

# MOTHER AND BABY HOMES COMMISSION OF INVESTIGATION

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14<sup>th</sup> December 2015

Hogan Lovells  
Atlantic House  
Holborn Viaduct  
London EC1A 2FG  
**FAO: Rod Baker Consultant**

**Re: Your Clients: The Adoption Rights Alliance (ARA) and JFM Research (JFMR)**

Dear Mr Baker

I refer to your letter dated the 12<sup>th</sup> November 2015 on behalf of your above named clients.

I would reply to the numbered queries set out therein as follows: -

1. If an individual does not wish to give evidence orally (or by video link where permitted), the Commission will require a statement of evidence of the witness to be exhibited to a sworn Affidavit in the form of Appendix 2 of our Rules and Procedures before it is received as evidence. Thereafter, if the Commission considers it appropriate, it may invite the witness to attend in person or to provide a further sworn statement for the purposes of receiving such further evidence that it considers relevant to the terms of reference of the Commission. Should the witness wish to provide oral testimony to the Commission, it is in order to simply provide a written statement in advance of the hearing. At the hearing, the statement can be formally received in evidence without the need for a sworn affidavit.
2. 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

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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.

3. Please refer to No. 2 above.
4. The person will be invited by the Commission to attend for cross examination in the circumstances referred to.
5. Unless the Commission directs that evidence will be heard in public and without prejudice to any powers vested in the Commission 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.
6. Please refer to number 5 above.
7. Please refer to number 5 above.
8. 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.
9. Section 23(2)(a) of the Commission of Investigation Act 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.
10. The prohibition in section 11 (3) of the Commission of Investigation Act 2004 requires that a person shall not disclose or publish any '*evidence given or the contents of any document produced by a witness while giving evidence in private*, unless in the particular instances permitted by the Act. The Commission does not consider that it is appropriate for it to attempt to further define what is a statutory provision giving rise to a criminal offence.
11. The Commission will not be inviting individuals who were not in one of the fourteen named institutions or in one of the County Homes which the Commission is investigating to give evidence to the Confidential Committee or the Commission.
12. 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.
13. 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.

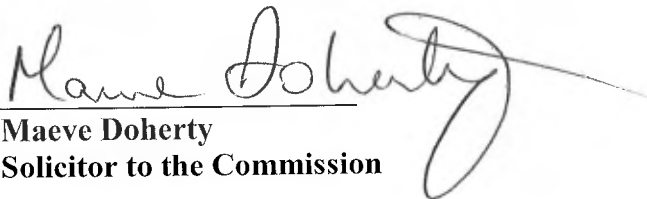
14. Should any witness or person who has given evidence to the Commission wish to disclose his/her particular experiences to the Confidential Committee, then this information must be submitted independently to the Confidential Committee.
15. The Commission has indicated a preference that in circumstances 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.

The Commission is currently considering suitable dates early in 2016 for persons to meet with the Confidential Committee within the UK to facilitate those who are unable to travel to Ireland. I enclose some application forms for your information. Should any of your clients wish to meet with the Confidential Committee in the UK, I would request that they complete the forms and return them as soon as possible.

I also enclose a copy of our Rules and Procedures as referred to above. I would particularly direct you to our Guidelines on the Payment of Legal Costs and other Expenses, which provides that legal costs are only paid by the Commission only in very limited circumstances.

I trust this answers your queries.

Yours sincerely,

  
Maeve Doherty  
**Maeve Doherty**  
**Solicitor to the Commission**