

JUDGE YVONNE MURPHY

Kathleen Funchion T.D.,
Cathaoirleach of the Joint Committee on
Children, Disability, Equality, Integration
and Youth.

11 June 2021

Dear Cathaoirleach,

I refer to your letter of 4 June 2021 and your invitation to attend before your committee on the 17 June 2021.

In February 2015, the Government established the Mother and Baby Home Commission of Investigation ('the Commission') to investigate the matters specified in Statutory Instrument 57/2015 and to report to the Minister in accordance with the Terms of Reference and the Commissions of Investigation Act 2004 as amended ('the 2004 Act'). The Minister who introduced the motion to the Oireachtas, Dr Reilly, indicated that he considered that *"the Commissions of Investigation Act 2004 provides an effective, prompt and transparent mechanism to investigate complex and sensitive matters, while also respecting fair procedures and natural justice"*.

Not everyone was in agreement then. Almost as soon as the Commission had been established, some organisations that advocated on behalf of interested parties were immediately disappointed that the vehicle of a Commission of Investigation had been chosen. That opposition continued throughout the lifetime of the Commission and beyond and, not unpredictably, those same organisations now call on the Government to repudiate the final report.

The Commission was a statutory body that was required to work in accordance with the 2004 Act and its Terms of Reference. These Terms of Reference, approved by the Oireachtas, required the Commission to investigate 14 named institutions and a sample of county homes (in practice 18 institutions in total) over a period of 76 years. Among other things, it was required to establish how women entered the institutions, how long they stayed there, what conditions were like, where the mothers went when they left, where their children went, and what involvement the women had in decisions about their children. It was also

required to investigate vaccine trials, deaths, burials and post-mortem practices. It was required to produce a social history report, as well as the Confidential Committee report.

The investigation into the 14 named institutions and a sample of county homes was undertaken by the Commission. During the Investigation, the Commission examined critical witnesses on oath, testing the evidence where appropriate and always on the express understanding that those affected by it would be given the opportunity to cross examine. Constitutional fair procedures and the terms of the 2004 Act were carefully followed by the provision of procedural safeguards during the hearings and in preparation for the hearings.

The Confidential Committee

The terms of reference also directed that "*The Commission shall establish a Confidential Committee to provide **a forum** for persons who were formerly resident in the homes listed in Appendix 1, or who worked in these institutions, during the relevant period to provide accounts of their experience in these institutions in writing or orally as informally as is possible in the circumstances.*" (emphasis added). This forum was known as the Confidential Committee. The Confidential Committee received testimony from 550 witnesses including people who were resident in the institutions as mothers and as children and also included social workers who dealt directly with the mothers concerning adoption matters.

The work of the Commission is reflected in its final report and its interim reports and not by commentators who seek to sweep aside its findings. While the Confidential Committee was separately constituted, its report is an important element of the Commission's final report. It is not true to say that the testimonies of the women were 'discounted' or 'discarded' by the Commission. Professor Daly did not say this. Others did. The accounts given were very much taken into account by the Commission. They were relied upon to the extent that the Commission considered appropriate having regard to the totality of the evidence gathered by the Commission and before making its findings. Those accounts were also reported in a manner that preserved confidentiality in the lengthy Confidential Committee report which was, as directed, 'of a general nature.'

It must be noted that the number of mothers who spoke to the Confidential Committee is a tiny proportion of the total number of mothers in the institutions under investigation. 304 mothers gave testimony to the Confidential Committee; 18 were in the institutions before 1960. In the period 1960 – 1998 inclusive, there were 24,207 mothers in the institutions investigated – the experiences of 1% of those are reflected in the Confidential Committee Report.

The Confidential Committee was directed by the Statutory Instrument to

- a) operate under the direction of and be accountable to the Commission,***
- b) provide in its procedures for individuals who wish to have their identity remain confidential during the conduct of the Commission and its subsequent reporting, and***
- c) produce a report of a general nature on the experiences of the single women and children which the Commission may, to the extent it considers appropriate, rely upon to inform the investigations set out in Article 1.***

The introduction to the report sets out in some detail the methodology and practice adopted by the Confidential Committee. A promise of anonymity was given to each of the participants who attended to give testimony to that forum. Their testimony was not given on oath and was received without question or cross examination. When those testimonies were eventually reported in the Confidential Committee report, it was necessary to anonymise not only the witnesses, but the persons and institutions referred to. The information that was being reported by the Confidential Committee in this forum was reviewed by the Commission and informed its investigations in accordance with the remainder of the Terms of Reference. Any suggestion otherwise is incorrect.

While the value of the report of the Confidential Committee should not be underestimated, it cannot be taken as a definitive history of mother and baby homes and associated topics. As already set out, only a very small number of former residents gave testimony. Not all spoke of harsh conditions or 'forced' adoption. Further, the Confidential Committee report does not cover some of the most harrowing evidence that can be found in the Commission's investigative report. Some of the statements to the Confidential Committee give details about work and living conditions in the various homes that are at variance with the testimony available to the Commission from other sources. This was also true of some of the testimony given to the Commission of Investigation by both former residents and people who were involved in running the institutions. This is not to suggest in any way that witnesses set out to mislead the Commission; it is an indication of the potential shortcomings in such evidence, given many years after the event; this testimony required people to recall a traumatic period in their lives. In the absence of evidence that would withstand scrutiny and cross-examination, the Commission was unable to reach factual conclusions that many people apparently wished that it had reached – such as excessive and punitive work regimes

in mother and baby homes; physical abuse of mothers and 'forced adoptions' – a term that does not have a single generally-accepted legal definition.

A small number of witnesses to the Confidential Committee have put their stories into the public domain as is their right. However, the great majority were concerned to ensure that their stories were confidential. This was stated by them in their dealings with the Commission. Again, the great majority of witnesses before the Confidential Committee have not commented publicly on the report. The Commission is conscious of the many witnesses who told the Confidential Committee that confidentiality was of vital importance to them. By definition, they will not come forward to the media and their views will not be heard, nor are they represented by any spokesperson or advocacy group. Confidential means 'intended to be kept secret'.

The Commission was not required to provide a complete account of each person's experiences as relayed to the Confidential Committee. The Confidential Committee Report, as stated and as directed by Government, is a "report of a general nature". The Commission was at pains to ensure that the report would maintain the confidentiality of the witnesses and that none could be identified from it. Details of any kind that might possibly lead to identification of the witness were excluded or were written in such a way as to preserve confidentiality. The institutions were not named. Matters that might reveal geographic location were excluded. Very personal details were not used. The general nature of the report and the need to protect the anonymity of the witness has necessarily required avoiding the use of some of the very specific information which is not central to the matters under investigation or if used, is recounted in such a way that it could not lead to the identification of the person concerned. The key issues arising from all of the testimonies relevant to the Terms of Reference are stated in the report and the former Commission members reject any suggestion that the Confidential Committee report is inaccurate.

The former child residents of the institutions who gave testimony to the Confidential Committee were primarily concerned with access to information on tracing. This was a major factor in the Commission's clear recommendations on this issue.

Abuse in the institutions

It is also not true to suggest that the Commission found there was no abuse in the institutions. Many of the chapters (including the Confidential Committee report) contain graphic accounts of the abuses that women and children underwent, in county homes, mother and baby homes, and as boarded-out children. They also document the callous

disregard shown towards the appalling levels of infant mortality. They also suggest that officials in the Department of Health, presented with stark evidence that mother and baby homes were not saving children's lives, gave no consideration to alternative measures to provide for unmarried mothers and their children. It found that women in county homes were abused, that there was emotional abuse of women in particular when they were giving birth. Most importantly, it found that they should not have been in the institutions but should have been at home with their families. The Commission is concerned that very little of that extensive evidence has been read, or if read, has been ignored, and there has instead been a rush to judgement, without due consideration being given to all the evidence presented.

Adoption

Since the publication of the Commission's report, there have been many complaints that the Commission did not determine that many Irish adoptions constituted 'forced' adoption. The Commission did not say that there were no 'forced' adoptions. In paragraph 34 of its recommendations, it said that it did not agree with the suggestion that all adoptions be renamed 'forced adoption' and went on to give its reasons. It acknowledged that many mothers had few options. Some of them had no option other than adoption – though some single mothers did keep their child. The time between childbirth and placing a child for adoption, and the requirement for mothers to sign not one, but two, legal documents in Ireland meant that the adoption process took longer here than in Britain, the USA or Australia. The use of terms such as 'forced' should for the reasons set out in the report be approached with considerable caution. Nobody who has read the complete report could understand it not to mean that many mothers were coerced by circumstances into making choices to permit adoption of their children.

Threats of legal action

The former members of the Commission wish to clarify that, unlike the Ryan Commission, there were no threats of judicial review by any of the religious orders which were involved with the institutions.

Language of the report

Some commentators, including leading politicians, have criticised the 'tone' of the report as 'cold' and 'legalistic'. The Commission of Investigation was engaged in a formal legal process and carried it out having due regard to the Constitutional and statutory requirement to fair procedures. The report is necessarily written in sober, straightforward, non-emotional language. This is normal for official reports and should continue to be so.

Independence of the Commission

Your committee is reminded that these constitutional and statutory requirements do not end once the Commission has reported. Some members of the Oireachtas Committee have already engaged in a public condemnation of the contents of the Commission's Final Report and of the methodology adopted. Regrettably some senior members of the Oireachtas have done that despite having been members of the Government that drafted and brought the Terms of Reference before the Oireachtas for approval.

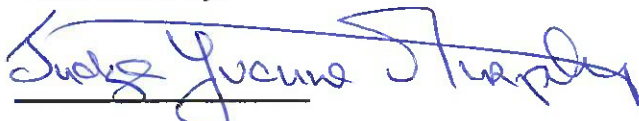
A Commission of Investigation is required by section 9 of the 2004 Act to be "*independent in the performance of its functions*". It does not follow a popular or political narrative or agenda. It seeks to establish the truth as best it can. It reports independently on the facts that it has established during its investigation. The outcome of the independent work of the Commission and its Confidential Committee in the form of its Final Report of 2860 pages (and a number of interim reports which also include substantial findings) could be put in peril by an appearance before some of the Committee's members whose rush to judgement without due process, is already a matter of record.

The independence, procedures and safeguards under which the Commission carried out its investigation and its carefully considered conclusions would be set at nought by an appearance before your committee and in circumstances especially where prejudgement is already manifest.

The former members of the Commission stand over its report which speaks for itself and must be read in its entirety.

The former members of the Commission have already indicated to you that they did not consider it appropriate to attend your committee. They continue to hold that view for the reasons set out in this letter and do not intend to participate in any process that could compromise the independent findings of the Commission. The independence of the Commission cannot simply be abandoned because its findings are not acceptable to some at a political level. Neither I nor the other former Commissioners, Dr William Duncan and Professor Mary E. Daly will be accepting your invitation to attend.

Yours sincerely,



Judge Yvonne Murphy