

1 July 2016

Maeve Doherty
Mother & Baby Homes - Commission of Investigation
73 Lower Baggot Street
Dublin 2
Ireland

Rod Baker
Consultant
rod.baker@hoganlovells.com
D 020 7296 2829

Our ref D3/RRB/5639903
Matter ref 157324/000001

Dear Ms Doherty

COMMISSION OF INVESTIGATION HEARING ON 9 MAY 2016

Thank you for your letter dated 1 June 2016.

In response to my request for the reasons why the Commission declined to hear our clients' evidence in public you have referred to both Section 11(1) of the Commissions of Investigation Act 2004 and have also suggested that Ms McGettrick did not respond to your enquiry as to why she considered that a public hearing would be appropriate.

Taking these points in turn;

Section 11(1) of the Commissions of Investigation Act 2004 states that "*a Commission shall conduct its investigation in private unless (a) a witness requests that all or part of his or her evidence be heard in public and the Commission grants the request, or (b) the Commission is satisfied that it is desirable in the interest of both the investigation and fair procedures to hear all or part of the evidence of a witness in public*".

From this, it is clear that sub-section (a) gives the Commission ample scope to hear evidence in public on the request of a witness (with or without a reason) and, in accordance with the normal principle that tribunals should give reasons for their decisions, if it declines the witness' request for this to happen, it is incumbent on the Commission to give an explanation for its decision. Sub-section (b) gives the Commission the power to determine that a hearing be held in public (whether or not the witness desires this) if it considers this to be desirable in the interests of both the investigations and fair procedures. Subsections (a) and (b) are expressed as alternatives and are not conjunctive as is implied by your letter.

In circumstances when our clients, as witnesses, made a request under Section 11(1)(a), in our submission it is not sufficient for the Commission to rely on wording contained in a separate sub-section and fail to give a reason why their request was denied.

As regards the suggestion that our clients did not give reasons for their request that the hearing be in public, reasons were given on page 8 of our clients' letter dated 3 May 2016 and in

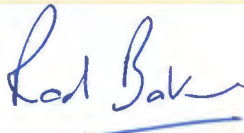
submissions made by their counsel, Colin Smith, at the hearing. These reasons included the fact that they were making submissions on the scope of the Investigation and not giving personal evidence, that they were acting in a quasi-representative capacity and that it was in the interest of fairness and transparency that this hearing was held in public. The Commission doesn't appear to have addressed these reasons.

In the above circumstances, I repeat our request that the Commission explains why our clients' request under Section 11(1)(a) was refused.

I would also invite the Commission to reconsider giving some general guidance as to the circumstances in which it might envisage holding hearings in public, particularly if requested by witnesses under Section 11(a). There is a great deal of interest in the proceedings of the Commission, not least amongst the members of our clients' organisations, and neither they nor we understand the apparent desire of the Commission for the Investigation to proceed entirely in private, especially when the Commissions of Investigation Act 2004 gives the Commission ample scope to hold at least some of its hearings in public.

I look forward to hearing from you.

Yours sincerely

A handwritten signature in blue ink that reads "Rod Baker". The signature is written in a cursive style with a horizontal line underneath the name.

Rod Baker

Consultant