



**CLANN: IRELAND'S UNMARRIED MOTHERS AND THEIR CHILDREN:
GATHERING THE DATA**

**Guide to the Commission of Investigation
into Mother and Baby Homes**

Version 1: June 2016

Justice for Magdalenes Research is a not-for-profit organisation whose main aim is to provide for the advancement of education of the general public by researching the Magdalene Laundries and similar institutions and by providing information and support to the women who spent time in the Magdalene Laundries and their families.

Adoption Rights Alliance is a not-for-profit advocacy organisation which campaigns for the enshrinement of the rights of the adopted child and Ireland's estimated 100,000 adopted adults in legislation. In the absence of adoption information legislation, Adoption Rights Alliance provides practical advice and advocacy to those affected by Ireland's closed, secret adoption system.

Introduction

This Guide has been compiled by [Adoption Rights Alliance](#) (ARA) and [JFM Research](#) (JFMR) as part of the [Clann](#) initiative, to assist those who wish to engage with the Commission of Investigation into Mother and Baby Homes and Certain Related Matters. The information in this Guide has been gathered from materials provided by the Commission of Investigation and from correspondence between our organisations (and our legal representatives) and the Commission. We consider this Guide to be a 'living document' that will be continually updated as new information becomes available: the version number and date on the front cover will change as it is updated.

What is the Commission of Investigation into Mother and Baby Homes and Certain Related Matters?

In response to the revelations about the deaths of children at the Bon Secours home at Tuam, then Minister for Children and Youth Affairs, Dr James Reilly, published the [Terms of Reference](#) for a [Commission of Investigation into Mother and Baby Homes and Certain Related Matters](#) (the Commission) on 9th January 2015. The Commission is comprised of Judge Yvonne Murphy (Chairperson), Professor Mary E Daly and Dr William Duncan (Commissioners). The Commission is hearing evidence via two Committees, the Investigation Committee and the Confidential Committee and below we outline further information on these processes.

What was ARA and JFMR's response to the announcement of the Commission of Investigation?

ARA [welcomed](#) the inquiry; however it expressed disappointment that the scope of the investigation was limited to just 14 institutions and a sample of County Homes, as listed in the Schedule to the Terms of Reference. In its reaction to the publication of the Terms of Reference, JFMR said it was [concerned](#) at the exclusion of the Magdalene Laundries from the Commission.

On 28th January 2015, ARA submitted a [briefing note](#) to TDs in advance of the debate on the Terms of Reference for the Commission of Investigation. ARA urged TDs to take the issues raised into account during the debate on the Terms of Reference as it was concerned about the limited scope of the Commission and the exclusion of large numbers of people affected by the issues. Unfortunately the Terms were agreed by the Dáil without ARA's suggested changes.

At least 170 institutions, organisations, agencies and individuals were involved with unmarried mothers and their children in 20th century Ireland and ARA and JFMR have supplied details of these bodies to the Commission. The Commission has statutory powers to request a widening of its focus and we believe that if a thorough and transparent investigation is to be made, the Commission must include all relevant bodies. ARA and JFMR have made submissions in this regard to the Commission and we will continue to do so.

Statement Drafting Assistance

ARA and JFM Research are committed to working with those affected by adoption and abuse in Mother and Baby Homes, County Homes, Magdalene Laundries and related institutions, to submit evidence to the Commission of Investigation and to ensure that the public record reflects the truth of their experiences. To that end, ARA and JFMR are working with [Hogan Lovells](#), a global law firm which is providing pro bono (free) assistance to us on a Project to compile statements, documentary evidence and legal argument for submission to the Commission of Investigation. Further information about the Project is available in our Information Form which is available on the [Resources](#) page of our website.

Does it matter that my agency/institution is not listed on the Schedule to the Terms of Reference for the Commission?

While the Schedule to the Terms of Reference for the Commission lists just 14 institutions (and the Commission has added 4 County Homes),¹ Section 6 of the Terms of Reference states that:

The Commission may include in its reports any recommendation that it considers appropriate, including recommendations in relation to relevant matters identified in the course of its investigation which it considers may warrant further investigation in the public interest. In any event, on the completion of the Report on the wider social and historical context required under Article (11) the Commission shall report to the Minister on whether it considers specific matters not included in the existing scope may warrant further investigation as part of the Commission's work in the public interest.

¹ The list of 18 institutions is available at this link: <http://clannproject.org/index.php/resources/institutions-in-the-commissions-current-terms-of-reference/>

JFMR and ARA will continue to urge the Commission to ask the Minister to broaden the scope of its Terms of Reference² and, with this in mind, we are interested in interviewing anyone with a connection to adoption, Mother and Baby Homes, Magdalene Laundries and similar institutions in Ireland, regardless of whether your institution was listed on the Schedule. Furthermore, we encourage you to engage with the Commission and share your experiences, regardless of whether your institution or agency appears on the schedule to the Terms of Reference.

I have received a letter from the Commission and have been refused a hearing, what should I do?

If you have received a letter from the Commission of Investigation informing you that you will not be given a hearing, please email us at info@clannproject.org with the details. If you are availing of the free witness statement drafting assistance being provided by Hogan Lovells, they will be able to advise you on what steps to take. If you are not availing of this assistance, we suggest that you submit a written statement to both the Investigation Committee and the Confidential Committee on your own behalf.

What is the Investigation Committee?

The Investigation Committee is comprised of members of the Commission itself. While all three Commissioners may be in attendance at a hearing, it is also possible that just one or two members of the Commission might be present. When you give evidence to the Investigation Committee, you will be required to swear or affirm that the evidence is given voluntarily by you and that it is true and accurate, to the best of your knowledge and belief. It is our understanding that both the Confidential Committee and the Investigation Committee will produce separate reports. While the Confidential Committee will not name individuals or institutions in its report, the Investigation Committee may indeed do so.

The Investigation Committee may also question you on your evidence, and if you name a person or institution, the Commission says it is *'obliged to furnish a summary of relevant evidence to those persons or bodies who may in turn seek an opportunity to*

² Please be advised that ARA, JFMR and Hogan Lovells have no control over the outcome of the Commission of Investigation or whether the Commission will seek to have its scope broadened but we intend to continue to advocate the extension of the Commission's Terms of Reference.

cross examine you on the matters raised'. In this instance you may be invited back to the Commission for this purpose. We provide further information on cross examination below.

How do I apply for a hearing at the Investigation Committee?

We strongly recommend that you avail of the free witness statement drafting assistance being provided by Hogan Lovells, who can send your statement to the Commission on your behalf and advise you on arranging a hearing.

If you would rather not avail of this assistance, the following information may be of help. The Commission has not provided clear guidance on how to apply for a hearing at the Investigation Committee, however we suggest that you write to the Commission at 73 Lower Baggot Street, Dublin 2, D02 N773 or PO Box 12626, Dublin 2 or email info@mbhcoi.ie. You may find it helpful to use the Commission's *Request to Meet the Confidential Committee Form* (available [here](#)) as a guide in making your application.

Important: If you intend to avail of the free witness statement drafting assistance provided by Hogan Lovells, we suggest that you do not apply for a hearing until your statement has been drafted.

Do I need to bring legal representation to the Investigation Committee?

The Commission has said that there is no requirement to bring a legal representative to hearings before the Investigation Committee, and the Commission will not reimburse the costs of retaining such representation. Nonetheless, we recommend that you bring a legal representative to the Investigation Committee. If you are availing of the free witness statement drafting assistance provided by Hogan Lovells, let them know if you would like to have legal representation at a hearing and they will do their best to organise local lawyers who will be able to provide pro bono legal representation for you at the hearing.

How will my evidence be heard at the Investigation Committee?

When you attend a hearing, your evidence may be heard by the entire Commission, or just a single Commissioner.³ Members of the Commission's legal staff may also be present, along with a stenographer (the hearing may also be recorded). We suggest that you ask the Commission who will be in attendance prior to your hearing.

When you arrive at the Commission's offices at 73 Lower Baggot Street, you will be brought into a small room on the ground floor. When the Commission is ready to see you, you will be brought upstairs to the Hearing Room. The Hearing Room is a small panelled room which has a large table in the centre with microphones set up. The Commission will sit on one side of the table and you (and your legal representative(s)/companion) will sit opposite. Please see below for a photograph of the three Commissioners in the Hearing Room.⁴



L to R: Professor Mary E Daly, Judge Yvonne Murphy and Dr William Duncan.
Source: <http://www.mbhcoi.ie/MBH.nsf/page/Who%20we%20are-en>

³ Commission of Investigation Rules and Procedures, Section 7 – 'Rules relating to the hearing of evidence before Commission Members', available here: http://clannproject.org/wp-content/uploads/MBHCOI_Rules-Procedures.pdf

⁴ Please note that during the ARA and JFMR hearing on 9th May 2016, the room appeared darker as the blinds were closed.

According to the Commission,⁵ witnesses who give evidence may be required to give evidence on oath or affirmation. If you are attending with a legal representative, you will be informed of your legal rights and obligations regarding your evidence. If you attend alone, the Commission will provide this advice to you.

Do I have to submit my evidence in person?

No, you do not have to attend a hearing in order to provide evidence. According to the Commission's Rules and Procedures,⁶ the Commission '*may receive evidence in any form that it considers appropriate, including orally before the Commission, by affidavit, statement, submissions, electronic and paper documents, live video links, a video recording, a sound recording or any other mode of transmission*'. If you would prefer not to attend in person or via live video link (in both cases you would be expected to swear an oath or affirm), the Commission will require you to provide a sworn affidavit which confirms that the evidence was given voluntarily by you and that it is true and accurate to the best of your knowledge and belief. If you choose to avail of the free witness statement drafting assistance provided by Hogan Lovells, they can advise you on how to proceed. If you are not availing of this assistance, the Commission has provided a suggested draft affidavit at Appendix 2 of its [Rules and Procedures](#).

If I submit a written statement to the Investigation Committee, does this preclude me from also giving evidence verbally?

No. If you wish to submit a written statement **and** attend a hearing of the Investigation Committee, you may submit your written statement in advance of the hearing, at which the statement will be '*formally received in evidence without the need for a sworn affidavit*'.⁷ Please note, as stated above, if you plan to submit a written statement without attending a hearing, the Commission may require you to provide a sworn affidavit.

Cross examination

One of the main differences between the Investigation Committee and the Confidential Committee is that witnesses may be cross examined at the Investigation Committee. As noted above, the Commission says it is '*obliged to furnish a summary of relevant*

⁵ Commission of Investigation Rules and Procedures, Section 7, available here: http://clannproject.org/wp-content/uploads/MBHCOI_Rules-Procedures.pdf

⁶ Commission of Investigation Rules and Procedures, Section 7, available here: http://clannproject.org/wp-content/uploads/MBHCOI_Rules-Procedures.pdf

⁷ Letter from Commission of Investigation to Hogan Lovells, 14th December 2015, available here: http://clannproject.org/wp-content/uploads/Letter-from-MBHCOI_to-HL_14-12-15.pdf

evidence to those persons or bodies who may in turn seek an opportunity to cross examine you on the matters raised'. In this instance you may be invited back to the Commission for this purpose. The Commission also states that 'if you decide not to attend then the Commission would have to take that into consideration when considering whether to use your evidence or the weight that should be given to your evidence'.

In November 2015 our solicitors, Hogan Lovells [asked the Commission](#) a number of questions in relation to the issue of cross examination. The Commission responded on 14th December 2015.⁸ These questions and responses are set out below.

Questions

We note your statement that the Commission may disclose the evidence of a witness to 'any person who is affected by it and may allow that person or their legal advisors to cross examine the witness'. We would be interested to learn in what circumstances this is likely to happen. For example, does it only apply if a witness names a specific person or would it cover an institution?

What factors will be used for determining whether cross examination will be required?

Response from the Commission

The Commission will disclose the evidence of a witness and ask that witness to attend in person (or by video link where permitted) for the purposes of cross examination by the representative of an affected party in circumstances where the Commission considers that fair procedures require such an attendance. That decision will obviously be to a significant extent based on the nature of the evidence given but will also depend on the other evidence available to the Commission and the degree to which a person is considered to be affected by the evidence. At this remove it is not possible to speculate as to the many circumstances that will result in a disclosure of evidence and a request to attend. However, to answer the particular example referred to in your letter, the Commission can envisage such a request being made in either of the circumstances mentioned but the decision will depend inter alia on the degree to which the person or institution is affected by the evidence.

⁸ Letter from Commission of Investigation to Hogan Lovells, 14th December 2015, available here: http://clannproject.org/wp-content/uploads/Letter-from-MBHCOI_to-HL_14-12-15.pdf

Question

Is it correct that if a person gives evidence (orally or by witness statement) and the Commission decides that that individual should be cross examined the Commission will give notice to the witness that they need to re-attend for cross examination?

Response from the Commission

The person will be invited by the Commission to attend for cross examination in the circumstances referred to.

Questions

What is the position as regards people who are interested to hear what is said by representatives of a particular institution relevant to their situation? Will they be given the opportunity to cross examine those witnesses?

How will the Commission let relevant parties know in advance that a witness might be of interest to them will be appearing?

What is the position if people in contact with ARA/JFMR want to have a legal representative present when someone connected with a particular institution at a particular point in time is giving evidence? In such circumstances, will that representative be allowed to cross examine the witness?

Response from the Commission

Unless the Commission directs that evidence will be heard in public and without prejudice to any powers vested in the Commission [it] is not anticipated at this stage that other interested parties or their legal representatives will be invited to attend the private hearings of the Commission. If such invitations are extended, a decision on allowing rights of cross-examination will be made at the relevant time and will be notified to all relevant parties.

Question

How will the Commission ensure that survivors have the ability to comment on evidence in testamentary or documentary form from those involved in the running of institutions that are relevant to them?

Response from the Commission

The conduct of the investigation is a matter for the Commission and should it at any stage require commentary on relevant evidence from survivors, arrangements will be made in this regard.

Question

What are the protocols for the cross examination of witnesses?

Response from the Commission

In circumstances where the Commission grants a right to cross examine, the protocols relating to the exercise of those rights will be defined by the Commission prior to or at the relevant hearing.

Question

What happens after a witness has been cross examined? How will the Commission use the questions asked and responses given by witnesses? Will these exchanges be reflected in the Commission's report? What criteria will the Commission use in examining these materials?

Response from the Commission

The manner in which any particular reference in the Commission's report will be made to evidence given whether on cross examination or otherwise is a matter for the discretion of the Commission and will clearly vary depending on the evidence given and context in which it appears in the Report.

Can I ask for a public hearing?

The Commission has stated that it will *'conduct its investigation in private, save where it decides to grant the request of a witness that his or her evidence be heard in public, or where the Commission is satisfied that it is desirable in the interests both of the investigation and of fair procedures to hear all or part of the evidence in public.'*⁹ ARA and JFMR attended its first hearing with the Commission on 9th May 2016. We made a number of written requests for a public hearing and we reiterated this request on the day

⁹ Commission of Investigation Rules and Procedures, Section 5, available here: http://clannproject.org/wp-content/uploads/MBHCOI_Rules-Procedures.pdf

of the hearing, however, the Commission decided to refuse our request on this occasion. If you would like to give your evidence to the Commission in public, we would encourage you to make such a request. If you are availing of the free witness statement drafting assistance provided by Hogan Lovells, you should feel free to ask them for advice on this matter.

Will I be able to obtain a copy of the transcript of my hearing?

No, the Commission has said it *'does not furnish copies of its transcripts to witnesses'*, however it has indicated that witnesses and/or their legal representatives are welcome to attend the Commission's premises to read their transcript in the presence of a member of the Commission's staff.¹⁰

Travel Costs

The Commission has said it will reimburse *'reasonable travel and other necessary expenses'* that may be incurred by you. You are advised to keep receipts and expenses are paid at public service rates.

Legal Costs

As indicated above, Hogan Lovells are assisting ARA and JFMR on a Project to compile statements, documentary evidence and legal argument for submission to the Commission. Hogan Lovells are working on a pro bono basis, which means that those who wish to avail of the statement drafting assistance can do so free of charge. If you are availing of the free witness statement drafting assistance provided by Hogan Lovells, let them know if you would like to have legal representation at a hearing and they will do their best to organise local lawyers who will be able to provide pro bono legal representation for you at the hearing.

Legal costs are paid by the Commission only in very limited circumstances, as outlined in its Rules and Procedures.¹¹ Under the Commissions of Investigation Act 2004, there is a provision to cover the legal costs of witnesses where their good name may be at issue. Hogan Lovells asked the Commission what this means in practical terms. The Commission responded that *'Section 23(2)(a) of the Commissions of Investigation Act*

¹⁰ See letter from the Commission of Investigation to Hogan Lovells, dated 1st June 2016, available here: http://clannproject.org/wp-content/uploads/Letter-from-MBHCOI_01-06-16.pdf

¹¹ Commission of Investigation Rules and Procedures, Section 13-14, available here: http://clannproject.org/wp-content/uploads/MBHCOI_Rules-Procedures.pdf

2004 provides that legal costs are necessarily incurred by a witness if inter alia “the good name or conduct of the witness is called into question”. At this remove and in the abstract, the Commission does not consider that it is appropriate to attempt to further define what is a statutory provision’.

What is the Confidential Committee?

The Confidential Committee operates under the direction of the Commission of Investigation. According to information provided by the Commission¹² the main purpose of the Confidential Committee *‘is to listen to the experiences of those who have spent time in Mother and Baby Homes’*. The Commission also says that the Confidential Committee *‘may be suitable for you if you wish to have your experiences heard in a sympathetic atmosphere by experienced people and you do not want any person or institution to know that you are giving evidence to the Commission. The evidence you give will not be open to challenge’*.

How do I apply for a hearing at the Confidential Committee?

As above, we strongly recommend that you avail of the free witness statement drafting assistance being provided by Hogan Lovells, who can send your statement to the Commission and assist you with arranging a hearing. If you would rather not avail of this assistance, the following information may be of help. To apply for a hearing at the Confidential Committee, you should fill out the Commission’s *Request to Meet the Confidential Committee Form* (available [here](#)) and send it to the Commission at 73 Lower Baggot Street, Dublin 2, D02 N773 or PO Box 12626, Dublin 2 or email info@mbhcoi.ie.

Important: If you intend to avail of the free witness statement drafting assistance provided by Hogan Lovells, we suggest that you do not apply for a hearing until your statement has been drafted.

How will my evidence be heard at the Confidential Committee?

Confidential Committee hearings are held in private. A member of the Confidential Committee will be there (not one of the Commissioners) and ‘an experienced person’

¹² See the Information for Witnesses at the Confidential Committee, available here: <http://clannproject.org/wp-content/uploads/Information-for-Witnesses-at-the-Confidential-Committee.pdf>

who will take notes. According to the Commission¹³, you will be asked to *'describe your experiences'*. The Commission also says that you *'may be asked some questions in order that the Committee can collect as much information as possible'*. If you have someone with you and you would like that person's assistance in giving your account to the Confidential Committee, you may do so with the agreement of the Committee.

Further information will be added to this section as it becomes available.

How will my evidence be used by the Confidential Committee?

According to the Commission¹⁴ the Confidential Committee *'will make a general report, which won't name you or any specific person or institution'*. The Commission will not give your information to the authorities, except where a serious crime has been committed, a serious risk to a person's life exists or where there is a current risk of child abuse.

Do I need to bring legal representation to the Confidential Committee?

While you will not be cross examined at the Confidential Committee, you are allowed to bring a solicitor and/or barrister with you. However, the Commission will not provide any reimbursement for this representation.

Travel Expenses

The Commission has said it will reimburse *'reasonable travel and other necessary expenses'* that may be incurred by you (and your 'companion', if applicable) in meeting the Confidential Committee. You are advised to keep receipts and expenses are paid at public service rates.

Should I engage with the Confidential Committee or the Investigation Committee, or both?

If you are availing of the free witness statement drafting assistance provided by Hogan Lovells, we suggest that you opt to send your statement to **both** the Investigation Committee and the Confidential Committee. If you are submitting a statement which you

¹³ See the Information for Witnesses at the Confidential Committee, available here: <http://clannproject.org/wp-content/uploads/Information-for-Witnesses-at-the-Confidential-Committee.pdf>

¹⁴ See the Information for Witnesses at the Confidential Committee, available here: <http://clannproject.org/wp-content/uploads/Information-for-Witnesses-at-the-Confidential-Committee.pdf>

have drafted yourself, we suggest that you send a copy of it to **both** the Investigation Committee and the Confidential Committee. If you can only attend one hearing and you want there to be a chance of your evidence being considered for the final report of the Commission then we suggest it may be prudent to attend a hearing at the Investigation Committee.

Our solicitors, Hogan Lovells asked the Commission *'[i]f a witness appears before the Commission, can they opt to have their statement considered by the Confidential Committee also, so that their experiences can be reflected in the Confidential Committee report due next August?'*

The Commission responded as follows: *'Should any witness or person who has given evidence to the Commission wish to disclose his/her particular experiences to the Confidential Committee, then this information must be submitted independently to the Confidential Committee'*.

I live outside Ireland – can I submit evidence to the Commission?

Yes, it is possible for those outside Ireland to submit evidence to the Commission.

Hogan Lovells asked the Commission what provisions are in place for those who cannot travel to Ireland, and if the Commission would meet the cost of a video link at the witnesses' end. The Commission responded that it *'has indicated a preference that in circumstances where oral evidence is intended to be given, where possible, that evidence will be taken in person. The Commission will deal with requests for evidence to be given by video link on a case by case basis. Issues of costs relating to this process will be discussed at the relevant time'*.

Please note, if you are availing of the free witness statement drafting assistance provided by Hogan Lovells, they are happy to interview people who fall into the categories outlined in our [Information Form](#), regardless of where they live. Most interviews will be conducted by telephone in any event.

I have already been to a Commission hearing/I have already submitted a statement which I drafted myself, can I submit further evidence to the Commission?

If you have already engaged with the Commission and you would like to submit further evidence that has come to hand, we would encourage you to do so. Furthermore, if you have already engaged with the Commission, but you would like to avail of the free witness statement drafting assistance provided by Hogan Lovells so that a further statement can be added to your evidence, you are most welcome to do so, provided you fall into the categories outlined in our [Information Form](#). You may find it helpful to have a witness statement for safe-keeping or future use, even if you have already been to the Commission of Investigation. In addition, if you consent to providing your anonymised statement to ARA and JFMR, your information could greatly assist the *Clann* group report.

We hope the information in this Guide is of help to you. If you have any questions or concerns or if you are unsure of anything, please contact us via our website www.clannproject.org.

Please note: nothing in this Guide should be taken as legal advice.

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