

Chapter 4:

Recommendations

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Introduction

- 1 The Inquiry's Terms of Reference require the Inquiry to make recommendations and findings on the following matters:
 - an apology - by whom and the nature of the apology;
 - findings of institutional or state failings in their duties towards the children in their care and if these failings were systemic;
 - recommendations as to an appropriate memorial or tribute to those who suffered abuse;
 - the requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims.
- 2 As can be seen from the Terms of Reference, it is for the Northern Ireland Executive to decide whether to accept our recommendations:

“However, the nature or level of any potential redress (financial or the provision of services) is a matter that the Executive will discuss and agree following receipt of the Inquiry and Investigation report.”
- 3 Throughout the Inquiry we have heard evidence about systemic physical, sexual and emotional abuse of children in institutional care and about neglect and unacceptable practices in children's homes. Whilst we recognise that any recommendations we might make cannot undo the hurt suffered by the survivors of abuse, in making our recommendations we have adopted the following criteria.
 - They should, so far as reasonably possible, ensure that the nature and scale of the experiences of children abused whilst in residential institutions in Northern Ireland are appropriately acknowledged.
 - Where there were systemic failings on the part of the state and/or the institutions that provided residential care to children under eighteen, that practical forms of redress are made to them.
 - Where necessary, appropriate steps are taken to ensure that such abuse and systemic failings are prevented in the future.
- 4 From the beginning of our work we have given considerable attention to the subject of redress, and conducted our own researches into redress schemes in other jurisdictions. Part of this process involved discussions with those who have been involved with, or have studied, redress schemes for the victims of sexual and other forms of abuse in Canada, Australia, the Republic of Ireland, the Netherlands and Germany. Whilst we found these

discussions extremely helpful, and some of our recommendations echo steps that have been taken in other jurisdictions to provide redress for the victims of historical institutional abuse, each jurisdiction has its own views on what is appropriate, not least in deciding what is the appropriate level at which financial compensation should be paid.

- 5 Because we believed the recommendations for a redress scheme that we make to the Northern Ireland Executive should take into account the views of those who may be affected by such a scheme, witnesses who gave evidence during the public sessions that they have been abused were asked for their suggestions as to what form of redress might be appropriate. We recognised that witnesses who had already spoken to the Inquiry in public sessions may, on further reflection, have additional suggestions or comments to make on the issue of redress. The witnesses who spoke to the Public Inquiry part of our process were not the only ones whose views we wanted to hear. The 129 applicants who only spoke to the Acknowledgement Forum did not have the same opportunity to make comments and suggestions on the subject of redress, and because they were equally entitled to make comments and suggestions we gave them the same opportunity to give us their views on this subject.
- 6 We gathered additional evidence by way of a consultation in which we invited comments and suggestions from all our applicants on what form a redress scheme might take. We believe that this was an unprecedented step for a public inquiry to take, certainly for an inquiry in Northern Ireland.
- 7 The consultation took the form of the questionnaire to be found at Appendix 1, and the numbers of responses to each question are shown in the table in Appendix 2. 541 questionnaires were issued and 330 were returned, a very high return rate of 61% for a document of this type. 232 of those responding added “General Comments”. We have taken the responses into account when formulating our Recommendations.
- 8 We received information from The Executive Office on aspects of redress schemes for those abused as children in residential institutions in other jurisdictions. We were also sent proposals by a group calling itself “The Panel of Experts” consisting of representatives of groups active on behalf of children abused in some residential institutions, lawyers who acted on behalf of such individuals, and academics with an interest in this field. We have taken this information and these proposals into account when finalising our proposals.

An apology

- 9 Mixed views were expressed about the desirability of an apology from any institution by applicants who gave their views during the public hearings. Some firmly demanded one, others equally firmly said that they either saw no point in one, or would not accept one if it was given. During each module the core participants had the opportunity to express an apology for any abuse and systemic failings for which they or their predecessors were responsible, and many did so.
- 10 We believe that an apology can be valuable as a formal recognition by government, or by a public authority, or by an institution, that they, or their predecessors, made mistakes in the way they treated the children in their care. As our conclusions on individual modules make clear, it was not only the religious and voluntary bodies that provided and organised the institutions we investigated that were at fault, we also found systemic failings on the part of the public authorities in the form of County Welfare Authorities, Health and Social Service Boards, the Ministry of Home Affairs, the Department of Health and Social Services and the Northern Ireland Office, when it was responsible for criminal justice institutions, and the RUC.
- 11 **We recommend that the Northern Ireland Executive and those who were responsible for each of the institutions investigated by the Inquiry where we found systemic failings should make a public apology. The apology should be a wholehearted and unconditional recognition that they failed to protect children from abuse that could and should have been prevented or detected. We also recommend that this should be done on a single occasion at a suitable venue.**

Memorials

- 12 Physical structures such as sculptures or plaques are valued as visible reminders of past events or individuals whose memory should be commemorated. As in the case of an apology, there were differing views expressed by applicants, many of whom were very strongly of the opinion that a memorial was not appropriate because they did not want to be reminded of their experiences as children in residential institutions. Whilst we respect that view, we are of the opinion that a memorial should be erected to remind legislators and others of what many children experienced in residential homes. **We recommend that a suitable physical memorial**

should be erected in Parliament Buildings, or in the grounds of the Stormont Estate.

- 13 The design of such a memorial should be chosen by a competition conducted by the Arts Council of Northern Ireland. The Arts Council should invite representatives of those who were abused as children in residential institutions in Northern Ireland to help in the selection of the successful design. The memorial should be paid for by the Northern Ireland Executive.

Additional provision for those who were abused

- 14 A common theme of the comments by applicants during their evidence at the public hearings, and in their responses to the Questionnaire, was that their experiences as children who were abused had a lasting effect on their lives, and that services should be available to them to enable them to cope with these problems. The areas that were most frequently identified as still causing difficulties for those who were abused we identified in the Questionnaire.
- Mental health problems.
 - Other health problems.
 - Literacy and numeracy problems.
 - Counselling.
 - Addiction problems.
 - Employment problems.
 - Access to education.
- 15 No single agency can deal effectively with such a multiplicity of issues, but steps to address these issues will need to be co-ordinated to ensure that existing facilities are made readily available to those who need them, and where there are gaps in the services already available these can be identified and remedied. We consider that the best means of addressing the specific needs of those who experienced abuse as children would be by the creation of a post whose holder would act as an advocate for those children who were subjected to abuse whilst under 18 and resident in institutions within our Terms of Reference. **We therefore recommend that a designated person should act as an advocate for such children, and should be responsible for ensuring the co-ordination and availability of services, and identifying suitable means whereby such services can be made available to those who need them.**

This person should be called the Commissioner for Survivors of Institutional Childhood Abuse (COSICA).

- 16 The Commissioner (who should be assisted by the necessary staff) should be entirely independent of government and the organisations that ran the institutions, but should be funded by government. The Commissioner would have a number of responsibilities.
- (a) Act as an advocate for all those who were abused as children in residential institutions in Northern Ireland between 1922 and 1995.
 - (b) Encourage the co-ordination and provision of relevant services free of charge for those who were so abused.
 - (c) Provide a central point of contact for providing advice on the services and facilities available; and provide assistance to those who suffered abuse to contact those services. This would include providing a hotline and internet advice.
 - (d) Be responsible for monitoring the matters referred to at 22 (a) and (b) below.
 - (e) Assist in the provision of advice and information to those who wish to apply for compensation to the HIA Redress Board proposed below.
 - (f) Assist people to access records about the time they spent in homes including admission and discharge dates to enable them to apply for compensation to the HIA Redress Board proposed below.
 - (g) Monitor the operation of the HIA Redress Board proposed below.
- 17 **We recommend the Commissioner should be assisted by an Advisory Panel consisting of individuals who as children were resident in residential homes in Northern Ireland. The members of the Advisory Panel should be chosen by the First Minister and deputy First Minister in accordance with the normal processes for public appointments in Northern Ireland.**
- 18 We understand that The Executive Office has funded a number of groups of former residents of residential homes for children, and **we recommend that such funding should continue on a transitional basis until such time as the members of the Advisory Panel have been appointed.**
- 19 The operation of, and need for, COSICA should be reviewed after five years.
- 20 Our Terms of Reference were limited to abuse that occurred in those institutions that came within our Terms of Reference, but we heard some

evidence of abuse of children in other circumstances, such as schools or foster care. It is not for us to say whether there should be other inquiries into allegations of abuse and systemic failings in such areas. However, if our Recommendations are implemented, we suggest that consideration be given to expanding the functions of COSICA as necessary to include other forms of abuse suffered by children, such as clerical abuse, abuse in schools or abuse suffered whilst in foster care.

- 21 So that the Commissioner would be, and would be seen to be, independent, and to ensure that the office would be adequately resourced, the office of Commissioner should be:
 - (a) created by statute;
 - (b) allocated a separate budget; and
 - (c) required to report once a year to the NI Assembly.

Specialist care and assistance

- 22 Sufficient funds should be made available by government on a ring-fenced basis for a fixed period of ten years, subject to a review after five years, to establish dedicated specialist facilities in Belfast, Derry and, if necessary, at other suitable locations across Northern Ireland to provide:
 - (a) general counselling services for those who have suffered abuse as children in residential institutions in Northern Ireland, supported by appropriate links to the health service and to other relevant housing, education and employment services; and
 - (b) practical help with literacy and numeracy, education, employment, housing and benefits advice tailored to the needs of individual victims of institutional abuse.

Financial compensation

- 23 On 4 November 2015 we announced that, based on the evidence we had heard, we would recommend that compensation should be payable to those who had been abused whilst in residential children's homes within our Terms of Reference.
- 24 The great majority of redress schemes that we have considered throughout the English-speaking world provide for lump sum payments to those entitled. Some argue that a more sensible form of redress would be to provide regular payments in the form of a benefit or pension, thereby

ensuring that the money is regularly available and is less likely to be dissipated unwisely. Whilst we can see some validity in that argument, we consider that a lump sum payment is preferable for a number of reasons.

- The recipient has the benefit of a lump sum to use as he or she thinks best, for example by giving some or all of the money to their children, by purchasing an annuity, or by paying for the cost of travel to the United Kingdom or Ireland to have contact with relatives.
- It is easier to identify the possible total cost of the redress.
- It is easier to administer, particularly if a redress scheme is time limited, and does not require a permanent organisation to be created and staffed as would be the case were the compensation to take the form of regular payments.

We therefore recommend that compensation should take the form of a lump sum payment.

- 25 Although some have argued that the institutions responsible for any abuse should be responsible for compensation, it must be remembered that the Inquiry has not investigated every institution in respect of which there have been allegations of abuse. As well as those we examined during our public hearings, as we explained on 4 November 2015 there were some other homes that were subject to specific, targeted investigations.
- 26 In addition there were another 43 homes or institutions where we decided that any further investigations into them would not be justified. This was because we were satisfied that further investigations were neither necessary nor proportionate, and would not add to our understanding of the nature and extent of systemic abuse of children in homes and institutions in Northern Ireland within our Terms of Reference. We emphasised that this did not mean that we had decided that abuse did not occur in those homes or institutions. Any compensation scheme has therefore to provide for those who may have been abused in homes or institutions that we did not investigate.
- 27 In addition, there may well be applications for compensation by individuals who were abused in homes or institutions against which no complaints were made to us. Some of those homes or institutions may no longer exist, nor may the organisations that ran them. Even if they do exist, those responsible for them now may not have sufficient funds to pay compensation, or may not be covered by insurance. If compensation were only payable by those responsible for the homes we investigated, and

have the funds to pay, that would mean that many who were abused might not receive compensation.

- 28 A further important factor is that we have found that employees of local authorities, health boards and Government departments were also guilty of abuse. In addition, these organisations were guilty of systemic failings in the homes or institutions they organised, such as Rathgael, Millisle, Lissue, Kincora and Bawnmore, or were responsible for inspecting in the case of the Ministry of Home Affairs and the DHSS.
- 29 For these reasons we believe that only a government-funded compensation scheme can ensure that all of these contingencies are provided for. If such a scheme is not provided, it is likely that many of those who should be compensated will not be compensated. **We recommend that the Northern Ireland Executive create a publicly funded compensation scheme.**

The HIA Redress Board

- 30 This publicly funded compensation scheme should be distinct from the Northern Ireland Criminal Injuries Compensation Scheme 2009 (The 2009 Scheme). As there will be similarities to the 2009 Scheme we considered whether the most effective and economical way to administer such a compensation scheme would be through Compensation Services who administer the 2009 Scheme. However, as we understand the position, in practical terms Compensation Services operates in a different fashion to the compensation scheme we propose below. First of all, when deciding whether an application comes within the 2009 Scheme it is dependent on information provided by the PSNI following a police investigation into the criminal offence(s). Secondly, in assessing the amount of compensation to be awarded it applies a tariff-based scheme to identify where on a wide scale of injuries the applicant's injury or injuries can be said to fall. The amount(s) prescribed by the tariff scheme is then selected.
- 31 Whilst such an approach is no doubt appropriate for a permanent compensation scheme where the facts of each case have been investigated by the police, we consider that such an approach would not be appropriate for a compensation scheme covering a wide range of different institutions where different conditions prevailed at different times, where the circumstances of individual applicants should be individually assessed, and where not every institution has been investigated by our Inquiry.

- 32 **We consider the appropriate method of administering the compensation scheme is to create a specific Historic Institutional Abuse Redress Board for that purpose, and we so recommend. The HIA Redress Board should be responsible for receiving and processing applications for, and making payments of, compensation.**
- 33 **It should be set up by the Northern Ireland Executive and consist of a Chief Executive and such administrative staff as required to administer the HIA Redress Board.**
- 34 **The HIA Redress Board would also consist of such judicial members as may be required, one of whom should be appointed by the Lord Chief Justice as President of the Redress Board.**
- 35 **The Chief Executive would be the accounting officer for the HIA Redress Board, and responsible for the administration of the HIA Redress Board, but would be obliged to comply with all directions given by the President of the Redress Board for the allocation of business to, and the discharge of functions by, a judicial member, whether sitting as a single member or as a member of the Appeal Panel.**
- 36 **The President of the Redress Board would be responsible for all matters relating to the discharge of functions by the judicial members.**
- 37 **We consider that the decisions to be made by the judicial members of the HIA Redress Board would be of the type made by judges in civil proceedings. In order that the judicial members would be seen to have the necessary experience and independence we recommend that the judicial members be appointed by the Lord Chief Justice and be persons who hold, or who have held, judicial office as judges of the Court of Judicature in Northern Ireland or of the County Courts in Northern Ireland.**
- 38 **We recommend (a) that a sufficient number of judicial members be appointed as members of the HIA Redress Board. Each judicial member should be remunerated on a fee paid basis for each day or half day they were engaged on the business of the HIA Redress Board. (b) Rules governing the applications for compensation, and the procedures to be followed by the judicial members, including the Appeal Panel, should be made by the Department of the Northern Ireland Executive responsible for the funding of the HIA Redress Board, subject to the consent of the Lord Chief Justice.**

Procedures for awarding compensation

- 39 Many applicants to the HIA Inquiry who apply to the HIA Redress Board will have given their account of their experiences on more than one occasion. In addition, in order for a decision to be made whether they are entitled to compensation, and if so what the amount of compensation should be, it may be necessary to explore sensitive personal matters that many victims of abuse would find it upsetting to have to discuss in a public forum. **We therefore recommend that the judicial member and the Appeal Panel should make decisions as to whether compensation should be paid, and if so, the amount to be paid, solely on the basis of the written material submitted by the applicant, and any other written material the judicial member or the Appeal Panel consider relevant.**
- 40 **We recommend that the Redress Board should be structured in the following way.**
- (a) **A single judicial member of the HIA Redress Board should decide whether compensation should be payable, and if it is payable, the amount to be paid. Brief reasons for the decision should be given in writing.**
 - (b) **A person or persons dissatisfied by the decision of the single judicial member of the HIA Redress Board should be entitled to appeal to an Appeal Panel whose decision would be final.**
 - (c) **The Appeal Panel would consist of three other judicial members of the HIA Redress Board selected by the President of the Redress Board.**
 - (d) **The Appeal Panel would make their decision on the same materials that were before the judicial member.**
 - (e) **The appeal would take the form of a complete reconsideration of the application.**
 - (f) **The Appeal Panel should have the power to affirm the decision of the judicial member, or to substitute its decision for that of the judicial member, including the power to vary the order made by the judicial member by awarding a higher or lower figure for compensation.**
 - (g) **In exceptional circumstances if it is necessary in the interests of justice the single judicial member or the Appeal Panel should have the power to (i) admit fresh evidence, and (ii) order an oral hearing.**

- (h) **Any oral hearing, whether by a single judicial member or the Appeal Panel should be held in private.**
- (i) **Decisions of the Appeal Panel should be by a majority, and the reason(s) for the decision should be given briefly in writing to the applicant and any other person the single member or the Appeal Panel consider should receive a copy of the decision.**

Eligibility for compensation

- 41 We consider compensation should not be payable to anyone merely because they were resident in an institution within our Terms of Reference. Many of those who were resident in these institutions were not abused in any way, and we consider there is no justification for awarding compensation to individuals merely because they were in homes where others were abused, but they were not themselves abused, and were unaware of abuse taking place.
- 42 **We therefore recommend that compensation awarded by the HIA Redress Board should only be payable to, or in respect of, a person who can show (or their estate can show) on the balance of probabilities that they:**
- (a) **suffered abuse in the form of sexual, physical or emotional abuse, or neglect or unacceptable practices, between 1922 and 1995; and**
 - (b) **were resident in a residential institution in Northern Ireland as defined by the Terms of Reference of the HIA Inquiry when they suffered the abuse; and**
 - (c) **were under 18 at the time.**
- 43 In some, though not all, of the institutions we investigated there was a harsh environment that affected all the children in that institution at that time. Other children who were exposed to that harsh environment, but were not themselves abused, were still affected by the general regime and the impact of what they witnessed, and therefore were also abused. **We recommend that such persons also should be regarded as having been abused and should also be eligible for an award of compensation by the HIA Redress Board.**
- 44 **Living persons should be eligible to receive a full payment.**

- 45 Not all redress schemes allow the surviving spouse or children of a person who was abused but who died before they could receive compensation to receive all or part of the amount the person would have had they lived. Payment under a redress scheme is designed to compensate an abused person for the effect of the abuse on him or her. However, many applicants to the Inquiry stressed the adverse effect of their experiences upon their adult lives when it came to being a spouse or parent, and said their families suffered as a result of their parent's experiences. We accept that was the case for many of those who spoke to us.
- 46 An additional consideration is what happens to those who were abused but died before they could claim compensation, or before their claim was dealt with. We are aware that, so far, at least eleven applicants to the Inquiry have died since they made their application, and sadly more may die before the HIA Redress Board could come into operation, or before their claim may be dealt with by the HIA Redress Board.
- 47 **We believe that it would be just and humane for only those directly affected, namely the spouse or children of a person who died after a prescribed date to be able to claim 75% of the compensation that would have been awarded to their spouse or parent, and we so recommend.** The Northern Ireland Executive announced that it intended to set up an Inquiry on 29 September 2011, and **we recommend that that should be the prescribed date, and that any person living on that date should be entitled to compensation from the HIA Redress Board.**
- 48 Where a person entitled to compensation died after 29 September 2011 we recommend that the following provisions should apply.
- (a) **Only the spouse or children of the deceased should be able to recover 75% of the award that would have been made to the person had he or she survived.**
 - (b) **Those entitled to the 75% proportion of the award will be the beneficiary or beneficiaries of the person's estate where the victim left a will. If the person died without leaving a will then the entitlement will be decided in accordance with the law of the country in which the person resided at the time of his or her death.**
 - (c) **Where more than one person is entitled to share in the estate of the deceased their respective shares will be decided in**

accordance with the law of the country in which the person lived at the time of his or her death.

- 49 We believe that a person should not be entitled to be compensated twice for abuse they suffered. **If a person has already received compensation through civil proceedings for his or her time in a residential institution within our Terms of Reference we recommend that person should not be entitled to a payment from the HIA Redress Board.**
- 50 **A person who has instituted civil proceedings against an institution or a public body or a government department for abuse suffered by that person whilst under 18 in a residential institution in Northern Ireland within our Terms of Reference must decide whether to continue his or her civil action or apply to the HIA Redress Board. They should not be able to do both, and must terminate those civil proceedings in a final manner before they apply to the HIA Redress Board.**
- 51 **We consider that a person who wishes to institute, or continue, civil proceedings instead of applying for compensation to the HIA Redress Board should be entitled to do so, but should not be able to top up any payments they have received, or may receive, by applying to the HIA Redress Board in the hope of obtaining a further payment in respect of abuse suffered in the same institution.**
- 52 **However, for the avoidance of doubt we wish to make it clear that this would not prevent a person who has already received compensation in civil proceedings in respect of abuse suffered whilst a resident in one institution from receiving compensation from the HIA Redress Board for abuse suffered whilst resident in a different institution, provided that institution was not managed by the same organisation against whom the earlier civil proceedings were taken.**
- 53 To allow applicants to claim in civil proceedings and from the HIA Redress Board would be contrary to the principle that compensation from the HIA Redress Board should be an alternative, and not a supplement, to compensation received as a result of civil proceedings.
- 54 To allow applicants who have accepted settlements, or who have instituted civil proceedings that were unsuccessful, would be contrary to the principle that litigation should be final; would cause difficulties for the courts and HIA Redress Board in deciding which case was to be dealt with first; and would cause difficulties for the courts and HIA Redress Board when deciding what the other had already taken into account and why.

- 55 However, in one instance only we consider that those who have been unsuccessful in civil proceedings based on abuse they suffered under the age of eighteen while in residential institutions in Northern Ireland should still be allowed to claim from the HIA Redress Board. As can be seen from the decisions in *McKee v Sisters of Nazareth and Irvine (Una) v Sisters of Nazareth* to which we refer below, claims for abuse suffered by former residents in institutions within our Terms of Reference brought by way of civil proceedings can be defeated by the operation of the limitation defence.
- 56 Possible changes in that defence in civil proceedings raise complex issues which are not for us to address, but we have recommended that compensation should be paid under the HIA Redress Scheme to anyone who suffered abuse between 1922 and 1995. We consider that it would be unjust if the small number of individuals whose claims in civil proceedings were defeated solely because of the application of the limitation defence were not to receive compensation from the HIA Redress Board when others who suffered abuse during the period 1922 to 1995 would be compensated by the HIA Redress Board. **We therefore recommend that a person who brought civil proceedings based on abuse in institutions within our Terms of Reference whose cases were dismissed solely because of the operation of the limitation defence should not thereby be disqualified from claiming compensation from the HIA Redress Board.**
- 57 We also make the following recommendations relating to the payment of compensation by the HIA Redress Board:
- (a) **It should not be a requirement for the payment of compensation that the person has to have reported the abuse to the police, nor should it be a requirement that the person engaged with the HIA Inquiry.**
 - (b) **Criminal convictions should not result in the withholding of, or the reduction of, compensation otherwise payable. It should not be a bar to compensation if the abuse happened within a family in the case of a child who had been placed by a residential institution with a family for a short time.**
 - (c) **It should not be a bar to compensation that the abuse occurred outside the physical boundaries of an institution but within its area of responsibility. For example, abuse that occurred on camping trips or holidays organised by the institution, or when a child had been placed by the institution with a family, or in**

the care of a volunteer authorised by the institution, should result in compensation.

Compensation procedures

- 58 A number of important practical aspects of the procedures for applications for compensation to the HIA Redress Board have to be provided for if those procedures are to be as straightforward, effective, and efficient as possible, **and the following recommendations are intended to enable these objectives to be achieved.**
- (a) **The statement of a person who made a statement to the Statutory Inquiry or to the Acknowledgement Forum if they did not also apply to the Statutory Inquiry should be accepted as the basis for compensation unless the person did not appear to give evidence to the Statutory Inquiry when requested to do so.**
 - (b) **The application forms for, and the procedure for assessing entitlement to, compensation must be designed in such a way as to be simple and user-friendly so as not to be off-putting to applicants.**
 - (c) **The judicial members of the HIA Redress Board should apply the definition of abuse used by the Inquiry, and take the findings of the Inquiry into account when considering whether an individual person was abused.**
- 59 Many have urged that a redress scheme be set up as a matter of urgency, not least because many applicants to the Inquiry were elderly or in poor health, and may not live to receive compensation if it takes a long time to set up a redress scheme. Whether the HIA Redress Board is put on a statutory or on an *ex gratia* basis, we urge the speedy implementation of our Recommendations.
- 60 As we have provided a detailed framework for the recommended compensation scheme and for the HIA Redress Board that would administer the compensation scheme we consider that if the implementation of our recommendations is addressed by the Northern Ireland Executive and Assembly in a positive and energetic fashion any legislative or administrative procedures that are required to create the HIA Redress Board can be put in place in time to enable the first payments to be made by the HIA Redress Board by the end of 2017.

- 61 **We recommend that priority is given by the HIA Redress Board to those applicants who are over 70 or in poor health.**
- 62 The Inquiry gave anonymity to applicants, although some chose to waive that anonymity. We intend that anonymity should continue indefinitely. The Inquiry also gathered a great deal of information, some of which is specific to the person concerned, such as their social services records, or is important to a proper understanding of the circumstances surrounding their time in institutions. This would include records held by the police or the institution concerned which would have a bearing on the proper level of compensation. Examples include witness statements made where there were complaints to the police, or admission records showing the time an individual spent in different institutions, because quite understandably many are not sure of the exact dates when they were in a particular institution, especially if they were in more than one institution.
- 63 While much information relevant to compensation is contained in the transcripts of the evidence relating to particular individuals, where the identity of that individual is covered by a designation that could be a significant impediment to establishing the necessary facts upon which an award of compensation should be made by the HIA Redress Board. Many documents such as social services records contain information about parents and other family members that may be relevant, but which should not be publicly available.
- 64 The Inquiry does not intend to place all the documents we have gathered in the public domain, but we will place such material in the Public Record Office for Northern Ireland (PRONI) subject to the condition that access is prohibited for 100 years.
- 65 To enable a person who applied to the Inquiry to seek compensation from the HIA Redress Board **we recommend that PRONI may only give access to material lodged by the Inquiry to an applicant to the HIA Redress Board where the applicant agrees to disclose his or her full name, date of birth and such other details that the HIA Redress Board reasonably considers necessary to decide whether compensation should be paid by the HIA Redress Board, and if compensation should be paid, the amount of the compensation.**
- 66 **We recommend that those details, and the relevant material relating to the applicant, shall only be disclosed by PRONI to the applicant and to the HIA Redress Board as either may reasonably require**

in order to decide whether compensation should be paid to the applicant, but, subject to the next paragraph, shall not be disclosed to anyone else without the written consent of the applicant.

- 67 **We recognise that there may be circumstances where a court in Northern Ireland considers that the interests of justice require the disclosure of such material deposited by the Inquiry with PRONI, and we recommend that regulations be made to enable such court orders to be complied with.**
- 68 We recognise that in some cases, particularly if claims are made for compensation for abuse alleged to have been suffered in any institution that was not investigated by the Inquiry, it may be necessary for the HIA Redress Board to put in place procedures to give notice to the institution concerned, or its successor if there is one, and to an identifiable individual who is alleged to have committed the alleged abuse, or who could give information about the allegation, to provide that information to the HIA Redress Board. We recommend that the HIA Redress Board put in place such procedures as may be necessary to enable such steps to be taken, and that the necessary powers be provided to enable this to be done.

Amount of compensation

- 69 As part of our consideration of the issue of compensation, and who should be compensated, and what the amount of compensation should be, we gathered information about as many civil claims that have been brought against institutions within our Terms of Reference as we could. We then analysed the awards to see what amounts of compensation had been awarded to, or accepted by way of settlement, by plaintiffs who had taken civil action against any of these institutions in Northern Ireland.
- 70 We believe that such an exercise on such a scale has never been attempted before in the United Kingdom because of the difficulty in obtaining information in respect of awards in civil claims against institutions within our Terms of Reference as many have been settled on confidential terms. We exercised our powers under section 9 of the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013 to require the provision of this information. Whilst we regard the details of individual awards as confidential, we have been able to gather much relevant information, the results of which are contained in Tables 1 and 2 in Appendix 3.

- 71 We know that 147 applicants to the Inquiry have instituted civil proceedings, and 67 individuals who did not apply to the Inquiry have also done so. We have established that of the 214 cases, 34 cases brought by applicants to the Inquiry, and 33 cases brought by individuals who did not apply to the Inquiry, resulted in payments being made to the plaintiff. We understand that 147 cases are therefore still unresolved.
- 72 We analysed the amounts that have been accepted in settlement by those who have taken civil proceedings, and the results are shown in the Tables at Appendix 3 to this Chapter. As the figures show, of the 67 cases where compensation has been paid as the result of civil proceedings in Northern Ireland no settlement has been for less than £5,000; and only seventeen settlements exceeded £20,000. Of those seventeen cases, only seven exceeded £30,000. Of the seven settlements over £30,000 the highest settlement figure was £60,000, and that was in only one case. We consider that the amounts to be paid by the HIA Redress Board should be in line with the amounts that litigants who have taken civil proceedings in Northern Ireland have received in respect of abuse suffered whilst they were residents in institutions within our Terms of Reference.
- 73 We have also taken into account the recent decisions in the High Court of Justice in Northern Ireland *McKee v Sisters of Nazareth* [2015] NIQB 93 and *Irvine (Una) v Sisters of Nazareth* [2015] NIQB 94. In both cases the actions were dismissed because the plaintiff could not overcome the limitation defence, but Mr Justice Horner and Mr Justice Colton respectively helpfully indicated the amounts they would have awarded the plaintiffs had their cases succeeded. In *McKee* Mr Justice Horner felt that the range of damages would have been between £5,000 and £7,500, and the award would have been £6,500. In that case the judge said that he would have awarded:
- “...a modest sum to reflect the nature of the harsh and brutal regime that was in place at Nazareth Lodge during [Mr McKee’s] short time there.”
- 74 In *Irvine* Mr Justice Colton accepted that the plaintiff:
- “...was subjected to corporal punishment which went beyond what was reasonable or lawful. An obvious example of this was her being punished by being struck with a stick with nails in it after she had been stealing apples from a nearby orchard. I also accept that she was subjected to unlawful assaults by way of discipline in particular from

Sister Coleman. There is also in my view credibility to her allegation that she was not permitted to go to the toilet when she wet herself and that generally she was subject to a harsh and uncaring regime...In terms of physical injuries it does not appear that the Plaintiff sustained any significant injuries. At no stage for example did she require medical assistance because of any assaults. Nonetheless, on the Plaintiff's evidence assaults were fairly frequent and occurred over a sustained period of time. For the physical injuries suffered by the plaintiff I would have awarded £7,500."

The judge dealt with a claim for psychiatric injuries in the following passages of his judgment.

"The main complaint relates to the emotional trauma suffered by the Plaintiff and psychiatric injury. By reason of the assaults to which I have referred and to the overall harsh nature of her care the Plaintiff alleges that she has suffered both emotional stress and psychiatric injury... This is not a case where the Plaintiff can establish that as a result of tortious acts by the defendant she has suffered an actual psychiatric injury. At best she has been rendered vulnerable to psychiatric injury and that injury has materialised because of other stressors in her life. Had it not been for the limitation defence my judgment is that a figure of £20,000 would be an appropriate award for this aspect of the case having regard to the medical evidence which I heard and carefully considered."

The judge therefore indicated that he would have awarded the plaintiff £27,500 in total had her case not been defeated by the limitation defence. Whilst the plaintiffs' claims in both cases were defeated by the operation of the limitation defence, their experiences were typical of many applicants who gave evidence to our Inquiry.

- 75 We do not consider that there is any reason why awards by the HIA Redress Board should be materially out of line with amounts that have been already been paid as a result of litigation, whether against individual institutions or public authorities, or by the state in the form of Criminal Injury Compensation, or which may be awarded by the courts. We believe that such awards are the appropriate benchmark against which awards by the HIA Redress Board in this jurisdiction should be measured.
- 76 We consider that there should be a minimum amount that would be awarded to a person who can show that they have been abused in a

residential institution, and that the upper limit of awards should be capped at a figure that would be sufficient to provide fair compensation for the worst cases, taking into account the highest settlements that there have been to date on the basis that there are likely to be few such awards by the HIA Redress Board, whilst leaving a certain amount of headroom in case a small number of cases are brought that would justify awards between £60,000 and £80,000. In what we believe would be a handful of cases where awards exceeding £80,000 (or £100,000 in the case of Australian applicants) might conceivably arise, the option of civil proceedings with an unlimited award would continue to be available.

- 77 Some applicants believe that had they not been abused whilst resident in a children’s home that they would have had had more success in life, and so earned more money. We consider that if a person wishes to claim for loss of earnings in adult life then they should pursue such a claim for loss of earnings as part of a claim in civil proceedings, and that claims for loss of earnings should not be allowed under the capped compensation scheme we recommend.
- 78 **We therefore recommend that every person entitled to compensation should receive a standard award sufficient to cover those forms of abuse that were widespread and suffered by a significant number of children, such as unacceptable living conditions, excessive domestic work, loss of earnings for excessive work done by children in children’s homes, minor physical abuse, or being subjected to emotionally abusive behaviour, but not for any other form of loss of earnings.**
- 79 **Those who may have been more significantly affected, or who were subjected to more serious forms of abuse of any type, such as sexual abuse or serious physical abuse, would be entitled to an enhanced payment from the HIA Redress Board.**
- 80 **Those sent to Australia under the Child Migrants Scheme should receive a special payment in addition to any other payment to which they might be awarded by the HIA Redress Board. The special payment should be of a sum sufficient to recognise the injustice they suffered as young children by being sent to a far away land and losing their sense of identity as a result.**
- 81 **We recommend that the amount of compensation should therefore consist of one or more of the following elements.**

- (i) **A standard payment of £7,500 payable to anyone who was abused, including those who experienced a harsh environment, or who witnessed such abuse.**
 - (ii) **An additional payment of £20,000 in respect of a person sent to Australia under the Child Migrants Scheme.**
 - (iii) **An additional enhanced payment to anyone who was more severely abused.**
- 82 **The maximum amount of compensation payable in respect of (i) and (iii) should not exceed £80,000, and the maximum payment in respect of (i), (ii) and (iii) should not exceed £100,000.**
- 83 **We also recommend that social security payments should not be affected by lump sum payments awarded by the HIA Redress Board.**
- 84 Lump sum payments of damages for personal injury, or by way of criminal injury compensation, are not taxable, and we consider that lump sum payments made by the HIA Redress Board should be treated in the same way. **We recommend that payments of compensation should not be taxable, and that the Northern Ireland Executive make representations to the Treasury and to HMRC to achieve this.**

Legal Aid

- 85 We accept that in order for them to pursue their claims effectively applicants to the HIA Redress Board, particularly those who were resident in an institution not investigated by the Inquiry, will require legal representation in order to obtain the necessary evidence to bring their application. **We recommend that applicants should be eligible for legal aid to allow them to obtain legal assistance to make an application for an award.**
- 86 **We recommend that the costs of a successful application should be paid to the applicant’s legal representatives on the County Court Scale. The County Court Rules Committee should be invited to suggest a scale of costs for cases for awards between £30,000 and £80,000. No additional costs should be payable where the award is between £80,000 and £100,000 because anyone who went to Australia under the Child Migrant Scheme would receive a fixed award of £20,000 and so there would be no real additional work or responsibility that would justify an extra fee for an award over £80,000.**

- 87 As the Table in Appendix 3 shows, the overwhelming majority of civil abuse cases have been settled for amounts below £30,000, and we see no reason to assume that awards by the HIA Redress Board should not follow a similar pattern. This assumption is subject to the caveat that it is not possible to predict how many people may apply to the HIA Redress Board, or what the amounts of compensation are to which individuals might be entitled.
- 88 However, not every applicant who was a resident in any institution would be eligible because in most institutions there was not a harsh environment of the type that we found existed at certain times within the homes run by the Sisters of Nazareth and the De La Salle Order. In some institutions there were instances of abuse but overall standards of child care were satisfactory.
- 89 In the case of those who were sent to Australia when they were so young that they have no recollection of their experiences in the homes in Northern Ireland before they were sent then such individuals should not receive the standard payment but would receive the special payment of £20,000. A person who could recall the harsh environment in the institution from which they were sent to Australia should receive the standard payment of £7,500 and the special payment of £20,000, a total of £27,500. A person who was sent to Australia and who could show that they had been more significantly affected, or who were subjected to more serious forms of abuse of any type, such as sexual abuse or serious physical abuse, would be also be entitled to an enhanced payment, but could not receive more than the maximum capped award of £100,000.
- 90 We consider that the operation of the HIA Redress Board should not continue indefinitely, but should be time limited, with a reasonable period being allowed in which prospective applicants could be expected to make an application for compensation. **We recommend that applications must be made within five years from the coming into existence of the HIA Redress Board, which should then close to new applicants after that date.** If other forms of abuse such as clerical abuse, or abuse in schools, were to be added to the HIA Redress Board then the five year period might have to be amended accordingly.
- 91 **We recommend that the existence of the HIA Redress Board should be adequately publicised in Northern Ireland and elsewhere, and that once the Commissioner’s post has been filled such publicity should**

be the responsibility of the Commissioner. Until the Commissioner's post is filled The Executive Office should be responsible for publicity about the HIA Redress Board.

- 92 **We recommend that the Regulation and Quality Improvement Authority (RQIA) and the Northern Ireland Social Care Council should have regard to any recommendations made to them by the Commissioner about practice issues relating to residential care.**

Contributions to the cost of the compensation scheme

- 93 There is a widely expressed view, which we believe to be valid, that the total cost of compensation awarded to the victims of historical institutional abuse should not fall completely on the taxpayer. **We recommend that any voluntary institution found by the Inquiry to have been guilty of systemic failings should be asked to make an appropriate financial contribution to the overall cost of the HIA Redress Board and any specialist support services recommended by the Inquiry.**
- 94 The amount, and how it would be paid, should be negotiated between the Government and the institution(s) concerned in the first instance. For example institutions may wish to argue that their funds, or their other obligations, are such that they are not in position to make such a contribution, or, in the case of institutions that have already made payments, that the payments or other outlay such as travel costs from Australia, should be taken into account and set off against any contribution to which they may be asked to make so that they do not pay twice over for their failings.
- 95 If agreement as to the amount(s) to be paid by the institution(s) cannot be reached, **we recommend that the Northern Ireland Executive and the institution(s) concerned submit all issues to mediation. If mediation fails then all remaining issues should be dealt with by the Northern Ireland Executive and the relevant institutions agreeing to submit to binding arbitration.**

APPENDIX I - Questionnaire

Name (optional): _____

Questionnaire

In this questionnaire “abuse” means “abuse suffered by an individual while they resided in a residential home (other than a school).”

FINANCIAL COMPENSATION		YES	NO
Q1	Should all victims of abuse receive financial compensation? <i>(if ‘Yes’ go to Q2)</i>	<input type="checkbox"/>	<input type="checkbox"/>
Q2	Should all victims of abuse receive:		
(a)	The same amount of compensation? <i>(if ‘Yes’ go to Q3)</i>	<input type="checkbox"/>	<input type="checkbox"/>
(b)	Should the amount of compensation vary depending upon the amount and type of abuse suffered by the victim?	<input type="checkbox"/>	<input type="checkbox"/>
(c)	Should there be an upper limit on the amount of compensation?	<input type="checkbox"/>	<input type="checkbox"/>
Q3	If a victim of abuse dies before any redress scheme comes into operation, should the amount of compensation that person would have been entitled to if they were still alive be capable of being passed to someone else? <i>(if ‘Yes’ go to Q4)</i>	<input type="checkbox"/>	<input type="checkbox"/>
Q4	Should the amount to be inherited be:		
(a)	100% of the amount of compensation to which the victim would have been entitled?	<input type="checkbox"/>	<input type="checkbox"/>
(b)	A lower percentage? <i>(specify below)</i>	<input type="checkbox"/>	<input type="checkbox"/>
(c)	Specify percentage eg 75%, 50%, 25%?		%

(continue overleaf)

OTHER FORMS OF REDRESS		YES	NO
Q5	Should there be a scheme for the victims of abuse to receive assistance with:		
	<i>(tick all that apply)</i>		
	(a) Mental health problems <input type="checkbox"/>		
	(b) Other health problems <input type="checkbox"/>		
	(c) Literacy and numeracy problems <input type="checkbox"/>		
	(d) Counselling <input type="checkbox"/>		
	(e) Any other form of assistance <input type="checkbox"/>		
	(f) Addiction problems <input type="checkbox"/>		
	(g) Employment problems <input type="checkbox"/>		
(h) Access to education <input type="checkbox"/>			
Q6	Should any form of assistance provided by way of redress to a victim of abuse be:		
	(a) Instead of, or	<input type="checkbox"/>	<input type="checkbox"/>
	(b) In addition to financial compensation?	<input type="checkbox"/>	<input type="checkbox"/>
General Comments			

(continue on another page if necessary)

You can return this form either by using enclosed pre-paid envelope or by email to general@hiainquiry.org. The closing date is **8 January 2016**

Appendix 2 – Summary of Responses

No.	Questions	Yes	%	No	%	Not returned or no answer ¹		No. Issued
Q1	Should all victims of abuse receive financial compensation?	324	60%	4	1%	213	39%	541
Q2	Should all victims of abuse receive:							
Q2 a	The same amount of compensation? <i>(If 'Yes' go to Q3)</i>	135	25%	144	27%	262	48%	541
Q2 b	Should the amount of compensation vary depending upon the amount and type of abuse suffered by the victim?	177	33%	27	5%	337	62%	541
Q2 c	Should there be an upper limit on the amount of compensation?	69	13%	113	21%	359	66%	541
Q3	If a victim of abuse dies before any redress scheme comes into operation, should the amount of compensation that person would have been entitled to if they were still alive be capable of being passed to someone else? <i>(if 'Yes' go to Q4)</i>	305	56%	22	4%	214	40%	541
Q4	Should the amount to be inherited be:							
Q4 a	100% of the amount of compensation to which the victim would have been entitled?	282	52%	16	3%	243	45%	541
Q4 b	A lower percentage?	18	3%	10	2%	513	95%	541

1 This column shows the number of those who either did not return the questionnaire or did not answer the question.

No.	Questions	Yes	%	No	%	Not returned or no answer ¹		No. Issued
Q4 c	Specify percentage eg 75%, 50%, 25% ²							
Q5	Should there be a scheme for the victims of abuse to receive assistance with:							
Q5 a	Mental health problems	293	54%	0	0%	248	46%	541
Q5 b	Other health problems	267	49%	0	0%	274	51%	541
Q5 c	Literacy and numeracy problems	232	43%	0	0%	309	57%	541
Q5 d	Counselling	280	52%	0	0%	261	48%	541
Q5 e	Addiction problems	254	47%	0	0%	287	53%	541
Q5 f	Employment problems	227	42%	0	0%	314	58%	541
Q5 g	Access to education	243	45%	0	0%	298	55%	541
Q5 h	Any other form of assistance	222	41%	0	0%	319	59%	541
Q6	Should any form of assistance provided by way of redress to a victim of abuse be:							
Q6 a	Instead of, or	30	6%	117	22%	394	73%	541
Q6 b	In addition to financial compensation?	273	50%	18	3%	250	46%	541

² Less than 10% of those who answered this question suggested figures other than 100%.

Appendix 3

Table 1

CLAIMS BY APPLICANTS SETTLEMENT BANDS	
Bands (£)	Number of settlements
7,000 - 10,000	11
10,001 - 12,500	2
12,501 - 15,000	8
15,001 - 17,500	0
17,501 - 20,000	2
20,001 - 22,500	2
22,501 - 25,000	1
25,001 - 27,500	0
27,501 - 30,000	2
30,001 - 40,000	4
40,001 - 50,000	1
50,001 - 60,000	1
34 TOTAL	

£716,500	TOTAL AMOUNT PAID	
£21,074	AVERAGE PAYMENT	

Payments made

34 claims (with settlement figures available)

- Total paid out
➤ £716,500.00
- Maximum payment
➤ £60,000.00
- Minimum payment
➤ £7,000.00
- Average payment
➤ £21,074.00

Table 2

CLAIMS BY NON-APPLICANTS SETTLEMENT BANDS	
Bands (£)	Number of settlements
5,000 - 7,500	9
7,501 - 10,000	2
10,001 - 12,500	0
12,501 - 15,000	5
15,001 - 17,500	2
17,501 - 20,000	10
20,001 - 22,500	0
22,501 - 25,000	3
25,001 - 27,500	1
27,501 - 30,000	0
30,001 - 40,000	1
40,001 - 50,000	0
50,001 - 60,000	0
33 TOTAL	

£521,000	TOTAL AMOUNT PAID	
£15,788	AVERAGE PAYMENT	

<u>Payments made: Non-Applicants (NI payments)</u>
33 claims settled
– Total paid out
➤ £521,000.00
– Maximum payment
➤ £35,000.00
– Minimum payment
➤ £5,000.00
– Average payment
➤ £15,788.00