



Oifig an Ard-Rúnaí
An Roinn Oideachais agus Scileanna

Office of the Secretary General
Department of Education and Skills

Ms Margaret Falsey
Committee Secretariat
Committee of Public Accounts,
Dáil Éireann,
Leinster House,
Dublin 2.

4 December 2017

Ref: S1713202

Subject: Follow-up to the Committee of Public Accounts Hearing on C&AG Special Report 96: Cost of Child Abuse Inquiry and Redress

Dear Ms Falsey,

At the meeting of the Committee on 16th November, I was requested to provide a further note regarding the contributions being made by religious congregations towards the costs incurred by the State in responding to residential institutional child abuse.

As the Committee is aware these contributions are being made under two rounds:

- the legally binding 2002 Indemnity Agreement; and
- the 2009 voluntary offers made by the congregations in the aftermath of the publication of the report of the Commission to Inquire into Child Abuse (the “Ryan Report”).

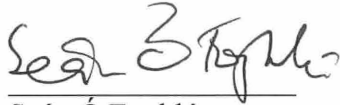
The attached note sets out the details of the progress being made to complete the contributions being made under both rounds. Considerable progress has been made in the matter since the Comptroller and Auditor General’s Special Report 96 (Cost of Child Abuse Inquiry and Redress) was finalised. As I explained in my letter to the Committee of 14th November, some €123.1 million in cash, counselling and properties have been received under the 2002 Indemnity Agreement. This represents some 96% of the total of €128 million provided for in the Agreement. A total of 5 properties remain to be transferred under the Agreement and work is proceeding in order to fully complete these transfers. One further property which had been offered has been rejected by the State and, in accordance with the terms of the Agreement, the congregation concerned has been requested to offer an acceptable alternative property or cash in lieu.

Considerable progress is also being made in relation to the 2009 voluntary offers. To date some €101 million of the cash component of the offers have been received with a further €11.8 million approximately due to be received by end 2018. A total of 18 properties have been accepted for transfer to a number of State bodies (to the Department of Education and Skills, the Health Service Executive and local authorities). To date 5 properties have fully

transferred while the transfer of a number of other properties is at an advanced stage. Every effort is being made to progress all remaining transfers.

If any further information is required, please let me know.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Seán Ó Foghlú', written over a horizontal line.

Seán Ó Foghlú
Secretary General

Department of Education and Skills
Contributions by religious congregations towards the costs incurred by the
State in responding to residential institutional child abuse

Information note for the Committee of Public Accounts
December 2017

1. Overall summary of contributions offered and amounts received

Contributions from religious congregations that managed some 100 of the 139 residential institutions listed in the schedule to the Residential Institutions Redress Board Act 2002 have been made under two distinct rounds, they are:

- the legally binding 2002 Indemnity Agreement; and
- the 2009 voluntary offers.

The total offers made by the congregations under the two rounds amount to €480.6m. This includes the offer by the Christian Brothers to transfer its schools playing fields (valued by them in 2009 at €127 million).

The value of the original 2009 offers was €352.61m including property offers (the valuations being those put on the properties by congregations in 2009). A number of adjustments were made, the basis for which is set out at section 3(i) below, and the value of these offers now stands at €317.42m when those are taken into account. That figure included an amount of €127m being the full value placed on their playing fields by the Christian Brothers in 2009 – however the maximum value that will be achieved on that offer was always likely to be some 50% of that value.

To end November 2017, total contributions amounting to €224m had been received under the two rounds as per Table A below while the adjusted offers are set out in Table B below.

Table A. Summary of original offers made plus amounts realised

	Offered (€m)	Realised (€m)	To be realised (€m)	Percentage of offer realised / yet to be realised
2002 Indemnity Agreement	128	123.14	4.86	96% / 4%
2009 Voluntary offers (*)	352.61	101.22	251.39	29% / 71%
	480.61	224.36	256.25	47% / 53%

* Full amounts offered are shown.

Table B. Summary of adjusted offers made plus amounts realised

	Offered (€m)	Realised (€m)	To be realised (€m)	Percentage of offer realised / yet to be realised
2002 Indemnity Agreement	128	123.14	4.86	96% / 4%
2009 Voluntary offers (adjusted)	317.42	101.22	216.2	32% / 68%
	445.42	224.36	221.06	50.4% / 49.6%

2. Indemnity Agreement

Under the June 2002 Indemnity Agreement, 18 congregations, acting collectively, agreed to provide a contribution of €128m comprising cash, property and counselling services. The cash and counselling portions of the Indemnity amounting to €64.4m have been paid in full.

The Department agreed in principle with CORI that a total of **64** properties would be accepted subject to good and marketable title and agreed valuations. This number has reduced to **61** as the Department has accepted and received a cash sum in lieu of three properties where good and marketable title could not be established.

The position as at 30th November 2017, is that a total of **55** properties have been fully transferred under the terms of the Agreement and there are no outstanding issues. The total value of these properties is €58.7m, representing 88% of the total monetary value of all the properties transferring under this aspect of the Indemnity Agreement excluding cash in lieu (with 96% of the total amount being contributed under the Agreement now having been provided). A list of these properties and their valuations are attached at Appendix 1.

A total of six properties remain to be fully transferred under the Agreement. While 5 of the remaining 6 properties are in use or available for use by the intended recipients, the legal requirements under the Indemnity Agreement are being pursued to finalise the transfer process. One of the properties offered has been rejected by the State and, in accordance with the terms of the Agreement, the congregation concerned has been requested to offer an acceptable alternative property or cash in lieu. A list of those properties yet to fully transfer and their current status and estimated timeframe for completion of the transfers is attached at Appendix 2.

Table C below provides a summary of the position in relation to the 2002 Indemnity Agreement.

Table C. 2002 Indemnity Agreement: Summary position 30 November 2017

	Cash (€m)	Counselling €m)	Property (€m)	Total (€m)
Offered	54.42	10.0	63.58	128
Realised	54.42	10.0	58.72	123.14
Outstanding	0	0	4.86	4.86

3. 2009 Voluntary Offers

(a) Initial and subsequent offers

In 2009, the then Government and subsequently Dáil Éireann, called on the 18 congregations (i.e., those that had contributed under the 2002 Indemnity Agreement) to commit to making further substantial contributions towards the cost of the response to residential institutional child abuse.

In response, the congregations offered additional contributions, which they valued at the time (late 2009) at €348.51m. These offers comprised €107m cash to be provided within 5 years; €4m for counselling, €2m by way of a waiver of rent and €235.51m in proposed property transfers to various State bodies and voluntary organisations. While an overall offer of a contribution on behalf of the congregations collectively was sought, the congregations' responses was on an individual basis and only 15 congregations offered to contribute.

In February 2010, the then Government decided to use the initial cash offer for the proposed Statutory Fund (now Caranua) and to ask that further additional contributions be made - as far as possible in cash which would be used towards the cost of the new National Children's Hospital project. The Government also gave initial consideration to the property offers made.

In response to the Government's call, one congregation (the Presentation Brothers) offered to provide an additional €1m towards the cost of the Children's Hospital and to refund all or part of its legal costs due from the Commission to Inquire into Child Abuse (the Commission) amounting to €0.6m, while the Oblates advised that it would not seek legal costs from the Commission (notional cost of some €0.725m).

When these additional offers and the value of some initial property offers (amounting to €1.775m) were included, the total value of the 2009 voluntary offers came to €352.61m.

(b) Nature of the 2009 offers

The 2009 offers of cash and property are entirely voluntary and do not form part of any binding agreement with the contributing congregations. There is, thus, no legal requirement on congregations to complete cash contributions or property transfers. There is, therefore, no recourse to the congregations in the event that contributions are not completed or if, for example, properties offered are not accepted or the valuation of properties on transfer is less than the original offer value.

While there is no binding agreement, the Department of Education and Skills has an overall coordinating role and is responsible for direct engagement with congregations, receipt of cash contributions, reporting to Government, etc. The Department also maintains a general oversight of the property transfer process and seeks and obtains regular updates from receiving bodies and engages with transferring congregations as required. It is a matter for the receiving State bodies, including this Department, to manage all aspects of the transfer of property to them.

(c) Realisation of cash offers

The Government decided to utilise the cash element of €110m of the congregations' offers of contributions to establish the Statutory Fund (now Caranua) with the €107m offered being augmented by the cash proceeds of property disposal by the Congregation of the Sisters of Mercy.

Initial contributions were received from a number of congregations in the years 2010, 2011 and 2012 and placed in an interest bearing account in the Central Bank of Ireland. On the establishment of Caranua in March 2013, contributions and accrued and earned interest amounting to €33.44 million had been received and were placed in a newly opened NTMA account. To end November 2017, contributions amounting to €101.23m, comprising cash contributions of €93.2m, the cash proceeds of property disposals amounting to €5.84m, a refund of legal costs of €0.6m, together with accrued/earned interest amounting to €1.38m had been received and placed in the account.

(d) Outstanding cash offers

A total of €11.8 million in cash contributions remains outstanding. Two of the congregations concerned, the Christian Brothers and the Daughters of Charity are expected to complete their contributions in 2018 with amounts of €8.8 million and €2 million (less a minor adjustment to reflect the value of an additional property transfer being recognised as a contribution) respectively due to be received.

In response to a call made by the then Government to congregations to make further contributions, the Presentation Brothers offered to contribute €1 million towards the National Children's Hospital. Arrangements are being made to receive this contribution and on receipt it will be placed in a special account in the name of the Minister for Health, as provided for in section 43 of the Residential Institutions Statutory Fund Act 2017. This section of the Act was commenced in August 2017 when the Minister for Education and Skills made the Residential Institutions Statutory Fund Act 2012 (Section 43) (Commencement) Order 2017 (S.I. 379 of 2017).

The Congregation of the Sisters of Mercy (which has fully completed its pledged cash contribution of €20 million) is in the process of disposing of properties offered to the Statutory Fund (Caranua) but not required. The proceeds of those remaining disposals combined with the completed cash contributions from the Christian Brothers and the Daughters of Charity, when received, will mean that the €110 million provided for Caranua under section 29 of the Residential Institutions Statutory Fund Act 2012, will in all likelihood be achieved.

Any cash amounts received in excess of €110 million will go towards the cost of developing the National Children's Hospital as provided for in section 43 of the Residential Institutions Statutory Fund Act 2012.

(e) Realisation of property offers

Following the publication of the Ryan Report, five congregations offered (in addition to making cash contributions) to transfer properties to the State, the voluntary/community sector, etc. The total value of these offers was €237.275m being the values placed on the properties by the congregations in 2009.

Following consideration of the property offers by the Government on a number of occasions it decided in 2013 to accept a total of 18 of the properties offered that were considered to be of potential benefit to the State and these were accepted for transfer to the Minister for Education and Skills (9 properties), the Health Service Executive (5 properties) and local authorities (4 properties).

A total of 5 properties have fully transferred (3 to the Minister for Education and Skills and 2 to local authorities), leaving 13 to be completed. Of these 13 properties, 5 transfers have received ministerial consent, 2 of which have also received the consent of the Charities Regulatory Authority. Work on the transfer of the 8 remaining properties is well advanced.

Details regarding all 18 properties accepted for transfer to the State, their current status and estimated timeframe for completion of the transfers, are set out in Appendix 3 below.

(f) Other property offers

Two properties offered to the State by the Sisters of Mercy, were not considered to be of interest and the Congregation was requested to dispose of them and provide the proceeds towards the Statutory Fund (Caranua). The 2 properties have been disposed of and net proceeds of €0.451m received (sale of Cobh Convent and of a former primary school at Ballymahon, Co. Longford).

As it was not intended that the Statutory Fund (Caranua) would hold property, the Sisters of Mercy were requested to dispose of the 16 properties offered to the Fund and to provide the proceeds towards Caranua. All bar 2 of these properties have been disposed of and proceeds of €5.39m have been received and are part of the funding available to Caranua.

A further 16 properties were offered by the Sisters of Mercy to the voluntary sector. Only one has been deemed of benefit to the State (a former primary school at Tulla, Co. Clare transferring to Comhaltas Ceolteoirí Éireann). While the Government noted the remaining transfers it decided to only reckon the one deemed of benefit towards meeting the costs of redress. It is understood that the transfers to the voluntary sector of most of the remaining properties have completed.

(g) Valuation issues

The Government agreed in 2013 that the properties being accepted under the 2009 round of offers would be valued at the date of transfer on an Open Market Value (OMV) basis. These valuations will then be used for the purposes of reckoning the contributions (net of significant State grants) and for asset register purposes.

As the offers were voluntary in nature and not covered by any agreement, there is no recourse to the congregations offering the properties in the event that the value at the date of transfer is less than the value attributed to a property by a congregation at the time the offer was made.

The 5 properties fully transferred have been valued at €1.38m.

(h) Christian Brothers' playing fields

As part of its 2009 offer, the Christian Brothers offered to transfer its school playing fields (at 49 locations), advised by the congregation to have a professional indicative value of €127 million in 2009, into a joint trust, between the State and the Edmund Rice Schools Trust (ERST) (the trust to which the congregation's primary and secondary schools were transferred). The then Minister made a counter-proposal that, instead the playing fields would be transferred to the State with guaranteed access for the schools using them under licence for as long as required by them. This counter-proposal was not accepted by the Christian Brothers and ERST was also opposed to it.

In July 2013, the Government agreed to a revised proposal by the Minister under which the congregation would be asked to transfer the playing fields to ERST for the continued beneficial use of the schools, subject to a legal requirement that the prior approval of the Minister would be obtained for a disposal of any part of them and that, in the event of any proposed transfer, the State would be entitled to receive at least 50% of the proceeds. Under the proposal, in terms of reckoning that contribution towards the costs of redress, it was proposed that the fields and associated lands be valued on an Open Market Value basis at the date of the transfer to ERST and 50% of that valuation would be reckoned as a contribution towards the cost of the response to abuse. The revised proposal was put to the congregation in a letter of 15th October 2013.

The congregation then advised that it was undertaking a comprehensive review of its capacity to meet all of its obligations (including its outstanding redress contributions). A final response to the Minister's proposal was not therefore received from the congregation until 9th September 2015. In its letter, the congregation stated that, as the initial proposal of joint ownership was not accepted by the Minister and as his counterproposal was not acceptable to either it or to ERST, it was proceeding with the formal transfer of the playing fields to ERST.

The Congregation wrote to the Minister again on 8 May 2017 advising him that the offer made by the previous Minister had been reconsidered and made compromise proposals. The effect of these proposals would be the transfer of the playing fields to ERST with the net proceeds of any future land sales being shared on a 50:50 basis between ERST and the State. Any sale would be notified in advance to the Minister. It was also indicated that the congregation planned to dispose of some land currently used by Clonkeen College and that the sale of the land would enable it to complete its outstanding cash commitment (which currently stands at €8.8 million).

Officials from the Department met with representatives of the Congregation on 24th November and had a preliminary discussion on the matter. A letter issued to the Congregation on 27 November summarising the Department's understanding of the issues discussed at the meeting and indicating a clear wish to progress the offer and conclude the matter. An acknowledgement to this letter has been received with an undertaking to revert with further information as soon as it becomes available.

(i) Offers not accepted or not reckoned as a contribution

A number of adjustments in relation to the 2009 voluntary offers should be noted. These include the exclusion of offers not being reckoned as a contribution and adjustments due to differing property valuations. The effect of these adjustments is to reduce the original offer amount by some €35 million.

The relevant adjustments are:

- a) Christian Brothers counselling - not reckoned as a contribution towards the cost of redress as it was considered unlikely that Caranua would be in a position to access any significant amount of services from this provision. Amount: €4m.
- b) Sisters of Nazareth - rent waiver not reckoned as no benefit was identified. Amount: €2m
- c) Sisters of Mercy - values (2009) of properties transferring to the voluntary sector but not being reckoned. Amount: €14.86m
- (e) Sisters of Mercy - difference between 2009 value of properties disposed of and amounts realised. Amount: €4.95m
- (f) Sisters of Mercy - difference between 2009 value of properties fully transferred and market value at date of transfer. Amount: €9.37m

The revised effective total for the 2009 voluntary offers is therefore €317.42m comprising cash of €107m, other offers of €2.32m (€0.6m in legal costs refunded, €1m for the National Children's Hospital (on completion) and the notional value of unclaimed legal costs €0.725m) and €208.09m in property (being the values placed on the properties by the congregations in 2009).

It should also be noted that the Sisters of Charity decided to waive its claim for legal costs from the Commission amounting to some €4.9m and to offset this against the outstanding cash contribution of €3m. The Government agreed to reckon this set-off as a contribution, which will be calculated by applying the average discount achieved by the Commission on its respondent legal costs. This exercise will be done once the Commission has completed its work. The congregation was advised that, in the event that the amount of the set-off calculated on that basis is less than the €3 million now outstanding, the Government would expect it to make up the shortfall by way of a cash payment.

(j) Section 42 of the Residential Institutions Statutory Fund Act 2012

Section 42 of the 2012 Act sets out provisions relating to the charitable status of cash contributions by congregations (that are charitable trusts) and the transfer of properties by congregations to the State (including to the Minister, to Vocational Education Committees (now Education and Training Boards) and to the Health Service Executive). The Section provides that cash contributions by congregations (as charitable organisations) to the Minister and the Minister for Public Expenditure and Reform will be charitable gifts within the meaning of the Charities Act 1961 and it confirms that property transfers, as contributions towards the overall cost of the response to residential abuse, may be made by congregations, subject to the consent of the Commissioners for Charitable Donations and Bequests for Ireland (now the Charities Regulatory Authority).

(k) Other issues

Each property transfers represents a separate transaction and each is required to be fully transferred in accordance with conveyancing law and practice. Each property must be fully examined from a technical perspective and any legal issues clarified, etc. If a property offered voluntarily in 2009 is being transferred by a charitable trust, ministerial consent under section 42 of the Residential Institutions Statutory Fund Act

2012 is then sought. When that consent is obtained signed contracts are submitted to the Charities Regulatory Authority (CRA) for consent. When that consent is provided or if not required, the transfer may be finalised through the exchange of contracts and the registration of the new owner.