

# Can Tuam excavation bring closure?

**T**HIS week, the minister for children advertised for people to serve on the Advisory Board of Authorised Intervention, Tuam. The board will oversee the excavation at a site in the former mother and baby home run by the Bon Secours nuns in the Co Galway town. The site is a disused sewage tank where the bodies of babies who had died were dumped, deposited, thrown, in the most disrespectful manner when the home was in use. Between 1925 and 1961, 796 babies are recorded as having died in the home, usually soon after birth.

Last Sunday, there was a scheduled protest by a relative of one of the babies. Annette McKay, whose sister died in Tuam, wanted people to gather with shovels to protest at the delay in excavating the site.

Last month, the minister, Roderic O’Gorman appointed Daniel McSweeney as the director who will head up the independent office for the excavation. The office was created under the Institutional Burials Act 2022, the law which oversees the whole process of excavating former mother and baby homes. Apart from Tuam, it is believed that sites may also exist in places like Bessborough in Cork, Sean Ross Abbey near Roscrea, and Castlepollard in Westmeath. For now, all the focus is on Tuam.

As it is an extremely sensitive subject, very few, if any, voices have questioned the process, where it will end, or what will ultimately be achieved. There is no doubting the noblest of motives in pursuing the course of action on which the state has embarked. Atonement for the sins of the past is entirely healthy and even necessary. The babies, whose final resting place was a sewage tank, were appallingly served in their brief existence. Excavating and reburial of the remains, it could well be argued, is the fairest and most appropriate way to address the injustice that occurred.

However, there are going to be huge difficulties around this process reaching anything that could be considered a positive outcome. The passage of time, the physical conditions in which the remains have been kept, and the prospect of finding relatives will present major challenges. What are the realistic chances of any sort of closure through this excavation? How many families will receive the remains of their long-deceased relative and have a reburial in a proper, fitting resting place?

Catherine Corless, who discovered the site, has done trojan work in documenting the existence of hundreds of babies who had effectively been wiped from history. She is owed a debt by past, current, and future generations for shining a powerful light into another dark corner of this country in the twentieth century. Her work in putting together the story of the home made world headlines when it broke in 2014.

Two years later, a test excavation took place at the site. One of those involved in the work, forensic archaeologist Niamh McCullagh, told the documentary, *The Missing Children*, that human remains were identified in the chamber. The test



Anna Corrigan, Peter Mulryan, and Annette McKay whose siblings are thought to be buried at Tuam took part in a protest over delays in the exhumation of the remains at the site. Picture: Andy Newman

state and religion during the period in question. But, in light of all the complexities involved, not to mention any philosophical issues around disturbing the dead, is this the best way to proceed?

An alternative means of honouring and remembering might have been a striking memorial piece at the site. Other measures, such as education bursaries for children living in disadvantage, could have complimented this, providing a living and focused reminder of how appallingly treated those at the margins in another lifetime were.

That is not to be. The excavation is going ahead. One can only hope that the reservations expressed here are wide of the mark and that some closure and justice will ultimately be achieved.

excavation did not count the dead.

“It’s more than 10 but is it more than 100, we can’t say,” she said.

“Individualisation of the mixed remains needs to take place,” she said. “Putting back together remains into an individual and then the set of remains could be put forward for DNA identification. The best scenario ... that they are individualised as much as possible and that those individuals are given a respectful burial.”

For this to occur, DNA samples would have to be taken and matched with a sample from living “eligible family members”, according to the act. This would require anybody who believes a close relative may have died there as a baby to come forward and provide the sample. One might ask what will be considered a positive conclusion. If five sets of remains can be individualised, matched with relatives, and subsequently, after due process, be reburied? Ten? Fifty? The other issue is what is to become of the remains that can’t be individualised or identified.

Last Sunday, in a piece under the headline ‘A stain on Ireland’s Conscience’, *The Observer* newspaper reported on the excavation. Geoff Knupfer, a former detective who headed up the commission to locate “the disappeared” during the Troubles, told the paper that the dig will probably involve archaeologists, anthropologists, investigators, and site managers. He said not all remains will provide a positive DNA match and there could be disputes over ownership and the fate of some remains.

“I fear this could prove something of a

minefield,” he said. “This process would be followed by coroners’ inquests and the release of remains to families — another potentially difficult area.”

The decision to excavate was taken at a cabinet meeting in 2018. An expert group made five recommendations to the then minister Katherine Zappone on how to deal with the scenario as discovered by Ms Corless. The fifth option was excavation. Ms Corless and a support group

had lobbied hard for excavation as they believe that this is the best, most humane course of action. The government went with it. There was no evaluation of how difficult the work might be or what the chances were of an outcome that could be considered in anyway positive in terms of closure or justice.

Ms Zappone has left politics. The current incumbent, Mr O’Gorman, told *The Observer* that nothing on this scale has ever been done before. “This will be one of the most complex operations of its kind in the world,” he said. Mr O’Gorman will be long gone from his current role whenever the excavation reaches either an end or an impasse. If there is any controversy, when that time comes, the minister of the day will explain that the real decisions were taken long before he or she took up office.

It is entirely understandable that Ms Corless and the relatives of some babies who died want to advance in this manner. They have an emotional attachment to the memory of tiny human beings and their mothers who were among the most innocent of victims of the callous and cold regime that existed at the interface of



## Mick Clifford

# Public purse is protected before people

**T**HE nursing home charges issue, which exploded into politics this week, raises various questions about public finances and morality at an official level. Where stands the balance between looking after public money and taking care of citizens who were wronged in the past? What obligation does the State have to citizens, often vulnerable, who are also legal opponents? Are there any moral constraints in paying for the wrongs done in the past at the cost of taking care of citizens in the present?

These questions are all valid topics of debate. However, a theme that appears to be constant in the administration of public finances is that when it comes to vulnerable groups, elected and permanent governments manage to display a degree of prudence that is absent in many other areas of spending.

A perfect example of this approach is the saga around the Disabled Drivers and Passengers Scheme. In 1989 there was finally a recognition that some people with disabilities require assistance with transport. For the vast swathes of the country not sufficiently serviced by public transport, a private car was the only option. Drivers and passengers with a disability required the vehicles to be adapted to their needs. So the finance act included provision for tax relief in VRT and VAT for the work to be done. The estimated cost of tax revenue foregone was £80m.

Roll on to 2001. Following an investigation on foot of a slew of complaints, the Ombudsman determined that disabled motorists were being ill-served by the scheme. In a report, 'Passengers with Disabilities', he found that decisions to refuse tax relief were "unreasonable, unfair and inappropriate" and contrary to "fair and sound" administration by the Revenue Commissioners. In particular, the criteria to qualify for tax relief were too narrow.

The outcome was the setting up of an interdepartmental group that recommended that the minister for finance introduce legislation to replace existing medical criteria with one which included people with mobility issues. This would be in line with the Ombudsman's findings. There was, however, resistance in the Department of Finance. Extending the scheme could blow a hole in the national coffers, apparently. The amount at issue wasn't specified, but even, at the upper end of cost, if it doubled to £160m per annum, surely this was a measure that was badly needed and life-altering for people with disabilities.

Nothing happened. In 2002, a few months after the interdepartmental report was completed, Charlie McCreevy announced his budget. "Budgets I have introduced helped to secure the most sustained period of investment and growth in the history of the country... a major step up in the funding of our public services... improving the living standards of both taxpayers and social welfare recipients alike." There was nothing in the speech for disabled drivers and passengers.

So it continued to be for over 15 years,



through the boom times, the boomier times, the crash, the recession, and the recovery. It didn't matter whether times were good or bad. If the disabled drivers and passengers didn't have the political muscle then their plight was to be ignored. The Ombudsman's report gathered dust and the permanent government looked the other way. Cabinets came and went and, not unlike the scenario with nursing home charges, incoming ministers simply nodded through policy that predated their tenure.

In 2018, two families took a High Court action after they were refused tax relief by an appeal board. One of the children had to manage the risk of hip dysplasia and hip migration. "She will continue to need the help of specialised equipment to walk short distances as she gets older," the court documents related. "Otherwise she will require a wheelchair."

The second applicant had a "genetic condition, which, in his case, has resulted in longstanding, widespread joint and spinal pain which has progressed into a secondary chronic pain syndrome and is severely disabled." Despite these serious conditions, the families in both these cases were deemed unworthy of receipt of a tax concession.

The High Court ruled that the minister was entitled to set the criteria as he saw fit and the Court of Appeal affirmed this position. In 2020, the Supreme Court ruled in favour of the families, saying the state had failed to vindicate their rights under the 1989 Finance Act.

Following that the government suspended the scheme and in 2021 introduced

an amendment that allowed the minister for finance to once more keep the criteria as narrow as he or she believes it should be. Another review of the scheme was set up and that is ongoing, nearly three years after the Supreme Court ruling. Last year, the appeal board, which was constrained by the minister's criteria, resigned en masse, thoroughly frustrated at how the whole issue is being handled.

Now and again the saga is raised in the

The nursing homes scandal highlights a theme that appears constant in the administration of public finances to vulnerable groups.

cupied, tax breaks that show little return for the exchequer, and on it goes. All of this is tolerated annually with a shrug of the shoulders.

However, when it comes to some sections of society, particularly those that don't have political power in one guise or another, the bean counters and their political masters can pinch pennies for Ireland. It is all done far from the public and political glare. Every action, including expensive and protracted trips to court, is undertaken in defence of the public purse as successive cabinets keep nodding through the policy because it predated their arrival.

Every now and again some human element to what is being quietly tolerated surfaces and there is public and political opposition outrage. And then the caravan moves on and those at the sharp end of this warped version of financial prudence continue to bear their burden on the margins.



## Mick Clifford

# An agonising path to unwind injustice

**W**HERE were you on February 14, 1981? Were you even alive? How much living have you done since then, from childhood or teenage years into adulthood, or from that station beyond into old age? How many of your loved ones who were around then are now gone?

The questions arise in a week when the inquest into the Stardust fire on the above date finally opened. The families of the 48 young people who died began this week to give pen pictures of the deceased. All brought to life the lives that were cruelly cut short in a tragedy that was not of their making. Loved ones rarely get over the death of a young person. They just learn to live with it, carrying it around as they try to get on with life. Usually, however, there is some class of closure in which the bereaved negotiate the various stages of grief, arriving eventually at acceptance. That was not possible for the Stardust families as they had to instead fight for decades to have the truth to be aired. There is every indication that the inquest now underway will at least arrive in the neighbourhood of what actually happened.

Their trauma has never been properly processed as a result. Years in which they might have been attempting to get on with living were held in suspension as they fought against the state to recognise that an injustice had been done. As with other cases of injustice that have arisen in recent years, it might well be asked why it had to take so long, why so many people had to be re-traumatised through the failure of the state to revisit a case that was crying out for further examination.

The tribunal that found as a fact what occurred sat for its first public session twelve days after the fire. That is a situation that is impossible to envisage happening today in the awful event that something similar were to occur. It concluded in November that year with the ruling that the fire was "probably" started by arson. The ruling exonerated the owner of the building, Eamon Butterly, from culpability. The tribunal did, however, include scathing criticism of some of the fire safety practices that were deployed by the owner and management of the Stardust building. It also prompted a whole rethink in the area of fire safety and led to the establishment of a new code in buildings for fire safety that persists today.

The chair of the inquiry was Judge Ronan Keane, a man who had a reputation for being a diligent and fair jurist. But his conclusion that the fire was "probably started deliberately" was ill-judged. Apart from anything else, it cast a cloud over the community from which those who attended a disco that night were drawn. Culpability, the official report inferred, lay within the community, probably even among the dead. That was considered an insult by the bereaved, a stain that had to be erased. Closure could not be reached until a fuller picture was established. But why did it take half a natural lifespan to rectify it?

A review of the tribunal report was finally commissioned by the government in



Antoinette Keegan who lost two sisters in the Stardust fire holding posters and candles with other people associated with the disaster meeting in the Garden of Remembrance before going to the first day of the inquest.

Picture: Sasko Lazarov/RollingNews.ie/Sasko Lazarov

that victims are not allowed to move past a life-altering event.

There needs to be full and proper recognition of how much living it costs victims to get to the point where the state recognises that a terrible injustice occurred. In too many cases wronged citizens or their bereaved loved ones have been ill-served by a system in which the state has to be dragged for decades to a point where it holds up its hands and says sorry.

2008. It concluded that Keane "did not reveal any evidence to support its conclusion that the fire was started deliberately" and as such the finding "was deemed to only be a hypothesis". That was a startling result, but even more startling was that it would be another fifteen years before a way could be found to begin a fresh dig for the truth.

**T**HIS long fingering by the state of an obvious wrong is not unique to the Stardust families. It took 36 years for the State to apologise to Joanna Hayes for her treatment in the course of the Kerry babies case. A tribunal in 1985 ruled that she had choked her baby to stop it crying, despite the inability of the pathologist to determine a cause of death. The chair, Judge Kevin Lynch, rejected claims by the family that the gardai had used harassment and physical intimidation to obtain false confessions through coercion. This is despite the fact that false confessions were obtained from Joanne and her siblings to the effect that they had participated in the violent murder of a baby and disposal of the body.

The judge's approach was summed up in how he considered whether the gardai, agents of the state, who had obtained the false confessions, were lying. "They are not barefaced lies on the part of the gardai (as regrettably is the case with members of the Hayes family) but they are an exaggeration over and above the true position, or a gilding of the lily, or wishful thinking elevated to the status of hard fact."

The Hayes family were entirely innocent, their treatment in custody highly

The Mick Clifford Podcast  
Available from 10am Friday  
Available on Apple Podcasts, SoundCloud, and Spotify  
Irish Examiner

suspect, yet this was the conclusion of the judge.

Like the Stardust case, it became obvious early on that there was something seriously amiss with the outcome of the inquiry. But once it was done, it was set in stone. And thereafter the state and its agents hid behind the official findings of fact, irrespective of how perverse were the findings.

Another case of a lifetime spent trying

to right a wrong was that of Martin Conmey. He received a miscarriage of justice certificate in 2016 over a conviction for manslaughter in 1972. He served three years in prison for killing a neighbour, Una Lynksey, whose death was followed by a "revenge" killing of a friend of Conmey's, Martin Kerrigan, who was also innocent. Again, it was obvious at the time that the basis for the conviction was seriously deficient. When the verdict at Conmey's trial was brought in, at 2.35am, one of the lawyers couldn't believe what he was hearing. "I am totally disinterested in such a ludicrous verdict," he is recorded as saying in a reaction that you are unlikely to ever hear from a counsel. Conmey had to wait 44 years before his name was cleared.

Errors are made in official inquiries, judicial tribunals, or courts, just as is the case in every other walk of life. Findings of fact can be subject to various pressures, mores of the day, unconscious, or even class prejudices. These things happen, nearly always in the absence of malice. But unwinding an injustice can result in a long, torturous process that eats up decades of living, piling on stress, ensuring



Mick Clifford