2 (9.45 am)

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- 3 (Session held in private)
- 4 (12.08 pm) (Back in Open Court)
- 5 THE CHAIRMAN: Mr Simpson, can I check, have Mr McKee and
- 6 Dr Carson gone?
- 7 MR SIMPSON: Yes, they were told to. It would only be
- 8 enthusiasm that keeps them here, sir.
- 9 THE CHAIRMAN: Ladies and gentlemen, thank you for waiting.
- 10 I'm sorry that we didn't progress in the way that we had
- 11 planned this morning. I can now explain the reason for
- 12 that. The reason for the delay this morning is that we
- 13 had asked the Directorate of Legal Services to make the
- 14 best efforts they could to find the files on Adam's
- case, which were held by Brangam Bagnall. As some of
- 16 you will know, at the time that Adam died, the firm
- 17 representing the Royal Trust, the firm of solicitors
- 18 representing the Royal Trust, was Brangam Bagnall. That
- 19 firm no longer exists and when they ceased to exist,
- 20 their live files were sent to the Directorate of Legal
- 21 Services, which took over their work, and their files
- 22 which had been closed were sent to storage. At our
- 23 request, DLS went to the storage facility and searched
- 24 through it to find if there was any documentation. And
- 25 I'm glad to say that some documentation has been found.

In particular, a document has been found which is entitled "Notes of consultation 14 June 1996", which is just a few days before Adam's inquest. We have been discussing over the last couple of mornings in closed session whether there is to be any claim of privilege for the contents of this consultation note and there is not. Accordingly, this note is now being released to you and will be added to the documents on the inquiry website. The reason why it is significant or potentially significant is that, as you will see from the list of attendees, towards the bottom of that list is Mr Brangam's name and that is followed by Mrs Neill, who we understand was a clerk who was then employed by Brangam Bagnall. And at the moment, we are assuming that she is responsible for this note. That is to be confirmed. The consultation was attended by four people who have already given evidence to the inquiry: Dr Murnaghan, Dr Gaston, Dr Taylor and Dr Savage, although you'll see from the note that it says that Dr Savage joined after some 10 or 15 minutes. So on the face of this note, he arrived a little late, though it does rather appear from the length of the note, which runs to six pages, that if he only arrived

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10 or 15 minutes late, he was there for most of the

- 1 meeting.
- 2 There are a number of issues arising from it.
- 3 There's some information recorded as having been given
- 4 by Dr Taylor. For instance, if you look towards the end
- of the second page, you will see a box in which there is
- 6 a calculation of maintenance requirements for Adam and
- 7 if I then take you on, in particular, however, to the
- fifth page, which starts with the number 4. The first
- 9 sentence then is:
- 10 "Whether there was some unforeseen reason ..."
- If you move down that page to the middle of it,
- 12 you will see a paragraph which starts:
- "A query was also raised ..."
- And in that paragraph, if you go to fourth line,
- 15 you will a sentence which says:
- 16 "During the surgery, when this kidney was failing to
- 17 operate, a needle was put into the artery and no blood
- 18 came out and, clearly, the kidney was not working when
- 19 the operation site was closed. However, the performance
- of the kidney was no longer relevant at this stage."
- 21 There is a very strong suggestion in that note that
- 22 it was known at the time that the surgery ended that the
- 23 kidney was not working and it is also possible, on the
- face of the note, to draw a conclusion that that was not
- 25 relevant because of the position with Adam's brain.

You will all realise that what is contained in that paragraph in particular, but in other sections of this note, which you will see when you get a chance to look at it in detail, is not consistent with a substantial amount of evidence which has been given to us during the hearings over seven or eight weeks.

On the basis of this note, I intend to recall
a series of doctors, including doctors Taylor, Savage,
O'Connor, and the surgeons, Mr Keane and Mr Brown.
I also intend to recall doctors Murnaghan and Gaston,
who have given evidence on the governance issues.

I think most of them have not seen this document. You have not seen this document until the last few minutes and we are now, instead of hearing the evidence of Dr Carson and Mr McKee today and then finishing governance with Mr Mullan on Tuesday, I'm afraid we're now going to have to go back into evidence which has already been given to see what the explanation is for this note, the extent to which it is accepted that the note is accurate and, if it is accurate, how on earth this has come about.

There's not really very much more I can say about this at the moment. I emphasise that I am not drawing any conclusions at this stage; I'm pointing out to you what, on the face of the note, it can be understood to

1 say.

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2 The next stage is how and when we recall the doctors. I can tell you now that we know that Dr Taylor 3 is unavailable for the next two weeks and that Mr Keane 4 is unavailable at present due to illness. There are 5 other doctors who I think are fairly immediately 6 7 available: Professor Savage is fairly immediately 8 available; Dr O'Connor, we know, is still working in the 9 Royal and, subject to working round her commitments 10 there, I hope she would be freely available; Dr Murnaghan lives locally and I hope is available soon; 11 12 Dr Gaston no longer lives in Northern Ireland, but is 13 not hopelessly unavailable; and Mr Brown, we know, has retired and is, I understand, living in 14 15 Northern Ireland. What I would like you to consider over the next few 16 17 minutes, when I rise, is whether there is any broad 18 agreement in how and when we should proceed. 19 anxious to deal with as much of this evidence as we can within the next week to ten days, but I have highlighted 20 21 for you that the two potentially very significant witnesses, Dr Taylor and Mr Keane, will not be available 22 23 to give evidence during that timescale. So I should 24 also say, for completeness, that I am putting back the

evidence of Dr Carson and Mr McKee until we have heard

what the doctors who were at this consultation have to say about it.

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We are also considering whether, on foot of this information, and perhaps on foot of further oral evidence, it is necessary to recall other witnesses or perhaps call, for the first time, some witnesses who we chose not to call to date because their evidence did not seem to be evidence which would necessarily be added to beyond what they had said in their written statement.

Mr Fortune, among others, has urged on me the value of proceeding as quickly as possible. I accept that point entirely and we were due to sit today and tomorrow to hear substantive evidence and we were scheduled for Monday and Tuesday next week for substantive evidence, although Monday was cancelled. The preliminary view of my team at present is while we want to make as much progress as we can as quickly as we can, we need a little time to go back through the transcripts and the written statements to compare what is recorded in this document with what has been stated to the evidence orally or in writing by some of these witnesses already. And that means it's not possible to sit tomorrow or Friday of this week to do that. We will need into next week and then there is a debate about the sequencing of witnesses and how that evidence will be heard.

- 1 So I am going to rise now until 12.45. That will
- give an opportunity for those of you who have not seen
- 3 the document to read it and to have at least some
- 4 preliminary thoughts about how and when the evidence
- 5 might proceed. Is that clear? Thank you very much.
- 6 MR FORTUNE: Sir, can I raise one matter? You will
- 7 appreciate that both Dr O'Connor and Mr Brown are
- 8 represented by counsel presently based in London.
- 9 THE CHAIRMAN: Yes.
- 10 MR FORTUNE: I will have enquiries made as to the
- 11 availability of counsel, but can I, at this stage, give
- them any indication as to when it is likely they will be
- 13 required? Because it may well be that my clerk for
- 14 Ms Woods and Mr Bradly's clerk for him will have to
- juggle the diaries.
- 16 THE CHAIRMAN: The reality is this, Mr Fortune: if we don't
- 17 hear some evidence next week, we will not hear evidence
- 18 probably until late August. In Northern Ireland, the
- 19 position is that towards the end of next week many
- 20 people start disappearing on holidays. If we're going
- 21 to hear evidence next week, I would like to hear
- 22 Mr Brown, Dr Savage and Dr O'Connor on Tuesday. That
- leaves open the possibility of doing doctors Gaston and
- 24 Murnaghan on Wednesday. One possible way forward is to
- 25 have Mr Brown, Dr Savage and Dr O'Connor on Tuesday and

- 1 Dr Gaston and Dr Murnaghan on Wednesday. It's hard for
- 2 me to anticipate for how long they will be recalled, but
- 3 I've heard a lot of evidence from them and they're being
- 4 recalled specifically to deal with the issues which
- 5 arise from this document.
- 6 MR FORTUNE: Forgive me for negotiating on my feet, but does
- 7 that mean that Monday is unavailable or can be made
- 8 available? Because I've just been told by
- 9 Professor Savage that he has medical graduation next
- 10 Tuesday. I haven't actually found out what that means.
- 11 THE CHAIRMAN: Okay.
- 12 MR FORTUNE: But clearly, there has to be some flexibility
- and I'm just trying to find that --
- 14 THE CHAIRMAN: I understand that. I will accommodate as
- many people as I can as best I can, subject to getting
- the evidence heard. Monday, at the moment, there are
- 17 a number of issues and difficulties about Monday.
- I will see if any of them can be cleared up, but I would
- 19 like to hear -- the point I'm really making is I would
- 20 like to hear, subject to any representations people
- 21 make, at least some evidence next week. I'm a bit
- 22 unhappy about it having to be done in this way because
- it means that two of the potentially main witnesses,
- 24 Dr Taylor and Mr Keane, then don't give evidence until
- 25 a later date towards the end of the summer, which is

- 1 really not very satisfactory. But neither of them is
- 2 available in the immediate future.
- 3 (12.24 pm)
- 4 (Adjournment)
- 5 (12.45 pm)
- 6 THE CHAIRMAN: Mr McBrien, Mr Hunter, you have now seen the
- 7 document and have had a chance to look at it and you see
- 8 the potential issues.
- 9 MR McBRIEN: We can see that it raises probably as many
- 10 questions as it answers.
- 11 THE CHAIRMAN: Okay. Before I express my views about how we
- 12 might go forward, does anyone have anything that they
- want to put forward or suggest?
- 14 MR QUINN: Mr Chairman [inaudible: no microphone] what
- 15 I don't know, representing the rest of the families, and
- what the legal team doesn't know is exactly how these
- 17 documents were found and we would like to know some
- 18 answers. I assumed these were documents that were found
- on a Trust file, obviously generated by a solicitor
- at the consultation, the solicitor's secretary to the
- 21 consultation, and that they were found in Trust storage.
- 22 However, I've heard that they may also be attributed to
- 23 the solicitors firm of Brangam Bagnall and we would like
- to know an answer to that, an open answer.
- 25 And I would also ask that on behalf of the families

- that the tribunal team, who have been doing everything
- 2 they possibly can, redouble their efforts in relation to
- all of the remaining cases, in particular in relation to
- 4 the solicitors' files. That applies probably mostly to
- 5 Claire's case because, as I understand it,
- 6 Brangam Bagnall were the solicitors in charge of the
- files at the time of Claire's death and they would have
- 8 perhaps provided some advice.
- 9 THE CHAIRMAN: There's a question, obviously in Claire's
- 10 case, about whether Brangam Bagnall were asked for any
- advice or whether Claire's case escaped from the
- 12 hospital to the solicitors.
- 13 MR QUINN: It could well have; we just don't know. But what
- it does is it raises a general issue. Again, no
- 15 criticism is intended of this, but it does raise
- an issue in relation to us seeking papers for Claire,
- 17 Conor and Raychel. And I understand that efforts have
- 18 been made to get those papers to us, but it does raise
- 19 the point that we need those papers as soon as possible.
- 20 And the families are very concerned about the drip-feed
- 21 effect of documents and you can understand how that
- 22 sounds to the families as members of the general public.
- 23 They can't understand why or how this could occur given
- 24 the efforts of yourself, Mr Chairman, and the inquiry
- 25 team.

- 1 Obviously, what we're seeking here is the truth.
- We've now spent perhaps three weeks asking questions
- from doctors when we weren't aware of a very, very
- 4 relevant consultation on 14 June 1996. And it seems
- 5 that the truth nearly escaped us until these documents
- 6 escaped from storage.
- We fully support your comments, Mr Chairman, about
- 8 calling the doctors again to answer the issues that have
- 9 been raised. There are maybe five or six very important
- issues in that document and I understand that there may
- 11 be more documents in relation to this particular file of
- 12 papers that we could receive that, again, may open more
- 13 avenues of inquiry.
- 14 Finally, Mr Chairman, I make the point on behalf of
- the families that we need to see all of the documents as
- soon as possible.
- 17 MR SIMPSON: I think I should answer the first part,
- 18 Mr Chairman.
- 19 THE CHAIRMAN: Yes, and I think it means, in essence,
- 20 repeating something in public which has been said during
- 21 some closed sessions.
- 22 MR SIMPSON: Not quite. I did say in open session a couple
- of days ago what the position was about searching for
- 24 these documents. I don't know if my learned friend was
- 25 here. By e-mail, on 30 May, the inquiry asked the DLS

- 1 to make necessary searches to see if there were any
- 2 inquest or medical negligence files. The position was
- 3 that it was thought, as I understand it, that all of the
- 4 Brangam Bagnall files had been handed over to the Trust.
- 5 That was not the position. The actual position was that
- 6 the Brangam Bagnall open files, cases which were not yet
- 7 disposed of, were given to MSC Daly, which was --
- 8 THE CHAIRMAN: The successor?
- 9 MR SIMPSON: Yes, exactly. Mr Daly was in charge of those
- 10 case. The closed files -- in respect of cases which
- 11 were disposed of -- were taken by Brangam Bagnall,
- 12 we can only assume, and left with McConnell Storage,
- which is a storage company in Belfast, but they were not
- organised into any recognisable shape. They were simply
- put in boxes and 338 boxes, as we eventually counted
- them, were found in McConnell Storage in no particular
- order.
- The papers in each box did not necessarily relate to
- one file or the same file, they related not only to
- 20 medical negligence type cases, but also family cases and
- 21 the other types of cases which Brangam Bagnall was doing
- 22 for the trusts. It took five members of staff two full
- 23 days to search through those 338 boxes to identify what
- 24 was relevant. And what was identified were two small
- 25 files of papers relating to the inquest into the death

- 1 of Adam Strain. They contained four categories of
- 2 documents.
- 3 The first category was a little -- maybe
- 4 quarter-inch or half-inch thick bundle of papers which
- 5 were handwritten notes made, we assume, by the solicitor
- 6 of the evidence given during the course of the inquest.
- 7 There was some miscellaneous correspondence, which
- 8 doesn't contain anything, we don't think, but that has
- 9 already been made available to the inquiry as have the
- 10 notes and records. There was a letter from Dr Coppell
- 11 to Dr Taylor. The fourth item was this item which has
- now been handed out to all of the parties.
- 13 I am not aware and do not have any instructions that
- 14 there are any other documents in relation to any of
- these cases which were identified in that hunt through
- 16 the boxes. Particularly, there was no medical
- 17 negligence file. We know there was a medical negligence
- action in the Strain case, but no medical negligence
- 19 file was found. So notwithstanding the search, no
- 20 documents other than those that have been disclosed
- in the last couple of days were identified.
- 22 THE CHAIRMAN: In essence, these are Trust property, aren't
- 23 they?
- 24 MR SIMPSON: They are Trust property in the sense that the
- 25 Trust was the client but they were not in the Trust's

- 1 actual possession.
- 2 THE CHAIRMAN: Sorry, I understand that. I mean in the
- 3 sense that the files are effectively owned by the Trust.
- 4 MR SIMPSON: Effectively.
- 5 THE CHAIRMAN: Right. Because I want to allay any concerns
- 6 that there may not be something else lurking and, in
- 7 light of this, I can understand why there are concerns.
- 8 I would be grateful if you would take instructions from
- 9 the Trust as to whether it would object to the inquiry
- 10 staff double-checking through the boxes and files.
- 11 MR SIMPSON: I certainly will take instructions. I'd be
- 12 astounded, but I will of course take instructions, yes.
- 13 THE CHAIRMAN: When we're doing that, we can look again.
- 14 Somebody might trip over the medical negligence file, if
- there was one, or any other consultation notes. Though,
- as we said earlier in closed session, it would be very
- 17 surprising if we had the notes of this consultation and
- they were separate from any other consultation. It's
- 19 a bit unlikely, but it can happen. For instance, a note
- 20 might have been moved off the inquest file, for
- 21 instance, on to a medical negligence file, but the
- 22 medical negligence file can't be found at the moment.
- 23 But there are all sorts of variations. But if the Trust
- 24 would be agreeable to that, we could arrange for any
- inspection to take place at some point over the summer.

- 1 MR SIMPSON: Yes. Our advice will be given to the Trust
- about what we think are the appropriate steps
- 3 in relation to that. There will be issues, of course,
- 4 of confidentiality and we would need to be careful about
- 5 files being looked at, for example, in family law cases.
- 6 THE CHAIRMAN: I understand there are boxes and boxes of
- 7 social work reports about children and parents and so on
- 8 which are entirely irrelevant.
- 9 MR OUINN: [Inaudible: no microphone] what I want to make
- 10 clear, Mr Chairman, is that -- well, it seems clear to
- 11 me when one looks at the transcript when Mr Simpson made
- 12 his address -- I think it was on Monday. When he said
- 13 there were hundreds of boxes, he's now identified 328
- 14 [sic] boxes, so he now obviously has more information at
- this point than he had on Monday. But the point that
- I make is that there must be other documents. Because
- if one looks at the penultimate page of the document
- 18 released to us, and looks at the penultimate paragraph
- on that page -- I think it's maybe page 5 -- where it
- 20 says:
- 21 "Dr Taylor is to write out a document reiterating
- 22 the points of what was done and why and is to fax this
- to Mr Brangam over the weekend."
- 24 That would be a relevant document.
- 25 THE CHAIRMAN: Yes.

- 1 MR QUINN: That's just one document that Mr Simpson hasn't
- 2 identified. He said there were handwritten notes, but
- 3 that's a document, for example, that must be on file if
- 4 indeed Dr Taylor did fax it. So one can see we have to
- 5 ask Dr Taylor: did you fax it? And we have to see if
- 6 we can find it.
- 7 THE CHAIRMAN: I accept Mr Simpson as indicating that there
- 8 has been a file found relating to Adam's inquest and
- 9 we have been forwarded all the documents which were
- 10 included in that file. Yes, it does appear from this
- 11 that Dr Taylor was to do something and e-mail it over
- 12 the weekend. This would be the weekend immediately
- before the inquest started. That is why, without any
- 14 disrespect to DLS, I'm volunteering that the inquiry
- 15 staff will go through this if we're given access to it.
- 16 MR QUINN: May I say on behalf of the families that I'm
- 17 obliged for that indication, but may I make another
- 18 point? It would seem to me that Mr Simpson has sought
- 19 a search in relation to documents for Adam, but has
- 20 a search been carried out in relation to Claire?
- 21 Because if he has a team of three or four people up
- there searching the boxes of documents, perhaps it
- should be made clear that we're looking for documents
- 24 relating to Claire and any of the other children that
- 25 I represent. As I understand it, it may be the point

- 1 that that was not the solicitor in charge of those other
- 2 cases. I'm just not aware of the timescale.
- 3 THE CHAIRMAN: The advantage of the inquiry team going in to
- do this would -- in fairness to DLS, they were
- 5 specifically asked for this search in relation to Adam's
- 6 inquest, at which we know Brangam Bagnall were involved,
- 7 but I don't think it was as broad a request as to find
- 8 if there were any additional files relating to Claire.
- 9 But that's one of the things that by us volunteering to
- 10 do it --
- 11 MR QUINN: I'm obliged.
- 12 THE CHAIRMAN: We'll get that done.
- 13 MR QUINN: Mr Simpson also mentioned MSC Daly. Could we
- 14 also follow up on that and ask that MSC Daly are
- 15 specifically requested to follow up in relation to a
- search of their files in relation to the children?
- 17 MR SIMPSON: I think the problem that there is no MSC Daly
- any more. That's gone as well.
- 19 THE CHAIRMAN: Mr Daly's on his own, isn't he?
- 20 MR SIMPSON: I think so. It certainly would be sensible if
- 21 the tribunal wants to ask Mr Daly does he have any
- 22 information which he could give to the inquiry about the
- whereabouts of documents. I have no problem with that.
- 24 MR FORTUNE: Sir, I rise at this stage because I'm concerned
- 25 about the breadth of the comments made by my learned

friend Mr Quinn. And without impugning what he wants in 1 2 any way, I am anxious that we remain focused on this 3 part of the inquiry, which presently relates to 4 Adam Strain. I can understand the request made in respect of the other families and the other deaths and 5 6 clearly I would encourage as thorough a search as can be 7 made. But if we concentrate on this part relating to 8 Adam Strain, the question is: what are we going to do 9 next? We have this document, which raises as many questions as answers, or so we've been told. And I put 10 it no higher than this: if or when the clinicians are 11 recalled, it may well be that we have a succession of, 12 13 "I do not remember or recollect such a meeting", "I do not remember the contents". But anyway, that's for 14 15 another day, and the question then is: when is that other day going to be? Because we have some clinicians 16 17 who are immediately available, we have other clinicians 18 who are either away on holiday or unfit for one reason 19 or another. How do you intend to proceed: with one hearing or with a split hearing? 20 21 You have set a timetable presently with a view to completing the evidence in relation to governance some 22 23 time towards the middle of next week with a request for 24 written submissions by the end of July. You have

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indicated yourself that you would be starting to draft

- a report in the summer, with the exception of the
- 2 Kirkham issue still to be resolved. And of course, the
- 3 families are anxious to see the timetable met because
- 4 you are going to start or you are proposing to start the
- 5 evidence in relation to Claire Roberts at the beginning
- of September.
- 7 THE CHAIRMAN: That's right.
- 8 MR FORTUNE: So there are some very fundamental questions to
- 9 be addressed and it is best that they're addressed while
- we're all here rather than by e-mails or conversations
- 11 with some parties and not with all parties at the same
- 12 time. So can we have a frank discussion now about what
- is required and what can be expected realistically and
- 14 a timetable? Because it seems to me that the timetable
- that may be either considered or, at worst, imposed is
- going to cause significant inconvenience.
- 17 THE CHAIRMAN: Yes, it's not going to be easy. I will come
- 18 back out at 1.30 and announce the timetable.
- 19 (1.12 pm)
- 20 (A short break)
- 21 (1.45 pm)
- 22 THE CHAIRMAN: Ladies and gentlemen, we have looked at the
- various options on the timetable since yesterday evening
- 24 when this problem began to emerge. I said earlier that
- one option was to hear some evidence next week and then

- 1 pick up the remainder of the evidence later at the end
- 2 of the summer.
- 3 On reflection, that is really an unsatisfactory way
- 4 to go about it, particularly because of the identities
- 5 of two of the people who are unavailable next week. And
- 6 accordingly, what I propose, subject to any
- 7 irreconcilable barrier to this, is that we will now
- 8 adjourn, that we will not resume until Wednesday
- 9 5 September and we will sit in the week of Wednesday
- 10 5 September and the week beginning Monday 10 September
- 11 to recall witnesses in Adam's case, to hear the evidence
- 12 of Dr Carson and Mr McKee and then the inquiry expert,
- 13 Mr Mullan. We will then take a break of one week on
- 14 Monday 17 September and start to hear the evidence in
- 15 Claire's case on Monday 24 September.
- 16 Mr Simpson?
- 17 MR SIMPSON: Just while you were out, sir, we made enquiries
- of witnesses to make sure that they were available. The
- 19 position is that Mr McKee is going to Australia on,
- 20 I think 2 or 3 September and will not be back
- 21 until January.
- 22 THE CHAIRMAN: Right. I will take Mr McKee's evidence at
- some other time. We will work around that. It doesn't
- 24 make sense, unless there's any contrary view, to take
- 25 Mr McKee's evidence until we sort out these issues.

- 1 MR SIMPSON: I think that's right, sir.
- 2 THE CHAIRMAN: We can work around that because unfortunately
- 3 it now looks as if we'll be here in January.
- 4 MR SIMPSON: It's Easter I'm worried about, sir.
- 5 THE CHAIRMAN: Ladies and gentlemen, there have been
- 6 a number of delays over the history of the inquiry. We
- 7 had made up ground, we had made very substantial
- 8 progress over the last few months and, as you all know,
- 9 my preferred outcome would be that, at least, we have
- 10 Adam's case finished before the summer. For the reasons
- 11 which have emerged and which are self-evident from this
- 12 document, we now have to go back over some evidence and
- that delays the completion. Claire's case, which we had
- intended to start on 10 September, I'm afraid -- and I'm
- 15 sorry, Mr and Mrs Roberts -- I'm putting it back again,
- but it is a comparatively short delay and I hope that's
- 17 understandable in the circumstances.
- 18 MR UBEROI: May I raise two brief points? Firstly, I take
- it it's self-evident that the witness submissions in the
- 20 case of Adam Strain, originally now due for the end
- of July, are now no longer due for the end of July?
- 22 THE CHAIRMAN: We'll re-fix those.
- 23 MR UBEROI: Of course.
- 24 Secondly, picking up an exchange from before the
- 25 break about the potential or possibility of whether or

- 1 not there's any more documentation out there, and
- 2 I think the name of a solicitor, Mr Daly, was mooted.
- 3 Just to place on record that I entirely endorse the
- 4 approach adopted by the inquiry so far, which is that if
- 5 documentation comes in, which is on its face legally
- 6 privileged, of course it must be shown first to the
- 7 individual in whom the privilege resides and that that
- 8 individual must be offered the opportunity to make
- 9 submissions on whether or not he asserts it or waives
- 10 it.
- 11 THE CHAIRMAN: That begs the question about whose privilege
- it is, Mr Uberoi.
- 13 MR UBEROI: It would do, in the same way it has over the
- 14 last week or two. I think that was a sensible way that
- was adopted and it may be in other scenarios where
- documentation is created in the aftermath of
- 17 Adam Strain's death, that conundrum is not there and the
- question may be far clearer as to in whom the privilege
- 19 resides.
- 20 THE CHAIRMAN: Thank you.
- 21 I should explain this in a little more detail. One
- of the reasons why we are not going to sit next week
- is that, subject to confirmation from the Trust that
- 24 this course is acceptable, I do intend to arrange for
- 25 inquiry staff to visit the premises where these boxes

- are held, to go through them for a further check in
- 2 Adam's case and also to confirm that there is nothing
- 3 in relation to Claire or any later cases. And it
- 4 doesn't really seem to make sense to start recalling
- 5 witnesses, do the checks simultaneously and then
- 6 potentially, if something does turn up, call witnesses
- 7 again. That's unproductive.
- 8 MR SIMPSON: You said "the Trust", sir; it's a number of
- 9 trusts. All the documentation that's in storage
- 10 includes a number of trusts. So we'll just clear it
- 11 with all the trusts before.
- 12 THE CHAIRMAN: Is McConnells a commercial firm?
- 13 MR SIMPSON: It is.
- 14 THE CHAIRMAN: But it's contracted to various trusts?
- 15 MR SIMPSON: It's contracted to not just a variety of
- trusts, but also to a number of other bodies who use it
- 17 because they don't have the storage themselves. It
- 18 might be Oasis or something like that, I think, but it
- is the old McConnell's storage. Where it is, I have no
- idea, sir, but we'll ensure that your staff know.
- 21 THE CHAIRMAN: Yes. There are issues which I know people
- 22 are anxious about in terms of costs and hours, which
- we were going to circulate over the next day or two.
- 24 Those are going to have to be rejigged in light of this
- 25 knock-back. I will do those and we will set out, as we

- 1 normally do, proposals early next week, which you will
- 2 be given a chance to respond to before any final
- decision is taken. Beyond that, is there anything else
- 4 immediately today?
- 5 MR QUINN: Can I ask about [inaudible: no microphone]
- 6 availability? It's just that he seems to be a witness
- 7 who affects both Adam and Claire. My clients would like
- 8 some information in relation to Dr Webb's illness.
- 9 THE CHAIRMAN: I understand that there is potentially better
- 10 news about Dr Webb, which is good for him, first and
- 11 foremost, but helpful to the inquiry.
- 12 MR QUINN: Of course.
- 13 THE CHAIRMAN: And we're hoping to get confirmation of that.
- 14 MR QUINN: I'm obliged.
- 15 THE CHAIRMAN: Mr Fortune?
- 16 MR FORTUNE: Professor Kirkham: what is going to happen
- 17 there?
- 18 THE CHAIRMAN: The position with Professor Kirkham, I think,
- 19 as has been circulated, is that the German expert
- 20 will not be -- we don't expect a report from him until
- 21 the end of August. I've assured Professor Kirkham, as
- I had to, that she would then have a chance to see that
- 23 report. But that report will also be circulated and
- I will then decide in light of the contents of the two
- 25 reports to what extent oral evidence is required from

- either or both of these experts. I should have said,
- 2 Mr Fortune, that I have given you the starting timetable
- for September, at the risk of being mocked, then issue
- 4 a further schedule for the remainder of 2012 and into
- 5 2013. I don't intend to put Professor Kirkham on that,
- 6 but I will deal with her and the German expert as and
- 7 when the need arises.
- 8 MR FORTUNE: Sir, on a practical note, in terms of the next
- 9 part of the inquiry, which is the Claire Roberts case,
- 10 realistically when could the bar expect to see some
- 11 documents? Because what I anticipate is beginning to
- 12 happen, that the protection bodies are being consulted,
- 13 solicitors will be instructed and counsel -- probably,
- 14 counsel already instructed -- will be instructed in new
- 15 matters. So it's a question of timetabling.
- 16 THE CHAIRMAN: We have written already to three individuals
- in Claire's case to advise them that they're entitled to
- interested party status, which in effect is notifying
- 19 them, and that will in turn be taken on to their
- insurers. That has been the sequence to date.
- In terms of papers, I had promised Mr and
- 22 Mrs Roberts and their representatives that they would
- 23 receive papers this week. There is a significant
- 24 outstanding witness statement and I will not make the
- 25 documentation available to anyone through whom the

- documentation may reach that individual who has yet to
- 2 complete a statement for us. I don't want that person
- 3 to start receiving the expert reports until that person
- 4 has provided the statement. But I say now that because
- 5 Mr and Mrs Roberts and their representatives would
- 6 obviously not forward that documentation to the
- 7 individual who I have in mind, I am going to release the
- 8 documentation to Mr and Mrs Roberts over the next day or
- 9 two, and when I receive the witness statement which is
- 10 outstanding, I will then release all the documentation
- 11 which we have, which is to be released.
- 12 MR FORTUNE: Insofar as the names of the three who have
- 13 received letters indicating interested party status, can
- 14 those names be obtained from the secretary? Because I'm
- 15 aware that six doctors have received certain advice.
- 16 THE CHAIRMAN: Right. Yes, I will arrange for that to be
- done.
- 18 MR FORTUNE: Thank you, sir.
- 19 THE CHAIRMAN: Thank you very much, ladies and gentlemen.
- 20 Enjoy the summer as much as you can and, subject to
- 21 anything arising in between, we will convene here at
- 10 o'clock on Wednesday 5 September.
- 23 (1.57 pm)
- 24 (The hearing adjourned until 10.00 am on
- Wednesday 5 September 2012)