables 8(a), 9(a) and 10(a) so that Government has all of the information it needs on the cost associated with any decision on the overall scope of the scheme.

³⁰ The cost of providing a once off payment to applicants living overseas has not been included in overview tables to avoid double counting as the cost of enhanced medical card has been calculated based on all applicants living in Ireland.

³¹ The costs in the tables are set out assuming that 50% of those eligible will apply in Year 1, 20% in Year 2 and 10% in each of the remaining years. As the financial payment is a once-off payment the cost will reduce over the years. The cost of the medical card will increase as it is an annual cost so costs for Year 2 will include applicants from Year 1 and Year 2 and so on.

Table 6: Cost of Scheme – Commission’s Recommendations (with 6 month residency condition applied to all categories) (6,500 applications for financial payment and 19,000 applications for enhanced medical card):

	Year 0 €m	Year 1 €m	Year 2 €m	Year 3 €m	Year 4 €m	Year 5 €m
Financial Payment Categories (a) – (c)		70.92	28.37	14.18	14.18	14.18
Enhanced Medical Card		30	42	50	55	54
Total - Financial Payment and Enhanced Medical Card		101	70	64	69	68
Administration and Operation including PCRS	0.45	5.75	2.25	1.2	1.13	1.13
Communication and Publicity		1.00	0.5	0.25	0.50	0.5
Legal Costs	0.08	5.75	2.25	1.2	1.13	1.13
Total – Administration, Communications and Legal	.53	12.5	4.75	2.65	2.51	.51
All Costs (rounded)	1	113	75	67	71	69
For all years	€396m					

Table 7: Cost of Scheme – Commission’s Recommendations + IDG Identified Categories (6 months residency condition across the Scheme) – 19,000 applications

	Year 0 (€m)	Year 1 (€m)	Year 2 (€m)	Year 3 (€m)	Year 4 (€m)	Year 5 (€m)
Financial Payment Categories (a) – (e)		208	83	42	42	42
Enhanced Medical Card Categories (a) - (e)		30	42	50	55	54
Total – Financial Payment and Enhanced Medical Card		238	125	92	97	96
Administration and Operation including PCRS	0.45	5.75	2.25	1.2	1.13	1.13
Communication and Publicity		1.00	0.5	0.25	0.50	0.5
Legal Costs	0.08	5.75	2.25	1.2	1.13	1.13
Total – Administration, Communications and Legal	.53	12.5	4.75	2.65	2.51	2.51
All Costs (rounded)	1	250	130	94	100	98
For all years	€673m					

Table 8: Cost of the Scheme – Commission’s Recommendations + IDG Identified Categories + all resident over 3 months – 28,000 financial payments and 19,000 enhanced medical card applications.

	Year 0 (€m)	Year 1 (€m)	Year 2 (€m)	Year 3 (€m)	Year 4 (€m)	Year 5 (€m)
Financial Payment Categories (a) – (e) Plus all over 3-6 months		252	101	51	51	51
Enhanced Medical Card Categories (a) – (e) only		30	42	50	55	54
Total – Financial Payment and Enhanced Medical Card		282	143	101	106	106
Administration and Operation including PCRS	0.90	11.5	4.5	2.4	2.25	2.25
Communication and Publicity		1.00	0.5	0.25	0.50	0.5
Legal Costs	0.15	11.5	4.5	2.4	2.25	2.25
Total – Administration, Communications and Legal	1.05	24	9.5	5.05	5	5
All Costs (rounded)	1	306	153	106	111	111
For all years	€788m					

Table 8a: Cost of the Scheme – Commission’s Recommendations + IDG Identified Categories + all resident over 3 months – 28,000 financial payments and enhanced medical cards.

	Year 0 (€m)	Year 1 (€m)	Year 2 (€m)	Year 3 (€m)	Year 4 (€m)	Year 5 (€m)
Financial Payment Categories (a) – (e) Plus all 3-6 months		252	101	51	51	51
Enhanced Medical Card (all)		45	63	74	83	79
Total – Financial Payment and Enhanced Medical Card		297	164	125	134	130
Administration and Operation including PCRS	0.90	11.5	4.5	2.4	2.25	2.25
Communication and Publicity		1.00	0.5	0.25	0.50	0.5
Legal Costs	0.15	11.5	4.5	2.4	2.25	2.25
Total – Administration, Communications and Legal	1.05	24	9.5	5.05	5	5
All Costs (rounded)	1	321	174	130	139	135
For all years	€900m					

Table 9: Cost of Scheme – Commission’s Recommendations + IDG Identified Categories (6 months residency condition across the Scheme) + Financial Payment for mothers 0-6 months residency – 34,000 financial payments and 19,000 enhanced medical cards.

	Year 0 (€m)	Year 1 (€m)	Year 2 (€m)	Year 3 (€m)	Year 4 (€m)	Year 5 (€m)
Financial Payment Categories (a) – (e)		208	83	42	42	42
Financial Payment Mothers 0-3 months		24	10	5	5	5
Financial Payment Mothers 3-6 months		26	10	5	5	5
Financial Payment Commercial Work 0-6 months		1	0.5	0.5	0.25	0.25
Enhanced Medical Card Categories (a) - (e) only		30	42	50	55	54
Total – Financial Payment and Enhanced Medical Card		289	146	102	107	106
Administration and Operation including PCRS	0.90	11.5	4.5	2.4	2.25	2.25
Communication and Publicity		1.00	0.5	0.25	0.50	0.50
Legal Costs	0.15	11.5	4.5	2.4	2.25	2.25
Total – Administration, Communications and Legal	1.05	24	9.5	5.05	5	5
All Costs (rounded)	1	313	156	107	112	111
For all years	€800m					

Table 9a: Cost of Scheme – Commission’s Recommendations + IDG Identified Categories (6 months residency condition across the Scheme) + Financial Payment and medical card for mothers 0-6 month residency – 34,000 financial payments and enhanced medical cards.

	Year 0 (€m)	Year 1 (€m)	Year 2 (€m)	Year 3 (€m)	Year 4 (€m)	Year 5 (€m)
Financial Payment Categories (a) – (e)		208	83	42	42	42
Financial Payment Mothers 0-3 months		24	10	5	5	5
Financial Payment Mothers 3-6 months		26	10	5	5	5
Financial Payment Commercial Work 0-6 months		1	0.5	0.5	0.25	0.25
Enhanced Medical Card(all)		47.5	66.5	76	85.5	95
Total – Financial Payment and Enhanced Medical Card		307	170	129	138	147
Administration and Operation including PCRS	0.90	11.5	4.5	2.4	2.25	2.25
Communication and Publicity		1.00	0.25	0.25	0.25	0.25
Legal Costs	0.15	11.5	4.5	2.4	2.25	2.25
Total – Administration, Communications and Legal	1.05	24	9.5	5.05	5	5
All Costs (rounded)	1	331	180	134	143	152
For all years	€940m					

Table 10: Cost of the Scheme – Financial payment for all survivors of Mother and Baby and County Home Institutions regardless of time spent – 58,200 financial payment applications and 19,000 enhanced medical cards.

	Year 0 (€m)	Year 1 (€m)	Year 2 (€m)	Year 3 (€m)	Year 4 (€m)	Year 5 (€m)
Financial Payment Categories (a) – (e) Plus all 0-6 months		398	159	80	80	80
Enhanced Medical Card Categories (a) – (e) only		30	42	50	55	54
Total – Financial Payment and Enhanced Medical Card		428	201	130	135	134
Administration and Operation including PCRS	1.80	23.9	9.0	4.8	4.5	4.5
Communication and Publicity		1.00	0.25	0.25	0.25	0.25
Legal Costs	0.30	23.00	9.00	4.80	4.50	4.50
Total – Administration, Communications and Legal	2.15	47.90	18.25	9.85	9.25	9.25
All Costs (rounded)	2	476	219	140	144	143
For all years	€1,124m					

Table 10a: Cost of the Scheme – All survivors of Mother and Baby and County Home Institutions regardless of time spent – 58,200 enhanced medical card and financial payments.

	Year 0 (€m)	Year 1 (€m)	Year 2 (€m)	Year 3 (€m)	Year 4 (€m)	Year 5 (€m)
Financial Payment Categories (a) – (e) Plus all 0-6 months		398	159	80	80	80
Enhanced Medical Card (all)		89	124	154	173	163
Total – Financial Payment and Enhanced Medical Card		487	283	234	253	243
Administration and Operation including PCRS	1.80	23.9	9.0	4.8	4.5	4.5
Communication and Publicity		1.00	0.25	0.25	0.25	0.25
Legal Costs	0.30	23.00	9.00	4.80	4.50	4.50
Total – Administration, Communications and Legal	2.15	47.90	18.25	9.85	9.25	9.25
All Costs (rounded)	2	535	300	244	262	252
For all years	€1,595m					

Chapter 6 Publicity and communication of the Scheme

6.1 A Communication Strategy

The Government has committed to a survivor centred approach in providing a Mother and Baby Institutions Payment Scheme. Clear and respectful communications on the Scheme are essential to fulfilling this commitment.

The IDG recommends that a Communication Strategy should be developed at the earliest opportunity. This will be integral to the success of any Mother and Baby Institutions Payment Scheme that is established by Government. It is clear from our consultations that people want the Scheme to be simple, clear and transparent.

The Communication Strategy should identify all target audiences within the broad and diverse range of people who were resident in Mother and Baby and County Home Institutions; identify appropriate and accessible communication tools; set out a calendar of key events for communication and focus on communication objectives i.e. what do you want to tell people? The Strategy could also identify key partnerships that might assist with communication and establish mechanisms for review so that processes remain responsive and evolve to meet the needs of survivors.

It is very important that adequate resources are in place to ensure comprehensive communication and publicity in relation to the Scheme. The potential costs in this regard are outlined in Chapter 5.

6.2 Accessibility

All communication and publicity in relation to the Scheme should take into consideration the demographic range of applicants and the potential vulnerabilities of some applicants. Taking into account the volume and age range of applicants, there are inevitably a diverse set of needs to be met to ensure that the Scheme is accessible to all. The public consultation found that people want Government to take a proactive approach to advertising the Scheme and reaching all intended demographics will require the utilisation of a broad range of traditional and modern communication methods.

6.3 Plain English Tips

It is recommended that all communications in relation to the Scheme should keep the National Adult Literacy Agency (NALA) top five plain English writing tips³² in mind. These are:

1. Think of the person you are writing to and why you are writing

Ask yourself what words or concepts the person is likely to know already, what tone and amount of detail is suitable and what message they are supposed to get from your information.

2. Be personal and direct

³² <https://www.nala.ie/plain-english/plain-english-tips/>

Don't be afraid to use 'we' for your organisation and 'you' for the reader. As much as possible, say who is doing what, for example 'We will write to you' instead of 'A letter will be sent'.

3. Keep it simple

Try not to inflict corporate language on the public – it doesn't serve them or your organisation's reputation! Avoid other complicated and foreign terms if you can use a plainer alternative to get your message across just as accurately.

4. Define or spell out any unavoidable jargon and abbreviations

If you must use a technical word because there is no plain alternative to it, define the term the first time you use it. The same applies to abbreviations – spell them out, especially if you intend to use them several times.

5. Keep sentences to an average of 15 to 20 words

Think about the point you want each sentence to make and stick to it. Try not to pad out your message with wordy and formal phrases such as 'in the event of', 'in accordance with' or 'subsequent to'.

NALA also outline key tips when designing documents, including guidance on the use of fonts, colour, how the use of images and other visuals can add value and how to make documents with complex information easier to understand. Particular attention should be paid to ensuring clear and simple communications in relation to all aspects of the Scheme.

6.4 A Dedicated Website

A website for the Scheme is recommended to ensure everyone has access to the same information regardless of where they live. The website will be a home for all information relevant to the Scheme, with clear contact details for applicants to engage with the Executive Office delivering the scheme if they have queries or concerns. The website should provide links to information on other actions in the Government Response and also assist people with information on how to access other supports including National Counselling Services and Patient Advocacy Liaison Services.

6.5 Launching the Scheme

To recognise the importance of communications and publicity, the legislation establishing the Scheme could provide for the Executive Office overseeing the scheme to make all reasonable efforts to ensure that persons who were resident in one of the relevant institutions are made aware of the functions of the entity. This approach was taken in the Residential Institutions Redress Act 2002 in relation to the functions of the Board established for that scheme.

At the point when the Scheme is launched all reasonable efforts should be made to ensure that:

- the Scheme is widely advertised.
- the terms of the Scheme are clearly communicated (what it is and is not offering).
- it is clear who is eligible for the Scheme.

- potential applicants are equipped with the information they need to make an informed decision on whether they wish to apply.
- all communications with potential applicants are undertaken with kindness and sensitivity to the nature of the issues involved.

Due to the scale of the Scheme and the potential number of recipients the following should be considered by way of publicising the Scheme:

- Advertisements in all the national broadsheet and tabloid newspapers, as well as the main provincial newspapers;
- A major radio ad campaign on all national and major local radio stations;
- Information days both in Ireland and abroad;
- Advertisements in Sunday newspapers, daily newspapers and publications abroad aimed specifically at the Irish community;
- Leaflets or pamphlets for display in GP practices and other locations such as community group locations; and
- Use of existing mailing lists of survivors and their advocacy groups to ensure that the Scheme is brought to the attention of potential applicants.

It will be important to ensure ongoing communication in relation to the Scheme and in particular to make arrangements to undertake additional publicity campaigns if necessary in advance of the Scheme closing.

6.6 Enhanced communication model

The Department of Children, Equality, Disability, Integration and Youth is currently developing proposals for an enduring and enhanced model of survivor engagement. This aim is to create a model capable of supporting much wider and sustained consultation and communication with people both in Ireland and abroad.

One option being considered is the possibility of appointing an independent Special Advocate who could play a central role in facilitating a strong and sustained voice for former residents on the matters which affect them. The Special Advocate would be independent of Government. He or she would deliver on their mandate with a particular focus on supporting the voice of survivors as a central, essential input to Government deliberations.

The Special Advocate would engage with former residents, their families and supporters to identify and discuss issues of concern to them. As part of this role the Special Advocate would develop channels and strategies for open and consistent communication with stakeholders and have a role in monitoring the implementation of measures designed to support former residents.

The Special Advocate would be supported by an Advisory Council comprised of former residents of relevant institutions who would help to ensure that the approach to consultation is informed by the lived experience and needs of former residents. In particular, the Advisory Council could help to inform the Special Advocate in the planning of public consultations, including workshops and activities which may be designed around specific themes or issues. In this way, the process could

serve to provide channels for in depth dialogue which take account of the full range of perspectives on these deeply personal issues and the specific needs of survivors now and into the future.

The IDG envisages that the Special Advocate could play a key role in assisting with communication in relation to the Mother and Baby Institutions Payment Scheme, particularly in relation to those living overseas and recommends that firm links are established between the Special Advocate and the Executive Office delivering the Mother and Baby Institutions Payment Scheme.

6.7 Applicants living overseas

A significant portion of potential applicants may be based outside of Ireland (in particular in the UK and America) and this will require an international component to any communications strategy. The need for extensive media coverage and a global media campaign was identified during consultations. Respondents want Government to reach out proactively to people living abroad to let them know about the scheme. In addition, it was also considered important to have liaison contacts/individuals available in each jurisdiction to coordinate applications and information. The importance of reaching out through the embassy network and engaging with existing support groups abroad should not be overlooked.

Chapter 7: Conclusions

In concluding this report, the IDG would like to reiterate some key messages in relation to the work undertaken in the development of proposals for the Mother and Baby Institutions Payment Scheme.

Firstly, the IDG appreciates the importance of this Scheme as one element of the Government's response to the Commission's findings to address the needs and wishes of survivors. It would emphasise the continued focus on the principles of kindness, respect and ongoing engagement in relation to all aspects of the Scheme's design and delivery.

Secondly, the IDG is aware that some of the proposed approaches may be regarded as not going far enough. However, these approaches reflect careful deliberation on how best to ensure a non-adversarial approach, a low burden of proof and, crucially, that no person would be retraumatised in accessing the Scheme.

The IDG is mindful that people are waiting for this Scheme and, so, have proposed an administrative model which can allow for preparatory work to run in parallel with the development of the necessary legislation.

Finally, the IDG has tried to present all of the information possible to allow Government to make a decision based on best estimates of recipient numbers and costs.

Next steps

The IDG proposes that, following Government agreement on the Scheme, an important next step is the establishment of an Implementation Steering Group to oversee and drive all aspects of the development and operation of the Scheme.

This Implementation Steering Group should include the following Departments and Agencies at minimum:

1. The Department of Children, Equality, Disability, Integration and Youth in relation to the development of the overarching legislation for the Scheme and the establishment of the Executive Office.
2. The Department of Health and HSE in relation to discussions with GP and other representative bodies and the operational requirements for the delivery of the enhanced medical card, including expansion of the PCRS system.
3. The Department of Foreign Affairs in relation to assisting with the delivery of the Scheme to those living abroad.

Other representatives or support may be required on either a permanent or as required basis in relation to matters including data management, IT support and legal implications. Consideration should also be given to including appropriate independent input.

The Implementation Steering Group should prepare a detailed project plan to support clarity on the shortest possible timeframe for delivery of a high-quality Scheme which is accessible, transparent, fair and kind to all those it serves.

Appendix A: Mother and Baby Homes investigated by the Commission

St Patrick's / Pelletstown, Navan Road, Dublin 7

The Tuam Children's Home, Tuam, Co. Galway

Bessborough Mother and Baby Home, Cork

Manor House Castlepollard

Sean Ross Abbey

Árd Mhuire Dunboyne

Bethany Home, Dublin

Denny House, Dublin

Miss Carr's Flatlets, Dublin

The Regina Coeli Hostel, Dublin

The Castle Newtowncunningham, Co. Donegal

The County Clare Nursery, Kilrush, Co. Clare

Belmont Flatlets, Dublin

St. Gerard's, Dublin

Appendix B: County Homes

Location	Other name
Carlow	Sacred Heart Home and Hospital, Carlow
Cavan	St. Felim's County Home and Hospital, Cavan
Clare (Ennis)	St. Joseph's Hospital, Ennis
Cork (City)	Cork County Home and District, St. Finbarr's
Cork (Midleton)	Our Lady of Lourdes Home, Midleton
Cork (Clonakilty)	Mount Carmel Home, Clonakilty
Cork (Fermoy)	St. Patrick's Hospital, Fermoy
Donegal (Stranorlar)	St. Joseph's Home, Stranorlar
Dublin (St. Kevin's Institution)	Initially the Dublin Union;
Galway (Loughrea)	St. Brendan's Home, Loughrea
Kerry (Killarney)	St. Columbanus Home, Killarney
Kildare (Athy)	St. Vincent's Hospital, Athy
Kilkenny (Thomastown)	St. Columba's County Home, Thomastown
Laois (Mountmellick)	St. Vincent's Hospital, Mountmellick
Leitrim (Carrick-on-Shannon)	St. Patrick's Home, Carrick-on-Shannon
Limerick (Newcastlewest)	St. Ita's Home, Newcastlewest
Limerick (City Home and Hospital)	St. Camillus Hospital, Limerick
Longford	St. Joseph's Hospital, Longford
Mayo (Castlebar)	Sacred Heart Home, Castlebar
Meath (Trim)	St. Joseph's Home, Trim
Monaghan (Castleblayney)	St. Mary's Hospital, Castleblayney
Offaly (Tullamore)	St. Vincent's Hospital, Tullamore
Roscommon	Sacred Heart Home, Roscommon
Sligo	St. John's Hospital, Sligo
Tipperary North (Thurles)	Hospital of the Assumption, Thurles
Tipperary South (Cashel)	St. Patrick's Hospital, Cashel
Waterford (Dungarvan)	St. John's Hospital, Dungarvan
Westmeath (Mullingar)	St. Mary's Hospital, Mullingar
Wexford (Enniscorthy)	St. John's Hospital, Enniscorthy
Wicklow (Rathdrum)	St. Colman's, Rathdrum

Appendix C: Members of the Interdepartmental Group

Fergal Lynch (Chair), Department of Children Equality, Disability, Integration and Youth

Laura McGarrigle, Department of Children Equality, Disability, Integration and Youth

Caitríona O'Connor, Department of Children Equality, Disability, Integration and Youth

James Gibbs, Department of Children Equality, Disability, Integration and Youth

Janet Lacey, Department of Children Equality, Disability, Integration and Youth

Niamh Callaghan, Department of Public Expenditure and Reform

Fionnuala Bourke, Department of Public Expenditure and Reform

Brenda Boylan, Department of the Taoiseach

Pamela Carter, Department of Health. Replaced by Catherine Bannon

Valerie Hughes, Department of Health. Replaced by Angela Noonan

Teresa Fitzgibbon, Department of Education

Hugh Geoghegan, Department of Education

Christine O'Rourke, Office of the Attorney General (alternate: Diarmuid Cunniffe)

Ben Mannering, State Claims Agency