

Mr Patrick McGowan
Chair
Western Health and Social Services Council
Hilltop
Tyrone & Fermanagh Hospital
OMAGH
BT79 0NS

Our Ref: JOH-21-2004

Date: 01 December 2004

Dear Mr McGowan

INQUIRY INTO HYPONATRAEMIA-RELATED DEATHS

I am writing to you regarding the above Inquiry which was announced recently into the events surrounding and following the deaths of Adam Strain, Lucy Crawford and Raychel Ferguson. I attach a copy of the Terms of Reference and my statement of 18 November. The Inquiry is a statutory Inquiry and the powers are set out in the Health and Personal Social Services (NI) Order 1972, copy attached. Those powers include requiring any person to give evidence or to produce any books or documents which relate to the issues which are under investigation.

In the coming weeks I plan to develop preliminary proposals which will detail how I propose to conduct the Inquiry and these will issue to all interested participants for consultation.

To assist me in identifying the key issues which I may decide to investigate I need to gather notes, documents, records and reports from all available sources.

Therefore, I would ask that you arrange for all notes, documents, records and reports relating to Lucy Crawford and Raychel Ferguson to be delivered to the Secretariat, Inquiry into Hyponatraemia-related Deaths, 20 Adelaide Street, Belfast BT2 8GB by 10 December 2004. The papers should be indexed and tabbed. Please liaise with my office regarding the precise arrangements for delivery of the papers. I am happy to accept photocopies of the various documents provided that they are legible, however, originals must be retained and held securely.

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Secretary: Ambrose Owens **Deputy Secretary:** Sharon Lindsay
The Inquiry into Hyponatraemia-related Deaths, 3rd Floor, 20 Adelaide Street, Belfast, BT2 8GB
Email: inquiry@ihrdni.org **Website:** www.ihrdni.org **Tel:** 028 9051 7038 **Fax:** 028 9051 7237

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I also require the names and contact details for all individuals who were involved in any reviews or inquiries relating to the deaths of Lucy Crawford and Raychel Ferguson. Should this include personnel who are no longer employed by your Council then I would ask that, if possible, you also provide the appropriate contact details if you know them or, if you don't, the last known address.

It would be very helpful if you could identify the roles which each of these individuals played and if you could list them chronologically.

I should add that in order to assist witnesses, and their representatives, in the preparation of their evidence to the Inquiry I may have to make available to them copies of documents provided to the Inquiry and to place such copies on the Inquiry website.

Yours sincerely

John O'Hara

MR JOHN O'HARA QC
Chairman

Encs

TERMS OF REFERENCE

**DEPARTMENT OF HEALTH, SOCIAL SERVICES
AND PUBLIC SAFETY**

**THE HEALTH AND PERSONAL SOCIAL SERVICES
(NORTHERN IRELAND) ORDER 1972**

In pursuance of the powers conferred on it by Article 54 and Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972, the Department of Health, Social Services and Public Safety hereby appoints Mr John O'Hara QC to hold an Inquiry into the events surrounding and following the deaths of Adam Strain, Lucy Crawford and Raychel Ferguson, with particular reference to:

- (i) The care and treatment of Adam Strain, Lucy Crawford and Raychel Ferguson, especially in relation to the management of fluid balance and the choice and administration of intravenous fluids in each case.
- (ii) The actions of the statutory authorities, other organisations and responsible individuals concerned in the procedures, investigations and events which followed the deaths of Adam Strain, Lucy Crawford and Raychel Ferguson.
- (iii) The communications with and explanations given to the respective families and others by the relevant authorities.

STATEMENT BY MR JOHN O'HARA QC, CHAIRMAN

THURSDAY 18 NOVEMBER 2004

1. I am honoured to accept my appointment by the Department of Health, Social Services and Public Safety to conduct this Inquiry into the events surrounding and following the deaths of the three young children, Adam Strain, Lucy Crawford and Raychel Ferguson.
2. The Terms of Reference of the Inquiry which have been published today are very broad and I believe they will enable me to look at all the issues which need to be examined. It is important to note that apart from the specific Terms of Reference, I have been given a general discretion to examine and report on any other relevant matters which arise.
3. I know that some concern has already been expressed that the Inquiry is not being conducted by someone from outside Northern Ireland. I want to emphasise my own independence from the Department and from those individuals and public bodies whose conduct will be examined. But I also want to make the point that as one who lives in Northern Ireland I have an obvious interest in an effective and efficient public health service. I have no interest whatever in protecting from criticism any individual or body which has been incompetent, inefficient or worse.
4. I have been promised by the Department that I will have access to all the support and expertise which is necessary to conduct this Inquiry. A dedicated Inquiry Team has been established which will operate from offices in Adelaide Street, Belfast. I will obviously need expert advice which I will obtain from outside Northern Ireland. A number of names have already been suggested and I am confident that I will have access to impartial experts whose input will be essential.

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5. **Powers of the Inquiry**

This is a statutory Inquiry and the powers given to me are set out in the Health and Personal Social Services (NI) Order 1972. They include the following:

- a. The power to require any person to give evidence or to produce any books or documents which relate to the issues which are under investigation;
- b. The power to require any person to provide information relating to any of the relevant issues as I think fit and as a person so required is able to furnish;
- c. The power to question witnesses on oath or to accept instead a statement in writing by any person.

6. It is important to remember that inquests have already been held into the deaths of Adam, Lucy and Raychel. It is not my intention to rerun those inquests – that would be a waste of public time and money. However I will have access to the coroner's records so that it will be possible to use the evidence which emerged at the inquests as one of the starting points of the Inquiry.

7. I am aware that questions have already been asked about whether the Inquiry will be held in public and whether legal representation will be available. I have some discretion as to how the Inquiry will be conducted and I will issue a paper in the coming weeks to interested parties setting out my detailed preliminary proposals. They will then have an opportunity to put forward different views before the procedure is finalised. It is likely the procedure will include the following:

- a. I will gather all available documents, records and reports from all available sources including the families, the hospitals, the Trusts and the Department;
- b. I will require detailed written statements to be provided from various people and bodies;
- c. I will then decide which people need to give oral evidence to the Inquiry. It is anticipated that, save in exceptional circumstances, this evidence will be given in public. However since the Inquiry is inquisitorial rather than adversarial the vast majority of the questions will be asked by a counsel to the Inquiry who will be appointed for that purpose. A person who is being questioned will be entitled to an appropriate level of legal representation so that, eg, questions can be challenged on the basis of privilege or relevance. That representative will also be entitled to ask additional questions of his/her client. It is not anticipated at this stage that there will be cross examination by lawyers representing other parties;
- d. Although the scope for legal representation is limited, I can recommend to the Department that it should pay for legal representation where it is necessary and where there are not other means by which that representation can be funded. It will then be for the Department to decide whether to accept my recommendation. I do not envisage making such a recommendation in respect of any public body or any person who has his/her own means of providing legal representation;
- e. When the questioning is complete I will prepare a report on the issues which have been investigated and I will provide that report to the Department. My understanding is that the Department is committed to publishing that report but that is a matter for the Department, not for me. The report will include conclusions where it has been possible to draw them and recommendations for the future.

8. **Timescale**

The Terms of Reference require me to report by 1 June 2005 or such other date as may be agreed with the Department. I will do everything I can to complete my work within that period. At this stage however it is not possible to predict exactly what issues will emerge in the months ahead. I am aware, eg, that there is an ongoing police investigation into various concerns arising from the death of Lucy Crawford. There is a possibility that that investigation will have an impact on the progress which I am able to make with the Inquiry. I understand however that I have an obligation to the families involved and also to many other individuals and bodies to conduct and complete the Inquiry as efficiently and speedily as possible. I will do everything I can to meet that obligation.

9. **Conclusion**

Representatives of the 3 families were kind enough to meet me this morning. I am grateful to them for taking the time and trouble at very short notice to make these meetings possible. Their concerns are obvious. They believe that their children's lives could and should have been saved. They believe that they have been misled and obstructed in their efforts to find out what happened. They also have reservations about my independence, about the independence of this Inquiry and about the procedures which I will follow.

I do not know and I have no view at this time on whether they are right or wrong to hold those beliefs or the extent to which they are right or wrong. The families accept that this and must be my position. I have tried to reassure them about my independence and I hope that they will cooperate with me and my team. I will however consider their points. The question of procedures has already been outlined in this statement and will be dealt with the way in which I have set out at paragraph 7.

SCHEDULE 8 ^{F069}

Article 54.

PROVISIONS AS TO INQUIRIES

1. The Ministry shall appoint a person to hold the inquiry and to report thereon to the Ministry.
2. Notification shall be sent to any persons appearing to the Ministry or the person appointed to hold the inquiry to be interested of the time when, and the place where, the inquiry is to be held.

3. —

(1) Subject to sub-paragraphs (2) and (3), the person appointed to hold the inquiry may by notice require any person—

(a) to attend at the time and place set forth in the notice to give evidence or to produce any books or documents in his custody or under his control which relate to any matter in question at the inquiry; or

(b) to furnish, within such reasonable period as is specified in the notice, such information relating to any matter in question at the inquiry as the person appointed to hold the inquiry may think fit, and as the person so required is able to furnish.

(2) A person shall not be required, in obedience to such a notice, to attend at any place which is more than ten miles from the place where he resides unless the necessary expenses are paid or tendered to him.

(3) Nothing in this paragraph shall empower the person appointed to hold the inquiry to require any person to produce any book or document, or to answer any question, which he would be entitled, on the ground of privilege or otherwise, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.

4. The person appointed to hold the inquiry may administer oaths and examine witnesses on oath, and may accept, in lieu of evidence on oath by any person, a statement in writing by that person.

5. Any person who—

(a) refuses or wilfully neglects to attend in obedience to a notice under paragraph 3, or to give evidence; or

(b) wilfully alters, suppresses, conceals, destroys or refuses to produce any book or document which he may be required to produce by any such notice; or

(c) refuses or wilfully neglects to furnish any information which he is required to furnish under paragraph 3(1)(b);

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shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding [^{F051}level 2 on the standard scale].

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6. The expenses incurred by the Ministry in relation to any inquiry held under this Order (including such sum as the Ministry may, with the approval of the Ministry of Finance ^{F022}, determine in respect of the services of any officer engaged in the inquiry) shall be paid by such of the parties to the inquiry in such proportions as the Ministry may order.

7. The Ministry may make orders as to the expenses incurred by the parties appearing at any such inquiry and as to the parties by whom such expenses shall be paid.

8. Any order made by the Ministry under paragraph 6 or 7 may, on the application of any party to the inquiry, be made a rule of the High Court.

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