WRITTEN BRIEFING PAPER
BRIEF TO COMMITTEE FOR THE EXECUTIVE OFFICE
1 OCTOBER 2025

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Introduction

We welcome the opportunity to brief the Committee for the Executive Office on key aspects of the Inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses and Redress Scheme Bill. We have also responded to the online public consultation.

Our briefing paper below is based on 30 years combined experience of researching and writing in the area of institutional abuses. This includes a recently completed 3-year major research study across the island of Ireland, North and South, which examined the lived experiences of victim/survivors, victim advocates, lawyers, and a range of church and state actors of justice processes including inquiries, redress schemes and apologies.[1] Details of this supporting information are included below with links to the publications, including policy reports which summarise the findings.

1. The Bill's Engagement with TRDP

1.1. An integrated approach

The 2021 report of the Truth Recovery Design Panel (TRDP) recommended a range of "Guiding Principles" (Recommendation 1); there is at best patchy evidence of this in the draft bill; there is little evidence on the face of the Bill of integration with the Independent Panel mechanism (Recommendation 3); limited evidence of a human rights-based approach or a prioritisation of survivor access to information (Recommendation 3 – Public Inquiry Terms of Reference; Recommendation 4 – Access to Records), among others. However, encouragingly, the majority of recommendations related to Redress Reparation and Compensation (Recommendation 5) are present on the face of the Bill.

As a result, the details regarding access to information and the proposed public inquiry could more accurately reflect the 2021 recommendations and any restrictions to redress, should be removed. It may be suggested that other pieces of legislation or policy address the recommendations of the TRDP that are not present in the Bill. While this is true, justice measures to address non-recent harms are optimal when they are designed and implemented in a coherent and integrated manner.

[1] The research was funded by the Higher Education Authority's North-South Research Programme (Grant Ref: Grant Ref: TJHIA-NSRP); The British Academy (Grant Ref: SRG21\210319); and the Arts and Humanities Research Council (Grant Ref: AH/W011077/1). It comprised extensive empirical research, including 74 interviews with key stakeholders as well as a review of international experiences and best practice on justice processes such as inquiries, redress and apologies.

1.2. Wraparound services for survivors and access to information

A wrap around service for survivors maximises their experience of agency and choice. As a result, building in access to services and access to information to survivors as foreseeably necessary supports for effective engagement with the inquiry and redress processes is crucial.

Legislation in Northern Ireland (such as the Preservation of Documents (Historical Institutions) Act (Northern Ireland) 2022) shows the willingness to provide for survivors in terms of access to information and existing budgets and policies regarding access to counselling and other psycho-social support services demonstrate existing political will and civil service capacity to deliver on these measures. What is needed is a commitment to sequencing these in an effective manner so survivors are informed and empowered before engaging with the inquiry and redress scheme.

2. Terms of Reference

2.1. A Human rights-based approach

A human rights approach is emphasised in Recommendations 1 and 3 of the Truth Recovery Design Panel (TRDP) and by 79% of respondents to the consultation report in January this year. Inquiries are not courts of law, they therefore cannot determine legal rights or liabilities – they cannot hold individuals, institutions or the state criminally or civilly liable.

Instead, inquiries should be understood as aiming to provide truth about what happened in the past, why it happened and who bears responsibility, but not limited to legal liability. In doing so, they can frame their terms of reference, conclusions and recommendations in terms of human rights standards – the ongoing Afghanistan inquiry in England and Wales has a mandate to determine whether there is “credible information” relating to arbitrary and unlawful killings, which are serious human rights violations, and whether further investigations are required.

A similar “credible information” approach regarding human rights violations here seems a plausible way forward. This is more than a “human rights compliant” investigation, whereby the Inquiries Act 2005 or equivalent legislation such as the present Bill are deemed to discharge the UK’s international obligations without explicit reference to or substantive engagement with, international human rights law specifics.

2.2. Integration of the findings of the Independent Panel

Clause 2 of the Bill concerns the Terms of Reference; while ongoing it would be important to see mandatory language that affirms that due regard will be had to the report of the Independent Panel, if published, to guarantee that body’s findings are integrated into the inquiry’s terms of reference (see also above at 1.).

2.3. Cross-border dimensions

The terms of reference should also be amended to include reference to the cross-border entry and exit dimensions of these institutions, consistent with the TRDP report.

3. Prescribed Institutions

3.1. Other Institutions

Under Clause 3, we welcome the Bill's capacity to include other institutions by regulation. Births and residences in hospitals and in private maternity homes are obvious candidates for potential future inclusion.

3.2. A modular approach

The inclusion of further institutions need not delay the process of inquiry findings related to institutions already included. A modular approach to the inquiry, with the potential for running parallel inquiry investigations into, for example, all Good Shephard and Daughters of Charity institutions, could lead to interim reports relevant to survivors in discrete contexts, subject to a final inquiry report that provides the overall structural and thematic conclusions and recommendations. These comments are also relevant to Clauses 18-20 of the Bill ("Reports").

This approach is consistent with the key principles and recommendations of best practice emerging from our empirical research.[2]

4. Composition and Appointment of the Panel

Clause 5 of the Bill suggests the possibility a single judge-led inquiry or an inquiry panel. The Clause as drafted provides for the potential of a larger inquiry panel. An inter-disciplinary range of expertise is needed to address the complexities of non-recent offences; it would be preferable for an inquiry panel to have a broad range of expertise as the current Independent Panel did.

Moreover, it is critical that survivors are among those directly appointed to an inquiry panel. This has been done in Canada and Australia in related to child abuse inquiries and did not raise issues or concerns about prejudice or bias. Such appointments, after due consideration, could be consistent with Clause 7(2) "not reasonably be regarded as affecting the impartiality of the inquiry panel."

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2 See Shilliday, P., McAlinden, A.-M., Gallen, J., and Keenan, M., *https://transformingjusticeproject.org/wp-content/uploads/2023/07/Non-recent_Institutional_Abuses_And_Inquiries-1.pdf;* see also McAlinden, A.-M., Keenan, M. and Gallen, J. *Transforming Justice Responses to Non-recent Institutional Abuses* (Oxford University Press, 2025), esp Ch 9 (pp 300-301). Available to read for free/open access at: https://academic.oup.com/book/59821

Picking the chair and panel members provides further opportunities to consult with survivors and build trust and credibility in the inquiry panel. A consultation process for the appointment of the chair helps build trust and credibility in the process and would ensure that there is some buy in before the appointment starts.

These points are also consistent with the principles of best practice emerging from our research.[3]

5. Advisory Panel

Clause 10 provides for an Advisory Panel. This is welcome and builds on the experience in England and Wales of the Independent Inquiry into Child Sexual Abuse's Victims and Survivors Consultative Panel (VSCP).

In recent research, VSCP members report a clash between their lived experience expertise and legal and bureaucratic culture in the inquiry.[4] The research concluded that "careful consideration is required in relation to how lived experience expertise can be meaningfully integrated into an inquiry's culture to safeguard survivors and enhance inquiry outcomes."

We would suggest that this clause should provide for mandatory language – an Advisory Panel *shall be* appointed, and that further consideration be given to the explicit role and provision of a terms of reference of any advisory panel.

6. Evidence and Procedure

Clause 13 governs the proposed evidence and procedure of the inquiry. We have yet to see evidence globally of any public inquiry, addressing past serious harms, where survivors did not experience some degree of distress or re-traumatisation, stemming primarily from legal culture and cross-examination. There are notable examples of best practice which have adopted a non-adversarial investigative approach such as the Australian Royal Commission into Institutional Responses to Child Sexual Abuse and the Mucklemore Hospital Inquiry here in Northern Ireland. We await empirical research with survivors to explore this further.

3 See Shilliday, McAlinden, Gallen and Keenan, note 2.

4 Taggart, D., Wright, K., Griffin, H., Duckworth, L., Baxter-Thornton, M., Coates, S., Lewis, E., Maxted, F., Shellam, K., Tuck, C. and Ford, S., 2025. Lived experience consultants to a child sexual abuse inquiry: Survivor epistemology as a counterweight to legal and administrative proceduralism. Child Abuse & Neglect, 159, p.107147.

Inquiries are large and challenging, but this Bill suggests some appetite for innovation and meaningful centring of survivors. Based on our research[5] and that of others, some key measures are recommended to minimise distress at inquiries.

First, building on Patricia Lundy's work on the Historical Institutional Abuse(HIA) (Hart) Inquiry, [6] early disclosure of documents to survivors is key. It seems to us that an inquiry chair could be obliged in the ToR to direct that documents be disclosed to survivors early and well in advance of the day of an oral hearing and that any documents provided to the inquiry with personal information concerning survivors, broadly defined, should not be withheld from the survivor as a directly affected person.

Second, inquiry processes should learn from the restrictions on cross-examination that exist in the criminal law in Northern Ireland and in England and Wales. A ground rule or preliminary hearing should be used to ensure that there is agreed and restricted questioning of victim-survivor testimony and the potential to use trauma-informed intermediaries rather than barristers to engage with survivor testimony.

Third, all legal counsel should be trained in trauma-informed approaches and how to engage with vulnerable witnesses.

Fourth, survivors should be granted core participant status as a protection of their rights and interests in light of the foreseeable risks that they will face challenge and criticism at an inquiry.

More broadly, we would encourage survivors to advocate for wrap around services for survivors beyond the provision of counselling services at the point of giving oral testimony. This can be built into the inquiry budget and be designed to coordinate with external service providers – the Australian Royal Commission into Institutional Responses to Child Abuse is the best model here. This could be facilitated through the Commissioner for Survivors of Institutional Childhood Abuse NI if properly resourced.

7. Redress

7.1. Acknowledgement

Redress is not about money. It is not about compensation; nothing can undo the irreparable harms to the lives of survivors and their families. Instead, for many survivors, it is about acknowledgment of harm and responsibility for the harm and fostering the possibility of repair.[7]

5 See McAlinden, A.-M., Keenan, M. and Gallen, J. Transforming Justice Responses to Non-recent Institutional Abuses (Oxford University Press, 2025), Available to read for free/open access at: https://academic.oup.com/book/59821], esp Chapter 9.

6 See eg Lundy, P. 2020. '"I Just Want Justice": The Impact of Historical Institutional Child-Abuse Inquiries from the Survivor's Perspective'. *Éire-Ireland* 55(1-2): 252-278.

7 See McAlinden Keenan and Gallen (2025) book, esp Ch 3, pp 232-234, and Ch 9.

In the explanatory memorandum with the Bill, para 14 states: “The Standardised Payment is an acknowledgement to those impacted by a system of institutions established for women and girls, and its associated shame and stigma.“ It is unclear how redress will function as a form of acknowledgement of responsibility or wrongdoing.

Based on past experiences, such as the HIA redress scheme, a successful applicant will receive money and a letter that confirms their eligibility. On this approach, there would be no explicit recognition or acknowledgment of this system of institutions, shame or stigma.

The Australian National Redress Scheme provided a personalised apology to survivors as part of the redress they received in addition to financial redress. Such apologies could come from the state but also relevant private institutions that were responsible for the abuse of children especially alongside their financial contribution to redress (see further below at 7.4.).

7.2. Entitlement to a Payment

7.2.1. Exclusion of Workhouses

Regarding entitlement to redress, we share the concern expressed by the Independent Panel at the exclusion of unmarried women, and their now adult children admitted to Workhouses before 1948. This cohort of survivors is foreseeably small, elderly, but equally deserving of recognition and justice.

We imagine officials may have concerns regarding Section 75 of the Northern Ireland Act 1998 which obliges public officials to have due regard to the need to promote equality of opportunity between persons of different social categories, including marital status. A difference in treatment between married and unmarried women can be justified: unmarried women historically experienced greater and distinct forms of discrimination, exclusion and hardship. This can be evidenced across a range of jurisdictions, in historical literature, and in the Research Report on Mother and Baby Homes and Magdalene Laundries in Northern Ireland (2021). We would welcome clarification on whether the commissioned Equality Impact Assessment addressed that issue.

7.2.2. Eligible Dates

We strongly disagree with the exclusion of posthumous awards to families of individuals prior to 29 September 2011. This date is arbitrary. It is tied to an unrelated decision on child abuse inquiries, and has no bearing on present context. There is no principled justification for restriction based on this date.

It is important too that survivors are part of a holistic and informed conversation about redress. We note the explanatory memorandum estimates redress costs between £30m - £96m. It is important for the TEO to clarify what budget if any has been secured for redress to date, whether funding has been ring fenced.

Consideration of redress needs to be fair to all survivors. The challenge politicians and civil servants face is to provide this fairness amid other claims and rights to public services in Northern Ireland. We would encourage officials to enable further candour in discussions on redress. What figures would be involved if post-2011 posthumous awards were included? For non-recent harms, is there forecasting available from the Northern Ireland Statistics and Research Agency (NISRA) on the likely rate of mortality among the relevant cohorts of the population?

Expanding the temporal scope of posthumous claims and seeking inclusion of survivors from workhouses is likely to require revising the intended figure for such awards. The explanatory memorandum provides a range of options to be considered – it would be fruitful to see the implications of as inclusive as possible a scheme and what the resultant options in terms of cost would be. There are several demands on the exchequer – would a more inclusive but less lucrative scheme be possible?

7.3. Access to Records

The lack of access to records provision in the Bill is the significant gap in implementing the recommendations of the Truth Recovery Design Panel (TRDP).

There are clearly an ability and willingness to legislate in this space, such as the Preservation of Documents (Historical Institutions) Act (Northern Ireland) 2022. Therefore the question is in aligning the access to records with a holistic wrap around service for survivors that will support them and family members in accessing records from a range of sources both public and private. The absence of access to records also has a fundamental impact on the extent to which survivors can engage meaningfully with inquiry and redress processes.[8]

International best practice in this regard remains Australia's Find and Connect service https://www.findandconnect.gov.au. In Australia, generally speaking, direct descendants and close family members have a right to access the records of a relative, but only after their death. A similar approach is likely aligned with the UK's obligations under data protection legislation.

7.4. Apology

The Australian National Redress Scheme provided a personalised apology to survivors as part of the redress they received in addition to financial redress. Such apologies could come from the state but also relevant private institutions that were responsible for the abuse of children especially alongside their financial contribution to redress. An apology, alongside any financial redress, has emerged as an essential part of the acknowledgement and reparations process for survivors.[9]

8 McAlinden, A.-M., Keenan, M. and Gallen, J. *Transforming Justice Responses to Non-recent Institutional Abuses* (Oxford University Press, 2025), see chapters 5 and 6 and 9 (pp 308-309). Available to read for free/open access at: https://academic.oup.com/book/59821

9 McAlinden, Keenan and Gallen (2025), Chapters 7 and 9.

Best practice for an apology would be for the provision of a general apology by Head of State or the jurisdiction and head of relevant religious organisations and churches, as well as individualised apologies as part of redress (see above at 7.1.).

As best practice on apologies for institutional abuse, a meaningful apology contains five essential elements which Professor Anne-Marie McAlinden outlined in her report on apologies and institutional child abuse. These were adopted by the Northern Ireland Executive in the first official state apology to victim/survivors of historical institutional abuses in residential care in Northern Ireland in March 2022: (1) Acknowledgement of Wrongdoing; (2) Acceptance of Responsibility; (3) Expression of Remorse/Regret; (4) Assurance of Non-Repetition; (5)) Offer of Repair/Corrective Action.[10]

As such, consideration should be given to sequencing a further written official apology to accompany monetary redress.[11]

7.5. Access to Legal Advice

Access to legal advice, and indeed increased supports for victim/survivors throughout inquiry and redress processes, are important elements of justice processes. This is especially true given the often vulnerable or elderly nature of some survivors.

The lack of supports for survivors, including the absence of or the limited nature of legal advice, can severely impact on the quantum of redress received.[12]

As such, it would be preferable if the language here was mandatory – "shall make", rather than "may make" and if a budget was ring fenced for this.

8. Supporting information:

We direct the Committee to our project website: https://transformingjusticeproject.org/ which contains all of our project outputs including most notably the following:

- **Transforming Justice Responses to Non-Recent Institutional Abuses - Book**
  Anne-Marie McAlinden, Marie Keenan, James Gallen
  https://academic.oup.com/book/59821

10 See Catterall, E. and McAlinden AM. 2018. *Apologies and Institutional Child Abuse*. Queen's University Belfast, pp 7-11. Available at: https://apologies-abuses-past.org.uk/assets/uploads/Apologies-Institutional-Abuse-Report_Sept-2018.pdf
See also: https://www.executiveoffice-ni.gov.uk/news/apology-victims-and-survivors-historical-institutional-abuse-ministerial-statements

11 See McAlinden, Keenan and Gallen (2025), Ch 7 and pp 305-309.

12 See McAlinden, Keenan and Gallen (2025), esp Chapter 6 (pp 196-199).

- **Reframing Justice Responses to Non-recent Institutional Abuses – Final Policy Report**
  Publication April 2025 Document Type: PDF size:2.4mb

- **Reframing Justice Responses to Non-recent Institutional Abuses – Summary version**
  Publication April 2025 Document Type: PDF size:2.3mb

- **Non-recent Institutional Abuses and Inquiries: Truth, Acknowledgement, Accountability and Procedural Justice**
  Publication: July 2023 Document Type: PDF Size: 3.2mb

See further the report referenced above on **'Apologies and Institutional Child Abuse'** by Anne-Marie McAlinden:

- https://apologies-abuses-past.org.uk/assets/uploads/Apologies-Institutional-Abuse-Report_Sept-2018.pdf

Copies also submitted electronically and in hard copy.

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17 September 2025