Midwives
for Choice

Review of The Surgical Symphysiotomy Ex Gratia Payment Scheme Report to Minister for Health Simon Harris TD of Judge Maureen Harding Clark 19th October 2016

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Contents

1. Introduction

Midwives for Choice is gravely concerned by the gaps in evidence and flaws in objectivity apparent in the Report by Judge Harding Clark on the Surgical Symphysiotomy Ex Gratia Payment Scheme.

On a budget of €34 million allocated by Minister Leo Varadkar, the Scheme was set up in 2014 on foot of the Walsh Report (Department of Health, 2014) and immediately prior to ruling by the United Nations Human Rights Committee that the practice of symphysiotomy between the 1940s and 1980s in Ireland constituted torture and involuntary medical experimentation, that is, without the knowledge or consent of the women involved.

Symphysiotomy involves surgical incision of the fibrous cartilage - the symphysis pubis - uniting the pubic bones of the pelvis, while pubiotomy involves sawing through either or both of the pubic bones united by the symphysis pubis.

Once an applicant established that she had undergone a surgical symphysiotomy or pubiotomy between 1940 and 1990, three levels of compensation were made available:

- €50,000 for symphysiotomy performed during labour
- €100,000 for symphysiotomy performed before labour or after birth, or pubiotomy
- €50,000 for significant associated disability greater than 3 years in addition to either of the above.

At a cost of €1.2m to administer the Scheme, and a further €105,000 for examination and investigation of claims,[67,68] Judge Harding Clark extolls the Report as making a significant contribution to the body of knowledge on symphysiotomy.[15] However, the Report is characterised by a reticence to present actual figures, using vague generalisations instead for key findings as though to keep the reader in the dark. As such, in the absence of transparency or proximity to objective scientific standards at any level, Midwives for Choice does not recognise any such contribution by the Report to the body of knowledge on symphysiotomy.

2. Applications

The Scheme opened for applications over 20 working days from 10 November 2014 to 05 December 2014. Within this timeframe, 563 applications were received by the Scheme.[209] A further 27 were received after the closing date, permitted over an extended 20 working days, up to 14 January 2015, in the event of unspecified exceptional circumstances. Of these later applications, 12 were rejected, thus leaving a total 578 applications accepted onto the Scheme.[209]

However, not all 578 accepted applicants proceeded with the Scheme. The collation of disparate evidence shows that subsequent to applying, 1 woman sadly died before her case could be assessed.[123] A further 65 women formally withdrew their application;[216] 8 made no contact with the Scheme subsequent to submitting a bare application form without any supporting evidence;[217] and

21 applications had been made erroneously by women misled by their medical records wrongly recording the surgical term, symphysiotomy, for naturally occurring dysfunction of the symphysis pubis. Thus, of the initial 578 applications accepted, 483 ultimately progressed for processing by the Scheme.

3. An un-awarded victim of symphysiotomy or pubiotomy

The Report states that symphysiotomy was established in 403 cases and pubiotomy in 1 case, equating to 404 eligible claimants in total, however, Table 1 shows its accounting for a total 405 eligible claimants of whom 399 were ultimately awarded:[18]

Table 1. Reported established claims

Cases	**Frequency**	**Sub-total**
Awarded €50,000	216	216
Awarded €100,000	168	384
Awarded €150,000	15	399 (total awarded)
Death of claimant before offer was made	4	403
Death of claimant after offer was made but before it could be formally accepted	1	404
Offer rejected by claimant in favour of litigation	1	405
Total	**405**	

So, which figure is correct - 404 eligible claims for award as reported by Judge Harding Clark, or 405 as accounted for by the Report? Evidently the figure of 405 eligible claims is correct. Firstly, the Report claims a total 590 applications of which 185 were ineligible,[18] equating to 405 eligible claims. Secondly, with specific reference to the 399 cases ultimately awarded, isolated figures presented across paragraphs 18 - 21, 134, 200 and 201 add up, not to 399 but rather to 400 eligible claimants, as shown in Table 2.

Table 2. Reported established claims awarded

	Without disability	**With disability**	**Total**
Symphysiotomy during labour[18]	216	128*	344*
Pre-labour symphysiotomy[200]	29	9	38
Post-birth symphysiotomy[201]	13	4	17
Pubiotomy[21]	0	1	1
Total	**258***	**142**	**400**

*Omitted by the Report

While much ado is made by the Report about errors in awarding 6 non-eligible applicants, providing a detailed account of the circumstances leading Judge Harding Clark into making such errors,[99,101] no such concern is shown for ensuring the award of all eligible claimants was accomplished. Who was the victim of established symphysiotomy or pubiotomy unjustly denied a minimum award of €50,000? This inaccuracy in basic calculation and accounting of eligible claimants for award is but one striking mark of the abysmal standards of a Scheme that cost in excess of €1.2 million to administer.

4. Who were the false claimants of medical experimentation and torture?

A dominant feature of the Report is the castigation of 185 elderly women as "*self-serving*"[226] false-claimants who "*should never have persuaded themselves to make a claim for payment for a procedure they did not have*".[212] The finding is repetitively highlighted at every opportunity throughout the Report, which dedicates some 12 pages of narrative to 'Ineligible claims' and the question 'How did so many get it wrong'.

Given the Report's accounting for 405 eligible claimants for award, 78 applicants thus failed to establish their claim from the total 483 progressed for processing by the Scheme. So how did Judge Harding Clark arrive at the figure of 185 false claims if all but 78 claimants established either symphysiotomy or pubiotomy? Table 3 shows the composition of the so-called false claimants.

Table 3. So-called false claimants

Cases	**Frequency**
Death of applicant before case could be assessed (123)	1
Applications voluntarily withdrawn (216)	65
Applications unpursued by lack of any subsequent engagement with the Scheme (217)	8
Applications made in error due to symphysiotomy wrongly recorded in medical records (219, 221)	21
Rejected late applications "*on the basis that no qualifying procedure was established*" (214), comprising 5 applications unpursued by lack of any subsequent engagement with the Scheme; 2 applicants misled by symphysiotomy wrongly recorded in records; and 1 applicant whose reason for late application was perceived not to amount to exceptional circumstances (219, 221)	12
Sub-total	***107***
Applicants who proceeded with the Scheme but failed to establish symphysiotomy or pubiotomy	78
Total	**185**

The policy adopted by Judge Harding Clark did not make provision for oral evidence by applicants, rather, she relied solely on *verifiable objective medical evidence* for establishing claims.[80] This meant that applicants, the majority of whom were over 75 years of age,[78] were required to obtain their

medical records going back between 14-74 years, and to do so within the timeframe of 20 working days for submission of applications. Given this challenging task, coupled with the fact that "*so many applicants … were unaware that they had undergone symphysiotomy*",[229] submitting an application form whilst awaiting medical records for verification was a wise approach for women in any doubt to take, and particularly given that exceptional circumstances had to be established for acceptance of late applications.

This approach is apparent in the conduct of 107 applicants, represented in Table 3, who subsequently voluntarily withdrew from the Scheme or simply didn't follow through with their application. It is furthermore apparent in the conduct of 18 applicants whose claim was subsequently up-graded due to under-claiming in their application forms.[121] While no comment is made by the Report about under-claimants, the castigation of 107 women for submitting an application form as false claimants is a repugnant attitude towards elderly women acting responsibly and fairly in their own interests and those of the Scheme. The question that remains is whether a similarly biased subjectivity was inherent in Judge Harding Clark's unwavering confidence that the remainder 78 so-called false claimants "*did not in fact undergo symphysiotomy*".[225]

5. The methodology for establishing symphysiotomy

The Report notes that the threshold for establishing symphysiotomy was strict. Of the total 185 'false claimants', a minimum 94 (51%) also claimed for associated significant disability,[214] and 13 women reported having no further children after the birth of their first and only child as a consequence of symphysiotomy.[222] It is unlikely that these 13 women would have withdrawn their application and were thus among the 78 claimants who proceeded with the Scheme and failed to establish their claim. Given this insight into their profile, a high standard of evidence was called for in making the finding that none of these 78 women had had the surgery. While Judge Harding Clark proclaims that every decision on her part in eliminating claimants was appropriately made, there is no evidence of a sound basis apparent in the Report for her confidence.

5.1 Missing medical records

The assessment of claims comprised a review of medical records as a first step. The Report notes: "*Objective findings contained in contemporaneous medical records and from radiology were relied upon."*[132] If an applicant could show evidence in her medical records for symphysiotomy it was thus established. However, "*the very many cases"* in which no medical records could be sourced represented 175 cases[98] – a significant finding inappropriately relegated to an easily overlooked footnote.

Given the primary reliance by Judge Harding Clark on medical records to establish claims, an objective and transparent report would have provided a breakdown of the 175 cases of missing records by successful and unsuccessful claimants. Doing so would have given an insight into the

implications of missing records for applicants in establishing their claim and hence the validity of reliance on medical records. Predictably, no such transparency is afforded, indeed the Report appears wilfully ambiguous on this matter. Consequently, it can only be surmised that missing records was a salient factor for the 78 claimants in failing to establish symphysiotomy, and hence in their categorisation as false claimants.

5.2 'Silent' medical records

Medical records did not necessarily represent reliable evidence for those who succeeded in obtaining them. Applicants are reported as having widely asserted in their application forms that symphysiotomy had been performed without their knowledge[228] and deliberately not recorded in their medical records.[223] The Report notes:

> *Many applicants - both those who received an award and those who did not undergo symphysiotomy or pubiotomy - who provided personal statements complained that they were unaware, even though they suffered many painful symptoms, that a symphysiotomy had been performed and they especially complained that they were totally ignorant of what to expect when discharged from hospital.*[228]

This significant and widespread evidence by applicants is corroborated by the findings of the Scheme. While the warranted details are not provided, reference is made by the Report to medical records "*silent*" on symphysiotomy[96] and to records that "*did not support*" symphysiotomy in cases where symphysiotomy was otherwise established.[98]

The evidence on the lack of reliability of medical records on symphysiotomy performance is not however reflected by Judge Harding Clark:

> *Particular difficulties arose in a number of cases where the applicants were firmly convinced that they had undergone either symphysiotomy or pubiotomy and were unwilling to accept the truth of the content of their medical records*.[117]

Lack of awareness among women of having undergone symphysiotomy accords with reported findings in relation to women who lost their baby at the time of symphysiotomy. Relegated to a footnote, the Report notes:

> *The practice at the time seemed to be to conceal any gross congenital fetal abnormalities from the mother. Several mothers therefore continued to grieve for the baby who they believed was perfectly formed but still born.*[191]

Notably, women's testimony of not being informed about, much less consenting to, symphysiotomy also accords with medicalised birth during the era in question when women gave birth in a drugged stupor. Medical practice during the 1940s, '50s and '60s was to keep birthing women sedated in 'twilight sleep' by injection of morphine combined with scopolamine - an amnesic drug – from which they awoke to find their baby born with no awareness of how it had happened or what had been

done to them in the process (Cassidy,2007). No reference is made by Judge Harding Clark to the medical practice of 'twilight sleep' consistent with women's testimony anywhere in the 273-page report, despite a team of consultant obstetricians engaged as her advisors. Rather, Judge Harding Clark dismisses the widely shared testimony of women as a "*self-convincing confabulation of personal history*"[226] on the part of those whose claim was unestablished, and as a "*lapse of memory less easy to understand*"[229] on the part of those who had established symphysiotomy. In characteristic fashion, reflected throughout the Report, Judge Harding Clark asserts her own subjective view over the evidence presented by women: "*I am reasonably satisfied that patients were informed that symphysiotomy had been performed and why*".[230]

5.3 Unreliable Birth Registers

For those whose medical records were missing, or whose available records were silent on symphysiotomy, Birth Registers maintained by maternity hospitals, comprising summary details of each birth, provided another important source of evidence to establish their claim. Of those who succeeded in establishing their claim, the vast majority had done so by furnishing to the Scheme a copy extract from their hospital's Birth Register confirming symphysiotomy.[81]

The Scheme itself also undertook to review Birth Registers on behalf of outstanding claimants, however, it was found that in common with medical records, Birth Registers did not reliably record the performance of symphysiotomy, confirmed by the finding that symphysiotomy cases reported in Annual Clinical Reports had not been recorded in the Birth Register.[96] This evidence therefore shows that simply because a woman's medical records, if available, or details of the birth recorded in the Birth Register, made no mention of symphysiotomy carried out, it did not amount to establishing the woman had never had symphysiotomy.

5.4 Annual Clinical Reports

Periodic Annual Clinical Reports going back to the 1940s produced by the three Dublin maternity hospitals and the Lourdes hospital in Drogheda were sourced by the Scheme. Combined, these four were named as the offending hospitals in 61 per cent of all claims.[77]

The Report explains that identifiers used by the Annual Clinical Reports for the purpose of preserving patient confidentiality enabled the Scheme to trace the reported cases back to claimants, thereby enabling women to establish their claim who had otherwise failed to do so by medical records or Birth Register.

Judge Harding Clark claims that the Annual Clinical Reports "*always identified each symphysiotomy performed*".[96] Given the evidence of symphysiotomy performed on women without their knowledge, combined with their complaints of symphysiotomy deliberately not recorded and substantiated by evidence of 'silent' medical records and Birth Registers, the sweeping assertion that accurate

reporting of all symphysiotomy surgery performed on patients was reserved for an annual overview of the hospitals' maternity services in the form of Annual Clinical Reports simply lacks credibility.

Indeed the claim points more to the influence of five consultant obstetricians, two of whom are employed by two of the four hospitals in question, acting as key advisors to Judge Harding Clark throughout the Scheme. Dr Peter McKenna who led the obstetric team is employed by the Rotunda hospital while Dr Peter Boylan is employed by Holles Street hospital, the hospital responsible for introducing symphysiotomy to Irish obstetrics in 1940s. The potential bias arising from the conflicted interests of the consultants in guarding the reputation of their profession and hospitals against damning evidence of a prevailing obstetric culture in which the historically controversial surgery was performed on patients without trace in medical records cannot be ignored in relation to the claim on the accuracy of Annual Clinical Reports.

The need for an open mind by Judge Harding Clark on the accuracy of Annual Clinical Reports is furthermore evidenced, albeit indirectly, in criticism by Professor W Kearney in Cork in 1957 of the master of the Rotunda. Drawing into question the transparency of the Rotunda Annual Clinical Report on symphysiotomy performance, Professor Kearney is quoted from a report of an annual obstetric meeting that year:

> *Symphysiotomy was not considered under a separate heading in the Rotunda Report and I could find only two references to it. On page 50 it is stated that symphysiotomy was carried out at the time of performing section in one case. On page 56 we read that "the operation continues to be used to a very small extent in the hospital" …. Surely there must have been several cases during the year that qualified for this operation at the Rotunda. If so, they are not mentioned in the Report* (pg.230-231).

5.5 Lack of medical expertise

The Report notes: "*When all efforts failed to obtain records, we moved to seeking secondary proof by scar and radiology evidence*".[92] Women who thus far had failed to establish symphysiotomy by hospital or GP medical records, Birth Register or Annual Clinical Report, were referred by the Scheme for physical examination to Dr Peter McKenna and his team for evidence of symphysiotomy scar. However, the deficit in obstetric clinical expertise is reported, as none among the consultants had first-hand knowledge of the procedure of symphysiotomy or of the appearance of its scar. The Report also describes the difficulty in discerning the "*faint and tiny*" scar[94] left by 'stab incision' closed by one suture - the technique for symphysiotomy in use by the late 1950s[93] – and in distinguishing "*criss-crossed*" stretch marks from a stab-incision scar, all of which was compounded by the challenge presented by "*pendulous*" abdomens and "*old and extensive*" Caesarean section scars.[98] Despite acknowledgement by the medical team that symphysiotomy scars from so long ago could be mistaken for stretch marks,[100] Judge Harding Clark nevertheless retains full confidence in the method of assessment: "*Fortunately, in most instances, there was no doubt about the absence or presence of a symphysiotomy scar. Either one was evident or it was not.*"[98] Confirmed by her own advisors, there was no basis for her confidence in the reliability of medical examination.

5.6 Invalid X-ray

Women whose faint and tiny scar was undetected by medical examination were referred for pelvic X-ray to Professor Leo Lawler, consultant radiologist at the Mater Hospital and visiting consultant to the Rotunda Hospital, for evidence of symphysiotomy on the pelvis to establish their claim. With respect to the value of X-ray, the Report notes:

> *Radiology was a vital tool in assisting to establish the fact of a surgical symphysiotomy when documents were unavailable and when scar evidence was equivocal*.[102]

The value of radiology was not however borne out by the experience of Professor Lawler reporting no evidence of symphysiotomy on the X-ray of women who had proof of the surgery otherwise. In cases of established symphysiotomy, the Scheme found that radiology showed a completely normal pubic symphysis and normal pelvic joints indistinguishable from that of a woman who had not undergone symphysiotomy.[23] Consequently, the Report contradicts the view of radiology as a vital tool::

> *It is fully accepted that radiology has limitations as a diagnostic tool. It cannot exclude symphysiotomy when a completely normal symphysis pubis is found. Many applicants who we knew from reliable records had undergone symphysiotomy, were categorised as grade III [showing no evidence of symphysiotomy on X-ray].*[106]

Thus, the 78 women who failed to establish symphysiotomy, among whom were 13 women who blamed symphysiotomy for limiting their family to one child,[223] were castigated by Judge Harding Clark for making false claims on grounds none other than a fundamentally flawed methodology that offered no reliable means of eliminating their claim. In a mark of the extent of prejudice against them, the claim by women that their experience of symphysiotomy was such that they had no further children is dismissed on no more solid basis than that Judge Harding Clark simply did not believe them, taking the view instead that they represented "*possible voluntary infertility*",[222] that is, they had no further children by choice. The Report notes:

> *All that is known is that 13 women stated in their application forms that they had no further live children after the birth at which they wrongly but perhaps understandably, believed that symphysiotomy or pubiotomy was performed.*[222]

In the absence of any grounds for making the claim, Judge Harding Clark served a gross injustice by the assertion that these 78 women, together with 107 other applicants, brought "*unfounded claims*"[224] as "*they did not ever undergo symphysiotomy*".[229]

6. The methodology for establishing significant disability

Once the qualifying symphysiotomy or pubiotomy was established, claims for associated significant disability were then assessed. Of all 404 women who established symphysiotomy, 70 per cent claimed associated significant disability,[133] representing some 285 claimants.

The Scheme defined significant disability, for which an additional €50,000 was awarded, as:

> *…medically verifiable physical symptoms and/or conditions directly attributable to the surgical symphysiotomy or pubiotomy and which have had a serious and debilitating effect on the Applicant's quality of life and include, but are not confined to, pelvic instability, pelvic pain, dyspareunia, urinary incontinence, back pain, pain on walking which continued for more than three years after the surgical symphysiotomy or pubiotomy*.[125]

With respect to establishing significant disability, the Report explains that "*GP records which outlined symphysiotomy related conditions and referrals for X-ray were of primary importance*",[80] and that "*objective contemporaneous records stretching over many years were preferred*".[112] The reliance by Judge Harding Clark on GP records for establishing significant disability was problematic for a number of reasons. Firstly, it severely restricted the opportunity of women confirmed to have had symphysiotomy to establish their claim for associated disability who could not source their medical records. Secondly, the Report notes:

> *…many applicants stated that they were unaware that they had undergone symphysiotomy until they heard/saw/read something in the media*.[229]

This evidence points to women becoming informed through the media and dedicated support groups of what symphysiotomy entailed and its effects, enabling them to recognise their symptoms retrospectively as fitting that they had undergone symphysiotomy. Yet, on review of GP records, claims for associated disability were eliminated by Judge Harding Clark on grounds that "*it was clear that the patient had never mentioned having undergone symphysiotomy nor had she made complaints referable to any obstetric procedure*".[114] How could a woman identify symphysiotomy to her GP and associate her complaints with it if she had not been aware that she had undergone the surgery? Eliminating claims for associated disability on grounds that claimants had not reported undergoing symphysiotomy to their GP or made complaints referable to it was entirely invalid in the context of evidence of a culture of silence on symphysiotomy performance, and most particularly in the context of symphysiotomy being established by women who had not been aware that the surgery was performed on them.

Judge Harding Clark indulges in much self-praise about her compassionate and generous approach to the assessment of disability claims[132] on the basis that she reduced the threshold for establishment from 'directly attributable to symphysiotomy' to 'possible association with symphysiotomy'.[134] Her compassion and generosity did not however extend to the establishment of claims on finding supportive evidence in medical records. The Report notes that even when evidence

of possible significant disability was identified in the medical records "*of very many cases*", disability could only be assumed on confirmation by X-ray.[113]

Alas, the reliance on X-ray was also problematic. The Report references the unresolved difficulty experienced by Professor Lawler in identifying what was meant by the qualifying condition of pelvic instability and how to diagnose it:

> *From the commencement of the Scheme, he [Professor Lawler] had difficulty in identifying just what pelvic instability meant in the context of a surgical procedure rather than a traumatic pelvic ring injury. This issue has remained problematical especially when viewing the imaging of a joint and pelvis so many decades after the fact of the symphysiotomy.*[104]

Consequently, despite the evidence "*in very many cases"* of possible disability associated with symphysiotomy in medical records,[113] the methodology of assessment adopted by the Scheme ultimately established associated significant disability in 79 (19%) cases of symphysiotomy or pubiotomy. While Judge Harding Clark lauds the "*unparalleled opportunity*" provided by the Scheme for obstetricians and orthopaedic surgeons to evaluate the long-term effects of symphysiotomy and its role in obstetrics today,[15] the omission to report the rate of established disability associated with symphysiotomy in labour is yet another example of the abysmal contribution the Report makes to any valid evaluation. The rate of 37 per cent (128 cases) established associated disability among the 344 women who had proof of symphysiotomy during labour is nevertheless calculable, as already shown in Table 2.

7. The Harding Clark Diagnostic Bar

While Judge Harding Clark asserts confidence that every decision on her part was appropriately made in eliminating claims for symphysiotomy and associated disability, she ultimately demonstrates a lack of conviction in her own methodology. Verifiable objective medical evidence by way of contemporaneous medical records, the presence of a scar, or abnormality on pelvic X-ray was the standard she adopted for establishing claims. Of the total 483 applicants whose claims progressed for assessment, 405 (84%) established symphysiotomy or pubiotomy while the methodology could not exclude the remaining 78 (16%) had undergone the surgery. Of those who established their claim, 79 (19%) also established associated significant disability, but the rate was way below the 285 (70%) claims. Judge Harding Clark was apparently uneasy about concluding the Scheme with these outcomes, hence, in what she describes as "*the most contentious part of my method of assessment*",[107] she took the decision to introduce an arbitrary measure of 15mm separation of the pubic joint as a definining diagnostic bar to bring the Scheme to closure. She explains:

> *As so many applicants claimed symptoms which were not supported by their medical records, I sought to devise some method by which a degree of objectivity could be introduced to the assessments. It was becoming*

> *increasingly evident that a surgically separated pubic joint could fully reapproximate with the passage of time…. I therefore decided that any diastasis* [separation] *of 15mm or more in width would be considered to be sufficient evidence to (a) establish symphysiotomy and, much more important for the purposes of the Scheme, (b) to constitute significant disability directly attributable to that symphysiotomy.*[107]

Why did Judge Harding Clark perceive the introduction of her diagnostic bar as more important for the purpose of the Scheme in establishing significant disability than in establishing symphysiotomy? In setting this arbitrary bar of 15mm diastasis, 63 more women were brought into the Scheme's net for award of an additional €50,000 for associated significant disability,[137] bringing the total established disability claims to 142. This served two important purposes. Firstly, it increased the rate of associated disability established by the Scheme from 19 per cent to a more agreeable rate of 35 per cent, representing a half of those who claimed in total. Secondly, it added in excess of €3.6 million to awards made by the Scheme, bringing the pay-outs up to the allocated budget and hence averting the potential attraction of scrutiny into the Scheme's coming in under budget.

8. Conclusion

The contrary outcome ultimately achieved by the Scheme was that women who did not meet the arbitrary criterion of 15mm were nevertheless awarded because they established symphysiotomy and disability in other ways. By Judge Harding Clark's own admission, a persistent separation of 15mm of the pubic joint "*is unsupported by any orthopaedic literature*".[108] Thus, by setting an arbitrary and invalid measure that no woman whose pubic joint had realigned could fit, the ground was laid for Judge Harding Clark to claim 78 women as never having had symphysiotomy, adding a further 107 women who had withdrawn from the Scheme, and thus presumably not tested for diastasis, to make the finding of 185 false claimants.

Those who failed to establish symphysiotomy under the Scheme's methodology were disqualified not because symphysiotomy was disproven but rather by a fallacious test. Equally, those who claimed associated disability with established symphysiotomy were instantly eliminated by the same fallacious test as never having suffered disability. In doing so, Judge Harding Clark brought the Scheme to conclusion within budget at just under €34 million.

Midwives for Choice acknowledges the challenge faced by Judge Harding Clark in the absence of objective evidence due to inconsistencies across medical records, Birth Registers and Annual Clinical Reports, combined with unreliable scar evidence and pelvic X-ray. Irrespective of these challenges, there was an onus on Judge Harding Clark to do justice to the best of her ability for the women who had placed their faith in her. Failure to acknowledge the limitations of the Scheme's methodology in favour of branding honest and responsible elderly women as false claimants, and setting an arbitrary

diagnostic bar in full knowledge of the impossibility of women reaching it whose symphysis pubis had re-approximated over time, is far from the standard of justice to which applicants were entitled.

Contrary to what has been reported in some areas of the media, the Report does not disprove that a single applicant was subjected to symphysiotomy - rather it fails to establish symphysiotomy by a fundamentally flawed methodology to which a self-recognised diagnostic measure with no basis in evidence was added by Judge Harding Clark. The limitations were not with any applicant but rather with the Scheme's invalid assessment that could not exclude symphysiotomy.

A more just and humane approach would have given women an opportunity to have their testimony heard by the Scheme to ascertain further evidence before their claims were dismissed. The Scheme's terms of reference did not out-rule oral evidence, thus, Judge Harding Clark decided herself not to take it as a matter of policy. It would also have made provision for any woman dissatisfied by the outcome to appeal the decision on their case. But these measures were denied, and with them the opportunity to give these elderly women a fair hearing and a dignified process.

The underlying culture the Report exposes is one of distrust of women, and a starting position of women's testimony being inherently unreliable as a measure in establishing symphyiostomy. Despite not being able to clinically disprove symphysiotomy, the Scheme has failed applicants, creating an image of unreliability, opportunism and untrustworthiness that is entirely unfounded. No reliable clinical basis is provided by the Report for a single claimant being declined and in the absence of it, Midwives for Choice has no confidence in the outcome of the Surgical Symphysiotomy Ex Gratia Payment Scheme.

We deeply regret the lost opportunity to defend and assert the human rights of women in Ireland to freedom from inhumane and degrading treatment in childbirth and we stand in solidarity with the victims of symphysiotomy who have been let down so profoundly by the Scheme.

References

15-230: The Surgical Symphysiotomy Ex Gratia Payment Scheme, Report to Minister for Health, Simon Harris TD, of Judge Maureen Harding Clark, 19th October 2016; referencing to paragraph numbering used by the Report

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