INQUIRY INTO HYPONATRAEMIA RELATED DEATHS

ADAM STRAIN

INTERIM SUBMISSIONS ON THE ISSUE OF GOVERNANCE

Submissions filed by Belfast Health & Social Care Trust ("the Trust")

1. The Inquiry is aware that the evidence relating to the issue of Governance remains unfinished. The Inquiry has directed that interim submissions should be made notwithstanding the unfinished nature of the evidence.

2. In compliance with the Inquiry's direction the Trust makes these brief interim submissions on the clear understanding that the submissions will be supplemented at the conclusion of the Governance evidence. The Trust's counsel have interpreted the direction as one which does not seek detailed submissions on the evidence which has been given, but as one which seeks the Trust's broad position in relation to governance.

3. Accordingly, in these brief submissions, the Trust does not seek to comment on the evidence which has been given to the Inquiry. That evidence, and inferences to be drawn from it are, essentially, a matter for the Inquiry.

4. However, generally, the Trust submits that the Inquiry must be careful to set the evidence and the inferences in the context in which the actions/omissions occurred and to judge those matters by the standards applicable in Northern Ireland at the time and not with the benefit of hindsight or, insofar as the Trust is concerned, not with reference to guidance or other material which did not apply to Trusts in Northern Ireland at the time.

5. While the Trust is aware that in oral hearings the Chairman has indicated that he is alive to the issue of judging actions/omissions with the benefit of hindsight, nevertheless, the Trust is concerned that some of the expert evidence may carry with it the danger that actions/omissions are being assessed, and may subsequently be judged, in an inappropriate contextual way.

6. A significant witness in relation to governance will be William McKee, who was Chief Executive of the Royal Hospitals Trust from 1992 to 2006. The Trust's counsel will seek the Inquiry's leave to examine Mr. McKee in chief in order to enable that witness to deal *in extenso* with the content, in particular, of Professor Mullan's report, before being examined by counsel to the Inquiry.

7. The Trust would seek, through Mr. McKee, to emphasise the governance position – and the role of medical self-regulation – as it actually was in 1995/1996.

8. Without seeking to anticipate the evidence which remains to be given, and subject to the content of that evidence, it is submitted that a significant amount of the

material relied upon by the Inquiry experts to support the criticism of the Trust at and following the time of the death of Adam Strain either post-dated the relevant events or did not apply in Northern Ireland until later than in other jurisdictions in the UK.

9. In his report to the Inquiry Professor Mullan cites some 30 circulars in support of his evidence. Only 3 of those were issued in Northern Ireland by the appropriate Department, to which the Trust would have been accountable. Accordingly, – insofar as any consideration of the actions/omissions of the Trust is concerned – it is those on which judgment should be based.

10. By way of brief example (which is not intended to be either detailed or exhaustive) dealing with some aspects of the report of Professor Mullan:

10.1. Re paragraph 2.7: Professor Mullan's assertion that "Mr. William McKee ... would have been required to provide Statements on Internal Control" is incorrect. It is noted that no evidence is cited in support of this assertion. In fact Statements on Internal Control to encompass wider aspects of risk management beyond financial matters did not come into place in Northern Ireland until 2003/4;

10.2. Controls Assurance standards were not officially established in Northern Ireland until 2003/4. This assertion, and inferences drawn from it, occurs throughout the report.

10.3. The Statutory Duty for Quality HSS (PPM) 10/2002 was issued in January 2003 and set out, for the first time, a duty of quality for health bodies in Northern Ireland;

10.4. Re paragraph 2.36: Clinical Audit evolved in Northern Ireland but the Chief Executives of Trusts in Northern Ireland were not required to sign a Statement of Internal Control in 1995/6; as noted above, this only became a requirement in 2003/4;

10.5. At 3.2.10 there is reference to HSS (GHS) 2/95 which was not issued until 6 October 1995. It is unclear how it would be expected that this would have been implemented, a new consent form designed and clinicians trained between that date and the date of Adam Strain's surgery;

10.6. In section 6 of the report of Professor Mullan he refers to the classification of risks and incidents. This was not dealt with by the Northern Ireland Department until the issue of the circular "How to Classify Incidents/Risk" in 2006;

10.7. RIDDOR were not used in relation to patients who died under clinical supervision. Further, as the Inquiry knows, the death referred to (paragraph 6.2.4) was non-clinical.

11. A significant number of other matters arise, but it is not appropriate to deal in detail with these in interim submissions prior to the giving, and testing, of the evidence. It would be intended, as noted above, that Mr. McKee, who is to give evidence in the early part of 2013, will deal with a considerable amount of the material.

16th December, 2012