

**INQUIRY INTO HYPONATRAEMIA-RELATED DEATHS**

**PROGRESS HEARING**

**IN BANBRIDGE COURTHOUSE**

**ON FRIDAY, 3RD FEBRUARY 2012**

*Transcript prepared by Stenography Services UK  
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## APPEARANCES

### **FOR THE FAMILIES:**

#### **ADAM STRAIN**

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#### **RAYCHEL FERGUSON**

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1 [REVIEW COMMENCED] 10.05

2 THE CHAIRMAN: Good morning, thank you all for coming to Banbridge. Could I just  
3 ask you later when each of you is saying what you want to say if you could  
4 introduce yourselves, the appearances have multiplied over the last number of  
5 weeks and in addition we have a new stenographer who has not been with us before  
6 who won't know the individuals. So it would help very much for the room, for my  
7 benefit and for the purposes of recording what happens this morning if you  
8 introduced yourselves.

9 The purpose of today's hearing is to update everybody on the progress which has  
10 been made in the last few months and to go through any outstanding issues in  
11 advance of the opening of the public hearings on Monday the 20th of February and  
12 the start of the oral evidence on Monday the 27th of February. As you're aware the  
13 vast majority of the evidence which we have gathered over the last number of years  
14 was circulated on the 19th of October last. This week there have been two  
15 important new documents received and circulated, the first of those is the report  
16 from the expert advisers to the Inquiry on what they describe, and I hope that  
17 nobody takes offence at this, as the report on, part 1 report on Adam's death, which  
18 they describe as clinical to distinguish it from a subsequent report which will come  
19 on governance. And in that helpful document which is cross-referenced to the  
20 inquiry files, which have been circulated to you, you will see that they have drawn  
21 together a number of issues under various headings and they have suggested at the  
22 end of each one what they consider are matters for further consideration. And to  
23 some extent they have drawn together the different themes which are set out in the  
24 reports of the expert witnesses and in the report of the - in the witness statements of  
25 those who were involved in treating Adam in the Royal in 1995.

26 The second statement, or the second new document is the statement which came  
27 into the Inquiry yesterday on behalf of Dr Taylor. That was circulated yesterday at  
28 about lunchtime or early afternoon, I hope that everybody has had a chance to see it,  
29 particularly because I think it is a significant document in which Dr Taylor accepts

1 responsibility for a number of the issues which have been raised in the course of the  
2 witness statements, and indeed in the course of his questioning by the police a few  
3 years ago. And I will come back to Dr Taylor's statement in a moment. There is a  
4 small number of expert's reports which we are waiting on and we expect that they  
5 will all be available next week. When that is so they will be immediately circulated  
6 of course and that, I anticipate, will come complete the gathering of the expert  
7 evidence.

8 The next outstanding issue is in respect of Salmon letters. Now, as you know it is  
9 standard practice for inquiries to issue these letters and they will be issued over the  
10 next week to ten days. I believe, however, that in the context of this Inquiry they  
11 are less significant and fundamental than they normally are in light of all of the  
12 documentation which has already been provided to the parties, including the report  
13 or the statements of the expert witnesses, and including this week's reports from the  
14 advisers. They will nevertheless be issued in respect of witnesses who are being  
15 called to give evidence because the purpose of a Salmon letter is to alert the witness  
16 to areas of questioning, possibly critical questioning, and probing. And it is unfair  
17 to those witnesses that they are not put on notice of what those areas of questioning  
18 will be. But it is clear, and I suspect that Mr McAlinden for the DLS will come  
19 back, or for Belfast Trust will come back to this later. It is clear that the purpose of  
20 these letters is to alert witnesses. We were asked yesterday by the Trust: Would the  
21 trust not receive a Salmon letter? The Trust is not a witness. Employees of the  
22 Trust are witnesses, but the purpose, since the purpose of a Salmon letter is to alert  
23 witnesses to any potential probing or criticism then the letters are addressed to the  
24 individual witnesses. I think there is a concern expressed yesterday by DLS about  
25 how these letters are conveyed and we can discuss that as the morning progresses.  
26 In terms of Dr Taylor's statement, to come back to that for a moment, in light of  
27 what Dr Taylor has now conceded, I think to put it bluntly, we will consider over  
28 the next few days what effect, if any, it has on the evidence which has to be given  
29 and the witness schedule. And I don't, Mr McBrien, I don't expect you to give any

1 comprehensive answer this morning but it would be helpful if you at least gave an  
2 initial response on behalf of your client to what is in this, if you can do so, and if  
3 you can't I won't hold you to it, but I will come back to you in a few moments, okay.  
4 Let me turn now to a number of other issues. In November two files of  
5 correspondence between the Inquiry and the Director of Legal Services on behalf of  
6 the Belfast Trust were circulated. That should not have happened, and should  
7 certainly not have happened in the manner in which it did. And the Inquiry has  
8 apologised to the Trust for this. To develop that, some of the documents were  
9 irrelevant and need not have been photocopied. There are also other documents  
10 which contained some personal information and those documents should have been  
11 redacted before they were issued and I very much regret that they weren't. And I  
12 have already written, the staff at the Inquiry have already written asking for them to  
13 be returned. They will be re-issued in a much more limited form and in that limited  
14 form they will contain the documents, by which I mean letters, which can be  
15 regarded as evidence. There are some letters by way of exchanges in which the  
16 Inquiry asked the Trust to explain or develop certain points and the responses which  
17 we received were in effect evidence to the Inquiry. Now, I distinguish those letters  
18 from letters about, for instance, can we try to track down if there was an anaesthetic  
19 nurse, or can we try to track down who, if anybody, was an assistant anaesthetist.  
20 Those are letters that are trying to track witnesses and giving lists of people who  
21 were on the Trust staff at the time which led then to a whole series of issues, a  
22 whole series of letters being issued by the Inquiry. I don't believe it was necessary  
23 for all of those letters to be circulated but what is clearly relevant is if there's  
24 anything in those, in the correspondence which is by way of evidence. And that will  
25 be re-issued and the Inquiry will similarly provide correspondence which, with other  
26 parties, which can be said to constitute evidence. My expectation is that any such  
27 exchanges are very limited. I do not think it is necessary to circulate everybody  
28 with endless Inquiry correspondence and it has been endless Inquiry  
29 correspondence. But what we want to do is focus on the issues which are relevant

1 to the Inquiry and in order to do that we will be providing letters which, as I said,  
2 can constitute evidence.

3 There are some small outstanding queries about the list of issues. There's only one  
4 of them I think, sorry there's some suggestions on behalf of Mr and Mrs Slavin  
5 about how the list of issues might be altered in relation to Adam. DLS have raised a  
6 number of points but only one of them relates to Adam. Those issues will be  
7 responded to at the start of next week. I don't believe that there's anything  
8 fundamental, and in fact the brevity of the responses and the fact that there were so  
9 few responses rather confirms that in the eyes of the interested parties the Inquiry's  
10 identification of the issues has been fairly impressive.

11 I now need to refer to an issue which has been raised by DLS on behalf of the  
12 Belfast Trust about the Forsythe Rigg reports. These reports were circulated in  
13 October and in their first report, at page 13, Professor Forsythe declared or revealed  
14 that he was recently involved in a review of transplant services in Northern Ireland  
15 commissioned by the Health & Social Care Board. And he said that some of the  
16 comments in the review might be considered to be pertinent. In his second report he  
17 answered questions, one question was asking him to provide a copy of the review,  
18 and the second question is to identify the comments which might be considered to  
19 be pertinent. He didn't himself provide a copy of the review but he referred us to the  
20 person who had requested the review and then said his understanding was that the  
21 report had been made public. In answer to the second question, which was why  
22 some of the comments might be considered to be pertinent he gave two reasons.  
23 The first reason he said was that it would seem very strange if one of us had not  
24 mentioned involvement in an external review of renal transplantation which  
25 included paediatric transplant services given that this public Inquiry concerns the  
26 death of a young child during the renal transplant procedure. Well, that explains  
27 why he disclosed his involvement. That's why he disclosed his involvement in the  
28 review. The second response given about why the comment might be pertinent was  
29 there is a section within that report concerning paediatric renal transplantation. This

1 refers to the difficulty of maintaining the super specialised service every hour of the  
2 year for a small number of patients. Now there has been correspondence over the  
3 last few months, in particular over the last few weeks, with DLS about this. And  
4 we have now been provided by DLS with two short extracts from the review which  
5 referred to paediatric renal transplants, but in addition to that the DLS on behalf of  
6 Belfast Trust are now contending that Professor Forsythe's report, that Professor  
7 Forsythe cannot now be regard as an independent expert witness and on that, I will  
8 hear Mr McAlinden in a few minutes. I anticipate that they will be, this in effect in  
9 the comparatively informal setting of the Inquiry is a request to exclude the  
10 evidence of Professor Forsythe. Now, subject to anything which is said today, and I  
11 will hear Mr McAlinden on this, I am content to lay down a timetable because he  
12 has suggested to the Inquiry that we might care to take written submissions on this,  
13 rather than to develop it at length during today's hearing, and I will let him come  
14 back to that whenever his turn comes this morning.

15 There was a further query about the core bundles. They will be issued, or at least  
16 the initial part of them or the bulk of them, will be issued I think next week,  
17 probably towards the end of the week and any supplementary documents will be  
18 issued the following week. They are being prepared in ease of the parties for the  
19 hearing but they will not contain documentation with which you're not already  
20 familiar, save for the reports which are due to come in at the start of next week or  
21 early next week. Beyond this first segment of the hearing, which I'm referring to as  
22 'Adam clinical', we then have a timetable after Easter to deal with Adam governance  
23 and then go on to the case of Claire Roberts. We have some outstanding witness  
24 statements in respect of Claire's case, and some of those outstanding statements are  
25 significant statements. We understand that four of them are due today at the Inquiry  
26 and we'll be able to, I think Mr Quinn, there was an issue raised yesterday about  
27 when those statements would be made available. Well, we want to take the  
28 procedure which we followed before about releasing documents together as best we  
29 can. So perhaps we'll get confirmation from DLS this morning that the four



1 statements which we were advised would be received this week will in fact arrive  
2 today because we have not received any of them this week so far. I think at this  
3 stage that's all, those are all the issues that I want to raise and unless anybody  
4 objects can I take the normal course of going through the parties and starting  
5 perhaps with Mr McBrien with you on behalf of Mrs Slavin.

6 Is there anything that's, which you particularly want to raise this morning? You  
7 don't have to but ...

8 MR McBRIEN: Yes, sir, I think I should.

9 THE CHAIRMAN: Sorry, could I say first of all thank you very much for this booklet  
10 which we've received this morning. You'll understand we haven't had a chance to  
11 look at it in any detail yet but thank you for providing that and for the work which  
12 has gone into it.

13 MR McBRIEN: Certainly. For the benefit of the stenographer, my name is David McBrien,  
14 I am a member of the Bar instructed by Hunter Solicitors representing the family of  
15 Adam Strain. Sir, as regards Dr Taylor's statement, I haven't had a chance yet to  
16 consult with Deborah Strain, Deborah Slavin, as she now is, however her initial  
17 comment has been relayed to me and it was: "*It's just a start*". There are a number  
18 of issues that still remain vis-a-vis Dr Taylor, I won't raise those today. My  
19 instructing solicitor and myself have had a very cursory examination of the  
20 timetable as regards witnesses for the clinical part of Adam and we think we may be  
21 able to assist in discarding some of them, but we wish to reflect further upon it  
22 before we state our position. But we would agree that there is some room for  
23 manoeuvre upon it. The next matter, sir, however is this, and it's something which I  
24 think we flagged up back about September, October. And that is how some of the  
25 witnesses will relate to both the clinical and the governance sections. Now we  
26 haven't seen your proposed timetable in respect of the governance section yet but  
27 three individuals seem to stand out from the crowd as regards both parts. And they  
28 would appear to be Doctors Savage, Taylor and Armour. So we would be seeking  
29 guidance from you, sir, as to whether they're going to be recalled after Easter or

1                   whether we have to prepare questions for them during the clinical part.  
2           THE CHAIRMAN: Yes. We'll come back to you on that as soon as I can. There is a point  
3                   at which you can clearly say something is clinical or something is governance. But  
4                   inevitably there is a cross over point at which it's difficult to define which exactly it  
5                   is or in fact it may be an issue may cover both areas.

6           MR McBRIEN: Yes.

7           THE CHAIRMAN: You know, for instance, there are arising out of Dr Taylor's statement  
8                   there's an obvious query well if this had been the position adopted by Dr Taylor in  
9                   1995, and Adam died, what effect would that have had on any internal review or  
10                  investigation within the Royal or what might have happened differently to what did  
11                  happen.

12          MR McBRIEN: Yes, indeed. Because we note from his statement WS-008/6, page 2, when  
13                  he says at the start:

14                  "*I am making this statement to the Inquiry after reflecting on the criticism of my*  
15                  *anaesthetic management of Adam Strain in the expert witness reports in late 2011*".  
16                  Bearing in mind, sir, that he still a practitioner and has played a role over the years  
17                  as regards hyponatraemia there's a concern from the perspective of the Strain/Slavin  
18                  family that: Why did he not reflect during the internal review? Why did he not  
19                  reflect at the time of the inquest? Why did he not reflect during the civil  
20                  proceedings? And why did he not reflect during the course of the PSNI  
21                  investigation? And that it's only 16 years later, the day before this actual hearing,  
22                  that we have this statement produced. So as Deborah Slavin has said "*it's just a*  
23                  *start*".

24          THE CHAIRMAN: Okay, thank you very much. Mr Quinn, I think on behalf of the  
25                  Roberts, do you have anything to raise today?

26          MR QUINN: Mr Chairman, I appear on behalf of both Claire Roberts and Connor Mitchell.

27          THE CHAIRMAN: Yes.

28          MR QUINN: In the Claire Roberts case I appear with Mr Michael McCrea, we're both  
29                  members of the Northern Ireland Bar. And in that case I appear on the instructions

1 of Ferguson & Company. In Connor Mitchell's case I appear with Sarah Ramsey,  
2 again a member of the Northern Ireland Bar instructed by Jones & Company.

3 THE CHAIRMAN: Thank you.

4 MR QUINN: I very briefly want to raise a number of issues, the main point that I make  
5 today is in relation to the cross-examination of the witnesses in relation to the Adam  
6 Strain part of the Inquiry. It is my intention to attend for the most important  
7 witnesses and really what I want, Mr Chairman, is some clarification as to what,  
8 what I will be allowed to ask in relation to the issues that I see as relevant. And in a  
9 nutshell I see the issues, as the relevant issues being:

10 1. Medications, being the fluids appropriate at that time.

11 The second issue is diagnosis, and how that diagnosis was arrived at.

12 Thirdly, Mr Chairman, is information circulation and analysis of relevant  
13 information at that time which will touch on governance but, as you say, some of  
14 the clinical issues and the governance issues cannot be ...

15 THE CHAIRMAN: Easily.

16 MR QUINN: .. easily divided. And the fourth issue is governance, and where do we draw  
17 the line. And again I accept my learned friend's point and we need to know who  
18 will be called on the governance issues as soon as possible to allow us some time to  
19 prepare questions. We also would like to see a list of issues and agenda and I thank  
20 you, Mr Chairman, for clarifying that this morning. But I just want to put myself on  
21 record to say that we would like to see a list of issues and agenda as quickly as  
22 possible. And the last point that I make if there's going to be some alteration in the  
23 witness timetable, given Dr Taylor's statement, then again it's necessary to see that  
24 as quickly as possible.

25 THE CHAIRMAN: Thank you very much. Could I, let me just, if you stay there for one  
26 moment. Mr McBrien, if you're going to suggest that we can do without any  
27 witnesses who are scheduled to give evidence in the clinical part of Adam's case can  
28 we ask you to come back to us as early next week as you possibly can on that?

29 MR McBRIEN: Yes, sir.

1 THE CHAIRMAN: We will be similarly considering that and it may be that other parties,  
2 this isn't just a question for the Inquiry and for Mr and Mrs Slavin, there are other  
3 parties who might have views on it but if anybody has views on it comes back as  
4 early as possible next week. It might not be so much a question of reducing the  
5 number of witnesses as reducing the number of areas of questioning of those  
6 witnesses. It might also, but we would only want to call witnesses who have to be  
7 called who we need to gain more information from. So if you could come back to  
8 us as early as possible on that next week, okay.

9 MR QUINN: Also obviously, Mr Chairman, that may well touch on some of the issues that  
10 I want to raise. So perhaps my learned friend would be kind enough to copy me into  
11 any correspondence or E mail that he may send.

12 THE CHAIRMAN: Mr Quinn, the points that you have raised about, I mean they arise  
13 because Claire died in the Royal in 1996 after Adam's death in 1995?

14 MR QUINN: Yes.

15 THE CHAIRMAN: And there is some degree of overlap.

16 MR QUINN: There's quite a degree of overlap in relation to the medical teams involved.

17 THE CHAIRMAN: Yes. Does this put you in a position where you would be writing a  
18 Salmon letter to individuals who may be giving evidence which you may be critical  
19 of in relation to Adam's treatment because that is relevant?

20 MR QUINN: Yes.

21 THE CHAIRMAN: Yes. And in the same way as I have committed the Inquiry to sending  
22 out its Salmon letters over the next week to ten days, could we also ask you to  
23 forward your effectively third party Salmon letters to the Inquiry for onward  
24 distribution?

25 MR QUINN: Yes, we will do that.

26 THE CHAIRMAN: If you can do that by next week?

27 MR QUINN: We'll do that by, before next Friday.

28 THE CHAIRMAN: Thank you very much. I will have a, when I see the issues that you  
29 have raised as we then transmit them to the individuals you address, then we will

1 form, I will be able to form a view about the extent to which you will, you need to  
2 cross-examine any of these witnesses. It's difficult for me to say off the cuff which  
3 of those, which witnesses you can cross-examine on which of these issues. But I  
4 would anticipate that, or I would hope that certainly the lines of questioning which  
5 you're following ...

6 MR QUINN: Yes.

7 THE CHAIRMAN: .. would not be far removed from the lines of questioning which the  
8 Inquiry and counsel are following. So it might be there's some, that most of this is  
9 covered already.

10 MR QUINN: I see that as overlapping but, and I don't see my role as very important in that  
11 but I do see, but I would like, if necessary, to have some input.

12 THE CHAIRMAN: Okay, thank you very much. Mr Doherty, Mr Coyle?

13 MS DOHERTY: My name is Desmond Doherty. I am a solicitor for the family of Raychel  
14 Ferguson and I am here on my own today in the absence of counsel, senior counsel  
15 Mr Topolski, and junior counsel, Mr John Coyle. Mr Chairman, I would agree with  
16 what Mr Quinn has said and support him in what he has said but to a much lesser  
17 degree from our point of view. I think that I flagged up one issue in correspondence  
18 that we may have some interest in with Alison Armour but I don't think it will  
19 necessitate, Mr Chairman, any Salmon letters. In actual fact I intend to deal with  
20 matters, and I'm pleased to hear Mr Quinn that will be here and there's plenty of  
21 counsel in the room so I would anticipate that in my presence that there will be very  
22 few questions on my behalf and if I need any assistance there's plenty of counsel to  
23 help me. The only other matter I would mention, Mr Chairman, is the fact that in  
24 relation to opening statements Mr Topolski has mentioned that he has a very short  
25 opening statement, and I have seen a draft of it, so it should be no more than five  
26 minutes.

27 THE CHAIRMAN: Well, I am delighted to hear that. I think the limit on the procedures is  
28 an hour so if he can do it in five minutes even better. Okay thank you very much  
29 indeed.

1 Turning now, Mr McAlinden, have you got anything, there's a lot of individual  
2 representation, I think greater individual representation for the various doctors now  
3 but do you want to lead off for, on behalf of Belfast Trust?

4 MR McALINDEN: I would happy to do that, Mr Chairman. I am Mr McAlinden and I am  
5 senior counsel representing the Belfast Trust, along with my learned friend  
6 Mr Gerry Simpson, also senior counsel and Mr Michael Lavery, junior counsel. Mr  
7 Chairman, I am very much indebted to you for dealing with a number of the issues  
8 which the Trust's solicitor had addressed to you in correspondence yesterday which  
9 we had hoped that would, that we'd be able to address this morning. Most of the  
10 issues have now been disposed of but there are a number of minor matters and one  
11 significant matter which I would wish to raise with you.

12 THE CHAIRMAN: Okay.

13 MR McALINDEN: In relation to the subsidiary matters number 2 in the correspondence  
14 dated the 2nd of February is the Deborah Slavin/Strain diary in relation to the  
15 kidney dialysis of Adam Strain and it's the Trust's submission that it would be  
16 helpful if that documentation was provided to the Trust.

17 THE CHAIRMAN: Sorry I understood that it went out a couple of days ago, but let me just  
18 check.

19 MS CONLON: It was delivered yesterday at two minutes past twelve and signed for at  
20 your offices.

21 THE CHAIRMAN: That's good, that takes care of that.

22 MR McALINDEN: That certainly takes care of that. The other minor issue was the issue of  
23 the Salmon letters and in terms of that their helpful correspondence I think sets out  
24 your position in relation to that. But it's the Trust's view that two things would be  
25 helpful: First of all, in relation to those individuals who are not, who have not been  
26 granted the status of interested parties but who are servants or agents of the Trust  
27 who are going to give evidence at this Inquiry. It's the Trust's firm view that it  
28 would be appropriate if the letters were delivered to the Trust for onward delivery to  
29 those individuals so that appropriate explanations can be given at the time and

1 appropriate support mechanisms can be put in place.

2 THE CHAIRMAN: I think I am right in understanding, Mr McAlinden, that previously  
3 when letters were sent they were in a sealed envelope addressed to the individual  
4 and they went to DLS which have helpfully agreed to send them on to the  
5 individual. Is that right?

6 MR McALINDEN: Yes, that is correct, yes, and the DLS was not allowed to open the ...

7 THE CHAIRMAN: Yes, but when the person to whom they're addressed opened them, that  
8 person is free to talk ...

9 MR McALINDEN: Yes.

10 THE CHAIRMAN: .. to DLS about it.

11 MR McALINDEN: Yes.

12 THE CHAIRMAN: Okay. Well, I don't see any difficulty doing that again and it would be,  
13 it's then a matter for that individual as to whether the individual consults with DLS  
14 or whether somebody, some other people clearly, well then they go off separately  
15 for other representation.

16 MR McALINDEN: The only issue I would take with that is that in terms of being able to  
17 put in place support mechanisms and having ready advice available to the person  
18 when they open the letter, it would be the submission of the Trust that it would be  
19 appropriate for the letter to be sent to the DLS first of all with the ability of the DLS  
20 to basically open the letter to ascertain what the content of the letter is and then  
21 forward it to the employee, and with appropriate covering letters, or with  
22 appropriate offers of assistance or advice, rather than the letter not be opened by the  
23 DLS and the DLS have no idea or insight into the nature and extent of the criticism  
24 which the witness may be faced with.

25 THE CHAIRMAN: Well, I think there's two things about that. The first is I'm really not  
26 sure at all that witnesses who may face criticism don't have any idea at this stage of  
27 the inquiry that they may face criticism. Anybody who has seen the expert  
28 statements must realise, and who has seen the consolidated report of the advisers,  
29 must surely realise what the Inquiry is focusing on and where the areas of concern

1 are. They're expressly set out in a number of places through the documentation.

2 MR McALINDEN: Yes.

3 THE CHAIRMAN: Now, that's one point. The second point is that I am not, I will reflect  
4 on this, well at first blush I am not consent to say that the Salmon letters addressed  
5 to various individuals, say Dr X and Dr Y, that they go to DLS, that DLS then opens  
6 them and then tells Dr X - and then contacts Dr X and Dr Y, and says these are the  
7 areas in which you are intensely facing criticism. I understand that DLS might have  
8 a helpful role to play in this, but I think it's probably better achieved by sending the  
9 letters in a sealed envelope, as before, and then for Dr X and Dr Y contacting the  
10 DLS - sorry, being asked to contact DLS because these letters have been received  
11 and invited to have the support and presence of somebody from DLS when they  
12 open the document. But that's a matter for them.

13 MR McALINDEN: Yes.

14 THE CHAIRMAN: It's not, I'm afraid, with respect a matter for DLS.

15 MR McALINDEN: Yes. How I will respond to that, I suppose, first of all we know from  
16 the various expert reports that some experts are critical of some issues in relation to  
17 the behaviour of the individuals and other experts frankly refute those areas of  
18 criticism so that there is a lack of clarity in terms of certain issues of criticism.

19 THE CHAIRMAN: Yes. So Witness A is critical of Dr X on the points 1, 2 and 3, and  
20 witness B is critical of Dr X only on points 1 and 2 and isn't critical on point 3,  
21 right. In that scenario the witness has to be, will be alerted to the fact that there  
22 might be criticism on points 1, 2 and 3 because the fact that there's a division of  
23 opinion between the experts does not mean that the witness will not face probing  
24 questioning on that area.

25 MR McALINDEN: Yes, but in terms of the nature and extent of the criticism I think that  
26 still has to be defined more precisely by way of a Salmon letter, rather than the  
27 witnesses themselves being left slightly in limbo at this stage in terms of the nature  
28 and extent of the criticism which will actually be levelled at them.

29 The other issue that I would raise at this stage is that it's not only doctors who may



1 be potentially criticised in this Inquiry, it's also nursing staff, some of whom have  
2 left nursing some considerable time ago and do not have the support of medical  
3 defence organisations or nursing bodies. And in those cases it's my submission that  
4 the importance of support mechanisms being in place before they are faced with  
5 documentation setting out the precise areas of criticism would, in my submission, be  
6 all the more important. And if it is the case that a sealed letter has to go to an  
7 individual, fine, but it would be my submission it would be appropriate as the  
8 former employer or present employer of those witnesses that the Trust be provided  
9 with a copy of the letter so that the Trust's support mechanisms can be put in place  
10 as soon as possible.

11 THE CHAIRMAN: I am reticent about that, but I am keen to work - I understand the  
12 concern which you have about protecting the well-being of people who might  
13 respond badly or emotionally to criticism, and I'm anxious to make sure that doesn't  
14 happen. So we will see if we can find a way through this which doesn't cause  
15 people any more upset or stress than is required. But I am obliged for that. And I  
16 have to say I'm not persuaded that that, what you have just suggested is a way  
17 through it, but let's see what we can do over the next week or so.

18 MR McALINDEN: Obligated.

19 THE CHAIRMAN: Okay.

20 MR McALINDEN: The issue then, just again it's a minor point, and it's in relation to the  
21 report which has been provided by the advisers, part 1 of the consolidated report.  
22 Now in terms of the expert reports that are referred to therein, and it may be a  
23 failing on my part, but there are three reports that I cannot remember actually seeing  
24 at present and those are the expert reports of Keeling, Consultant Paediatric  
25 Pathologist; Squier, Consultant Neuropathologist; and then Landes, Consultant  
26 Paediatric Radiologist. Now, one is dated 2012 the others, I think, are dated, well,  
27 there's 2011 comma 12 and 2011, those seem to be very recent reports and I cannot  
28 say that I have seen them and I just seek information at this stage as to whether they  
29 have been provided to all the parties at this stage?

1 THE CHAIRMAN: Well I know for certain that Squier hasn't, Dr Squier hasn't. The reason  
2 is that Dr Squier has provided a report but has not signed the report and in it she also  
3 refers to the input of another person who has assisted and we want a signed from  
4 that report from that person too. So you don't have Dr Squier. Dr Keeling?

5 MS CONLON: There is a background paper that has been issued. It is a background paper  
6 and is available on website. So it's not actually an expert report, it is a background  
7 paper.

8 THE CHAIRMAN: And Dr Landes?

9 MS CONLON: Yes, that has been issued.

10 THE CHAIRMAN: That has been issued?

11 MS CONLON: Yes, it has.

12 THE CHAIRMAN: Okay. Well I hope that clears that up. Dr Squier is one of the reports  
13 you will receive next week.

14 MR McALINDEN: Yes, I am obliged.

15 THE CHAIRMAN: We have it but it's imperfect in the sense that it's not, it hasn't been  
16 signed off and it doesn't also have with it the opinion of a further person who  
17 contributed to her report and those will both come to you next week.

18 MR McALINDEN: Obligated. And then finally, Mr Chairman, it's in relation to the issue of  
19 the ...

20 THE CHAIRMAN: Forsythe Rigg?

21 MR McALINDEN: Yes. Now, I think it probably would be best if there were written  
22 submissions made in relation to this issue because, as you're no doubt aware, I did E  
23 mail you a number of authorities.

24 THE CHAIRMAN: Yes.

25 MR McALINDEN: I apologise for the lateness of the service ...

26 THE CHAIRMAN: Don't worry.

27 MR McALINDEN: .. of those authorities. But there are a number of authorities, including  
28 two recent 2011 cases, dealing both with the issue of, and I think there are two  
29 aspects to this case. There's the issue of whether his evidence would involve the

1 risk of disclosure of confidential information that is one aspect. And then the  
2 second issue is whether he can be regarded as an independent expert. Now, the  
3 authorities that I have provided you with all deal with adversarial situations and  
4 where one party is alleging that another party's expert may not be independent and  
5 the court should not admit that evidence. And as you have rightly stated in  
6 correspondence usually in adversarial situations the views taken by the court has  
7 been that the issue of independence can be tested in cross-examination. I would just  
8 point out at this stage that it would be the Trust's view that different circumstances  
9 or different criterion might apply when it is not an adversarial situation but an  
10 inquisitorial forum and especially where the expert who has been retained in the  
11 case has been retained by the Tribunal itself. And the issue then of apparent bias  
12 and the test set out in Porter and Magill may resurface in terms of the assessment of  
13 independence. So it's my submission, Mr Chairman, that in light of the recent  
14 authorities it may well be appropriate we will be able to deal with this issue by way  
15 of written submission.

16 THE CHAIRMAN: Okay. Well, I am content to do that but it's obviously something which  
17 has to be resolved very quickly.

18 MR McALINDEN: Yes.

19 THE CHAIRMAN: Okay. But, because of the informality of the Inquiry so far what, let's  
20 agree on what has to be done. First of all you need, if we were in court you would  
21 be issuing a summons, an affidavit or something, but the point of the summons  
22 would be to define exactly what it is that you're seeking.

23 MR McALINDEN: Yes.

24 THE CHAIRMAN: So the first part of your submission is to define what exactly it is that  
25 you're seeking. The second part is then to set out precisely the ground on which that  
26 contention is advanced.

27 MR McALINDEN: Yes.

28 THE CHAIRMAN: Okay. Now I would like this to be done by Tuesday coming, which is  
29 Tuesday the 7th, is it?

1 MR McALINDEN: Yes.

2 THE CHAIRMAN: Can that be done by 4.00 pm?

3 MR McALINDEN: It can be because the submissions are relatively net and they're  
4 relatively brief and I think all the issues are dealt with in the authorities that I have  
5 provided to you.

6 THE CHAIRMAN: Okay. Well, if you could have them with us by Tuesday at 4.00 pm.  
7 There will inevitably be other parties who may consider responding to that.

8 MR McALINDEN: Absolutely.

9 THE CHAIRMAN: So what you present to the Inquiry will then be circulated to the others  
10 and I want replies from the others by next Friday at 4.00 pm also. Okay, next  
11 Friday being Friday, the 10th.

12 MR McALINDEN: Yes.

13 THE CHAIRMAN: Okay. Now, if an oral hearing is needed on that it will have to be  
14 arranged for the following week.

15 MR McALINDEN: Yes.

16 THE CHAIRMAN: But if I don't think that an oral hearing is needed, if I think I have the  
17 information and representations which I need from the written submissions I will  
18 give you a decision in writing on Monday the 13th.

19 MR McALINDEN: Obligated for that, yes.

20 THE CHAIRMAN: Okay. Now just let's be careful about setting this up. There has been  
21 an exchange of correspondence between the Inquiry and your instructing solicitor in  
22 this, is there any reason why all of that correspondence cannot be disclosed ...

23 MR McALINDEN: No.

24 THE CHAIRMAN: .. in the course of it. Now, and just to be precise on this, when you  
25 responded or where your solicitor responded yesterday, Miss Beggs, there was a  
26 three page letter from her, attached to that are minutes of public meetings at which  
27 this review or aspects of it were discussed. Right?

28 MR McALINDEN: Yes.

29 THE CHAIRMAN: And then attached to that at the end there are two single pages from the

1 review which Professor Forsythe said he took part in.

2 MR McALINDEN: Yes.

3 THE CHAIRMAN: Now, since I have those there's no reason why they should not be  
4 forwarded to others, isn't that right?

5 MR McALINDEN: That's right.

6 THE CHAIRMAN: Arising out of that, can I just ask you one point - do you have this  
7 handy to you at all?

8 MR McALINDEN: I have yes.

9 THE CHAIRMAN: The two pages, just to advise, this is particularly relevant to  
10 Mr McBrien, but I'm sure might be relevant to others, we've been given two pages  
11 from the review and the first page we have been given is page 25 of 38.

12 MR McALINDEN: Yes.

13 THE CHAIRMAN: The second is page 33 of 38. Okay. Page 25, the title of the document  
14 is: "*Review of renal transplantation services in Northern Ireland*".

15 MR McALINDEN: Yes.

16 THE CHAIRMAN: Page 25 is headed: "*14*", that means section 14, "*Paediatric renal  
17 transplantation*".

18 MR McALINDEN: Yes.

19 THE CHAIRMAN: And it has 14.1, 14.2, and 14.3. Is that the end of section 14?

20 MR McALINDEN: Yes.

21 THE CHAIRMAN: Right, so there's no 14.4 over the page?

22 MR McALINDEN: This is the entirety of section 14.

23 THE CHAIRMAN: Thank you. And in relation to, the second extract is page 33, it's  
24 headed: "*18.3*", so it's an extract from section 18 and the heading is:  
25 "*Recommendations concerning paediatric renal transplantation*", and there's a six  
26 or a seven line section. And that is the only element of that, of that review which  
27 deals with paediatric renal transplantation. So first of all is that the only  
28 recommendation in relation to renal transplant, paediatric renal transplant?

29 MR McALINDEN: Yes, it is.

1 THE CHAIRMAN: And the reason why we have been given those two is because, or  
2 maybe you could confirm this, is it because Professor Forsythe's report with  
3 Mr Rigg says that there are some pertinent comments and we are to take these as  
4 what he is almost certainly referring to as the pertinent comments?

5 MR McALINDEN: Certainly that would be the Trust's interpretation rather than it is  
6 Professor Forsythe's interpretation, a different one.

7 THE CHAIRMAN: Okay. But there's no difficulty about the information which you have  
8 given us being forwarded and what we will do is we will forward these exchanges in  
9 advance -- sorry, we will forward these exchanges in advance of Tuesday at 4.00 pm  
10 so that other parties such as the Slavin family can see what the issue is which will  
11 emerge in your submission. And we will also forward to them the list of four or five  
12 authorities which you helpfully sent through this morning so that they have a  
13 starting point. They can start working on it before...

14 MR McALINDEN: Absolutely.

15 THE CHAIRMAN: .. they get on it on Tuesday evening. Right. Well, and then the other  
16 point that you made was that you think the submission, you can make it relatively  
17 concise?

18 MR McALINDEN: I hope so.

19 THE CHAIRMAN: It would be very welcome if you do that and the same applies to  
20 anybody who's responding to it, if they could make their submissions equally  
21 concise that would be helpful. I'm not saying, be as long as you have to be, or sorry  
22 be as complete as you have to be but I'm not encouraging volumes. Okay. Is there  
23 anything else, Mr McAlinden?

24 MR McALINDEN: No, Mr Chairman, thank you very much.

25 THE CHAIRMAN: Okay, thank you. Who's next on behalf - much of the Department's  
26 here, if the Department has anything to contribute this morning?

27 MS RODGERS: I am Catherine Rodgers from the Departmental Solicitors office.  
28 Unfortunately our senior counsel Mr Stephen Shaw and junior counsel David  
29 Sharpe are unavailable this morning. The Trust, or the Department do not really

1           have anything of substance to add at this stage.

2           THE CHAIRMAN: Okay, thank you very much.

3           MS RODGERS: We would agree with Mr McAlinden's comments with regard to the

4           Department hope to put in place appropriate support mechanisms for department

5           witnesses who may be the recipients of Salmon letters. And if you would like the

6           Department to make written submissions on how they should be passed on we

7           would welcome the opportunity to do so.

8           THE CHAIRMAN: Well, Mrs Rodgers that would be very helpful, I don't think we're into

9           submissions on this, if you have suggestions I'm very happy to receive them. I don't

10          think in this section in relation to Adam clinical we're into departmental witnesses

11          but for future reference ...

12          MS RODGERS: No, but if a procedure was being put in place then it probably would be,

13          you know, followed through.

14          THE CHAIRMAN: Absolutely that would help.

15          MR RODGERS: Very much obliged.

16          THE CHAIRMAN: Now is there any representation this morning for Dr Taylor?

17          MR UBEROI: There is. Good morning, sir. Perhaps if I rise at this moment, Michael

18          Uberoi. My surname is spelt U-B-E-R-O-I.

19          THE CHAIRMAN: I'm sure you've had to spell that out once or twice before, have you?

20          MR UBEROI: I certainly have. I am counsel for Dr Taylor and I am here attending with

21          Cora Docherty from my instructing solicitors bto.

22          THE CHAIRMAN: Okay.

23          MR UBEROI: Perhaps if I deal with this first, I don't propose to add any gloss to the

24          witness statement that has been put in, it's intended to assist the Inquiry in its work

25          and Dr Taylor very much hopes that it does. If I could echo one or two of the

26          comments that have just been made about the governance aspect of the Inquiry's

27          work. I think it is certainly very clear what the issues are as far as clinical matters

28          are concerned. And I take on board therefore your points as to the Salmon letters

29          for that stage of things, but we would certainly welcome some further guidance as to

1           how the Inquiry intends to approach the governance side of things as soon as  
2           possible.

3           I also wish to mention questioning, we recognise the middle ground that's, you are  
4           seeking to tread between keeping control of your own timetable while also allowing  
5           for cross-examination by interested parties where necessary. And if I could say we  
6           very much welcome that middle ground and we anticipate we will stick to the  
7           procedures and supply our lines of questioning but reserve the right to ask  
8           permission to cross-examine ...

9           THE CHAIRMAN: I understand.

10          MR UBEROI: .. where appropriate.

11          THE CHAIRMAN: Have you thought about whether you intend to make any opening  
12          statement on behalf of ...

13          MR UBEROI: Yes, we have, and the present intention is that we won't.

14          THE CHAIRMAN: Okay, thank you. Could I ask you to pause for a moment,

15                 Mr McAlinden, I should have asked you, do you have any idea at this stage?

16          MR McALINDEN: I don't think so. I don't think it will be necessary.

17          THE CHAIRMAN: Thank you.

18          MR UBEROI: I think the final thing, sir, I wanted to mention this morning, again based on  
19                 some of the content of the hearing so far is as regard to Salmon letters. Our  
20                 questions and areas of interest will mirror the areas of interest the Inquiry experts  
21                 have flagged up and it's a slight mirroring of the point you have already made about  
22                 the Inquiry's Salmon letters. It's fairly clear what the areas of interest and conflict  
23                 are. So it's not our understanding of the Inquiry's protocol that you'd wish us to  
24                 simply copy or copy and paste out extracts that refer to each witness and put them in  
25                 a new letter, so we don't propose to do that. But while I can state there's nothing  
26                 new that isn't already in the expert evidence that will be cross-examined on we  
27                 obviously still reserve our position to make comment and, if appropriate, criticism  
28                 in the aftermath of the oral evidence once we know what it is.

29          THE CHAIRMAN: Yes. That's very helpful because, I mean it seems to me when we've



1           been discussing internally the issue of Salmon letters that a cut and paste from the  
2           expert's reports is really pretty useless, isn't it?

3           MR UBEROI: Quite so.

4           The CHAIRMAN: It's time consuming at our end and it doesn't actually give the witness  
5           any better idea or any more developed idea of what the questions are going to be  
6           raised at all.

7           MR UBEROI: Absolutely. That was very much our view.

8           THE CHAIRMAN: And this Inquiry I think is slightly unusual in that in all of the expert  
9           statements have been circulated in advance so the extent of its Salmon letters are  
10          really valuable is perhaps a bit more limited here than to some other inquiries that  
11          you have experience of.

12          MR UBEROI: I would agree. As I say with a slight caveat, although I fully agree so far as  
13          the clinical aspects are concerned, I might have a slightly different answer on the  
14          governance aspects but I appreciate that is following in train behind the clinical  
15          aspect. So from Dr Taylor's point of view I think it's very fair and I would be  
16          surprised if when the Salmon letters come there are any aspects of it that we haven't  
17          been able to anticipate as a result of the very detailed work that has been  
18          undertaken. Unless I can assist you with specific questions those are the only points  
19          that I propose to make.

20          THE CHAIRMAN: Okay. You will be, I mean I should have said, I should make it clear  
21          that the submissions on what I will call the Forsythe, Rigg issue are, everyone is  
22          free to make them, I am not particularly encouraging everybody to make them  
23          because I think the main protagonists are quite clear, but if anybody else who's  
24          replying, I'm anticipating a reply from Mr McBrien on behalf of the Slavins, but  
25          everybody else who's replying has to do so by this day week at 4.00 pm.

26          MR UBEROI: Yes. I'm grateful for the indication and the timetable is noted.

27          THE CHAIRMAN: Thank you very much. Mr Miller?

28          MR MILLER: Yes, Mr Chairman. I appear on behalf of Mr Keane.

29          THE CHAIRMAN: Right.

1 MR MILLER: Patrick Keane. I am instructed by Carson McDowell, I am a barrister, as  
2 you know, but everyone may not know.

3 THE CHAIRMAN: Right.

4 MR MILLER: Lest I forget the point about whether we intend to make an opening  
5 submission, we don't anticipate doing that at present, sir.

6 THE CHAIRMAN: Thank you.

7 MR MILLER: Just a couple of points arising out of the letter that we received, it's dated the  
8 1st of February, and it was the letter that accompanied Inquiry advisers report. You  
9 have mentioned already, sir, that you anticipate receiving some further expert  
10 evidence either at the start of, or early next week, and you have mentioned one  
11 particular piece of evidence. Can the Inquiry say at the moment just how much  
12 further evidence it expects to receive next week, and in particular will any of that be  
13 surgical material emanating from either Mr Rigg or Mr Forsythe?

14 THE CHAIRMAN: It won't be Rigg or Forsythe, no. It's not surgical.

15 MR MILLER: Just arising out of the letter, sir, this whole general issue of Salmon letters  
16 and their usefulness in this Inquiry and whether or not everyone knows what the  
17 issues are having had the witness statements. It's absolutely true that we have had  
18 the opportunity to consider the various witness statements, we can see what the,  
19 what issues have been addressed by the experts in their witness statements. I think  
20 it's not right though to say that having read them one knows where the criticisms  
21 might come from, and I say that particularly on behalf of my client. And part of  
22 what I'm saying is prompted by your comments, sir, that just because one expert  
23 endorses what was done and another one says that he or she is critical, that doesn't  
24 mean that there will not be criticism.

25 THE CHAIRMAN: Yes.

26 MR MILLER: And it raises the whole issue of what approach the Inquiry is adopting to  
27 when it will be critical of a witness. And many of us are accustomed to the concept  
28 that where a clinician acts in accordance with a responsible body of medical  
29 opinion, so for example Mr Keane is a surgeon, comes up to the standard of a

1 responsible body of surgical opinion, that that generally will not then be the subject  
2 of criticism.

3 THE CHAIRMAN: In a medical negligence case?

4 MR MILLER: I appreciate that, and I appreciate this isn't a medical negligence claim. But  
5 if one takes for example the issue of consent, if I can refer you just to the second,  
6 just by way of illustration, if one takes the second page of the Inquiry's advisers'  
7 consolidated report. They are dealing with the consent process and they begin by  
8 saying there are different expert opinions. And then when one moves down to the  
9 two paragraphs below that you will see they refer to Messrs Rigg and Forsythe who  
10 state:

11 *"It is the role of the transplant surgeon to gain consent from a paediatric patient's*  
12 *parents".*

13 And then further down:

14 *"In contrast Dr Coulthard states it was relatively common for the final written*  
15 *consent for a child's renal transplant to be undertaken by the consultant paediatric*  
16 *nephrologist".*

17 And we know that Mr Koffman, who is another very eminent paediatric transplant  
18 surgeon, whose report is not referred to in this document. He also endorses entirely  
19 a process whereby the consent is taken by a nephrologist and not a surgeon. Now  
20 having read that someone representing Mr Keane could quite reasonably step back  
21 and say well fair enough, Rigg and Forsythe have their view, they're entitled to their  
22 views, they're reasonable views, but since Koffman is quite happy that it's done by a  
23 nephrologist and since Coulthard, who is one of the Inquiry's experts, is quite happy  
24 that it's done by a nephrologist, that couldn't conceivably be an area of criticism.

25 THE CHAIRMAN: Okay, I understand your point.

26 MR MILLER: And then, sir, I'm slightly alarmed then, sir, when you say well the fact that  
27 you're in that position doesn't mean that you're not going to be criticised. So while  
28 on the one hand that one knows that there are areas of concern and interest being  
29 expressed in these documents, if one takes, for example, the consent issue and it

1 actually runs throughout this document in relation to other issues such as whether  
2 there should have been here a catheter installed, which vessels should have been  
3 chosen for the anastomosis, there are lots of differences of opinion. And generally  
4 speaking, and I don't make the point solely by reference to clinical negligence  
5 claims, but generally speaking if what you have done is supported by an eminent  
6 colleague in the same discipline, you don't really expect to be criticised. And I'm  
7 just wondering then, sir, whether the Inquiry's approach is going to be very different  
8 and if Mr Keane is going to expect to be cross-examined solely by reference to  
9 Rigg, Forsythe on the basis that they're right and everyone else is wrong. And if  
10 that's not the case one has to wonder what other ...

11 THE CHAIRMAN: No, no.

12 MR MILLER: .. clinical basis there's going to be for questioning because counsel for the  
13 Inquiry, with all due respect to their many abilities, are not clinicians and they're not  
14 surgeons.

15 THE CHAIRMAN: We do not put, or the Inquiry does not put the views or the opinion  
16 expressed by one of the experts above the views expressed by another one of the  
17 experts. All of these issues will be tested. That's why, subject to any development  
18 next week, that's why for instance Forsythe and Rigg would give evidence, that's  
19 why Coulthard gives evidence, that's why Kaufmann gives evidence, because all of  
20 these issues are probed. And the more of them agree, or the more strongly they  
21 agree or, you know, you might, this is typically where you know one might say  
22 well, look maybe it was a bit too harsh and I can understand how this happened, I  
23 don't think it's really very good, but I can understand how it happened and it  
24 happened regularly. Then that makes it more difficult to be critical, but it doesn't  
25 mean that those areas are not explored, Mr Miller. It would be quite wrong not to  
26 explore an issue where an independent expert has said this, in terms, this wasn't  
27 good enough. And it would be wrong not to explore that just because another expert  
28 says well actually this was good enough.

29 MR MILLER: It's how the Inquiry ...

1 THE CHAIRMAN: And the end result is, it's the end, or you can't get to an end result, you  
2 can't produce a report without at least exploring the extent to which the exculpation  
3 from criticism of one of the doctors stands up to scrutiny.

4 MR MILLER: It's another approach, and obviously it's a matter entirely for the Inquiry ...

5 THE CHAIRMAN: Yes.

6 MR MILLER: But one might have had a response from the advisers, for instance, which  
7 was to say that well, we've considered the expert opinions of various surgeons or  
8 clinicians or physicians on these issues, we see that they're all reasonable people, we  
9 see that there's a difference of opinion, we don't think it's going to be useful to  
10 explore that, it seems that what was done did fall within the band of what was  
11 regarded as acceptable by a responsible body of opinion in 1995. And that they may  
12 then have felt that there were more useful issues to explore, but there was a sharper  
13 difference.

14 THE CHAIRMAN: But I'm sorry, that involves the advisers giving a definitive position on  
15 something, and that is absolutely not their role. We have used the advisers because  
16 the Inquiry legal team and myself don't have medical expertise. We needed people  
17 to steer us through this process over the last few years. They have done that. They  
18 have, in many cases they have identified the experts who we go to and helped us in,  
19 or helped the Inquiry team because I have stepped back from involvement with  
20 them, helped the Inquiry team understand reports and then helped identify other,  
21 additional reports, the type of which you have seen about other issues which need to  
22 be explored. But it is certainly not their position or their role to say well in light of  
23 what that, the Inquiry actually doesn't need to consider this and it doesn't need to  
24 consider that.

25 MR MILLER: I think just to leave the point, I think what we can see from the documents  
26 are the issues which may be considered but I think it's a long way from that to being  
27 able consult with one's client and advise one's client whether he is likely to be the  
28 subject of criticism.

29 THE CHAIRMAN: Okay.

1 MR MILLER: That involves someone distilling the material, taking a view about what way  
2 they're going to approach it. Do they think in the light of what is available at  
3 present that, for instance, Mr Keane is going to be criticised for not being involved  
4 in the consent process in 1995, notwithstanding that if one does a simple head count  
5 that the majority of people, including the Inquiry's own experts, think it was  
6 perfectly reasonable that he not do that.

7 THE CHAIRMAN: But sorry, I mean again let me make this clear when the Inquiry  
8 counsel is cross-examining or questioning Mr Keane, it's not her role to put to him  
9 'you should have taken the consent, not somebody else taken the consent'. Her role  
10 is to probe what was, who took consent or who should have taken consent. But it's  
11 not like, we're not in the High Court where you're putting a client's case to the  
12 witness, the Inquiry does not have a case to put to the witness. We are not saying  
13 you were negligent and we're not on the other hand saying you weren't negligent;  
14 the Inquiry is probing whether people were negligent or whether people, to put it I  
15 think more aptly, whether, we're just probing the standards which were followed,  
16 and the standards which were adhered to. And that does not involve the Inquiry  
17 counsel, unless I completely misunderstand her role, in putting it to Mr Keane that  
18 he was somehow at fault in not taking consent.

19 MR MILLER: It's difficult, sir, because there are occasions when your advisers do use the  
20 language of whether it was reasonable that a certain thing was done.

21 THE CHAIRMAN: Yes.

22 MR MILLER: That immediately rings a bell with all of us and we are then asking ourselves  
23 well, is it a matter of whether one would adhere to a standard of reasonableness, and  
24 that takes one into some of the issues that I mentioned earlier on but ...

25 THE CHAIRMAN: Okay.

26 MR MILLER: .. in any event.

27 THE CHAIRMAN: I know where you're coming from.

28 MR MILLER: Can I then just move on to some more sort of housekeeping matters.

29 Consultation facilities, does the Inquiry have a view about what facilities, if any,

1                   will be available for people representing witnesses who have ...

2           THE CHAIRMAN: We're in County Down because it was the best available facility.

3           MR MILLER: I appreciate that.

4           THE CHAIRMAN: And the cost was relevant, but it's also, you might remember this when  
5                   it was a courtroom, and it's been changed for the purposes of another Inquiry and it's  
6                   maybe not the ideal venue from everybody's perspective, but it's the best venue  
7                   which we have. In terms of facilities outside there will be stages at which people  
8                   will be involved when different parties and different individuals will require more  
9                   consultation facilities than others. For instance, on the family side, say Mr and Mrs  
10                  Slavin will want to have more immediate access to the lawyers for consultation  
11                  during the section of the Inquiry which is looking specifically at Adam, whereas the  
12                  Fergusons will want more time and more space with Mr Doherty and his team when  
13                  we come on to Raychel's case. The same applies on the other side of the house.  
14                  And all I can do is ask the you to facilitate each other and to be sensitive to the  
15                  needs of the other parties or the comparative needs of the other parties.

16          MR MILLER: It was partly at a factual level, I'm just not sure how many rooms there are,  
17                  or whether there are rooms in other parts of the complex of the buildings other than  
18                  this one?

19          THE CHAIRMAN: We can arrange a tour for you after this when we finish, Mr Miller.

20          MR MILLER: I have seen one room, is that it?

21          THE CHAIRMAN: No, there's more than one room.

22          MS CONLON: Four.

23          MR CHAIRMAN: There's four.

24          MS CONLON: And we will make some arrangements to have all the facilities available and  
25                  we just, I need to work on that with Denise after the hearing today. We will do our  
26                  best to provide the facilities.

27          THE CHAIRMAN: I think on any given day four rooms should be enough.

28          MR MILLER: Yes, hopefully it will.

29          THE CHAIRMAN: Okay.

1 MR MILLER: Just give me a second. I'm instructed just to ask, sir about a, I think you had  
2 mentioned a booklet that Mr McBrien had handed in, presumably in connection  
3 with Adam's case, is that right?

4 THE CHAIRMAN: Yes, I just got it before we sat and I presume there are copies,  
5 Mr McBrien and Mr Hunter, available for the other people who are interested?

6 MR MILLER: That's absolutely fine. And then lastly, sir, on the list of issues I think you  
7 quite reasonably said that you were interpreting the lack of vigorous correspondence  
8 in response to the list of issues as an endorsement of the comprehensive nature ...

9 THE CHAIRMAN: Well perhaps in your case a reluctant acceptance.

10 MR MILLER: Well I just wanted to make the point that I think we, perhaps in advance of  
11 that list we've written extensively about our view of the proper scope of the Inquiry,  
12 etc. I think the Inquiry shouldn't interpret the lack of yet further letters as a ringing  
13 endorsement, if I can put it like that.

14 THE CHAIRMAN: Thank you. Is there anybody else who wants ...

15 MS WYLIE: Mr Chairman, good morning. Amanda Wylie, partner in Kennedy's Law in  
16 Belfast and I am acting on behalf Stephen Brown. I also, as of recent, as of the 25th  
17 of January, Professor Maurice Savage. And of as of last night Dr Mary O'Connor  
18 on the instructions of the MDU.

19 THE CHAIRMAN: Okay.

20 MS WYLIE: Really the position is probably more to highlight to the Trust that the, or to  
21 the Chairman that the MDU have been brought in at quite a late hour in respect of  
22 Professor Savage and also Dr O'Connor. I have had a chance to meet with Dr  
23 Savage, or Professor Savage, I haven't had an opportunity to meet Dr O'Connor as  
24 yet given that instructions were only received last night. I would like to reserve my  
25 client's position at the present time because clearly with regards to obtaining  
26 suitable and available counsel perhaps to represent them at this Inquiry might be  
27 slightly more trying than usual. Secondly, I have picked up on Mr McAlinden's  
28 point that Mrs Slavin has actually given a copy of the book in relation to the  
29 peritoneal dialysis that that she carried out on Adam, I was wondering if a copy of



1                   that book could be provided to ...

2           MS CONLON: It was delivered to you yesterday.

3           MS WYLIE: If it's there, it's not a problem.

4           THE CHAIRMAN: If when you go back to your office if you find that it still hasn't arrived,

5                   could you contact the Inquiry?

6           MS WYLIE: That's not a problem, I can do that, I'll just do that, that's quite all right. The

7                   only other, I suppose those issues at the present time is just simply in relation to the

8                   Salmon letters. I take Mr Miller's points and I think that the Salmon letters in some

9                   way, particularly for the defence organisations, were going to be seen as a trigger as

10                  to the potential criticisms for each of the professionals involved and thereby a

11                  trigger for separate legal representation. That has come separately from how he, Dr

12                  O'Connor and Professor Savage being made interested persons in the Inquiry and

13                  the Trust relinquish their representation of them. I have nothing more really to add

14                  at the present time, as I say, until I consult with my client. But if any issues arise I

15                  will certainly notify the Inquiry post haste.

16           THE CHAIRMAN: Okay. Miss Wylie, can I just confirm one thing with you for the

17                  record?

18           MS WYLIE: Yes.

19           THE CHAIRMAN: While you have received late instructions from Professor Savage and

20                  Dr O'Connor, you have been involved in the Inquiry for some time on behalf of Mr

21                  Brown, is that right?

22           MS WYLIE: That's correct. There's nothing really from that point of view, really what I'm

23                  highlighting is the housekeeping matters of obtaining perhaps counsel who's not (a)

24                  already involved and conflicted, (b) who's actually some - preference in dealing

25                  with clinical matters, and more important, given the shortness of time availability

26                  and for what duration of the Inquiry.

27                  I'm just highlighting it at the present time, it may be that we'll just have to go to

28                  England, it's just something I wanted to highlight in case there was any undue

29                  criticism of the client later.

1 THE CHAIRMAN: Well do you have counsel representing Mr Brown?

2 MS WYLIE: Mr Brown does not have counsel as of yet. The MDU's position was to wait  
3 until the receipt of the Salmon letters. Now clearly the advisers' report now has  
4 been received as of 2nd of February, so from that point of view we are now aware of  
5 potential criticisms that may be directed towards certain individuals. And that  
6 certainly will assist the MDU in reaching therefore a decision.

7 THE CHAIRMAN: Well I have to say to you that I don't, I would be really taken aback if  
8 you said that you're only aware of potential criticisms from the advisers' report you  
9 just received this week since the experts' witness statements were circulated in  
10 October. And they are, they contain various criticisms of various individuals, most  
11 of those individuals must surely have been alert to them at that time. And I will,  
12 you're flagging up to me your concern about finding available counsel, I'm flagging  
13 up to you that it will be exceptionally difficult to persuade me to adjourn any part of  
14 this hearing which has been set for a number of months because at a very late stage  
15 somebody's going round looking for a barrister.

16 MS WYLIE: I take your point entirely and my point was that up until the previous week  
17 both Dr O'Connor and Professor Savage would be represented by Mr McAlinden  
18 and the Trust. They may have to seek separate representation, that is simply my  
19 point. I'm not saying that we are not aware of the issues in respect of various  
20 individuals, I'm just saying as a matter of timing, as a matter of courtesy to the  
21 professional representatives involved in this Inquiry that they are now without  
22 counsel.

23 THE CHAIRMAN: Well I understand, I take that point, but this raises, there's been some  
24 correspondence between the Inquiry and the Trust over recent weeks about this  
25 because the Trust's position is that they never represented any individual. The Trust  
26 position is that the DLS has only ever represented the Trust and has never  
27 represented an individual.

28 MS WYLIE: Perhaps the individuals weren't quite aware of that.

29 THE CHAIRMAN: Well, that's ...

1 MS WYLIE: Which is a separate issue, Mr Chairman, from the Inquiry and not for you ...

2 THE CHAIRMAN: It is thank you very much.

3 MS WYLIE: I appreciate it. Thank you very much, Mr Chairman.

4 MS LINTON: Mr Chairman, Leigh Linton of Carson McDowell, I am a solicitor. I am  
5 representing Dr Alison Armour on the instructions of the Medical Protection  
6 Society.

7 Dr Armour, as you will be aware, was granted interested person status as of the 18th  
8 of January 2012 and received correspondence copied from Hunter & Associates,  
9 effectively a third party Salmon letter at that time. And I have been on record since  
10 the 31st of January. Now, the position, Chair, is that I haven't had previous  
11 involvement in the Inquiry and therefore I'm basically trying to play catch up at the  
12 minute.

13 THE CHAIRMAN: I understand.

14 MS LINTON: The Inquiry secretary has been very helpful in trying to furnish  
15 documentation to us. My position is that I haven't quite finalised, but I believe I  
16 have identified counsel who will be available for the relevant portion of the Inquiry.  
17 What I would say is there may be occasional days when that counsel cannot be  
18 present and a solicitor/representative from our office will be present and I'm hoping  
19 that won't cause any difficulty.

20 THE CHAIRMAN: Well I hope that we can, I mean I hope it doesn't cause any difficulty  
21 either and I hope that we can, your barrister's availability can be worked round the  
22 days when it's particularly important for Dr Armour to be represented?

23 MS LINTON: Yes.

24 THE CHAIRMAN: Which I think it's probably going to come more towards the, it's  
25 unlikely to be significantly on the first week or week and a half, we'll see as that  
26 develops but with some luck we can work our way round that Miss Linton.

27 MS LINTON: I think that would be very helpful. But just in terms of availability, I realise  
28 Mr McBrien mentioned this morning about the possibility that Dr Armour may be  
29 relevant to the governance section. As the Inquiry, but perhaps not all parties, are

1           aware Dr Armour is now resident outside the jurisdiction and actually works for the  
2           Home Office in England. I am aware from Dr Armour that she is involved in a  
3           number of forthcoming significant criminal trials and therefore if we could try and  
4           identify the dates on which Dr Armour will be required to give evidence and pin  
5           those down as soon as possible that would be very helpful as well.

6           THE CHAIRMAN: I understand. Thank you.

7           MS LINTON: I think the only other factor that I wanted to raise at the minute was  
8           obviously in terms of outstanding expert evidence. I think a report from Squier was  
9           mentioned this morning, which from the consolidated expert report would seem to  
10          impinge on my client and clearly the sooner that we can have that the more helpful  
11          that would be.

12          THE CHAIRMAN: I entirely agree. And the evidence which is, which will come through  
13          next week is of great significance to your client and we'll get it through as early as  
14          we possibly can.

15          MS LINTON: Well that would be appreciated. There's nothing else at the moment.

16          THE CHAIRMAN: Thank you very much.

17          MS LOWRY: Mr Chairman, I am Francesca Lowry, solicitor, from Carson McDowell  
18          Solicitors. I have been instructed by the Medical Protection Society on behalf of Dr  
19          Terence Montague. Again I have only come on record last night and the, or Dr  
20          Montague was granted interested party status by letter dated the 18th of January. I  
21          have also hopefully secured counsel for the relevant portions of Dr Montague or of  
22          the evidence that would be of interest to Dr Montague. And at this stage I haven't  
23          had the opportunity to consult with him or counsel and again the Inquiry secretary  
24          has been very helpful this morning informing me when hopefully we'll be able to  
25          get the papers and all the relevant information. And I have nothing further to add at  
26          this stage.

27          THE CHAIRMAN: Okay, thank you very much. Is there anybody left who has anything to  
28          add? Okay. Mr McBrien?

29          MR McBRIEN: Could I just mention one point that I didn't mention at the start which you

1 have raised with other members, sir, and also just one other sundry matter. First of  
2 all, you were enquiring from different parties about opening statements. Just to  
3 formally put on the record that yes, we will be making an opening statement and I  
4 have one in draft already and I am conscious of the fact that you have specified a  
5 one hour time limit and I think I will be finished well within that time. Secondly,  
6 sir, the second point of relevance which is mentioned, the handbook which we  
7 produced for you, sir, we didn't circulate it round to the interested parties because  
8 we felt we had to submit it to you in the first place. And it's therefore we thought  
9 could only be circulated once you were happy that it didn't contain anything that  
10 shouldn't be circulated. We believe there's nothing of a controversial nature within  
11 it but that's why we put it into your office, sir, first of all rather than give it out  
12 directly.

13 THE CHAIRMAN: Right.

14 MR McBRIEN: The third matter, sir ...

15 THE CHAIRMAN: Sorry, just if you pause there, it's a ninety page document. We will go  
16 through it, a lot of it is a chronology, I think isn't that right, referring to E mails and  
17 so on?

18 MR McBRIEN: That's correct, sir. If I can just indicate briefly, it's in four parts. The first  
19 part is just a little bit about the life of Adam Strain so that everyone present does not  
20 forget that the whole matter arose out of the death of a four year old boy. Part 2 is  
21 to assist you, sir, since it's the duty of the family to assist the Inquiry in any way  
22 they can. Part 2 is an extrapolation of dates and documents from the various  
23 documents that have been produced by the Inquiry to date which should be on line.  
24 But they are to assist you when you come to do your report at the end that rather  
25 than dealing with either electronic data or a lot of A4 sheets you may have a quick  
26 point of reference to assist you in establishing who wrote what to whom when, and  
27 who did what when.

28 THE CHAIRMAN: Sorry, when you said they should be on line what do you mean by that?  
29 They should be ...

1 MR McBRIEN: Documents, whatever documents were released, reports for example. The  
2 Glasper reports are on the Inquiry's website.

3 THE CHAIRMAN: Right.

4 MR McBRIEN: So everything should be available somewhere.

5 THE CHAIRMAN: Okay.

6 MR McBRIEN: Then part 3 was a brief resumé, aide-memoire, if you like, as to some of  
7 the questions which we hope you would be addressing in due course.

8 THE CHAIRMAN: You're not trying to add to the list of issues in this by any chance,  
9 Mr McBrien, are you?

10 MR McBRIEN: I think they all fall within categories, sir, but again it's a matter you could  
11 just glance over during a cup of coffee and consider at your leisure. And part 4, sir,  
12 is an epilogue.

13 THE CHAIRMAN: It's a note from ...

14 MR McBRIEN: It's the extract from Deborah's witness statement so it is in a sense a very  
15 personal document. It serves several purposes and we hope it will be of some value.  
16 And if you do decide to release it to everyone that everyone finds it of some  
17 assistance during the course of the Inquiry.

18 THE CHAIRMAN: Well, I don't see at first blush any reason not to circulate it. The  
19 extract, I mean going backwards the extract from Mrs Slavins' witness statement can  
20 hardly be controversial since her whole witness statement is available to everybody  
21 anyway. Right. I will reserve my position on what you describe at pages 86 and 87  
22 as questions for the Inquiry. But, and just for the record this will not be a 'back door  
23 way' of adding to the list of issues. You have got fourteen points here and I  
24 understand from what you said a moment ago that that is condensing the rather  
25 longer list of issues.

26 MR McBRIEN: It's not meant to be a synopsis of the list of issues.

27 THE CHAIRMAN: Okay.

28 MR McBRIEN: It's just Deborah's, these are fourteen things I would like answered.

29 THE CHAIRMAN: And ...

1 MR McBRIEN: We believe they're covered in the list of issues.

2 THE CHAIRMAN: And then pages 9 to 85 are your, are a chronology?

3 MR McBRIEN: Yes.

4 THE CHAIRMAN: Okay. And then pages 7 and 8, part 1 are, it's another two page note  
5 from Mrs Slavin, I think that's not an extract from her witness statement?

6 MR McBRIEN: That's correct, sir.

7 THE CHAIRMAN: And I don't see any reason for withholding it on that basis.

8 MR McBRIEN: Well, I'm not asking you to decide on it now, sir, we just found today an  
9 appropriate time to hand it in.

10 THE CHAIRMAN: Okay. Well, let me look at that and we'll decide on that this afternoon  
11 and if we agree then that can be circulated between this afternoon and Monday to --  
12 how many copies do you have?

13 MR McBRIEN: We don't have any, sir, because it cost us, there was some expense in  
14 producing it, I think we produced about twenty for the Inquiry.

15 THE CHAIRMAN: Okay.

16 MR McBRIEN: We weren't anticipating the number of people here today based on previous  
17 numbers that had been here.

18 THE CHAIRMAN: Yes. Okay, well we'll see what we can do about that.

19 MR McBRIEN: Just finally, sir, just as regards Mr Keane I had mentioned previously about  
20 Drs Armour, Savage and Taylor. Just arising out of what my learned friend said,  
21 it's just so that there's no doubt since he had raised queries about the Salmon letters  
22 and the context of the reports from the perspective of Deborah's family, we will  
23 have criticisms of his behaviour and whereas I recited what Dr Taylor had to say  
24 yesterday after sixteen years the first expression of regret that we're aware of or  
25 communication from Mr Keane was in document, his witness statement of  
26 September last year. And just for the benefit of those present and for Mrs Slavin if I  
27 can just identify, it's WS006/3 was when he expressed some regret at not having  
28 spoken to her in the intervening sixteen years. The matters of seeking consent, we  
29 appreciate you will be looking at it from a clinical perspective but at the end of the

1 day under the terms of reference there's also the perspective of Deborah Strain,  
2 Slavin as she now is, and how Mr Keane did or did not approach her in the last  
3 sixteen years to say anything about what happened in the operation.

4 THE CHAIRMAN: Thank you. Can I, just as a matter of courtesy, can I confirm one thing  
5 with you, I had previously understood that your client's name was pronounced  
6 Sla-vin, I was then corrected to Slav-in and I think as a basic courtesy we should get  
7 her name right before the Inquiry starts. Is it Mrs Slav-in or Sla-vin?

8 MR McBRIEN: Her husband is known as J Slav-in so I have been pronouncing it as  
9 Slav-in, but I will of course take instructions. Because I of course would not wish  
10 to, I'm on first name terms with them now, so I don't tend to be using the surname  
11 much.

12 THE CHAIRMAN: Well it's just a bit unfortunate if we don't pronounce correctly ...

13 MR McBRIEN: Absolutely.

14 THE CHAIRMAN: The name of somebody who's so central to the Inquiry and I would just  
15 like that niggle tidied up. Okay.

16 MR McBRIEN: I will check that, sir.

17 THE CHAIRMAN: Ladies and gentlemen, thank you very much. Unless there's a  
18 necessity for an oral hearing in relation to the Forsythe, Rigg issue we will not  
19 convene again before Monday the 20th of February when the Inquiry will open here.  
20 Thank you for your time.

21

22 [REVIEW ADJOURNED UNTIL 20TH FEBRUARY 2012]