

THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 520 J.R.]

BETWEEN

M. K. L.

FIRST APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

AND

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 36 J.R.]

BETWEEN

D. C

SECOND APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice White delivered on the 1st day of June, 2017

1. The first applicant seeks an order of *certiorari* quashing the respondent's decision of 23rd June, 2015, refusing to admit her to the *ex gratia* scheme for women who were admitted to and worked in the Magdalen Laundries, St. Mary's Training Centre, Stanhope Street and House of Mercy Training School, Summerhill, Wexford, established by the Government of Ireland in December 2013 ("Magdalen Laundry Scheme").

2. The second applicant seeks an order of *certiorari* quashing the respondent's decision of 29th October, 2015, refusing admission to the *ex gratia* scheme for women who were admitted to and worked in Magdalen Laundries, St. Mary's Training Centre, Stanhope Street and House of Mercy Training School, Summerhill, Wexford, established by the Government of Ireland in December 2013, (Magdalen Laundry Scheme).

3. It was alleged by the first applicant that she was admitted to and worked in St. Mary's Refuge Magdalen Laundry at High Park Convent, Drumcondra, Dublin 9 between 1977 and 1982, and the second applicant alleged she was admitted to and worked in the St. Mary's Magdalen Laundry, Cork Road, Waterford, between 1971 and 1978, and at St. Mary's Magdalen Laundry, High Park, Grace Road, Drumcondra, Dublin 9, between 1978 and 1981.

4. The matter was at hearing before this Court on 25th January, 2017. Controversy arose on the second day of the hearing on 26th January, 2017, and the proceedings were adjourned to allow further affidavits to be filed and continued on 21st and 22nd February, 2017 when judgment was reserved.

The Pleadings of the First Applicant

5. The first applicant filed a statement required to ground application for judicial review on 16th September, 2015, together with a grounding affidavit and exhibits sworn on 15th September, 2015. Leave was granted on 12th October, 2015. A motion was issued on 15th October, 2015, originally returnable for 1st December, 2015. The first applicant deposed a supplemental affidavit on 4th December, 2015. A statement of opposition on behalf of the respondent was filed and served on 4th February, 2016.

6. Janet Lacey, an Assistant Principal Officer in the Restorative Justice Implementation Unit of the respondent, deposed an affidavit with exhibits in reply on 28th January, 2016. The first applicant deposed a further replying affidavit on 15th March, 2016. Loretta Barrett, a Higher Executive Officer of the respondent, deposed an affidavit on 20th January, 2017. The first applicant deposed a third replying affidavit on 24th January, 2017.

7. In response to a controversy on disclosure, James Martin, Assistant Secretary of the respondent deposed an affidavit on 1st February, 2017, together with exhibits. The first applicant deposed a fourth replying affidavit on 6th February, 2017, in response.

The Pleadings in Respect of the Second Applicant

8. The second applicant filed an amended statement required to ground application for judicial review on 27th January, 2016. The first applicant's solicitor, Wendy Lyon, deposed an affidavit with exhibits on behalf of the second applicant on 21st January, 2016. The second applicant deposed an affidavit on 19th January, 2016. Leave was granted on 25th January, 2016. A motion issued on 27th January, 2016, returnable for 15th March, 2016. The respondent filed a statement of opposition on 4th April, 2016.

9. Janet Lacey, Assistant Principal Officer in the Restorative Justice Implementation Unit of the respondent, deposed an affidavit with exhibits on 1st April, 2016. The second applicant deposed a replying affidavit on 10th June, 2016.

The affidavit of James Martin, already referred to was common to both applications. The second applicant then deposed a third affidavit on 6th February, 2017, in reply.

The ex gratia scheme.

10. The *ex gratia* scheme is defined as being for women who were admitted to and worked in Magdalen Laundries, St. Mary's Training Centre, Stanhope Street and House of Mercy Training School, Summerhill, Wexford. The terms of the scheme were set out in writing in December 2013. At Appendix 1 of the scheme, the twelve institutions covered under the scheme were set out, ten being Magdalen Laundries, four under the auspices of the Good Shepard Sisters at St. Mary's, Cork Road, Waterford; St. Mary's, New Ross, Wexford; St. Mary's, Pennywell Road, Limerick, and St. Mary's, Sunday's Well, Cork.

11. Two were under the auspices of the Sisters of Our Lady of Charity at St. Mary's Refuge, High Park, Grace Park Road, Drumcondra, Dublin 9 and Monastery of Our Lady of Charity, Sean McDermott Street (formerly Gloucester Street) Dublin 1. Two laundries were under the auspices of the Sisters of Mercy, the Magdalen Home (formerly Magdalen Asylum) at 47 Foster Street, Galway and St. Patrick's Refuge, Crofton Road, Dun Laoghaire, Co. Dublin and two under the auspices of the Sister of Charity, at St. Mary's Magdalen's Floraville Road Donnybrook, Dublin and St. Vincent's, St. Mary's Road, Peacock Lane, Cork.

12. Two other institutions were included in the scheme, one under auspices of the Sisters of Mercy, House of Mercy Training School, Summerhill, Wexford (laundry operated in the Training School) and St. Mary's Training Centre, Stanhope Street (laundry operated in the training centre) operated under the Sisters of Charity. A note at Appendix 1 stated:-

"Institutions listed in the schedule to the Residential Institutions Redress Act 2002 are not covered by the scheme."

13. The introduction to the scheme stated:-

"(1) The Government has decided to provide on an *ex gratia* basis a scheme of payments and benefits for those women who are determined, under the application process set out below, to have been admitted to and worked in one of the twelve institutions listed at Appendix 1. Payments and benefits under the scheme will only be made to those women who comply with all of the terms of this scheme (including the signing of the form and declaration of Appendix 2) and who waive any right of action against the State or against any public or statutory body or agency arising out of their admission to and work within one of the twelve institutions concerned.

(2) The scheme is informed by the report of Mr. Justice John Quirke 'on the establishment of an *ex gratia* scheme and related matters for the benefit of those women who are admitted to and worked in the Magdalen Laundries' May 2013 which is referred to in this scheme as the Quirke report.

(3) A Restorative Justice Implementation Unit has been set up in the Department of Justice and Equality, for a limited period to process applications and payments under the scheme.

At para. 16 under the heading 'deciding whether a person falls within the scope of this scheme'. The scheme states

"The first phase of processing a properly completed application will be the making of a provisional assessment as to whether the applicant comes within the scope of the scheme. This assessment will be made on the basis of the records of the institutions concerned and any other records or statements available. On this basis, a decision will be made as to whether on the balance of probabilities, the applicant was admitted to and worked in one of the twelve institutions covered by the scheme and if so an assessment will be made of the length of time which she spent in the relevant institution. This provisional assessment will be set out in a letter to the applicant.

THE QUIRKE REPORT.

14. Examining the underlying Magdalen Commission Report the Quirke report on the establishment of an *ex gratia* and related matters for the benefit of those women who were admitted to and worked in Magdalen Laundries May 2013, the following passages are relevant. At para. 3.02 of the report at p. 19, the report sets out the terms of reference in setting up the scheme as follows:-

"(i) to advise on the establishment of an *ex gratia* Scheme (to operate on a non-adversarial basis) including identifying the criteria and factors to be taken into account to facilitate the early establishment and effective conduct of an *ex gratia* Scheme for the benefit of those women who were admitted to and worked in a Magdalen Laundry and in the Laundry operated in the Training Centre at Stanhope Street, Dublin, taking into account criteria determined to be relevant, including work undertaken and other matters as considered appropriate, to contribute to a healing and reconciliation process."

15. At para. 3.03, the report states:-

"The concept of the proposed Scheme results directly from the findings of the McAleese Report and the unprecedented responses of the Taoiseach, the Government of Ireland, the Oireachtas and the Irish people to those findings. As I have indicated earlier the McAleese Report found that there had been direct State involvement in the running and operation of the Magdalen laundries."

16. Paragraph 3.08 states:-

"3.08 Since the proposed Scheme upon which I have been asked to advise must operate on a non-adversarial basis, lengthy and mutually antagonistic roles and positions leading to invasive and painful inquiry and interrogation cannot be entertained and must be specifically avoided.

It follows that the 'traditional' methods and principles which apply to the awarding and assessment of damages cannot appropriately and effectively be applied to the function and administration of the proposed Scheme and must be replaced in order to meet its requirements.

3.09 The Commission decided at an early stage that the proposed Scheme would be best founded upon a flexible collaborative and consensus-orientated process, fostering an environment of healing and of reconciliation. The needs and interests of the Magdalen women should be at the forefront of its consideration rather than the parties' respective differences.

'Alternative dispute resolution', ('ADR') is an umbrella term for a variety of alternative and flexible processes for resolving

disputes. The primary focus of these processes is not the parties' respective differences, but the needs, interests and underlying requirements of the parties.

3.10 This Commission decided that a flexible and consensus-orientated approach placing an emphasis on underlying interests rather than divisions and seeking a creative resolution based upon those factors was the appropriate means of achieving the objectives envisaged by the Terms of Reference. ADR processes are intended to give participants significant control over the conduct and outcome of the process (adversarial processes can sometimes be largely delegated to third parties like legal representatives and experts).

The Commission took the view that an ADR process would give a coherent voice and a degree of 'self determination' to a cohort of women who for so long have been "wondering why they were the ones who were excluded or penalised" (as Senator McAleese so eloquently explained) and who have told me that they have for a very long time felt forgotten, denied and disbelieved.

3.11 I have decided to recommend the establishment of an ex gratia Scheme which has been designed after the application and completion of an interest based dispute resolution process in which a large proportion of the participants were persons, and organisations with legitimate intrinsic interests in the proposed Scheme and its functions and outcomes.

The criteria and factors taken into account in the design of the Scheme have been:

- (a) The needs and interests of the Magdalen women,
- (b) The avoidance of 'positional' or confrontational advocacy,
- (c) The nature and extent of the work undertaken by the Magdalen women,
- (d) The wish of the contemporary Irish community to reduce the hurt and pain suffered by the Magdalen women by providing them with monetary and other benefits;
- (e) The needs and interests of that community including its capacity to provide such benefits in a manner which will be (i) fair, just and equitable to all of those, who will be affected by the proposed Scheme and (ii) as proportionate as is reasonably possible having regard to the assessment and calculation of other similar monetary awards made within this and other jurisdictions and;
- (f) The need to facilitate and encourage any reasonable measures which may be required to accommodate consensual healing and reconciliation between parties having an interest in the Scheme."

17. The report did consider applicants under the scheme who may have received payments under the Redress Board Scheme but were transferred to the laundries and this was set out at para. 3.15 which states:-

"Since a number of applicants seeking to recover under the Scheme may have received payments under the Redress Board Scheme, this Term of Reference appears to envisage the administrator of the proposed Scheme carrying out an investigation in order to discover whether, and to what extent, applicants have been awarded damages or compensation by the Redress Board.

The objective appears to be to avoid an 'overlap' or double recovery by some applicants and to reduce the risk of over-compensation. The relevant legislation applies strict confidentiality requirements to awards made by the Redress Board for a variety of reasons.

The terms of reference states:-

'(iv) to consider the approach to be taken in circumstances in which a payment has already been made by the Redress Board by way of redress to a former resident of an industrial school, where such payment included a sum specifically due to the direct transfer of that person from an industrial school to a relevant Laundry and their time or part of their time spent in a Laundry or Laundries."

18. The report did not consider the position of applicants, who were in other institutions on the same campus as the laundries but who were forced to work in the laundries as children.

19. Separately, the report did not give a lot of consideration to an appeal system for those who were considered ineligible for the scheme.

20. The sixth recommendation of the report is set out at p. 45 of the report which states:-

"I am therefore recommending that the State should establish, fund, staff and accommodate a small Dedicated Unit which should be charged to provide the following services for eligible Magdalen women:

- A helpline accessible daily by the women to assist them to obtain the health, monetary and other benefits to which they will now be entitled.
- Investigative and other help and assistance in obtaining such sheltered or other housing as they may be entitled to.
- Investigative and other help and assistance in obtaining such educational assistance as they may be entitled to.
- Practical and, if necessary professional, assistance to enable those women who wish to do so to meet with those members of the Religious Orders who have similar wishes to meet and interact.

- Similar practical assistance to meet and interact with other Magdalen women.
- The acquisition, maintenance and administration of any garden, museum or other form of memorial which the Scheme's administrator, after consultation with the advisory body or committee referred to below has decided to construct or establish.

The Unit should be established after the Scheme's administrator has first consulted with and received written submissions from an advisory body or committee representing the needs and interests of the Magdalen women. That body or committee, in turn, should be broadly representative of the majority of Magdalen women and should include representatives of eligible women currently living within the UK or elsewhere.

A simple appeal process to a single agreed independent person should also be provided to resolve disagreement or dissatisfaction with preliminary decisions made by the Scheme's administrator in respect of the matters identified above."

21. That seems to be the only reference to an appeals procedure in the Quirke report.

Relevant history of the applicants

22. It is not disputed that the first applicant was admitted to An Grianan Teenage Centre from 30th July, 1975 to 8th August, 1975; and from 29th June, 1976 to 19th July, 1976; and finally from 21st September, 1977 to 5th September, 1982. She was committed to St. Joseph's Industrial School, Whitehall on 21st September, 1977 but continued to reside in An Grianan. She was required to carry out work in the Magdalen Laundry at St. Mary's Refuge.

23. The disputed issue is the ability of the first applicant to claim eligibility under the scheme as An Grianan was considered to be a separate institution from the laundry, and thus the first applicant was not admitted to the laundry. The respondent also took issue with the description of the scheme as being set up to compensate women who worked in the laundry. It is contended that the payments under the scheme are not intended to reflect or include a calculation of loss of earnings sustained by the women but simply intended to express the sincere nature of the State's reconciliatory intent.

24. There is no dispute that the second applicant was resident in St. Dominic's Industrial School, a school attached to the Good Shepard Convent in Waterford from 30th May, 1967, to 1978, and from 1978 until 1981 in An Grianan, High Park, Drumcondra, Dublin 9. It is not disputed that the second applicant as a child worked at the Magdalen Laundry at Cork Road Waterford during the summers and also worked in the Magdalen Laundry at St. Mary's Refuge, High Park, Drumcondra.

25. The respondent disputes the second applicants eligibility under the *ex gratia* scheme as she was not admitted to or worked in St. Mary's Magdalen Laundry, Cork Road, Waterford or St. Mary's Refuge, High Park, Drumcondra. The respondent considers that admitted means resident in those institutions while both applicants contends that it should be interpreted as being obliged to work in those institutions and that in particular on the Drumcondra campus, there was no difference in reality between An Grianan and St. Mary's Refuge.

Legal Principles.

26. It is open to this Court to review the operation of the *ex gratia* scheme. Such a scheme set up by the Government is a public scheme and the administrators have a duty to apply fair procedures. The jurisprudence dictates that the *ex gratia* scheme attracts the protection of constitutional justice in its administration. The court should not usurp the functions of the administrators of the scheme in deciding its essential components such as eligibility and awards. It would only be in exceptional circumstances that the court would interfere with a decision on eligibility or an award.

27. This Court relies on the judgment in *The State (Keegan) v. Stardust Victims Compensation Tribunal* [1986] I.R. 642 and *The State (Creedon) v. Criminal Injuries Compensation Tribunal* [1988] I.R. 51, to ground its jurisdiction in examining the operation of the scheme. In *The State (Keegan) v. Stardust Victims Compensation Tribunal*, it was held by the Supreme Court (Finlay C.J., Hamilton P., Henchy, Griffin and Hederman JJ.) in disallowing the appeal, 1, that the test of unreasonableness or irrationality in judicial review lies in considering whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense. In *The State (Creedon) v. Criminal Injuries Compensation Tribunal*, it was held by the Supreme Court, (Finlay C.J., Walsh and McCarthy JJ.) in allowing the appeal and granting the relief sought, 1, that to succeed in her application the applicant had to establish that the decision of the respondent had been at variance with reason and common sense.

28. The court approves an English authority *R. v. Ministry of Defence (Ex Parte Walker)* [2000] 1 WLR 806, when the House of Lords decided that:-

"It is plainly open to the court on an application for judicial review to consider whether the Ministry of Defence has correctly interpreted the scheme (as originally made, or as subsequently modified) or whether its decision involves an error of law (see e.g. *Reg. v. Criminal Injuries Compensation Board, Ex parte Schofield* [1971] 1 W.L.R. [926]; *Reg. v. Criminal Injuries Compensation Board, Ex parte Ince* [1973] 1 W.L.R. 1334)."

29. That related to a scheme set up by the English Ministry of Defence introduced as a Criminal Injuries Compensation (Overseas) Scheme in 1979 to provide compensation for members of the armed forces and their dependents who were the victims of crimes or violence while serving overseas comparable to that awarded for crimes of violence by the Criminal Injuries Compensation Board within the United Kingdom.

30. The first applicant is not precluded from obtaining relief by reason of s. 13(6), 13(12) and 24 of the Residential Institution Redress Board Act 2002. These provisions apply to several proceedings arising out of abuse in residential institutions for which redress has already been granted. These statutory provisions do not preclude any award under the present *ex gratia* scheme. The respondent is quite correct to ensure that there is no double recovery by way of payment under the scheme for that which the applicant has already been compensated under the redress scheme. The court appreciates that this exercise in differentiating the two maybe be difficult but not impossible.

31. The scheme is not an Act, a statutory instrument, a guideline pursuant to an Act or a European Directive, thus strict legal application of statutory interpretation does not arise. It is not for this Court to decide eligibility. That is a matter for the body responsible for administering same. It is not appropriate for this Court at present to give a strict legal definition to the words "admitted to". The court is entitled to examine the reasons for setting up the scheme and the method by which it was to be operated.

Relevance of exchange of correspondence between the respondent and the Ombudsmans office.

32. The failure of the respondent to disclose the dispute between the Ombudsman's office on the administrators of the scheme in the department is a relevant issue in these proceedings.

33. This arose subsequent to the first day's hearing of the judicial review on 25th January, 2017.

34. A letter from a legal adviser from the Ombudsman's office who was attending the court on a watching brief, was exhibited in the affidavit of James Martin of 1st February, 2017. The email was addressed to the solicitor for the respondent and copied to the solicitor for the applicants and it stated:-

"I am writing to you as one practising solicitor to another and because I was uncomfortable with a number of averments made by your client in relation to the Ombudsman, I appreciate that the affidavits in question were sworn some months ago and that some circumstances have changed since then. Nonetheless, as you yourself will recall the Ombudsman has had cause to review the operation of the Magdalen Restorative Justice Scheme in the last twelve to eighteen months. There has been considerable engagement with the Department on the matter and as a result of the intervention of the Ombudsman, four women who were previously refused admission to the Scheme have since been included. The Department also undertook to review any other cases where the facts matched those of the four women admitted to the Scheme with a view to admitting them to the Scheme.

There are other cases which consequent on this review by the Ombudsman have been notified to the Department as meriting inclusion in the Scheme and which have been the subject of discussion between this Office and the Department. However, the Department has refused to further consider these cases for inclusion in the Scheme.

The Department was notified of the Ombudsman's intention to commence an investigation into the operation of the Scheme by letter dated 20th December, 2016. A response was received on 20th January, 2017, from the Department notifying the Ombudsman of the appointment of a liaison officer for the purpose of the investigation. The complainants to this office whose cases are captured by the investigation are currently being notified of the investigation.

Separately, it was averred that the Department had committed to being bound by any decision of the Ombudsman on cases "appealed" to this office. It is our understanding that there was no commitment given and indeed the actions of the Department in recent months do not lend credence to any such commitment on the part of the Department."

35. It was incorrect to recite in an affidavit that the respondent considered itself bound by the Ombudsman's recommendation. This should have been clarified as the respondent reserved the right to disregard the Ombudsmans finding if in the respondent's opinion it was outside the criteria of the scheme.

Decision

36. It is accepted by the respondent that it considered documentation on the eligibility of the applicants, which was not furnished to them for their consideration and submissions before any decision was made.

37. It has emerged from the disclosure subsequent to 25th January, 2017, and in particular the affidavit of Mr. Martin and exchange of correspondence between him and the Ombudsman that the location of An Grianan and St. Mary's Refuge in the same building has given rise to a dispute of fact as to the actual separation of these institutions. It is accepted that they were in the same building and that both applicants worked regularly in the laundry as children without remuneration. It has been conceded by the respondent that prior to 1972, the separation was so uncertain that some applicants who were in *An Grianan* have been considered suitable for inclusion in the *ex gratia* payment scheme.

38. While the court accepts that the exchange of correspondence has arisen subsequent to the decisions made in respect of the admission of these applicants to the scheme, nevertheless, the court is satisfied that the respondent had enough evidence to suggest, there was an issue here. For that reason the respondent should have been careful to ensure that any documentation that it was considering in dealing with this aspect of the eligibility of the applicants was exchanged with them for their consideration and comment. To that extent, the respondent did not apply fair procedures to the applications.

39. The applicants did not appeal to the Ombudsman. This was initially a ground of opposition of the respondent. The ground was withdrawn subsequent to the hearing of 25th January, 2017. The court can only conclude following the logic of the respondent's submission that if it considered the applicants to be outside the criteria of the scheme if the Ombudsman had found in their favour, this finding would have been rejected by the respondent as it would not have regarded itself bound by a decision of the Ombudsman which in the view of the respondent was outside the appropriate criteria for the establishment of the scheme.

40. Residents of An Grianan albeit prior to 1972 have not been precluded from entering into the scheme thus the contention of the respondent that anyone who was in the An Grianan institute would not be eligible for inclusion in the *ex gratia* scheme is incorrect.

41. The appeal system, either by way of internal review within the respondent's department or on external appeal to the Ombudsman did not envisage a disputed issue as to eligibility and how that could be determined if the putative applicant was not considered eligible.

42. Mr. Martin in his affidavit referred specifically to this issue at para. 4 of his affidavit deposed on 1st February, 2017. He stated:-

"The position of the respondent with regard to the status of appeals to the office of the Ombudsman is set out at paras. 4 – 6 of the second affidavit of Janet Lacey sworn on 25th April, 2016. In discussions and exchange of emails with a senior official in the office of the Ombudsman in June and July 2013, it was proposed by the Department and accepted by the office of the Ombudsman that there would be a special appeals process to that office in any factual determination made as to whether a woman was in one of the twelve institutions, namely those which are listed in Appendix 1 and the duration of stay. It was clear that the office of the Ombudsman was not being given jurisdiction to extend the list of institutions that are covered by the terms of the *ex gratia* scheme and in particular it has not been given jurisdiction to include institutions that are expressly excluded from the *ex gratia* scheme as they fell within the framework of the Residential Institutions Redress Scheme. The focus of the interactions between the respondent and the office of the Ombudsman that have occurred since April 2016, relevant to these proceedings have related to a view expressed by that office that the scheme should include those women who are admitted to An Grainan. It is the view of the respondent that this falls outside the jurisdiction of the Ombudsman as it would amount to the addition of an institution to the scheme

which by Government decision has been expressly excluded from the scheme.”

43. The Ombudsman’s office seems to have respectfully disagreed. In a letter of 15th July, 2016, the Ombudsman wrote to Mr. Martin stating:-

“It remains the view of the Ombudsman that the Scheme may have been administered on the basis of an overly narrow interpretation of the purpose of the Scheme. You refer to the inclusion of any new institution as being a matter for Government but it is not the case that any of the applications/complaints being considered by this office would necessitate such an amendment to the Scheme. In all of the cases under review by this office, the applicant/complainant has worked in one of the 12 listed institutions.”

44. The key dispute of interpretation between the parties is the requirement of the respondent that total residence in the institutions is required, and that someone who resided on the campus of the relevant institutions but worked regularly in the laundries is excluded from the scheme.

45. This is a genuine dispute and the court does not consider that the respondent has acted irrationally or without commonsense. It is relevant particularly if an applicant has previously received compensation from the Redress Board.

46. The second applicant is in an unfortunate situation in that she was entitled to make a claim to the Redress Board but as she resided in the United States of America, she did not do so and is now out of time and is now reliant on the application to be included in the *ex gratia* scheme the subject of these proceedings. The fact that she is out of time for an application to the Redress Board is not an appropriate matter for consideration by this Court.

47. The respondent may well be correct that the applicants are outside the scope of the *ex gratia* scheme as presently constituted. It is not appropriate that any applicant under the *ex gratia* scheme should receive compensation, however described from the Redress Board Scheme and the *ex gratia* scheme covering the same wrong. .

48. The administration of the *ex gratia* scheme was flawed in the disputed cases as both applicants had no opportunity to make submissions on the evidence considered by the Restorative Justice Unit and the review system on the disputed issue and in addition, it is now established that in some cases, applicants to the *ex gratia* scheme have been compensated even though they were in an institution, namely An Grainan which was included in the Redress Board Statutory Scheme, albeit at a time when its status before 1972 was uncertain. The applicant should have been afforded the opportunity to provide evidence that contradicted the finding that An Grainan and St. Mary’s Refuge had a distinct separation.

49. The second applicant should have been afforded an opportunity to consider any evidence that St. Dominic’s and the Magdalene Laundry in Waterford were the same or separate institutions although it seems from the evidence that there was separation between St. Dominic’s Industrial School and the Refuge/Laundry.

50. I will grant the relief sought on the narrow basis of a refined ground 3 in the second applicant’s application that is “the respondent’s decision was reached in violation of the second applicant’s right to natural and constitutional justice and fair procedures”.

51. In respect of the first applicant, I will grant the relief sought on the basis of 4(a) of the grounds upon which relief is sought that is the respondent’s decision was reached in violation of the applicant’s right to natural and constitutional justice and fair procedures in particular (a) the respondent based her decision on information that has never been put to the applicant and which she has not had the opportunity to challenge. The court refuses to grant relief on the basis that the decision was unreasonable and irrational.

52. The court is of the opinion that the matter should be remitted to the respondent to be considered in the context of the other matters which are under review between the respondent and the Ombudsman’s office.