

Report of the Inter-Departmental Group on Mother and Baby Homes

Department of Children and Youth Affairs

July 2014

I. Introduction

The Inter Departmental Group was set up in response to revelations and public controversy regarding conditions in Mother and Baby Homes. This controversy originally centred on the high rate of deaths at the Bon Secours Mother and Baby Home in Tuam, Co. Galway. A local historian, Ms Catherine Corless, sourced details from public records of 796 child deaths, very many of them infants, in this home in the period from 1925 to 1961. There was also considerable anxiety and questions as to the burial arrangements for these infants. Notwithstanding that Tuam was the original focus of this controversy, related issues of death rates, burial arrangements and general conditions have also been raised with regard to Mother and Baby Homes in other locations.

Shortly after the Inter-Departmental Group was established, Dáil Eireann passed a motion, following a Government sponsored amendment, on 11th June 2014 as follows:

“That Dáil Éireann:

acknowledges the need to establish the facts regarding the deaths of almost 800 children at the Bon Secours Sisters institution in Tuam, County Galway between 1925 and 1961, including arrangements for the burial of these children;

acknowledges that there is also a need to examine other "mother and baby homes" operational in the State in that era;

recognises the plight of the mothers and children who were in these homes as a consequence of the failure of religious institutions, the State, communities and families to cherish the children of the nation in the way they should have been cherished and cared for;

acknowledges the valuable work undertaken by historians, archivists and others in relation to these issues;

recognises the fact that there is a clear requirement for records, both public and private, to be gathered for all mother and baby homes in the State to assist in establishing the truth regarding these institutions and the treatment of those who were in their care;

believes that this latest shameful episode in Ireland's painful social history must be fully and accurately documented in order that a comprehensive account of these institutions is available;

notes that as an initial step, a group comprising senior officials across a range of Government Departments has already been established to gather information and report to the Government on the means by which this complex, disturbing and tragic situation can be best addressed; and

agrees that the Government should:

- *complete the process of identifying the relevant information and records, public and private, pertaining to mother and baby homes in the State in an urgent and timely manner;*
- *use the findings of the initial cross-departmental review which is already under way and is to report to the Government no later than 30 June 2014 to inform decisions on the scope, format and terms of reference of a commission of investigation; and*
- *report back to Dáil Éireann on the establishment of this inquiry, the findings of which should in due course be published before the House rises for the summer recess.”*

In the Dáil debates on this matter a range of further specific issues such as adoptions and vaccination trials were raised. Contributions also highlighted concerns regarding specific institutions. The Bethany Home, which was named in the original Sinn Fein motion, was referenced and both the Taoiseach and the Minister for Children and Youth Affairs confirmed the Government’s intention to include this within the Commission of Investigation along with other Mother and Baby Homes. The intention to include records beyond those in the possession of the State was outlined. The powers under the Commission of Investigation Act, 2004 to compel records were noted as was the support of church leaders for the setting up of the proposed Commission.

Other residential institutions and children’s homes were also referenced by Deputies, as was the relevance for contemporary issues including children’s current experiences in areas such as direct provision.

II. Membership of the Inter-Departmental Group

The following Departments are represented on the Group at official level:

Department of Children and Youth Affairs (Chair)

Department of the Taoiseach

Department of Social Protection

Office of the Attorney General

Department of Health

Department of Education and Skills

Department of Justice and Equality

Department of Foreign Affairs and Trade

Department of the Environment, Community and Local Government

General Register Office

The National Archives

III. Role of the Inter-Departmental Group

The Group understands its role to be one of informing and supporting Government in the decisions that will be necessary on the Terms of Reference. The work and approach of the Inter-Departmental Group has been adapted to take cognisance of the motion adopted by Dáil Eireann, in particular that this initial cross-departmental review should report to the Government no later than 30 June 2014 so as to inform decisions on the scope, format and terms of reference of a Commission of Investigation. The Group submitted its interim report on 30th June 2014. Updated information continued to be received after this date and this report reflects the most up to date and comprehensive information which the Inter-Departmental Group has been able to compile. The time available to the Group to survey the many issues and diverse sources of information has, of necessity, been extremely compressed. Initial examinations have served to highlight the volume and range of records that are potentially relevant to the work of the Commission.

The Group has concentrated, in the time available, on some of the potentially most salient records which might be of assistance and accessible in the time frame so as to inform consideration of the scope and format of the Commission of Investigation, rather than in commencing the more extensive process of assembling and investigating all records which undoubtedly will be a very significant part of the Commission's work to which, of course, the Departments on the Group will fully contribute. The emphasis in this phase has been on seeking to map important dimensions of the issues in the short time available. The treatment is neither fully comprehensive nor checked against alternative sources. Information provided mostly draws upon secondary sources, particularly a number of very relevant and relatively recently published social histories, but with some consultation of primary records contained in Department of Health files and the General Register's Office.

The Group has been kept informed of the Minister for Children and Youth Affairs' consultations with Opposition parties and key stakeholders and the response to the call for submissions on the Terms of Reference, all of which are expected to inform the Government's considerations. Over one hundred submissions have been received.

The procedure for establishing a Commission of Investigation involves the laying of a draft order before the Oireachtas to be followed by the passing of a motion by both Houses agreeing to the establishment of a Commission. The Commission of Investigation Act 2004 specifies in detail the issues to be covered in the order together with the information on cost and time scale which is required to be included in an accompanying statement. This requires careful textual and legal drafting to ensure the matters it is proposed to investigate, and only those matters, are accurately captured in the order. The Inter-Departmental Group has not undertaken this task, not least because this Report is not the only input into this process with other elements, including the very many public submissions, also to be weighed by Government in its deliberations. However, the Group considers on the basis of past experience that very careful consideration needs to be given to finalising the draft order if the Commission is to be established on the most sound footing possible.

IV. The Overall Context - Treatment of Unmarried Mothers¹, 1922-1987

The Group formed the view in its deliberations, that the particular social and historical issues which the Commission of Investigation will be asked to explore, are likely to distinguish the nature of its investigations from those of many other Commissions. Other Tribunals, Commissions of Investigation and review processes have in the past had social and historical dimensions to their work but arguably few to such a degree as is likely to apply here.

Mother and Baby Homes have their origins as far back as the 1920's. While not immediately obvious to today's general public, it seems clear that their role and purpose was the subject of significant public debate over the intervening period. As early as 1927 unmarried mothers and their children were one of the groups given particular consideration in the Report of the Commission of the Sick and the Destitute Poor. Indeed academic research shows the extent to which the establishment of these Homes was part of a wider debate in the 1920's which was re-visited periodically over the years. Quoting Ferriter, at length, regarding developments in post-independence Ireland:

“The solution to the problem of illegitimate births was believed to lie in the establishment of antenatal homes for expectant unmarried mothers and institutions where the mother and children ‘might be maintained together for at least the first year of the child’s life’ (the idea being that the child could then be fostered). It was also believed that such homes were necessary ‘where by appropriate training and example, self-respect is restored’, preventing the women from staying in county homes at the expense of the ratepayers, or ‘drifting into a life of degradation’. In the summer of 1922, proposals that unmarried mothers go to institutions other than workhouses (now referred to as county homes) were raised by the religious orders, the main concern being, it seems, that at that time such women were ‘not segregated’ from more ‘hardened sinners’. The state’s acceptance of such proposals laid the foundation for the infrastructure of religious order-run mother and baby homes that operated from 1922 until the 1970s.”ⁱ

Therefore, it is clear that the Mother and Baby Homes were a manifestation of attitudes to and treatment of unmarried mothers and their children. There are institutional features to such treatment but these institutional features cannot arguably be properly investigated without a wider examination of the social history of the period as it relates to unmarried mothers and their children.

Figures presented by Earner-Byrneⁱⁱ show that some 89,247 “illegitimate” births were recorded between 1922 and 1973, although Earner-Byrne notes that there “appears to be little doubt that the figures recorded were distorted by an under-registration as a result of social pressure”. The rate of “illegitimate” births as a percentage of total births ranged between 1.6% and 3.9% over the period.

¹ The historical term “unmarried mother” is used in this document based upon the language and thinking of the time. The more contemporary term of “single mother” is acknowledged as being more suitable and acceptable when referring to the present day.

As noted by O'Sullivan and O'Donnellⁱⁱⁱ, those confined to institutions represented only a small proportion of women and girls who became pregnant outside of marriage. The authors note that in 1931:

“the Committee on the Criminal Law Amendment Acts (1880-1885) and Juvenile Prostitution had received evidence of the on-going migration of unmarried pregnant women to England, of whom ‘the great majority are country girls’. Although unable to estimate the extent of the migration with any precision, it is believed the reason for the flight was that ‘their distressful plight and shame cause so many unmarried girls to endeavour to conceal.’ ”

Of course many other unmarried mothers from country areas made their way to Dublin, at least in the first instance. Though difficult to quantify it is also likely that at least some births to unmarried mothers were followed subsequently by marriage and perhaps other children born to unmarried mothers were brought up as a sibling of the mother or within the extended family without the true parentage being acknowledged. These were some of the limited range of options, in the climate of the time, for an unmarried mother who had no support from the father or her own family and, in the absence of social welfare provision, no means of providing for herself or her child.

The children of unmarried mothers appear to have fared poorly, even in comparison with the relatively poor general standards of child welfare applying at the time. Earner-Byrne provides a comparison of mortality rates for all births and for illegitimate births over the period 1923 to 1950 which is based upon Annual Reports of the Registrar General.^{iv} From the figures presented it can be calculated that the infant mortality rate per 1,000 illegitimate births was at least 3.8 times that of other births. The mortality rate for illegitimate births was highest at 344 per 1,000 births in 1923 but it exceeded 200 per 1,000 births in 23 of the 28 years for which data is provided.

According to Ferriter^v “in Ireland in 1940, 26 per cent of illegitimate children born died (it had been 30 per cent in 1924); in England and Wales the figure in 1939 was 8 per cent.”

In 1939 the League of Nations Advisory Committee on Social Questions undertook a report on the legal position of the illegitimate child in twenty-two countries. It showed wide variation between countries in respect of (1) the civil status of the child (2) the legal protection given to the child (3) the legal protection of the mother (4) the measures of the social insurance laws and (5) special social welfare measures, including relief and public health. The League of Nations attributed higher infant mortality rates to the social and economic position of unmarried mothers: “The reasons for this higher rate [of infant mortality] are obvious: it is partly due to the less favourable legal status of the unmarried mother and the illegitimate child, partly to the social and economic consequences of this unfavourable position.”^{vi} National - or international - rates of mortality are insufficient to explain the mortality rates to be found in particular institutions and this will require further, in depth examination as indicated in the motion approved by Dáil Eireann.

The extensive quotes provided by Earner-Byrne from a “Report on Unmarried Mothers in Ireland” compiled in 1939 by Ms Alice Litster, inspector for boarded out children in the Department of Local Government and Public Health, are worth referring to in this regard:

“The chance of survival of an illegitimate infant born in the slums and placed with a foster-mother in the slums a few days after birth is greater than that of an infant born in one of our special homes for unmarried mothers. I except the Manor House, Castlepollard, in which the infantile death rate is comparatively low. In theory, the advantage should lie on the side of the child institutionally born. Pre-natal care, proper diet, fresh air, sufficient exercise, no arduous work, proper and comfortable clothing, freedom from worry, the services of a skilled doctor, the supervision and attention of a qualified nurse, all should be available and should make for the health of the expectant mother and the birth and survival of a healthy infant...Cleanliness, medical attention, dietetic knowledge, all the human skill may continue to preserve child life should be at hand. Yet any infant born in any other circumstances appears to have a better chance of life.

I have grave doubts of the wisdom of continuing to urge Boards of Health and Public Assistance to send patients to the special homes so long as no attempt is made to explore the causes of the abnormally high death rate

The illegitimacy birth rate shows an upward trend. In 1916 it was 1530; in 1925 it was 1662. We cannot prevent the birth of these infants. We should be able to prevent their death.”^{vii}

For those children who did survive they were left with the realities of a society that did not encourage their functioning as a family unit with their mother. Hence, fostering, boarding out and, post the introduction of legislation in 1952, adoption are issues which the Government has been urged to include within the considerations of the Commission of Investigation.

Any consideration of the treatment of unmarried mothers over the period is likely to identify gender discrimination as being to the fore, while also acknowledging the role played by social class with different settings and patterns of treatment for those in different economic circumstances.

Attitudes changed over the years and in response, so too, in time, did the institutions. The introduction in the Social Welfare Act 1973 of the Unmarried Mothers Allowance was a very important development and it followed a recommendation by the Council for the Status of Women in 1972. The Unfair Dismissals Act 1977 ensured that women would not lose their jobs as a result of pregnancy, and in so doing served also to provide some protection for the unmarried mother against social prejudice. The Status of Children Act, 1987 abolished the concept of illegitimacy and sought to equalise the rights of children including those born outside marriage.

Voluntary and advocacy groups contributed much to this evolution of social attitudes and pressure for social and legislative change. For example, Ally was set up in the late 1960s to assist unmarried mothers and Cherish was founded in 1972 by a group of unmarried mothers seeking to bring about social change.

It should also be noted that developments in healthcare and obstetrics also took place over the period. The delivery of babies to unmarried mothers onsite was a feature of many, though not all, Mother and Baby Homes as it was in a range of smaller private nursing homes. This practice fell away over the period with births to mothers from Mother and Baby Homes increasingly taking place in maternity hospitals or maternity units. One of the last such institutions, the Sacred Heart Home in Bessboro, agreed with the Southern Health Board in about 1986, to discontinue deliveries at the home in favour of the nearby St. Finbarr's Hospital.

Remaining Mother and Baby Homes either closed or evolved into different roles. Supervised flatlets formed part of the transition away from the major institutions to today's non-institutionally based supports. According to O'Sullivan and O'Donnell^{viii}, "by the late 1970's the County Homes and Mother and Baby Homes, where so many unmarried mothers and their babies had hidden in shameful silence, were falling into disuse."

V. Mother and Baby Homes

a) Mother and Baby Home, Tuam, Co. Galway

As an early priority the Group gathered information in relation to the Mother and Baby Home at Tuam as follows:

- The Mother and Baby home was run by Bon Secours Sisters 1925-1961 in what was previously a workhouse dating back to famine times.
- The Child and Family Agency is in possession of Bon Secours' records relating to Tuam including registers and returns.
- The General Register's Office (GRO) has identified the deaths of 796 children who died at the Tuam home during the 36 years averaging 22.2 deaths per year but ranging from one in 1958 to 53 in 1947.
- The reported causes of death are wide ranging including:

Table 1

| Primary Cause of Death | Total | % of Total | Primary Cause of Death | Total | % of Total |
|------------------------|-------|------------|--------------------------|------------|------------|
| Debility from birth | 193 | 24 | Congenital heart disease | 31 | 4 |
| Respiratory Diseases | 120 | 15 | Meningitis | 28 | 4 |
| Measles | 82 | 10 | Congenital syphilis | 12 | 2 |
| Influenza | 77 | 10 | Malnutrition | 10 | 1 |
| Premature Birth | 60 | 8 | Skin Diseases | 9 | 1 |
| Whooping Cough | 46 | 6 | Ear Infections | 7 | 1 |
| Other | 39 | 5 | Chicken Pox | 6 | 1 |
| Convulsions/Epilepsy | 38 | 5 | Cerebral Haemorrhage | 5 | 1 |
| Gastroenteritis | 33 | 4 | Total | 796 | |

- The number of births included in the records of the General Registers Office has been identified as 1,101 for the period.
- Garda enquiries confirm reports that skeletal remains were discovered in an underground structure near the site in mid-1970s with no record of Garda/coroner involvement at that time. The Gardaí are continuing to make enquiries locally at the request of the Minister for Justice and Equality.
- Assessment of mortality rates will need public health specialist/historical analysis of statistics on children born and resident at the home in Tuam.
- In relation to lawful burials - as indicated in the Magdalen Report^{ix} - prior to 1994 there were no conditions applying to burial sites attaching to religious homes and no onus to report or give notification of burials therein to any authority.
- The question of a suitable memorial at Tuam is one that is being looked at locally by the Tuam Home Graveyard Committee. The Inter Departmental Group has been advised that Land Registry records indicate that the site is in the ownership of the the Local Authority, having been transferred to them by the Health Board in 1978.

b) Additional Locations

The institutions listed in Table 2 below represent the best summary of the core group of Mother and Baby Homes as has been possible to arrive at in the time available. Although a number of these homes have been called by somewhat different names these are the institutions most commonly identified in the academic literature and public media as Mother and Baby Homes. The fact that there was not a common governance, policy or legislative basis to their operation adds to the difficulty in their classification which, as can be seen, has drawn heavily upon the academic literature.

Table 2

| <i>Home</i> | <i>Year Opened (where available)^x</i> | <i>Year Ceased (where available)</i> | <i>Ownership/Operation</i> |
|--|--|--------------------------------------|---|
| Ard Mhuire, Dunboyne, Co. Meath; | 1955 | 1991 | Sisters of the Good Shepherd |
| Bessboro, Cork | 1922 | - | Sisters of the Sacred Heart of Jesus and Mary |
| Manor House, Castlepollard, Co Westmeath | 1935 | 1971 | Sisters of the Sacred Heart of Jesus and Mary |
| Sean Ross Abbey, Roscrea, Co Tipperary | 1930 | 1969 | Sisters of the Sacred Heart of Jesus and Mary |
| Bethany Home, originally Blackhall Place and in 1934 moved to Orwell Road, Rathgar, Dublin | 1921 | 1972 | Generally administered by and for those of Protestant religion, although mothers not exclusively so |
| Pelletstown/St Patrick's, Navan Road, Dublin | Pre-dated State's foundations | 1985 | Dublin Board of Assistance/Sisters of Charity of St Vincent de Paul |
| Tuam, Co. Galway | 1925 | 1961 | Galway Board of Health and Public Assistance/Bon Secours Sisters |
| Kilrush, Co. Clare | 1922 | c.1936 | Board of Health and Public Assistance/Sisters of Mercy |
| St.Gerard's, 39 Mountjoy Square, Dublin | 1933 | 1939 | Saint Patrick's Guild |

i. St Clare's, Stamullen, Co. Meath

The Group noted that St Clare's Stamullen is included as a Mother and Baby Home in a list of seven Mother and Baby Homes in the "Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries"^{xi}. However, unlike the other Homes included above, St. Clare's/Stamullen is not generally included in the academic literature when Mother and Baby Homes are being listed. Milotte refers to St. Clare's Adoption Society and says:

“St. Clare’s adoption society was run by the Franciscan Sisters of St Clare under the chairmanship of Father PJ Regan. Father Regan was also parish priest at Castlepollard, about 20 miles away in County Westmeath, where the Sacred Heart nuns ran one of their mother-and-baby homes.”^{xii}

It has been suggested that there were two parts to the operations at Stamullen - an Adoption Society (St. Clare’s) and a babies’ home (sometimes referred to as St. Joseph’s) and that these may have operated from 1951-1986. An internal Department of Health memorandum from 1986 refers to St. Clare’s Stamullen as an “infant nursing home” with a capacity of 60 and the length of stay being usually around six months depending on the needs of the child. The Sisters of St. Clare are identified as the governing authority. The overall thrust of the memorandum was to advocate for community based child welfare programmes and the gradual run down of St. Clare’s was proposed with the type of child currently cared for there catered for in the existing residential child care sector, mental handicap services and by fostering. It is understood that an intellectual disability service is currently provided at St. Clare’s, Stamullen.

The records of the General Register’s Office indicate that no births took place at St. Clare’s Stamullen, although of itself this does not determine matters since, certainly in later periods, births in relation to some Mother and Baby Homes took place in maternity hospitals or units. St. Clare’s Stamullen has not been identified as having been registered under the Registration of Maternity Homes Act, 1934 (see also Section V(i)).

The Group made enquiries in relation to St Clare’s Stamullen with the Child and Family Agency which is in possession of the records for St Clare’s and would have some local understanding based upon dealing with access to these records. The Agency confirmed that St. Clare’s was an adoption society and not a residential unit for mothers or babies. There was a baby home connected called St. Joseph’s. There was also linkage between St. Clare’s Adoption Society and Mother and Baby Homes in Dunboyne and Castlepollard.

ii. “Bethany Home”, Dublin

The inclusion of “Bethany Home” relates to the Mother and Baby Home operated first at Blackhall Place and from 1934 at Orwell Road, Rathgar. Sometimes the terms “Bethany Homes” has been used to signify a wider grouping of homes including children’s homes.

c) Mothers and Children

Earnar-Byrne identifies that the number of unmarried mothers in the three Sacred Heart run homes (Bessboro, Sean Ross and Manor House) ranged over the period 1932 to 1942 between 266 and 352^{xiii}. Sean Ross had the highest number in any year (1933) with 193 mothers, Bessboro next with 150 in 1937 and Manor House with 81 in 1940.

In terms of movement in and out of these homes the following table is taken from Earner Byrne with information originally sourced from the Annual Report of the Department of Local Government and Public Health, 1935-36.

Table 3^{xiv}

| <i>Inmates:</i> | <i>Bessboro</i> | <i>Sean Ross Abbey</i> | <i>Manor House</i> |
|------------------------------|-----------------|------------------------|--------------------|
| Expectant Mothers | 109 | 176 | 60 |
| Mothers with children | 6 | 12 | 12 |
| Births | 96 | 157 | 38 |
| | | | |
| <i>Discharges:</i> | | | |
| Mothers with children | 29 | 80 | 10 |
| Mothers alone | 81 | 102 | 5 |
| Children boarded-out | 7 | 31 | 0 |
| Children adopted | 15 | 12 | 3 |
| Children to nurse by mothers | 1 | 80 | 1 |
| Children to rescue homes | 0 | 3 | 1 |
| Maternal deaths | 0 | 0 | 0 |
| Infant deaths | 25 | 54 | 4 |
| Mothers in institutions | 127 | 139 | 51 |
| Children in institutions | 79 | 129 | 33 |

O’Sullivan and O’Donnell (2012, p 19) note that: “While difficult to quantify, it seems clear that many women spent considerable periods of time in these homes on the basis that such treatment was required to save them from themselves.”^{xv}

d) Births

The Table below sets out the figures for births which have been compiled by the General Register’s Office. It can be seen that a total of over 23,000 births have been identified as taking place at these locations. It is important to note that significant numbers of mothers accommodated in these homes would appear to have given birth at other locations, including maternity or other health facilities.

Table 4^{xvi}

| Name of institution | Years when births registered | Total number of births registered | Comment |
|--|-------------------------------------|--|--|
| Ard Mhuire, Dunboyne | 1955-91 | 7 | Also called Good Shepherd Home. Local information suggests most births took place at Rotunda. |
| Pelletstown/St Patrick's, Navan Road | 1922-84 | 6,596 | Births also registered using address of 381, Navan Rd. Only 5 births registered between 1922 and 1934. |
| Sacred Heart, Bessboro, Cork | 1929-87 | 5,912 | Local knowledge suggests that prior to 1929 births occurred at Cork District Hospital, now St Finbarr's. |
| Manor House, Sacred Heart, Castlepollard | 1935-71 | 3,763 | |
| Sean Ross Abbey, Roscrea | 1931-69 | 5,252 | |
| Tuam, Co Galway | 1925-61 | 1,101 | |
| Bethany Home | 1922-84 | 599 | Located at Blackhall Place up to 1934, Orwell Rd., Rathgar thereafter. |
| Kilrush, Co. Clare | 1922-32 | 432 | Includes 120 births to married women (Father's name recorded) |
| St.Gerard's, 39 Mountjoy Square, Dublin | 1933-1937 | 45 | |
| TOTAL: | | 23,707 | |

Figures supplied by General Register Office.

e) Death Rates

Various annual reports at the time noted that death rates in Mother and Baby Homes were undesirably high. The following figures are taken from the Annual Report of the Department of Local Government and Public Health, 1934-35 and presented by Earner-Byrne

Table 5

Illegitimate Infant Deaths in Institutions

| <i>Institution</i> | <i>Admission</i> | <i>Deaths</i> |
|--------------------|------------------|---------------|
| Pelletstown | 155 | 53 |
| Tuam home | 120 | 42 |
| Bessboro | 64 | 25 |
| Sean Ross Abbey | 160 | 60 |

The 1939 Annual Inspector's Report, referenced by Earner-Byrne, noted that Bessboro home, Cork had an infantile death rate of 47 per cent, Sean Ross Abbey, Roscrea had a death rate of 18 per cent, the Manor House, Castlepollard a rate of 7 per cent, and St. Patrick's Home, Pelletstown and the home in Tuam, County Galway had rates of 23 per cent and 15 per cent respectively^{xvii}. By comparison the mortality rate for the general infant population was 6.2 per cent and 19.3 per cent for so-called illegitimate births.

f) Adoption

As noted by Graham^{xviii} Ireland was particularly late in legislating for adoption. Of European Countries, only Portugal and the Netherlands were later than Ireland in legislating for adoption; Britain had done so in 1926. The Adoption Act 1952 provided for illegitimate and orphan children to be adopted. The Act established the Adoption Board and an adoption societies' register where all adoption societies that wanted to handle adoptions had to be registered. The Act required the legal, written consent of the unmarried mother to give up her rights to her child forever. It also stated that the adoptive parents must be of the same religion as the child, married and over the age of thirty years. Over 40,000 adoptions have been approved by the Adoption Authority subsequent to the Adoption Act 1952.

Previously adoption was unregulated and the Adoption Act 1952 allowed those involved in *de facto* adoptions, which preceded the Act, to apply to adopt their child as long as they could prove that the child had been living with the adoptive parents for at least three years and the mother had given consent.

In the absence of adoption legislation the placement of children with others before 1952 was much more informal with boarding out, fostering and *de facto* adoptions directly or through intermediaries. Natural mothers have strongly disputed the voluntary nature of the consent given to these arrangements in particular cases, even after 1952. Adoption rights groups have demanded the investigation of "forced adoptions". The issue of illegal registration of births –

whereby a birth is illegally recorded as being to someone other than the natural parents – is also a source of controversy.

A specific issue which arises in relation to adoption, is the placement of children with parents abroad, particularly in the United States. The Adoption Act, 1952 provided that a child could not be removed from the State without the approval of the mother unless he or she was over one year of age. This meant that children were kept in Mother and Baby Homes or Baby Homes until after they had reached their first birthday. The Department of Foreign Affairs was responsible for processing passport applications for these children and these applications often contained significant information relating to the adoption. Milotte^{xix} presents data sourced from the Department of Foreign Affairs records from the late 1950s onwards. He identifies that of 1,962 passports issued in such cases 1,911 related to the United States. The origins of these children are shown in the table below.

Table 6

| Children's Origins by Institution | |
|---|------------|
| St Patrick's Guild | 515 |
| Sean Ross Abbey | 438 |
| Castlepollard | 278 |
| St. Patrick's Home | 254 |
| St. Clare's Stamullen | 130 |
| Sacred Heart Convent Cork | 98 |
| Catholic Women's Aid Adoption Society, Cork | 37 |
| St Joseph's Convent, Croom | 29 |
| All Protestant Adoption Societies | 24 |
| St Bridget's Orphanage | 14 |
| <u>Miscellaneous</u> | <u>101</u> |
| Total | 1918 |

Considerable difficulty is encountered in addressing the overall claim from adoption groups of extensive coercion on mothers. As set out above, at the time, societal pressures alone were such as to greatly limit an unmarried mother's options. The fact that adoption and other related records are private and require the consent of those involved to their disclosure, even amongst the parties, has made it difficult in practice for those seeking to establish the truth. Adoptions took place from a range of sources and were not limited to Mother and Baby Homes. However, if it were possible by means of a Commission of Investigation to effectively examine the placements of children born in Mother and Baby Homes – either directly or through intermediaries – may throw considerable light on practices generally.

Section 88 of the Adoption Act, 2010, restricts access to adoption records held by the Registrar General. Further consideration will be required in conjunction with the Adoption Authority and the Registrar General, on the specific issue of facilitating access by the proposed Commission of Investigation to adoption records, taking into account existing legislative provisions. In addition, the sensitivity of adoption records highlights a wider requirement to take account, in the establishment and operation of the Commission, of issues

of privacy in relation to sensitive personal information. This issue is returned to in the Methodology discussion below.

There is a separate but related issue which many of those who have been adopted are seeking to have addressed. The issue relates to the tracing of a natural mother or child by someone who has been involved in the adoption – in the case of someone adopted as a child seeking to trace a natural mother, the wish is closely related to a desire to establish one's identity and personal story. The legal position currently is that this requires the prior consent of the parties involved because of the implications for the Constitutional right to privacy of others. There are likely to be distinct issues as between access by the Commission to adoption records for the purposes of investigation and subsequent public reporting of overall findings, in a suitable non-identifying format, and access by individuals to personal records for information and tracing purposes. Government is seeking to address these complex issues through a programme of legislative and administrative reforms with proposals for a new Adoption (Information and Tracing) Bill currently being finalised. It is important that improved and ongoing provision is made for the management of the very large volume of records in this area and for access to individual records by those concerned. A Commission of Investigation is not a suitable or effective vehicle for addressing the interest of individuals in securing access to their own records. An accelerated legislative and operational programme of reform to tackle this very important issue to the greatest degree possible is the most appropriate means to progress matters.

g) Vaccine Trials

In May 1991, three trials involving the use of childhood vaccines that had been undertaken in the 1960's and 1970's were brought to the attention of the Minister for Health. The vaccines in each trial were manufactured by Wellcome Laboratories and subsequently used in these trials. The research institutions involved in the trials were Wellcome Laboratories in the UK, the Department of Medical Microbiology in University College Dublin and, in Trial 3, the Eastern Health Board. Two of these trials were the subject of published articles in peer review journals and the third was unpublished. These vaccines were administered to a total of children in Ireland, one hundred and twenty three of whom were resident in children's homes in various parts of Ireland.

These particular trials became the subject of public discussion because some of the children who took part were resident in Mother and Baby homes and children's homes and questions had been raised as to the ethical propriety of these trials.

In 1998 the then Minister for Health referred the issue of vaccine trials on children in residential institutions to the Chief Medical Officer (CMO) of the Department (Dr Jim Kiely), for the purpose of compiling a report on the 1961, 1971 and 1973 trials.

Dr Kiely's Report was published in 2000 and its findings are summarised below.

| Trial | Details | Consent ² |
|--|---|--|
| <p>Trial 1:</p> <p><u><i>Hillary, IB, Meenan, PN, Goffe, AP, Knight, GT, Kanarek, AD and Pollock, TM: Antibody response in infants to the poliomyelitis component of a quadruple vaccine. Br. Med J 1962; i: 1098</i></u></p> | <p>This trial, in which 58 infants resident in five mother and baby homes took part, sought to compare the poliomyelitis antibody response after vaccination with a quadruple vaccine (Diphtheria, Pertussis Tetanus (DTP) and Polio combined) with the standard vaccines in use at the time which consisted of DTP and Polio administered separately and at different sites. The names of the five homes involved were not known but one of the investigators subsequently indicated that the Sacred Heart Home, Bessboro, Cork was one of the locations in which the trial may have been conducted.</p> | <p>“There was no documentation available which describes any arrangements arrived at with management or parents for the conduct of this trial. Professor Hillary has asserted that the management, medical officers and mothers were aware of the nature of the trial and gave their consent on that basis.”</p> |
| <p>Trial 2:</p> <p><u><i>Hillary, IB: Trials of intranasally administered rubella vaccine. J Hyg Camb. 1971; 69: 547-553</i></u></p> | <p>In this trial, 69 children (aged 2-18) resident in a children’s home in Dublin had blood taken. Twelve were subsequently administered intranasal rubella vaccine. In the same trial, 23 children living at home were administered this vaccine. The purpose of the trial was to investigate whether there was a propensity for intranasally administered vaccine to spread to susceptible contacts and to estimate antibody levels and acceptability of the intranasal technique of vaccination. The name of the home is not mentioned in the published article and despite subsequent inquiries it did not prove possible to identify the home in question.</p> | <p>“There is no information available which can clarify, one way or another, whether consent was obtained for the participation in this trial of those children who were resident in the children’s home mentioned because there are no records.”</p> |
| <p>Trial 3:</p> <p><u><i>Diphtheria, Tetanus, Pertussis Trial (DTP) 1973 (Not published)</i></u></p> | <p>In this trial, in which 53 children in Mother and Baby homes and children’s homes in Dublin and 65 children living at home in Dublin were administered vaccine to compare the reactogenicity³ of the commercially available batches of Trivax vaccine and Trivax AD vaccine, with a vaccine of equivalent efficacy but of lesser potency. Of the 53 children mentioned above who lived in institutions, twenty were in St Patrick’s Home, Navan Road, nineteen in Madonna House, seven in Cottage Home, six in Bird’s Nest Home and one in Bohernabreena.</p> | <p>“The question of consent is unclear. Available correspondence seems to indicate that the Medical Officer of some of the homes may not have been aware that residents of these homes were being given the vaccines prepared for the trial in use at the time. Professor Hillary asserts that she sought and received permission to use these newer vaccines in the homes as part of a clinical trial.”</p> |

² Verbatim quotation from CMO Report, Department of Health, 1997

³ Reactogenicity: Events that are considered to have occurred in direct relationship to the vaccination. These events may be local or systemic.

Overall findings included the following:

Regulatory requirements

The Therapeutic Substances Act, 1932 was the statute governing the importation and use of vaccines in these trials. The Chief Medical Officer was unable to locate or identify documentation which would confirm whether or not the legal requirements of this Act were complied with in respect of these three trials.

In respect of Trial 3, the modified vaccines used and the protocol for the trial itself were the subject of a letter of no objection from the National Drugs Advisory Board under a voluntary, non-statutory code of approvals in place at the time.

Consent

As the subjects of these trials were children, effective consent to their participation in the trials could only have been given by their parents or guardians. The requirement for such consent to be obtained was clearly understood by researchers and articulated in a number of documents available to the research community at the time.

Follow-up

It was not the practice to follow-up vaccinated children for other than very short periods and the participants in these trials were not followed up in the longer term.

Subsequent to the setting up of the Commission to Inquire into Child Abuse the then Government in June 2001 made an order to refer the report compiled by the CMO – “*Report on three clinical trials involving babies and children in institutional settings 1960/61, 1970 and 1973*” – to the Commission. The Commission was requested by the Minister “to inquire into the clinical trials referred to in the report.”

On 9th November, 2000, the Minister for Health advised the Dail that, while the CMO’s report was a good report, it was nonetheless incomplete, because, in some areas “the most rigorous interrogation of the system failed to produce documentary records of the trials”. The Minister stated that there were informational gaps in the report such that he was satisfied that the work of the Chief Medical Officer “... must be regarded as the beginning, not the end of the matter”.

The CMO’s report was sent by the Minister for Health to the Commission to Inquire into Child Abuse (CICA) on 13th November, 2000. The Commission established a division of its Investigation Committee (the Vaccine Trials Division), to inquire into these matters.

The work of the CICA into these issues ceased in 2003, following a High Court ruling that the work of the Division was *ultra vires* the Commission to Inquire into Child Abuse Act 2000. The judgements show that for vaccine trials to be inquired into a sound legal basis for any such inquiry must be in place. This experience underscores the general point made in Part II of this report that the drafting of an order setting out the matters into which a Commission of Investigation is to inquire should be the subject of very careful consideration.

The Commission to Inquire into Child Abuse set out in some detail, in its Third Interim Report, the work it had undertaken on the vaccine trials issue up to 2003. This indicated that the Commission had obtained some additional information about the trials dealt with in the Chief Medical Officer's report. [Chapter 14, entitled *The Vaccine Trials Division*, refers.]

Finally, as referred to above, it is to be noted that the vaccine trials concerned while performed in Mother and Baby Homes, were also it seems, undertaken in children's homes and the community.

h) Anatomical Examination of Bodies

This issue was highlighted in an RTE *Prime Time* programme on vaccine trials in 2011 and in more recent press coverage. Reports suggest that university medical schools (including UCD, Trinity College, the Royal College of Surgeons and NUI Galway) received some 474 remains for the purposes of anatomical study. This practice took place up to the mid-1960's. This issue was wider than Mother and Baby Homes and receipt of infant remains appears to have been part of a wider practice at the time regarding the use of anatomical remains.

The Anatomy Act, 1832, was designed to regulate schools of anatomy and provide a legal supply of cadavers for medical research and education, in reaction to public fear at the illegal trade in corpses. The granting of licences and the appointment of inspectors under the Act were functions of the Minister for Health from 1949 until they transferred to the Medical Council under Section 106 of the Medical Practitioners Act 2007. The Act contains requirements for a certificate of death (needed before the body can be removed for examination) and returns to be made to an inspector by persons practising anatomy. These returns were to contain the time when the body was received, date and place of death, the sex, and, as far as is known, the name, age and last place of abode.

An inspector was required in turn to make quarterly returns to the Minister for Health, relating to every body removed to a place where the practice of anatomy is carried on, detailing the sex and, where known, the name and age of the deceased person. These returns are now made to the Medical Council.

Large, bound registers relating to the Anatomy Act 1832 had been held in the Chief Medical Officer's office, Department of Health dating back to circa 1917. These were transferred to the Medical Council (on commencement of the Medical Practitioners Act 2007). Although the functions around licensing and inspections have transferred to the Medical Council, The Department of Health may also hold other records containing returns under the Anatomy Act 1832. However, the extent of such records would need to be established.

In relation to anatomical examination of bodies of infants, the Anatomy Act 1832 provides for the donations of remains by the next-of-kin or an individual acting in *loco parentis* and allowed unclaimed bodies to be given to anatomy departments. Among the provisions of the Anatomy Act is a requirement for anatomy departments to provide a proper burial for the remains, including a coffin and a religious service. Both adult and infant remains were used for the study of anatomy and for teaching of medical students. In the 1960's, voluntary donation was encouraged and this became the norm by the mid-1960's. Although the

Anatomy Act 1832 remains in force, since that time unclaimed bodies are no longer accepted by anatomy departments. All donations involve fully informed, written consent.

The Minister for Health is currently developing proposals for a Human Tissue Bill which will repeal the Anatomy Act, 1832, and put in place enhanced arrangements in relation to the donation of bodies to anatomy schools and provisions for the setting of guidelines and standards to be met in the practice of anatomy. The Human Tissue Bill will also provide for an updated licensing framework and an updated consent framework for donation. Central to the new consent framework is that a decision on donation of a body for anatomical examination is solely for the individual whose body it is.

Mother and Baby Homes were amongst the institutions from where such remains were transferred. It has not been possible to establish all relevant facts on this issue in the time available, including the extent to which infant remains transferred from hospitals and other institutions might also have been those of infants from Mother and Baby Homes. It is clear, however, that the issue is significantly wider in scope than Mother and Baby Homes, Children's Homes or even children.

Material provided by the Anatomical Committee of the Irish Medical Schools is as follows:

“During the first half of the 20th century, the practice of transferring remains from institutional settings to Anatomy Departments was in accordance with the Anatomy Act (1832) which allowed individuals to specify if they wanted to donate their remains after death; next-of-kin or an individual acting in loco parentis could also donate a person's body; and the Act allowed ‘unclaimed bodies’ to be transferred to Anatomy Departments in Ireland.

Transfers were recorded by the Anatomy Departments in Ireland. Records show that between the years 1940-1965, 474 unclaimed infant remains were transferred to Anatomy Departments in Ireland. The purpose was for the study of anatomy; the study of the structure of the human body.

The practice of transferring unclaimed infant remains ceased in the mid-1960s, following a public campaign by a group of anatomy professors to encourage public donation, and practices have long been in place to ensure absolute procedural sensitivity towards donors and families. All contemporary donations are predicated on fully informed consent.

Anatomy Departments will, to the utmost of their ability, assist any individuals or families who may wish to enquire about the transferred remains of past family members...

The Anatomy Department of each of the Irish Medical Schools has provided the following information in relation to their respective institution:

Trinity College Dublin

| <i>Time Period</i> | <i>Infants</i> |
|------------------------|----------------|
| <i>Total 1940-1949</i> | <i>93</i> |
| <i>Total 1950-1959</i> | <i>8</i> |
| <i>Total 1960-1962</i> | <i>2</i> |
| <i>Total</i> | <i>103</i> |

The Anatomy Department at Trinity received infants' remains from St Kevin's Hospital, St Patrick's Home, Cork Street Hospital and St Clare's Home in Dublin.

Royal College of Surgeons in Ireland

| <i>Time Period</i> | <i>Infants</i> |
|------------------------|----------------|
| <i>Total 1940-1949</i> | <i>72</i> |
| <i>Total 1950-1959</i> | <i>10</i> |
| <i>Total 1960-1962</i> | <i>5</i> |
| <i>Total</i> | <i>87</i> |

The Anatomy Department at RCSI variously received infants' remains from Dublin Union and St Kevin's Hospital and St Patrick's Home,

University College Dublin

| <i>Time Period</i> | <i>Infants</i> |
|------------------------|----------------|
| <i>Total 1940-1949</i> | <i>234</i> |
| <i>Total 1950-1959</i> | <i>10</i> |
| <i>Total 1960-1965</i> | <i>5</i> |
| <i>Total</i> | <i>249</i> |

Anatomy Department at UCD received infants' remains from Dublin Union, St Kevin's Hospital, Temple Street Hospital / Regina Coeli and St Patrick's Home.

NUI Galway

| <i>Time Period</i> | <i>Infants</i> |
|------------------------|----------------|
| <i>Total 1940-1949</i> | <i>7</i> |
| <i>Total 1950-1959</i> | <i>1</i> |
| <i>Total 1960-1964</i> | <i>27</i> |
| <i>Total</i> | <i>35</i> |

Anatomy Department at UCG received infants' remains from Central Hospital Galway and Regional Hospital Galway

University College Cork

None

University of Limerick

None"

VI. Other Institutions

There have been calls for the inclusion of a wide range of institutions within the scope of the proposed Commission of Investigation. Such calls have been made based both upon general types of institution and by reference to specific named institutions.

In an effort to establish relevant institutions, the relevant Government Departments carried out an initial review of their records to determine possible sources of information which could inform this process.

a) Institutions Covered by the Registration of Maternity Homes Act, 1934.

A starting point for the Group's examination has been to research those institutions that were registered or exempted from registration under the Registration of Maternity Homes Act, 1934. An important motivation in the introduction of this Act, as noted by Ferriter, was to respond to concerns relating to infant mortality^{xx}. However, the Act related to all maternity homes and was not confined to those offering services unmarried mothers.

Under this Act, 'maternity homes' were defined as premises which are, either wholly or partly, used or intended to be used for the reception of pregnant women or of women immediately after child-birth. Exemptions from registration could be granted by the Minister "to any hospital or institution which is a maternity home but is not carried on for private profit." Section 10 of the Act required that homes registered under the Act shall keep records of:

(a) every reception into such home;

(b) every discharge from such home;

(c) every confinement therein;

(d) every miscarriage therein;

(e) every birth therein;

(f) every death therein;

(g) every removal of a child therefrom and of the name of the person by whom and the address to which such child is removed;

and within twelve hours after every such reception, discharge, confinement, miscarriage, birth, death or removal to enter in the said records the prescribed particulars thereof."

Inspections of records and homes were provided for under the Act and these began in 1936.

Department of Health records held in the National Archives were examined to see what information could be found regarding registrations under the Act. The approach taken, given

the limited time available and the significant time period covered, was to attempt to show a ‘snapshot’ of maternity homes in a certain year, per decade. Maternity homes listed on the files were captured for the years 1949, 1953/54, 1969, 1971-1973. Significant caveats must apply to this information, based upon the usefulness of the records and the very limited time available.

However, the scale of the challenge can be seen, even on this basis, with over 200 locations having been identified from the records relating to 1949.

Efforts were made to classify these locations by type. For example, in the sample year 1949, a total of 15 different ‘types’ of facilities were found in the lists of registered maternity homes and/or inspection reports examined. The titles used in some cases may have been informal rather than providing a clear indication of the nature of the facility or service concerned. The 15 different “types” of facility identified in this way are:

1. Cottage Hospital
2. County Home
3. County Hospital
4. Home
5. Home & Hospital
6. Hospital
7. Maternity Hospital
8. Nursing Home
9. Other
10. Maternity Home
11. District Hospital
12. County Home & Hospital
13. District Home
14. District Mental Hospital
15. Children's Home

It can also be seen from the analysis, at least implicitly, that those registered ranged in scale from large institutions to private homes where maternity and nursing type services were provided.

The point has been well made in the literature that County Homes played an important role in relation to unmarried mothers. O’Sullivan and O’Donnell note that: “*At Independence, the majority of workhouses were either closed or converted into hospitals, but in all counties, with the exception of Louth, one workhouse was retained. The workhouses that were retained accommodated the aged and infirm, the chronically sick, children, unmarried mothers, mental defectives and epileptics. These catch all institutions continued to operate until the 1960s when the remainder were converted into homes for the aged. They were funded and managed by the State, with some additional assistance from female religious congregations, especially in their hospital facilities, and particularly from the Sisters of Mercy.*”^{xxi}

Dr Seán Lucey has identified that: "*On March 31st, 1943, there were 583 "unmarried women" in 31 county homes in Ireland, compared to 352 in the three mother and baby homes run by the Order of the Sacred Heart - Bessborough in Cork City, Sean Ross in Roscrea and Manor Home in Castlepollard - and 201 in Tuam and Pelletstown combined.*" (Irish Times article 18 June 2014.) O'Sullivan and O'Donnell note that: "*On 31 March 1950, there were 8,585 residents in County Homes, of whom 450 were mothers and 829 were children. Eight years later the numbers in County Homes remained stable at 8,564, but unmarried mothers had declined to 103 and children to 259....By 1966...only 53 children and fewer than a dozen unmarried mothers. The publication of the Inter-Departmental Committee on the Care of the Aged Report in 1968 formally ended their multi-purpose role.*"^{xxiii}

Ferriter identifies that "in 1940 seven counties continued to send women to the county homes" despite earlier policy recommendations to change this practice.^{xxiii}

The Inter Departmental Committee appointed to examine the Question of the Reconstruction and Replacement of County Homes (1951) noted that "*the usual practice is to keep the mother and her child in the County Home for about two years at least. After that period the child is boarded out and the mother may be permitted to leave the home. This, however, is not the invariable rule. The mother may be retained much longer and the child may be boarded out much earlier....many matrons rely almost wholly on inmates for the performance of the burdensome menial work necessary for the running of such large and varied institutions. As good domestic labour is extremely hard to come by nowadays, the removal of unmarried mothers would create something of a problem*". O'Sullivan and O'Donnell^{xxiv} note that: "*While conscious of the importance of unmarried mothers to the institutions, the committee nonetheless recommended that the period of detention be reduced from two years to six months...It seems to have taken some time before this recommendation trickled down to the matrons.*".

In 1966 there were 47 such homes. (Response to Parliamentary Question: Dáil Éireann - Volume 220 - 17 February, 1966)

The overall difficulty presented from this, of necessity, very curtailed review of the Registration of Maternity Homes Act 1934 records is to distinguish between those institutions which played a significant role in relation to unmarried mothers in a manner that is consistent with the areas to be addressed by the Commission of Investigation. Furthermore, this must be done in such a way that it does not unintentionally bring in other areas which would undermine the effectiveness and timeliness of the Commission of Investigation process. It is the view of the Group that considerable historical research is likely to be needed to establish the role played by particular institutions from amongst the large and diverse range of facilities identified. This would assist in determining to what extent, if any, particular facilities may have a relevance to the issues that have given rise to the establishment of the proposed Commission of Investigation and the extent to which a practical methodology could be utilised, based upon the availability of records, to contribute to the overall work of the Commission in a timely and effective manner. An important potential contribution of the

Commission would be to research a social history which provides an objective account, within the wider social context, of the role of the different types of institution and the records available to assist further research.

b) Other Institutions

It is important to note that the exercise in examining records relating to the Registration of Maternity Homes Act 1934 is, by definition, confined to facilities intended to be used for the reception of pregnant women or of women immediately after child-birth. As highlighted previously in some Mother and Baby Homes, few actual births took place, at least over certain periods, with maternity facilities provided to women from Mother and Baby Homes in other local health facilities. In addition, a number of calls have been made to include a range of institutions such as orphanages, infant homes, children's homes and residential care centres where children were accommodated but where mothers were not present. This is understandable since amongst these will be some such institutions that may have had a relationship with a Mother and Baby Home and/or where issues such as adoption and vaccine trials which form part of the Mother and Baby Home controversy may also be relevant. However, a broad-ranging investigation into such institutions would be huge in scope and would have the potential to repeat much of the work of the Commission to Inquire into Child Abuse which looked in detail into such institutions. It is important to note in this regard that the 'institutions' covered by the Commission to Inquire into Child Abuse included a school, an industrial school, a reformatory school, an orphanage, a hospital, a children's home and any other place where children are cared for other than as members of their families. The period covered was 1936 to 1999 for the Commission's Investigation Committee and 1914 to 2000 for the Confidential Committee.

On the other hand, calls have also been made for the inclusion of settings where mothers were accommodated but where children were not present. This includes Magdalen Laundries. At least some of these calls extend beyond the issue of the referral of mothers from Mother and Baby Homes to these institutions.

VII. Establishing an Effective Modus Operandi

Establishing an effective approach to the matters to be investigated is essential if the Commission is to provide valuable findings in a manner which is cognisant of the sensitivities of those most concerned and the importance of undertaking its work on a timely and cost effective basis. A number of lessons from previous investigation processes and issues are highlighted below.

a) Relevant Previous Experiences

The Public Accounts Committee in its *Third Interim Report on the Procurement of Legal Services by Public Bodies*, published in 2011, reviewed the experience of Tribunals of Inquiry and found that as of mid-2009, the likely costs of the Mahon, Moriarty and Morris Tribunals of Inquiry are between €336 – €366 million, with serious caveats and contingencies that third-party costs could increase the final sum. The Committee endorsed the recommendation for the terms of reference of inquiries to be tightly drawn and that new lines of inquiry should be limited.

The introduction of the Commission of Investigation Act 2004 means that a Commission of Investigation is the preferred means of establishing a statutory inquiry.

Commission of Investigation into Child Abuse

Before the introduction of this Act, the Commission of Investigation into Child Abuse was established^{xxv}. Following the then Taoiseach's apology in 1999, the Commission was initially established on a non-statutory administrative basis and subsequently on a statutory basis pursuant to the Commission to Inquire into Child Abuse Acts 2000 and 2005. Its main functions were to provide, for persons who have suffered abuse in childhood in institutions during the relevant period, an opportunity to recount the abuse, and make submissions to a Committee, and through a Committee to inquire into the abuse of children in institutions during the relevant period and other related matters.

The Commission acted through two Committees which provided the Commission with a general report on the issues encountered in its work.

- The Confidential Committee provided a forum for victims of abuse to recount their experiences on an entirely confidential basis. The purpose of this Committee was to meet the needs of those victims who wanted to speak of their experiences but who did not wish to become involved in an investigative procedure. This Committee provided the Commission with a general report on the issues encountered in its work.
- The Investigation Committee facilitated victims who wished to both recount their experiences and to have allegations of abuse inquired into.

During 2002, the Department of Education became concerned as to the apparent lack of progress of the Investigation Committee and, following a request for significant additional resources in June 2002, the Government decided on 3rd December 2002 to review the operations and remit of the Commission and in particular the Investigation Committee. Following the resignation of Ms. Justice Mary Laffoy as Chairperson of the Commission, the Government, on 26th September 2003, appointed Mr. Justice Sean Ryan as Chairperson of the Commission. The Government requested Mr. Justice Ryan to immediately undertake his own independent review of the working of the Commission.

Justice Ryan made a number of recommendations for a more efficient and effective approach to the extensive matters before the Commission. The Government accepted the recommendations contained in Mr. Justice Ryan's Report and the legislative changes recommended by Mr. Justice Ryan were included in amending legislation enacted in July 2005.

As noted earlier, the Commission of Investigation into Child Abuse was subject to legal challenge, including but not limited to the vaccine trials module.

In a Special Report^{xxvi}, the Comptroller and Auditor General considered the timeliness and cost of the Commission to Inquire into Child Abuse. The report reviewed the factors that gave rise to the extended timescale as the Commission was originally given a **two** year timeframe in which to complete its work - which was expected to cost somewhere between **€1.9 million to €2.5m**. A number of factors impacted on the timeframe of the Commission such as:

- Additional functions given to the Commission (Vaccine Trials)
- Reviews of the Commission delayed the work
- Delays in settling a scheme for payment of legal expenses
- The issue of compensation to victims
- Legal challenges

Expenditure on the Commission since its inception to the end of 2013 was **€71.48m**. These costs can be broken down as follows:

| | |
|--|---------|
| · Administration Costs (Pay and Non-Pay) | €31.80m |
| · Commission's Legal Team | €14.75m |
| · Third Party Legal Costs | €24.93m |

At the end of 2013 it was estimated that a provision in the region of **€15** million may be required to meet the remaining costs of the Commission. This is tentative given that the Commission has yet to negotiate on a number of large third party legal bills.

Post Mortem Inquiry

The difficulties experienced by the Post Mortem Inquiry also provide learning in this area. Again, this inquiry pre-dates the Commission of Inquiry Act, 2004. On 9 February 2000 the then Minister for Health announced the establishment of an Inquiry relating to all post mortem examinations, organ removal, retention and disposal at Crumlin Hospital and that it might be extended to other hospitals. The Post Mortem Inquiry was established by decision of the Government on 4 April 2000. Ms Anne Dunne was appointed Chairperson of the Inquiry on 6 April 2000. This Inquiry ceased to exist on 31 March 2005 following a Government decision to that effect. On that date Ms Dunne delivered to the Tánaiste and Minister for Health, Ms Mary Harney T.D., a report dealing with the three Dublin paediatric hospitals. This report comprised 3,500 submissions from parents/next of kin, hospitals, health boards and professional bodies. On the advice of the Attorney General it was decided not to publish this report. On 3 May 2005 the Government appointed Dr. Deirdre Madden to complete a final report on post –mortem practice and organ retention by 21 December 2005. The report was compiled by Dr Madden^{xxvii}, submitted by the due date and published.

b) Potential Methodologies

The subject matter of this proposed Commission of Investigation, by its nature, is likely to encompass a number of diverse elements. The methodologies to be adopted by the Commission must be effective in dealing with these subject matters and should, where appropriate, be differentiated as between different elements of the Investigation. Having regard to the long period of time which has elapsed since the events at issue, it is important that matters of the utmost priority are investigated expeditiously. It is also important that investigations be conducted in a cost effective manner since unnecessary expenditure is at the expense of meeting other important demands on the Exchequer, including today's priorities for the improvement of the welfare of children. It could be the case that there are a number of modules to the Commission's work which can be completed using different methodologies and expert input. Further issues of methodology include:

- **Sampling, Selection of Examples and Case Research**

A number of recent Commissions of Investigation have adopted very effective approaches which have included the selection of cases examples via sampling and other techniques. The Commission of Investigation *into the Catholic Archdiocese of Dublin*^{xxviii} was requested in its establishment order to select representative samples for investigation including of complaints or allegations or of the handling of cases known to the archdiocese of Dublin.

The Statutory Instrument establishing the Commission of Investigation into the Banking Sector^{xxix} provided that: "The methodology or framework may include or provide for such sampling techniques or selection of examples as the Commission may determine."

- **Involving those who experienced mother and baby homes**

Former residents of Mother and Baby Homes have made it known that they would wish to provide the Commission with an account of their own personal experiences. This could play an important role in giving a voice to their long-neglected perspective and also giving them a voice in the process. Such processes require careful and expert

input and a range of different mechanisms might be considered which would allow the Commission to receive personal statements from former residents. It is acknowledged that some former residents will not wish to participate in such processes, as is entirely their right. Whatever processes are put in place should, to the greatest extent possible, deal with matters in as sensitive and non-adversarial a fashion as possible. Should matters be dealt with in an adversarial or legalistic manner from the outset, or as a result of legal challenge, this is likely to lead to protracted procedures and add significantly to costs.

- **Privacy**

A Constitutional right to privacy is enjoyed by all citizens, particularly in relation to sensitive personal information bearing on private and family life. The Commission of Investigation into Child Abuse took very careful account of such issues in its operations, as did, for example the Commission of Investigation *into the Catholic Archdiocese of Dublin and the Inter-Departmental Committee* to establish the facts of State involvement with the Magdalen Laundries.^{xxx} It will be important that such careful consideration is given to these matters if the process is to protect the rights of individuals and win the support of those most concerned.

- **Building on the work of previous inquiries**

In the interests of prioritising those issues which should be most urgently and cost effectively addressed the Commission should avoid repeating the work of previous investigations. In particular, there is some potential overlap with matters which fell within the terms of reference of the Commission to Inquire into Child Abuse. The ‘institutions’ covered by the Commission to Inquire into Child Abuse included a school, an industrial school, a reformatory school, an orphanage, a hospital, a children’s home and any other place where children are cared for other than as members of their families. It would be important that work is not duplicated in the establishment of the proposed Commission.

VIII. Conclusions

- a) The Inter-Departmental Group has sought to compile relevant background material to inform the separate task, to be completed in line with Government direction, of finalising a detailed terms of reference. Past experience indicates that the finalisation of a draft order providing for the establishment of a Commission of Investigation must be handled very carefully and precisely in order to ensure the Commission is established on the most sound footing possible.
- b) Detailed investigation has been proposed into particular concerns which have arisen regarding specific institutions. These institutions are likely to require to be specifically identified in the Terms of Reference. There is the basis for a reasonable degree of confidence on the core relevance of the nine locations outlined at Table 2 above, including Tuam Mother and Baby Home. Decisions will be required on the activities which the Commission is asked to investigate in relation to these Mother and Baby Homes and this Report has sought to provide background information to assist in this task. The scale of the task of investigating activities related to these nine Mother and Baby Homes will be considerable. There were almost 24,000 births in these nine institutions and many more children are likely to have been resident who were born elsewhere. The Commission should have the option of using sampling techniques, selection of examples and case research. It would seem sensible and necessary for the effective use of scarce public resources that the Commission should not encroach on the terms of reference or repeat the work of previous investigations, in particular the Commission to Inquire into Child Abuse.
- c) Whereas the issue of adoption and other placements is amongst the activities and concerns relevant to the Commission, the Commission of Investigation itself is not likely to be a suitable or effective vehicle for addressing the very real interest of individuals in securing access to their own individual records. Legislative and operational reform to address this issue to the greatest degree possible is likely to deliver a much more effective and sustainable approach and such reforms should proceed as speedily as possible and not be dependent on the progress of the Commission of Investigation.
- d) An opportunity for those who were mothers or children in these Mother and Baby Homes to input their experiences should be developed. This is recognised as requiring considerable and careful planning taking account of previous learning from similar processes. A range of mechanisms might be explored for facilitating those who wish to provide the Commission with personal statements. The process should be as sensitive and non-adversarial as possible, consistent with the requirements of natural justice and provisions of the Commission of Investigation Act 2004. More generally the Commission of Investigation will be addressing matters which touch on areas of great personal sensitivity. Protocols should be adopted which protect the confidentiality of sensitive personal information.
- e) In its deliberations the Group benefited greatly from review of the existing literature, much of it researched and published relatively recently. The Group considers that a comprehensive historical survey of the treatment of unmarried mothers and their children in Ireland would be of considerable relevance to public understanding. As well as addressing general societal attitudes to and treatment of unmarried mothers and their children, a particular benefit would be in mapping the range of settings where unmarried mothers and/or their children were accommodated, the relative significance of these different types of institution and the relationship between them. These institutions would include mother and

baby homes, county homes, private nursing homes, homes for infants or children and Magdalen laundries. Patterns relating to the admission of unmarried mothers into these institutions and the pathways experienced by unmarried mothers and children on leaving such institutions could be assessed. The management and operation of these institutions, including religious and state involvement, and information on the conditions within these institutions and the welfare of those accommodated could be researched.

f) As noted in this Report, the Group's examination of the extensive records which could contribute to greater public understanding of historic practices has necessarily been very modest given the scale of such records. The Group considers that a very important benefit of such an historical survey would be to provide an inventory and analysis of the archival and other sources, both public and private, of most relevance in researching these issues. The Group considers that the response to the high level of public concern and controversy surrounding Mother and Baby Homes provides an opportunity to secure the support of all of those with relevant records for the completion of a comprehensive social history of the issues which would be of enduring significance.

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- ^{iv} Earner-Byrne, Lindsey (2013), *Mother and Child: Maternity and Child Welfare in Dublin, 1922-60*, p181
- ^v Ferriter, Diarmaid (2012), *Occasions of Sin: Sex & Society in Modern Ireland*, p252
- ^{vi} (League of Nations, *Study on the legal position of the illegitimate child* (Geneva, 1939) p.111 quoted in Graham (2012) *Unmarried Mothers: The Legislative Context in Ireland, 1921-79* p68.)
- ^{vii} Earner-Byrne, Lindsey (2013), *Mother and Child: Maternity and Child Welfare in Dublin, 1922-60*, p195
- ^{viii} O’Sullivan, Eoin and O’Donnell, Ian (eds) (2012), *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* p253-254
- ^{ix} Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries
- ^x *Opening of Bessboro sourced from O’Sullivan and O’Donnell (2012, p18); Castlepollard and Roscrea from Earner-Byrne (2013, p184 and 210.); Kilrush from the Clare Champion (12/6/2014); Dunboyne from Graham (2012, p 64); Tuam from Corless (2014); Bethany Home from Meehan (2010). The Adoption Rights Alliance website indicates that Pelletstown was originally set up to provide for children in poverty in Dublin during the late 1800's and that it subsequently became St. Patrick's Home and was closed in 1985. This timeline for the closure of St. Patrick's, Navan Road is consistent with a 1986 internal Department of Health memorandum which said the St. Patrick's was "at present being re-located to a much smaller premises at Eglington Road, Donnybrook." The Adoption Rights Alliance website also indicates that Ard Mhuire, Dunboyne closed in 1991. The Bessborough Centre now operates at the location of the former Mother and Baby Home. The Centre provides family development support to vulnerable families. Details for St. Gerard's taken from Earner-Byrne (2013, p185). Earner-Byrne (2013 p185) is alone in including St.Gerard's, 39 Mountjoy Square, Dublin as a Mother and Baby Home. She bases this upon the references in the Annual Reports of the Department of Department of Local Government and Public Health for 1933-4 and 1939-40. These refer to St.Gerard's as having admitted "paying cases and selected destitute ones". It was established in 1933 by the Saint Patrick's Guild but only operated for six years, closing in 1939.*

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- ^{xi} Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries
- ^{xii} Milotte Mike (2012), *Banished Babies: The Secret History of Ireland's Baby Export Business*, p143
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- ^{xiv} *Ibid*, p188
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- ^{xvii} *Ibid*.
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