

THE INQUIRY INTO HYPONATRAEMIA-RELATED DEATHS

PUBLIC HEARING ON DRAFT INQUIRY PROCEDURES

TRANSCRIPT OF ORAL SUBMISSIONS

Thursday, 3rd February 2005

10.30 am

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1 Thursday, 3rd February 2005

2 (10.45 am)

3 (Opening statement by the Chairman)

4 THE CHAIRMAN: Good morning. Perhaps I should start by
5 introducing myself. I am John O'Hara. I was appointed
6 by the Minister to chair this Inquiry in November. Some
7 of you may not yet know that the Counsel to the Inquiry
8 who has been appointed is Monye Anyadike-Danes, who is
9 sitting to my right, closest to me; and beside her is
10 Fiona Chamberlain, who, subject to anything which is
11 said or any representations today, will become the
12 Solicitor to the Inquiry.

13 I should start by acknowledging how sensitive and
14 emotional much of the work of the Inquiry has already
15 been and will continue to be for everyone involved, for
16 doctors, nurses, administrators, but above all for
17 the families of Adam, Lucy and Raychel, whose early
18 deaths are at the heart of our work. I also acknowledge
19 that at particular times emotions will run especially
20 high. For instance, tomorrow would have been Raychel's
21 13th birthday, and I understand that this must be
22 an especially difficult week for the Ferguson family.
23 I will try to conduct this Inquiry as sensitively as
24 possible, and I hope that everyone else will do
25 the same, but it would be unrealistic for any of us to

1 expect that people will not be upset or distressed at
2 various times.

3 I am determined to get to the heart of the issues
4 which led to the Minister's decision to establish
5 the Inquiry. We already know some of what happened at
6 different times, but there is much we still do not know
7 about how Adam, Lucy and Raychel died, and there are
8 general issues which I will refer to shortly which at
9 the moment we know little or nothing about. Both the
10 families and the general public need to know more about
11 these issues.

12 Specifically, the public needs to know that our
13 Health Service is managed and organised in such a way
14 that when unfortunate events happen, as they inevitably
15 will, lessons are learned to prevent their repetition.
16 Nobody can reasonably expect that mistakes will not
17 occur in our Health Service. What we all should expect,
18 however, is that steps will be taken to help to minimise
19 the risk to the health of others in the future.

20 The immediate purpose of today's and tomorrow's
21 hearing is to review and debate the procedures and other
22 matters which are set out in my proposals of
23 17th December. I am grateful for the effort which
24 parties have put into making detailed responses to that
25 paper. The Inquiry team has spent a considerable amount

1 of time analysing those responses to see whether our
2 proposals can be improved upon.

3 Rather than simply invite the various legal
4 representatives to present their cases by highlighting
5 issues already set out in their written papers,
6 I thought it might be helpful to start by outlining
7 changes which I am now inclined to make as a result of
8 the representations received to date. I will also deal
9 with a number of specific queries which have been
10 raised. I emphasise that no final decisions will be
11 made until after this hearing. In any event, it would
12 be unwise to write these procedures in stone and, as
13 the proposal paper indicated, the procedures will be
14 kept under review for the duration of the Inquiry.

15 The first issue I will deal with is the question of
16 cross-examination of the witnesses. The paper in
17 December set out the various reasons for my intention to
18 restrict cross-examination to Counsel for the Inquiry,
19 Ms Anyadike-Danes. Those reasons included
20 speed, efficiency, and the fact that the Inquiry is
21 inquisitorial rather than adversarial. Objections have
22 been made to this proposal by all three families
23 currently involved, and reservations have also been
24 expressed on behalf of the Royal Group of Hospitals and
25 to a limited extent by the Chief Medical Officer.

1 There are three main thrusts to these objections.
2 The first is that cross-examination is consistent with
3 an Inquiry being inquisitorial. The second is that it
4 would be exceptionally difficult for Ms Danes to
5 cross-examine the same witness on a number of different
6 bases which may be contradictory. The third,
7 particularly advanced by the families, is their
8 contention that their Article 2 European Convention on
9 Human Rights rights are breached if they cannot engage
10 effectively in the Inquiry through cross-examination.

11 I do not accept as a matter of law that extensive
12 cross-examination by a number of lawyers is required for
13 a fair Article 2 Inquiry. To the extent that it is
14 argued that Article 2 might be breached by the process
15 which I have proposed, I believe that Article 2 requires
16 effective input into the process and that that need not
17 necessarily involve cross-examination.

18 Nonetheless, having considered these responses and
19 the particular position of the families, and subject to
20 any further representations, I am now inclined to accept
21 that there can be cross-examination of witnesses at
22 the oral hearing stage. This might typically involve
23 questioning in the first place by Ms Anyadike-Danes,
24 followed by questioning, depending on who the witness
25 is, on behalf of the relevant family or families, by

1 the relevant Trust, perhaps the Department, by
2 a representative of a union or staff association, and
3 then questioning by me. The final line of questioning
4 I would normally expect to be by the legal
5 representative of the witness who is giving evidence.

6 I need to emphasise from the start that this
7 concession is made on the basis that it will not be
8 abused by any of the legal representatives. I emphasise
9 that I will not allow indefinite, repetitive, irrelevant
10 or unnecessary questioning. I also emphasise that
11 I expect that there will be collaboration and
12 cooperation between parties who share the same interest
13 in the evidence of a particular witness. I have been
14 given specific written assurances on behalf of
15 the Ferguson and Crawford families on this point, and
16 I infer the same from the submission made to me on
17 behalf of Mr and Mrs Slavin. Their legal
18 representatives will be held to those assurances, and so
19 will every other person seeking to cross-examine
20 a witness at any time.

21 In due course, as today's hearing progresses, I will
22 invite representations on this point if that is thought
23 necessary.

24 That leads me on directly to the question of legal
25 representation. It follows from what I have said about

1 cross-examination that it has been necessary to review
2 the level of legal representation proposed for
3 the families. I am now minded to agree that
4 the families may engage senior counsel for the purpose
5 of the oral hearing. However, since there is no
6 apparent conflict or reason for conflict between
7 the families, I invite them to consider agreeing to
8 engage a single Queen's Counsel to represent all three
9 of them. This proposition was in fact raised in
10 a letter sent to me at an earlier stage by Mr Doherty,
11 and in so far as I control this, which is a very limited
12 control, by making a recommendation to the Department
13 whose final decision it is, I would expect the families
14 to consider seriously the proposition which was in fact
15 advanced by one of their representatives, and also to
16 explain clearly, if one Queen's Counsel cannot represent
17 all three, why that is the case?

18 I believe that that suggestion balances
19 the families' concerns about equality and fair
20 representation against other relevant considerations.

21 In this context, one important point needs to be
22 addressed. I have to take account of the cost of
23 the Inquiry to the public purse. That is not a decisive
24 factor, but it is a relevant one. It is equally
25 relevant to the various Trusts and to the Department

1 itself in organising their legal representation.
2 Everyone is under a duty to facilitate the conduct of
3 the Inquiry, to minimise its cost. Consideration will
4 have to be given, for example, by the legal
5 representatives as to whether their presence is required
6 for particular segments of the oral hearings which will
7 follow in due course.

8 I turn now to concerns about delay.

9 The terms of reference require me to report by
10 1st June 2005 or such other date as may be agreed by
11 the Department. As you will all be aware, the Police
12 have written indicating that there is an ongoing
13 investigation into various circumstances surrounding
14 Lucy's death, and they have asked me to defer
15 investigation of those circumstances until such time as
16 the Police investigation has been completed.

17 I understand that the Police file is expected to be with
18 the Director of Public Prosecutions by mid-April.

19 I also understand from the Police that they have no
20 plans to investigate the circumstances surrounding
21 the deaths of either Adam or Raychel. I might also
22 mention briefly in this context that I understand that
23 there is ongoing civil litigation arising from Raychel's
24 death. I do not see that civil litigation as a reason
25 for the Inquiry being delayed.

1 One possibility which has been raised is that
2 I should ask the Attorney General for an indemnity in
3 respect of any evidence given in this Inquiry, so that
4 such evidence cannot be used in the event of
5 a prosecution. I will keep that possibility under
6 review, particularly in the light of how long it takes
7 the Director of Public Prosecutions to decide whether to
8 prosecute after he receives the Police file.

9 There is, however, a tension between the possible
10 right under Article 6 of the European Convention of
11 a defendant in a criminal case to a fair trial, and
12 the rights and expectations of the families and others
13 to have a proper Inquiry conducted and completed within
14 a reasonable time.

15 In all these circumstances, I have now had to write
16 to the Minister to ask her for an extension of time, and
17 I have outlined to her the following timetable.

18 The documents which we have received are being put
19 through a computer system on to the internet, but that
20 will take some time, and that is not likely to be
21 complete until in or about the end of March. We intend
22 to gather witness statements in May and June. We then
23 propose to have an oral hearing, probably in
24 October/November, or rather a series of hearings. We
25 think it is unlikely and unhelpful to propose oral

1 hearings during July and August, when so many people in
2 Northern Ireland are away at different times. The net
3 effect of that is that the report will be delayed,
4 subject to the Minister's approval, until February or
5 March of next year.

6 There is still a risk of this timetable being thrown
7 off schedule. But if that becomes a serious risk,
8 I have to consider, in conjunction with the Minister,
9 that there may be a point when the advantage of the most
10 perfect Inquiry is countered by it being so slow that
11 the problem of the delay exceeds the advantage of it
12 covering every possible issue.

13 What is to happen in the meantime. Again, subject
14 to representations which might be made over the next few
15 days, I do not believe that there is any reason for me
16 not going ahead with the investigation into Adam's death
17 in 1995. I also believe that it should be possible to
18 cover virtually every aspect of Raychel's death in 2001.
19 At this stage, I have to say regrettably that there is
20 a real possibility that a further death will be added to
21 that list. I expect to receive confirmation within
22 the next month that a death in October 1996 will require
23 investigation.

24 Apart from Adam and Raychel's death and the possible
25 third death to which I have just referred, there is

1 a series of issues which I believe can be progressed
2 immediately. There are general issues which are really,
3 I believe, obvious which need to be addressed. Perhaps
4 the single most important one is what procedures have
5 been in place to ensure that information and lessons
6 which emerge from inquests are disseminated within
7 the hospital concerned, within the Health Service in
8 Northern Ireland and within the Health Service
9 throughout the United Kingdom generally. One example
10 which we already have from documents we have received is
11 a letter which the Coroner for Greater Belfast,
12 Mr Leckey, wrote on 7th November 2002. He wrote this
13 letter to the Chief Medical Officer, Dr Campbell,
14 referring to the forthcoming inquest into Raychel's
15 death, and he referred back to the inquest which had
16 taken place into Adam's death in 1996. He said:

17 "My clear understanding was that changes would be
18 made in relation to the future management of cases such
19 as that of Adam Strain. Therefore, I did not see a need
20 for formal action pursuant to rule ..."

21 He is referring there to the Coroner's rules:

22 "... also I assumed that there existed some
23 mechanism for dissemination of Dr Sumner's opinions, but
24 it now appears that this is not the case."

25 One of the questions which arises from that letter

1 is why that was not the case?

2 Another issue which we want to address is what is
3 the frequency of death as a result of hyponatraemia in
4 Northern Ireland. Our understanding from figures which
5 we have received recently from the Department is that in
6 the last 20 years, there have been eight deaths which
7 have been registered as directly attributable to
8 hyponatraemia; but that there have been 55 deaths
9 registered with hyponatraemia as a secondary or
10 contributory factor and 16 of those deaths were
11 registered in 2002 and 2003. We want to inquire whether
12 this is in keeping with equivalent figures for the rest
13 of the United Kingdom; we want to inquire whether this
14 is in keeping with other European countries; and whether
15 it is or is not equivalent to other countries, is there
16 any extent to which such deaths are avoidable.

17 I give these as examples of the sorts of general
18 issues which we will be investigating at the same time
19 as Adam and Raychel's death to illustrate the point that
20 there is much to be going on with while we await
21 developments from the Police, and I invite
22 representations on this issue particularly from
23 the Crawford family and perhaps also from the Ferguson
24 family.

25 I turn now to the Inquiry team. I acknowledge that

1 concerns have been expressed on behalf of the Fergusons
2 and Crawfords about the Secretary and Deputy Secretary
3 to this Inquiry. Those concerns are expressly based on
4 the perception that their presence might be unfair
5 rather than any actual event. The Slavin family have
6 a different position, which I understand to be one of
7 seeking reassurance that if the Secretary and
8 Deputy Secretary remain in post, the Department will be
9 given no illicit advantage or forewarning which would
10 improve their position against that of any other
11 relevant party to the Inquiry.

12 In my paper in December I explained the roles of
13 the Secretary and Deputy Secretary. I want to put on
14 record my gratitude to them for the integrity,
15 commitment and unstinting support which each of them has
16 given to the Inquiry since November. I do not want them
17 to leave; on the contrary, I believe it is a positive
18 benefit to me to have these people with their knowledge
19 of the local Health Service working with me. I repeat
20 and emphasise the plain fact that their role is
21 managerial and administrative only. For instance, IT
22 requirements and resources, funding. The legal team
23 will deal with any substantive issues, such as
24 procedure, document-gathering, witnesses and evidence.
25 All of those issues will go through me,

1 Ms Anyadike-Danes or Ms Chamberlain. I could refer to
2 the fact that there is a Civil Service Code of Ethics
3 which binds the Secretary and Deputy Secretary. I could
4 also refer to the fact that it would be a disciplinary
5 offence, almost certainly of gross misconduct, for them
6 to behave in any improper way. I could also refer to
7 the fact that it could even be a criminal offence
8 contrary to the 1972 Order for them to behave in a way
9 which obstructed the work of the Inquiry. I do not
10 believe that it should be necessary for me to do so,
11 because from working with them over the last few months,
12 I have no doubt about their commitment and integrity.

13 It is not my intention to seek to have them replaced
14 on the basis of any of the legal representations which
15 have been made to me.

16 Having said that, I do recognise the fact that all
17 three families must feel bruised and distrustful as
18 a result of their tragic experiences. But I invite
19 the families to accept my reassurances about
20 the Secretary and the Deputy Secretary, and I invite
21 them to reconsider their objections.

22 I turn now to deal with some of the particular
23 issues about procedure.

24 In terms of document gathering, we have to date
25 received approximately 80 lever-arch files of papers

1 from various sources. We will be receiving more from
2 the families, I am sure, in the near future. At
3 the moment we are checking through these documents for
4 completeness and also to give us a clear idea of
5 the issues which arise. Arrangements are in hand for
6 the installation of a computer system which all these
7 documents will be put into, so that they will become
8 available on the internet, and also for the purpose of
9 the oral hearings, they will be available on a LiveNote
10 system, similar to the one used in the Bloody Sunday
11 Inquiry. There has to be some limited redaction of
12 documents, for instance personal addresses and phone
13 numbers of people will be removed; the names of some
14 patients who are not directly involved in this Inquiry
15 will also be removed. When the computerisation is
16 complete, DVDs of these records and documents will be
17 sent to the various interested parties. It is likely
18 that this procedure, given the amount of documentation
19 involved, will take until about the end of March.

20 The next stage will be to obtain written statements.
21 I agree with some of the helpful suggestions which have
22 been made to us that it will be appropriate so far as
23 possible to have those statements in a standard form.
24 Witnesses will be asked to deal with specific issues
25 which appear to us to be relevant to them, but they will

1 be invited to add any other comments or facts which they
2 believe to be relevant.

3 The Inquiry can ask for clarification or additions
4 to any of these statements, and we accept the suggestion
5 made on behalf of the Altnagelvin Trust that in light of
6 statements which come in, parties should be able to
7 volunteer additional statements rather than to wait for
8 the Inquiry to ask for them. These statements will go
9 on the website, since they do form the basis for
10 the oral evidence which will come at the next stage.

11 Now, so far as oral evidence is concerned, I do not
12 anticipate that everyone from whom a written statement
13 is taken should be required to give oral evidence.
14 The list of witnesses whom we intend to require to give
15 oral evidence will be circulated, parties will be able
16 to suggest whether any additional witnesses are required
17 and if so, on what basis. The areas upon which a person
18 will be asked to give oral evidence will be specified to
19 that person before he or she is called. Anyone else who
20 wants to cross-examine a witness will have to notify
21 the Inquiry in advance of that fact and identify
22 the areas for questioning. Cooperation on this is
23 essential in order for us to plan a meaningful timetable
24 for the oral hearings.

25 So far as the venue is concerned, in view of

1 the technological input which there will be into
2 the oral hearings, it seems almost certain that it will
3 be necessary for us to fix one single venue, rather than
4 for us to move around from Belfast to Derry to
5 Fermanagh. I regret this because I know it will be
6 inconvenient for some people. But so far as we can
7 gauge at this stage, there would be a significant cost
8 and impracticality of moving around in that way.

9 So far as witnesses elsewhere are concerned,
10 specifically, I believe this issue was raised in
11 relation to Dr Malik who is now in Pakistan. It may be
12 that we need to come back to that issue because as
13 you will know, Dr Malik was or may be a relevant witness
14 in Lucy's death. But on a more general note, if
15 the witnesses are now outside Northern Ireland and
16 decline to come here to give evidence, we will consider
17 what alternative steps can be taken; for instance, we
18 will consider the use of video-link evidence; we will
19 consider taking evidence on commission. Much of that
20 will depend on how significant that evidence is or
21 whether the same points could largely be covered by
22 another person.

23 If I can turn now to the question of expert
24 advisors.

25 We have received quite a number of queries about

1 the role of these experts. The experts whom we hope to
2 engage are a paediatrician, a paediatric anaesthetist,
3 a nurse and a health service manager. The initial
4 difficulty which we have is to find people who have time
5 on their hands to cooperate with us, who have
6 the necessary expertise and who are largely unfamiliar
7 with people and individuals in the Northern Ireland
8 Health Service. We will not be using any of the doctors
9 who have already been used, either by the Coroner or who
10 have been involved in any of the litigation which has
11 been or which is taking place. Having said that,
12 we hope that Dr Sumner will cooperate with the Inquiry
13 and will give evidence at the oral hearings. In some
14 specialties, and I am thinking particularly here of
15 paediatric anaesthetists, it is already proving
16 exceptionally difficult to engage somebody who does not
17 know anybody in Northern Ireland. The world of
18 paediatric anaesthetists is a comparatively small one.
19 We are doing our best to find someone who fits the
20 criteria which I have just described and who has
21 the least possible familiarity with individuals in our
22 Health Service.

23 So far as their role is concerned, it is not our
24 intention that these experts will be cross-examined,
25 because we think it is particularly difficult for

1 somebody who has been cross-examined to then come to
2 retire with me and the legal team, and to advise on what
3 the position is or should be. What we will do, however,
4 is to ensure that any issues which the experts have
5 raised with us are put to the witnesses in questioning,
6 so that the witnesses have a clear idea of what at least
7 one expert view is.

8 The next issue, which I think it is fair to say
9 concerns the various statutory bodies in particular, is
10 the question of a preview of the report being issued to
11 anyone who is potentially subject to criticism. This
12 point arises, because in other inquiries it has been
13 traditional for excerpts from reports which are critical
14 to be sent in advance. The party who is being
15 criticised then has an opportunity to rebut those
16 criticisms, so that, for instance, it might be reduced
17 from four criticisms to two or whatever. For
18 the reasons set out in our paper in December, we are not
19 inclined to follow that position. We do not believe it
20 is consistent with the notion of an open and public
21 Inquiry. We do accept, however, that elementary
22 fairness requires that no person or institution should
23 be criticised without first having had a chance in oral
24 evidence to deal with the area of criticism. We would
25 normally expect, therefore that the witness or

1 organisation involved will have a chance to present
2 evidence and to respond to that criticism. If needs be,
3 that might mean reconvening an oral hearing or recalling
4 a witness who has already given evidence to deal with
5 the particular point.

6 I want to finish with two points.

7 The first, perhaps a relatively minor one now, is for
8 the families to consider. In the early stages of
9 the Inquiry, there was a suggestion that the Inquiry
10 should appoint a family liaison officer who could be
11 a bridge between the families and the Inquiry. In view
12 of the fact that the families now all have legal
13 representation, I would welcome an indication from the
14 families as to whether that is required, or whether the
15 legal representatives can fill that role.

16 The final point is that as at least the lawyers will
17 know, but the families might also know from the paper
18 which was issued in December, as Chairman of
19 the Inquiry, I have been given various statutory powers
20 under Schedule 8 to the 1972 Health and Personal Social
21 Services Order. I do not intend to go through those
22 powers in detail, save to say that they enable me to
23 require people to provide documents, to answer questions
24 in writing and to give oral evidence. There are
25 specific criminal sanctions set out in the schedule

1 in chronological order of death, I will invite
2 Dr McGleenan to go first, and then Mr McAteer, and then
3 Mr Coyle.

4 Before each of you starts, could I ask you to
5 introduce yourself, because the stenographer needs to
6 know who you are for the record, which will be available
7 on the internet site on Monday.

8 So, Dr McGleenan.

9 Representation by DR MCGLEENAN

10 DR MCGLEENAN: I am Dr McGleenan. I am representing
11 the family of Adam Strain. Firstly on behalf of
12 the family, we welcome your response to our submission.
13 We welcome your reconsideration of various aspects of
14 your original proposal document, and we have some issues
15 which we would like to address arising from your own
16 opening statement this morning.

17 We welcome the opportunity afforded to the
18 representatives to cross-examine those witnesses who
19 will give evidence during the course of this particular
20 Inquiry. We have made submissions on that point, and we
21 restate our view that we consider the Article 2
22 requirements to be a valuable guiding principle for this
23 Inquiry, and that there is plainly a need for effective
24 representation in order to protect and preserve
25 the legitimate interests of the next of kin.

1 You raised an issue also, Chairman, with regard to
2 the levels of representation, and you did refer back to
3 previous correspondence, where a suggestion was put to
4 you that a single senior counsel could represent
5 the interests of all the families in the course of this
6 Inquiry. Although reference has been made to the legal
7 representatives of Adam Strain in relation to that
8 submission, at this stage, we would like to reserve our
9 position as to whether or not a single senior counsel
10 would in fact be appropriate for the purposes of
11 representing our interests.

12 There clearly is a commonality in factual terms
13 between the family members; there clearly is significant
14 overlap in relation to the cause of death in these
15 particular cases. But there may well be a need,
16 notwithstanding that solidarity, for separate
17 representation in the future. For that reason we
18 reserve our position and we will communicate with you in
19 writing on that point.

20 THE CHAIRMAN: I will not force a position today,
21 Dr McGleenan, but can I remind you that it was not your
22 solicitors who said this, but it was McCartney & Casey
23 on behalf of the Crawfords who also adopted that
24 position as recently as 18th January.

25 DR MCGLEENAN: Yes, indeed. Chairman, you also raised

1 the issue of progressing the various aspects of
2 the Inquiry in light of the ongoing police investigation
3 into the death of Lucy Crawford. I have taken
4 instructions from the family of Adam Strain. Their
5 position is clear: they see no reason why
6 the evidence-gathering and the document-gathering,
7 the taking of witness statements into the death of
8 Adam Strain cannot go ahead. Similarly, they see no
9 reason why in due course oral hearings into his death
10 can also not proceed.

11 It is their view that there are discrete factual
12 issues relating to Adam's death; there is no ongoing
13 civil litigation. We are reassured by the comments from
14 PSNI that there is no ongoing criminal investigation,
15 and for that reason our instructions are that there
16 should be no impediment to that aspect of the Inquiry
17 going ahead. Indeed, we would say that there is
18 an overarching need for a prompt investigation into this
19 death, and we would impress upon the Inquiry the need to
20 progress this matter.

21 Chairman, a related issue has been raised in our own
22 written submission, and we note your comment that there
23 are now some 80 lever-arch files of evidence. In our
24 respectful submission, we indicated that there is
25 a dearth of documentation available to Adam's family, in

1 part because civil litigation files do not appear to be
2 available, and in part because of the lapse of time. We
3 hear your comment that documentation will be made
4 available via the website by the end of March, and again
5 we would ask that in light of the absence of any
6 documentation which the families have, if it were
7 possible to advance the timescale or to present hard
8 copy information in advance of the end of March,
9 certainly that would greatly assist those representing
10 Adam's family.

11 THE CHAIRMAN: Could I indicate that multiple photocopying
12 of all these files would be a very heavy burden on
13 the Inquiry staff. But what I will enquire into and
14 what I think may be possible is that instead of all 80
15 files being available on the website at the end of
16 March, if it is done in stages, to follow
17 the chronological approach; the documents relating to
18 Adam would go on first, so that you might have them
19 earlier than that. I will see if that can be done.

20 DR MCGLEENAN: Thank you, Chairman. We did direct attention
21 to particular notes and records in our submission, and
22 again I will highlight that point if it assists you.

23 Chairman, with regard to the Inquiry team and
24 the administrative managerial support, I note in your
25 statement that there was a position adopted by Adam's

1 family which is slightly different from that of Lucy and
2 Raychel. We set our position out quite clearly. We say
3 that there is a need for independence in this Inquiry
4 and a need for the appearance of independence, and we
5 remain of that view. If the personnel identified as
6 your managerial and administrative support are to remain
7 in position, as you clearly indicated, then we would
8 restate the need for appropriate fire walls, as I think
9 we put it, to ensure that there is no
10 cross-contamination or release of documents to,
11 for example, the Department of Health. But we have set
12 that position out clearly in the submission.

13 THE CHAIRMAN: I understand that.

14 DR MCGLEENAN: Chairman, a point does arise in relation to
15 expert advisors. You have identified plainly the need
16 to instruct a paediatric anaesthetist in order to assist
17 you. Again, in our written submission, we have
18 highlighted the potential need for assistance with
19 regard to the specialism of paediatric renal
20 transplantation. Because as we have indicated, there
21 may well be issues arising not from the fluid management
22 alone, but also from the surgical procedure which was
23 taking place in and around the time of Adam's death.

24 THE CHAIRMAN: Yes.

25 DR MCGLEENAN: Chairman, now that the issue of

1 cross-examination appears to have been settled,
2 a further point flows from that. My understanding is
3 that the expert advisors are to assist you in your work.
4 Now that the representatives of the families will have
5 the entitlement to cross-examine the witnesses, we have
6 identified in the short recess a potential difficulty in
7 that the families' legal representatives will not have
8 direct access to any expert information, and therefore
9 a potential scenario is that they are cross-examining
10 medical experts without the benefit of any expert
11 opinion. It would appear to us from a cursory
12 examination of this point that it can be remedied either
13 by permitting the instruction of expert witnesses on
14 behalf of the families, where appropriate, or by
15 providing access by some means to the expert advisors
16 that have been appointed to assist you.

17 We have not have time to fully reflect on that.

18 THE CHAIRMAN: I understand that. But, for instance,
19 Dr Sumner, I think, gave evidence at all three inquests.

20 DR MCGLEENAN: Yes.

21 THE CHAIRMAN: Subject to correction, I am not sure that
22 the families disagree with any of Dr Sumner's points
23 made at the various inquests.

24 DR MCGLEENAN: Yes.

25 THE CHAIRMAN: If Dr Sumner is also going to give evidence

1 to this Inquiry, does that not ease your concerns?

2 DR MCGLEENAN: Well, as I have indicated in the written
3 submission, again, there are particular areas of
4 specialist expertise. As I flagged up, the paediatric
5 renal transplantation and the paediatric anaesthetics.
6 I am not entirely sure about whether or not Dr Sumner
7 would be qualified to comment to that degree on those
8 points. But again this is an issue that has only arisen
9 today; we may need to revisit it.

10 THE CHAIRMAN: Okay.

11 DR MCGLEENAN: With regard to the Family Liaison Officer,
12 that was a request made by the families. Certainly our
13 instructions are from Adam's family that in light of
14 the representation that they now have, a Family Liaison
15 Officer will be superfluous and they do not see the need
16 for that.

17 A further point, Chairman, which you did not touch
18 upon is the issue of interested parties.

19 It is plain from the written submissions that have
20 been received and published on the website that there
21 are already a multiplicity of parties who consider
22 themselves to be interested parties. Our instructions
23 on this point is that there may well be a need for some
24 mechanism or method of determining who is in fact
25 an interested party, because there are those who clearly

1 have an interest in the workings of this Inquiry for
2 a variety of reasons. Some of them may be only
3 tenuously linked to the unfortunate deaths which we are
4 considering. Our submission at this stage will be to
5 reflect upon the possibility of using the public law
6 standard of examining whether or not a particular person
7 has a sufficient interest in the proceedings in order to
8 be designated an interested party.

9 THE CHAIRMAN: Thank you.

10 DR MCGLEENAN: One final point arising out of the written
11 submissions of others; I believe it is in the written
12 submission advanced on behalf of
13 the Chief Medical Officer. Reference is made to
14 the fact that the Department of Health has retained its
15 separate representation. However, certainly on behalf
16 of Adam's family, they were somewhat surprised to see
17 that there was no submission on behalf of the Department
18 of Health. If there could be clarification as to
19 whether they have sought to become an interested party,
20 or as to whether or not the Inquiry can deem a body such
21 as the Department of Health to be an interested party.

22 THE CHAIRMAN: Well, the Department was sent the proposals
23 in December, like many other people. The Department did
24 not give a written response. The Department is,
25 however, represented today. I think it is inevitable

1 that if there is a formal definition of interested
2 parties, given the sorts of general issues raised,
3 the Department must be an interested party.

4 DR MCGLEENAN: Chairman, those are my oral submissions in
5 the light of your written statement.

6 THE CHAIRMAN: Thank you very much. Mr McAteer.

7 Representation by MR McATEER

8 MR McATEER: Sir, my name is McAteer. I am instructed on
9 behalf of the Crawford family, instructed by
10 McCartney & Casey.

11 There are a number of issues which arise which I can
12 deal with reasonably quickly and without replicating
13 much of what Dr McGleenan has said, and without
14 replicating much of what you have said and what appears
15 in the responses which have been filed.

16 In relation to the expert evidence that Dr McGleenan
17 raised, it may be necessary -- you asked a question,
18 sir, whether or not Dr Sumner, who will be giving
19 evidence, might ease our fears. That may well be right
20 to an extent, although there may be issues which require
21 clarification or explanation during the course of this
22 Inquiry, and which therefore the families may need
23 access to the experts or to other experts who can
24 clarify or explain certain points that may arise.

25 You raised a question regarding the Inquiry

1 personnel. On behalf of the Crawford family, we accept
2 your assurances, but would ask the Tribunal to bear in
3 mind that there is a level of distrust between
4 the families and the Department. Certainly we would
5 keep that under review. But certainly we accept your
6 assurances in that regard.

7 As everybody is aware, there is an ongoing police
8 investigation touching upon the death of Lucy Crawford.
9 Therefore the family, mindful of that investigation, and
10 mindful of the submissions made on behalf of the PSNI of
11 14th January, are quite content that nothing be done to
12 prejudice or to hinder that ongoing police
13 investigation. Effectively, that would mean that
14 the statement-gathering in relation to the events
15 touching upon Lucy's death would not happen, and that
16 oral hearings certainly could not take place.

17 But I see no reason at this stage why certain
18 documentation cannot be received, for example Coroner's
19 papers and things of that nature, so as not to unduly
20 retard progress of that portion of the Inquiry. But
21 we are certainly mindful of the Inquiry --.

22 Would the Tribunal consider, then, when the police
23 inquiry is completed and when the DPP have finished
24 their deliberations, the Inquiry might like to obtain
25 copies of their respective files. Obviously

1 the submission on behalf of the police allows really for
2 some slippage in terms of time. I would respectfully
3 suggest that the timetable for that investigation be
4 kept under review by the Tribunal, and it may well be
5 that further slippage may well be occasioned if
6 the Department decides to pursue any prosecutions in the
7 matter, and that will obviously then retard the progress
8 of the Inquiry into Lucy's death.

9 THE CHAIRMAN: That becomes a real problem if there is
10 a prosecution, because if the DPP gets the file in
11 mid-April, and even if he is content that he does not
12 need any additional statements or clarifications,
13 whatever, he then has to make up his mind. Even if he
14 makes up his mind, supposing he decides in a couple of
15 months and there is a prosecution, that takes it well
16 into next year.

17 MR McATEER: It does and therefore it throws your initial
18 timetable off, I would suggest.

19 THE CHAIRMAN: One option then is for the Inquiry to report
20 on all the other issues, rather than hold back the
21 complete report until we can look at Lucy's death.
22 Another option is the proposition which has been
23 advanced about approaching the Attorney General. It
24 would be difficult, I suspect, if you were representing
25 a defendant in a criminal case like that, you would be

1 very concerned about an Inquiry being held in public at
2 the same time as you are coming to trial.

3 MR McATEER: Obviously we can revisit that in due course
4 once we know the scope of the investigations and whether
5 or not there may be a prosecution; and the Terms of
6 Reference to, for example, the Attorney General could be
7 considered, et cetera. So I think we need to reserve
8 our position on that. But at this stage, we are mindful
9 of the police's request and do not wish to do anything
10 which would hinder that investigation.

11 Another matter which arose, sir, was the placing of
12 documentation on the website and a possible redaction of
13 certain pieces of documentation, personal documentation.
14 Might I suggest that the legal representatives of
15 the interested parties receive copies of
16 the documentation prior to it being published on
17 the web? Because it may well be that redactions may be
18 proposed by certain interested parties, not just
19 the families but by other parties, and therefore
20 publication to the interested parties' legal teams may
21 well be advantageous.

22 THE CHAIRMAN: You are asking for hard copies of everything?

23 MR McATEER: It does not matter whether it is hard copies or
24 copies by CD-ROM, or whatever is available.

25 THE CHAIRMAN: Let me give you an example. For instance,

1 there are some documents we have already seen which
2 refer not only to, say, Lucy or Adam or Raychel, but
3 which might refer to other patients. We would propose
4 to remove the names of those other patients and refer to
5 them as A, B, C or D for instance. So that you would
6 know from those documents that there has been
7 a redaction and you would know what that is. That,
8 I presume, is not controversial.

9 MR McATEER: No.

10 THE CHAIRMAN: We have also asked each of the Trusts to
11 identify the various people who were involved at
12 the various stages. So, for instance, in Lucy's case
13 we have asked for the names of all the people who were
14 involved in her medical care, and we have asked for all
15 the names of all the people who were involved in
16 the various inquiries and reviews. In each case,
17 whether Lucy's or any other, we have asked that if that
18 person is no longer employed by the relevant Trust,
19 we have asked for their last known address.

20 We would not propose to put such an address or phone
21 number on the website.

22 MR McATEER: No, I accept that.

23 THE CHAIRMAN: When I am talking about redaction, that is
24 what I am talking about. I presume that you do not
25 require that.

1 MR McATEER: No, no. I do not disagree with that. But
2 there may well be issues which do arise during
3 the course of the Inquiry which may require comment. So
4 that the legal teams receiving advance notification of
5 the documents that are proposed to be posted on the
6 website may well be advantageous, should certain issues
7 arise which ought to be kept under review.

8 THE CHAIRMAN: I will consider (a) whether that is necessary
9 and (b) whether it is feasible.

10 MR McATEER: Right. In relation to venue, on behalf of
11 the Crawford family, we are entirely content that it is
12 one venue.

13 THE CHAIRMAN: Thank you.

14 MR McATEER: In relation to the allocation of senior
15 counsel, the suggestion came from my instructing
16 solicitors, Messrs McCartney & Casey, and we are quite
17 happy at this stage that there is no particular conflict
18 arising between the families. Obviously, should one
19 arise in due course, it is something which would have to
20 be revisited, but we are content with the allocation as
21 suggested.

22 Unless there is anything further ...

23 THE CHAIRMAN: I presume that you did not comment on venue,
24 because you are assuming it is Belfast, Dr McGleenan?

25 DR MCGLEENAN: Is that not settled?

1 THE CHAIRMAN: Okay, thank you very much.

2 MR McATEER: Sorry, one thing before Mr Coyle makes his
3 submissions. I omitted to mention the Family Liaison
4 Officer. Again, we see no need for it in
5 the circumstances.

6 THE CHAIRMAN: That is very helpful, thank you. Mr Coyle.

7 Representation by MR COYLE

8 MR COYLE: My name is Coyle. I am instructed by
9 Desmond J Doherty for the Ferguson family. To commence
10 with a general observation, sir, and to state a plain
11 fact, what the Ferguson family seek is what we believe
12 and know the Inquiry itself seeks, which is the truth,
13 plain and simple, in all its uncomfortable and perhaps
14 complicated nuance. What they have had experience of to
15 date has been an inaccurate release of information to
16 them; and they trust and hope that the Inquiry will
17 attribute responsibility for Raychel's death and for
18 misinformation that was given to them, and share your
19 view that the work of you and your team will ensure that
20 there is no repetition of the type of tragedy that
21 they have endured and continue to endure with the other
22 families; and to ensure that when there is a difficulty
23 or an unfortunate occurrence, that there is a supply of
24 accurate information at an early stage to those who are
25 grieved.

1 My learned friends have made a number of
2 observations, most of which I share, sir, so that means
3 I can be even briefer than I had intended.

4 In terms of the Attorney General's reference, one
5 matter we invite you to consider is the assurance which
6 we have invited you to seek, as we appreciate it
7 encompasses the evidence of only that particular
8 witness; in other words that a witness who gives
9 evidence will not incriminate themselves, but that
10 the assurance does not, in our experience, extend to
11 other witnesses who would come before you, given sworn
12 evidence, that the police or the Director of Public
13 Prosecution might well look at that sworn evidence and
14 reflect upon it. We see the potential value of
15 the Attorney General's assurance to get to the truth,
16 plain and painful as it may be.

17 As regards the pending criminal proceedings as
18 regards Lucy, the Ferguson family's attitude is echoed
19 by your opening, sir, that the sensible timescale that
20 you have made out, if I may say so, allows for
21 the continuation of the Inquiry's work behind the scenes
22 in the gathering of information. Should there be
23 a criminal trial which might elongate matters, that
24 timetable might have to be revisited, but none of us
25 have a crystal ball at this juncture.

1 In terms of access to experts, Dr McGleenan has made
2 observations which we share. We may make one further
3 suggestion, sir, which we hope may assist, mindful of
4 the difficulty which you have isolated in terms of
5 identifying experts who are independent, and that is
6 that there may be a value in peer review: that if
7 you have an expert, you and your team may be assisted in
8 the confidence with which that information is received
9 by the interested parties, if -- why one has a primary
10 expert in each field, that there are others, perhaps in
11 other jurisdictions, in the United States or
12 Australasia, who review the expert advice you are
13 getting and therefore everyone is satisfied that it is
14 of premium quality.

15 As regards the Family Liaison Officer, we echo
16 Mr McAteer's submissions to you. There are other deaths**
17 which my instructing solicitor, Mr Doherty, has been
18 notified of, and subject to those persons who have
19 contacted him agreeing, we will of course release
20 details of those to you as they become available to us
21 so that you are fully informed of any wider
22 ramifications.

23 THE CHAIRMAN: Could I just say, Mr Coyle, and maybe
24 I should have made it clear earlier in relation to other
25 deaths: one of my concerns is that the point of this

** see addendum on page 59

1 Inquiry could potentially be undermined if it runs on
2 and on and on looking at more and more deaths. Because
3 on one view we are here to look at really two things:
4 the first thing is the three particular deaths of Adam,
5 Lucy and Raychel; and the second thing is the more
6 general issue about lessons being learned, how hospitals
7 learn, how they spread information and how lessons are
8 learned in particular from Coroner's inquests.

9 If we get involved in investigating a whole series
10 of deaths, the report could be further and further
11 delayed. It seems to me that to the extent that this
12 report will be valuable generally and of benefit to
13 the families and others, a report in two or three years'
14 time, because we have got caught up in looking at five
15 or ten or fifteen more deaths becomes less valuable
16 perhaps as time goes on, and there may be a point at
17 which it is more prudent to say: although that is
18 another tragic death, although that is potentially
19 another avoidable death, it does not add to the point of
20 the Inquiry.

21 Do you disagree with that?

22 MR COYLE: I do not disagree with that at all, sir. We are
23 acutely aware of that. But it would be improper of us
24 in assisting you and your team if we became aware of
25 circumstances that might illuminate issues which are

1 squarely before you. But we do not wish to have
2 an inquiry into every death or serious injury, and there
3 are serious injury cases that Mr Doherty has become
4 aware of, or people have approached him. But it is for
5 you and your team, sir, to decide whether it is a useful
6 line of inquiry for you to pursue and the extent to
7 which you pursue it. We would not wish to fail you by
8 not alerting you to it.

9 THE CHAIRMAN: Thank you.

10 MR COYLE: There are complaints to
11 the General Medical Council, and Mr Doherty has recently
12 possessed the civil litigation file. Subject to you,
13 sir, it would seem perhaps more helpful if my
14 instructing solicitor was to write to you and set out
15 the details of the status of both the civil litigation
16 file and supply the pleadings to you so that you are
17 informed of the progress and of the General Medical
18 Council's attitude, rather than to recite it here and
19 now.

20 THE CHAIRMAN: I think Mr Doherty had promised in
21 correspondence that when that file was available,
22 because he was taking it off other solicitors, that that
23 would be provided to us.

24 MR COYLE: That has very recently happened. He, of course,
25 will honour the undertaking given to you.

1 THE CHAIRMAN: Thank you very much.

2 MR COYLE: I do not think I have anything further to add to
3 you. I am grateful for the time you have given.

4 THE CHAIRMAN: Thank you. Could I invite
5 the representatives of the families to withdraw from
6 the table.

7 Then the sequence, to speed things along: Mr Lavery,
8 could I invite you to move to that table, and Mr Good
9 for Sperrin Lakeland, and Mr McAllinden. That would
10 help. Thank you. Mr Lavery.

11 Representation by MR LAVERY

12 MR LAVERY: My name is Michael Lavery, I am Queen's Counsel,
13 and I am instructed by Messrs Brangam & Bagnall on
14 behalf of the Royal Group of Hospitals with
15 Mr MCW Lavery, who is a barrister. The first thing that
16 I would like to do on behalf of the Royal Group is to
17 associate ourselves fully with the remarks of sympathy
18 that you made to the families of these unfortunate
19 children. Nobody could overstate the tragic loss that
20 they have suffered. The Trust is acutely aware of this,
21 and can only continue to extend their sympathy to them.
22 Perhaps if I can assure both the families and the Trust,
23 and you, sir, that the Trusts will do all in their power
24 to cooperate fully with this Inquiry. They share fully
25 the object of the Inquiry to get to the facts behind

1 these deaths and to see what lessons can be learned.
2 They see themselves as an organisation which endeavours
3 to provide the best health services it can in a caring
4 way to the people of Northern Ireland. They are forever
5 willing to listen to anything that may be said and to
6 attempt to improve these services.

7 May I add also on the point that you made recently,
8 and that is the importance of having this Inquiry done
9 as expeditiously as is possible, consistent with its
10 purposes. Because as well as the reasons which you
11 gave, it must be remembered too that there are other
12 human beings involved in this matter. For the member of
13 a caring medical profession, to lose a patient is always
14 a traumatic event. The trauma is compounded and
15 the burden is increased greatly if there are allegations
16 of wrongdoing of some sort, and they too are anxious
17 that this matter should be brought to an end as soon as
18 possible, in order that they at least may know what
19 their circumstances are.

20 With regard to the procedures, we welcome your
21 statement today. We note that you have addressed
22 the reservations that we had expressed in our letter
23 with regard to cross-examination. We accept fully
24 the observations that you made about the natural
25 restrictions that will be accepted by those involved in

1 the cross-examination, not to be repetitive or vexatious
2 or to prolong them. We hope that that will assist in
3 the speedy winding-up of the Inquiry.

4 May I finally just make one final observation, and
5 that is that, as I have said, there are a lot of
6 individuals involved in this who are carrying a burden;
7 some of them have been subjected to intense attention
8 from the media, which is of course within the right of
9 media, to pursue these things in a democratic society.
10 But all I would ask people to take into account is that
11 the proper place for the determination of these
12 questions is in this Tribunal. You have the assurance
13 that my clients and no doubt all the other bodies
14 involved in this will leave no stone unturned to further
15 the Inquiry. I just conclude by repeating once again,
16 or by expressing once again our sympathy to the families
17 of these children.

18 THE CHAIRMAN: Thank you very much. Mr Good.

19 Representation by MR GOOD

20 MR GOOD: Mr Chairman, my name is Patrick Good. I am
21 a barrister appearing on behalf of Sperrin Lakeland
22 Health & Social Care Trust, instructed by Mr Maginness,
23 the Director of Legal Services of the Central Services
24 Agency.

25 Can I first say that we would wish to be associated

1 as a Trust with the expressions of sympathy to
2 the families. In furtherance of that, we reiterate our
3 commitment as expressed in correspondence to you, sir,
4 to assist the Inquiry in every reasonable way we can in
5 the objectives which you have outlined in your proposals
6 and your statement.

7 Just in terms of the procedural aspects, we note
8 that you have sought to strike a delicate balance
9 between the continuing PSNI inquiry into Lucy's death
10 and the events surrounding that, and the pursuit of your
11 own objectives in this Inquiry. We appreciate the point
12 that that must be kept under fairly close review in
13 the coming months as that investigation proceeds.

14 One area that we had raised in our correspondence
15 with you, sir, was the ability of those persons or
16 bodies who might be the subject of criticism to perhaps
17 rebut or to come back on those potential criticisms. We
18 note that you have adopted a position whereby, while not
19 accepting rebuttals in what has been the fashion up
20 until now, you are proposing to deal with that, I think,
21 by way of oral representations. Could I enquire whether
22 that will be as of right that those persons and bodies
23 will be entitled to that? If so, naturally we would be
24 satisfied with that course.

25 THE CHAIRMAN: If there is criticism in the ultimate report,

1 nobody will be criticised without first having had
2 a chance to deal with the point of criticism. If we can
3 organise the Inquiry in such a way that that criticism
4 is suggested to them when they are giving their oral
5 evidence, that would be the simplest way to do it. But,
6 as you know as well as I do, a point of criticism may
7 emerge from the evidence of a later witness or from
8 reconsideration on the part of the Inquiry. In that
9 event, we would in some way recall the witness or
10 reconvene the oral hearing in order for the witness,
11 having been put on notice of the point, to be given the
12 chance to deal with it.

13 MR GOOD: I am grateful for that, sir. I have nothing
14 further to add in terms of the Sperrin position.

15 THE CHAIRMAN: Thank you very much. Mr McAllinden.

16 Representation by MR McALLINDEN

17 MR McALLINDEN: Mr Chairman, my name is Gerald McAllinden,
18 and I am a barrister who is instructed on behalf of
19 Altnagelvin Hospital's Health & Social Services Trust by
20 the Central Services Agency.

21 Firstly, Mr Chairman, I wish to be associated with
22 the comments of my learned friend Mr Lavery in relation
23 to the expression of deep-felt sympathy on behalf of all
24 the doctors and nurse nurses in the Trust in relation to
25 the tragic death of Raychel Ferguson.

1 In relation to the procedural responses which
2 you have set out this morning, the Trust welcomes your
3 proposals in relation to the right to submit
4 supplementary statements arising out of any issues
5 obtained from or detailed in other statements submitted
6 to the Inquiry. The Trust also welcomes your response
7 in relation to the issue raised by the Trust in respect
8 of the right of rebuttal by oral evidence arising out of
9 any specific criticism or potential criticism of any
10 witness or body in the Trust.

11 Finally, Mr Chairman, the Trust does welcome this
12 Inquiry in its entirety and in its stated aim to get to
13 the truth in relation to these three tragic deaths. It
14 is hoped by the Trust that the full investigation of all
15 the facts in this case will clearly show that there is
16 no substance whatsoever to any claim that there was any
17 misinformation given by any servant or agent of
18 the Trust to the family of Raychel Ferguson in relation
19 to her death, and also that this Inquiry will further
20 establish that it was the staff at Altnagelvin hospital,
21 following the death of Raychel Ferguson, which brought
22 this issue of hyponatraemia directly to the attention of
23 the Chief Medical Officer of the Department of Health.

24 I have no further observations to make at this stage.

25 THE CHAIRMAN: Thank you for your assistance. Gentlemen,

1 could I invite you to step back. Could I ask you, I do
2 not think there is any representative from
3 the Western Health and Social Services Board to make
4 a legal submission? I take it from the silence that
5 there is not. Is there anyone here from Arthur Cox?
6 There is. Do you want to say anything? You do not.
7 Thank you very much.

8 Is there a representative of Thompsons McClure?
9 Mr McQuillan. If you would not mind taking a seat.

10 Representation by MR MCQUILLAN

11 MR McQUILLAN: My name is Ciaran McQuillan of
12 Thompsons McClure Solicitors. I am instructed by UNISON
13 Trade Union on behalf of Ms Brid Swift.

14 THE CHAIRMAN: Thank you.

15 MR McQUILLAN: The only two brief comments I would make is
16 first of all, Mr Chairman, I would welcome your
17 recognition of the potential dangers of the overlap
18 between the police inquiry that is ongoing and this
19 Inquiry and the steps that you have taken to address
20 that in timetabling. The only one issue that was raised
21 by Dr McGleenan was on the matter of interested parties,
22 and I understand the Inquiry will be making a decision
23 on that and there will be a definition. Obviously there
24 will be witnesses before the Inquiry who could not be
25 deemed to be interested parties and others who clearly

1 would be. We look forward to the Inquiry's decision on
2 that, and reserve our position depending on that
3 decision.

4 THE CHAIRMAN: Can I ask, you have been approached by
5 Ms Swift as a member of UNISON?

6 MR McQUILLAN: That is right.

7 THE CHAIRMAN: Is it anticipated that there will be other
8 UNISON members here involved?

9 MR McQUILLAN: I am aware of one other member who may be
10 a witness to the Inquiry; I am not sure at this stage.
11 But at this stage, that is all I am aware of: two
12 members.

13 THE CHAIRMAN: Is that also from Sperrin Lakeland?

14 MR McQUILLAN: That is also from the Sperrin Trust.

15 THE CHAIRMAN: Okay, thank you very much indeed.

16 MR McQUILLAN: Thank you, Chairman.

17 THE CHAIRMAN: Is there a representative from
18 the Medical Protection Society here? No. Is there
19 a representative of the Police who wants to say
20 anything? No. Is Dr Deeny here? After 2 o'clock.
21 Is there any other representative who wants to say
22 anything before I break? We have one person coming at
23 2 o'clock, Dr Deeny MLA, but it appears to me from
24 the list of people that we anticipated to hear

1 submissions from, everyone has been heard. If that is
2 the case, I will stop until 2.15 in case there is any
3 delay on Dr Deeny's part. After Dr Deeny makes his
4 representations about procedures, and procedures only,
5 it looks as though this hearing will be completed. But
6 we will deal with that after 2.15. Thank you very much.

7 (12.30 pm)

8 (The short adjournment)

9 (2.45 pm)

10 THE CHAIRMAN: Ladies and gentlemen, we have been waiting
11 for some time to allow Dr Deeny to arrive. I understand
12 that he is on his way but he will not be here for
13 a few minutes. Of course, anyone who wants to stay for
14 Dr Deeny is welcome to do so. There are a couple of
15 bits and pieces to be tidied up from this morning.

16 I understand that there is a level of concern, that
17 perhaps reflects the sensitivities of the Inquiry, which
18 virtually everybody has recognised this morning, but
19 that there is a level of concern about some comments
20 made about whether somebody was at fault, and somebody
21 else was hoping that the Inquiry would clear them of any
22 allegations of being at fault.

23 I think on reflection, since today's hearing is
24 about procedures and not who was at fault and who was
25 not at fault, it might perhaps have been more

1 appropriate to leave comments on those issues to a later
2 stage. That is particularly what the oral hearing will
3 address; no doubt before that, the witness statements
4 will address it. At least I am happy to note that
5 the references of that type were kept to a minimum. For
6 the fact that they were kept to a minimum, I am grateful
7 to the parties for what they said. I do not think
8 I need to spend any longer on that point.

9 This morning, I was not being deliberately
10 discourteous, but I omitted, going through the various
11 representatives, to identify specifically whether there
12 were any representations to be made on behalf of either
13 the Department or the Chief Medical Officer.

14 Mr Kelly, do you have anything specifically from
15 the Department?

16 MR KELLY: I do not think there is anything I can usefully
17 add.

18 THE CHAIRMAN: Thank you very much. Mr Anthony?

19 Representation by MR ANTHONY

20 MR ANTHONY: Andrew Anthony, solicitor on behalf of
21 the Chief Medical Officer. I would obviously reiterate
22 the comments from the early representatives in relation
23 to the sympathy towards the families and obviously
24 the serious nature of the Inquiry.

25 Sir, one point which perhaps may be a matter for

1 clarification is in relation to the use of expert
2 assessors. I am not aware whether it is proposed that
3 expert assessors will provide written reports, and
4 whether those written reports will be made available,
5 and when they express opinions to yourself and your
6 colleagues, whether those opinions will be made
7 available. I think the position is really that it would
8 certainly in my respectful submission be helpful to all
9 parties if that was made available to them, and
10 certainly it would be of assistance to the open and
11 transparent nature of an Inquiry if opinions which you
12 were proposing to rely upon were known to interested
13 parties.

14 THE CHAIRMAN: Have you any other point to make?

15 MR ANTHONY: No, sir.

16 THE CHAIRMAN: Let me deal with that, because I think there
17 is a general concern about experts.

18 It will not come as a surprise to everyone that
19 I require some expert advisors, because I simply do not
20 have the knowledge to make decisions on areas like
21 paediatric anaesthetics, paediatrics, health service
22 management or nursing care. I had envisaged that
23 the role of the expert advisors would be to review
24 the documents which are provided, then to review
25 the witness statements, and then to advise me on issues

1 which concern them arising from those. It would then be
2 my intention that those concerns would be put to
3 the various witnesses during oral questioning.

4 Now, by that time, what we will have available to us
5 will be the views of various experts which are already
6 in the papers, for instance the evidence given by
7 Dr Sumner at the various inquests, the written reports
8 of doctors who advised for the purposes of civil
9 litigation, and within Northern Ireland the doctors
10 whose work lead to the 2002 Guidance on Hyponatraemia.

11 Now, I have to be alert to the fact that there can
12 be a range of opinions on various issues, so that the fact
13 that one expert takes one view does not make the view of
14 a different expert in itself unreasonable. But I would
15 hope that the guidance which was issued in 2002 might be
16 regarded as a baseline, because it was issued by
17 the working party established by the Department in which
18 the CMO herself was active. But from the perspective of
19 the families, that guidance was as I understand it
20 endorsed by Dr Sumner when he gave his evidence at
21 Lucy's inquest. So, as of 2002, I anticipate that there
22 should be little room for debate, at least on the areas
23 which are covered by the guidance.

24 If, however, it is the case for instance that
25 representations are made, perhaps for the sake of

1 argument, by one or more of the hospitals that whatever
2 guidance was in place from 2002 was not necessarily
3 the practice or the appropriate standard in, say, 1995,
4 when Adam died, then there may have to be a debate about
5 that. But we may have as a starting point for that
6 debate the later guidance.

7 If the experts who are advising me raise any
8 additional or different issues, I will ensure at
9 the very least, through the questioning of
10 Ms Anyadike-Danes, that those issues are raised. If
11 I need to take it further than that, if we need to put
12 any particular points which they have open for debate,
13 then we can try to arrange to do that. Quite how that
14 will be done is something we can consider perhaps at
15 a later stage.

16 MR ANTHONY: I am grateful for those indications.

17 THE CHAIRMAN: Now, save for Dr Deeny, is there anything
18 else that needs to be dealt with today?

19 Okay, well then unfortunately I will have to invite
20 you to break for a couple of minutes. Hopefully this
21 will not be take long. Thank you.

22 (2.55 pm)

23 (A short break)

24 (3.15 pm)

25 THE CHAIRMAN: Dr Deeny, you are very welcome. My name is

1 O'Hara, I am the Chairman of the Inquiry. I just want
2 to confirm with you, doctor, that you realise that what
3 we are talking about today are the procedures which
4 the Inquiry will follow in terms of gathering together
5 written documents, then witness statements, and finally
6 moving on to oral evidence. Okay?

7 DR DEENY: Yes.

8 THE CHAIRMAN: And you are familiar with the Terms of
9 Reference of the Inquiry?

10 DR DEENY: Yes.

11 THE CHAIRMAN: In correspondence with me you have raised
12 a number of issues about the new hospital being sited in
13 Fermanagh rather than Tyrone, which I think I have to
14 tell you are issues which occur to me as being beyond
15 the remit of this Inquiry. But what I am here to listen
16 to you talk to me about is the issue of the Inquiry's
17 procedures, and invite you to say what you want,
18 restricting yourself to the issue of the procedures of
19 the Inquiry.

20 Representation by DR DEENY

21 DR DEENY: Thank you, Mr O'Hara. You are quite right,
22 I understood that yesterday and today -- today's events
23 were concerning procedural matters. What I would say to
24 you: I have the Terms of Reference in front of me here,
25 and I know the Inquiry itself will deal with all

1 the issues of concern. All I will say -- I have
2 a submission here, but really it is evidential,
3 therefore it is not appropriate for today.

4 What I would say is that this is not about where
5 a hospital is built; this is about the behaviour of people
6 in health management and the Health Service that I have
7 been working in for almost 25 years. It actually
8 impinges on that.

9 Today I would like to say that I would like to
10 contribute to this Inquiry.

11 THE CHAIRMAN: Doctor, I will welcome any contribution which
12 in my view falls within the Inquiry's Terms of
13 Reference. You have indicated that you have
14 a submission. What I will do is take that submission
15 from you, but I understand from what you are saying that
16 it is probably not a submission for me to deal with
17 today because it is not on procedural issues.

18 DR DEENY: I am also aware of the fact that the PSNI have
19 asked for evidential material not to be provided to
20 the Inquiry until such time as they have carried out
21 their research and conducted their interviews. Is that
22 correct?

23 THE CHAIRMAN: They have asked me not to continue with
24 the investigation into the circumstances of Lucy's death
25 pending the outcome of their investigation. But

1 I already have documentation from Sperrin Lakeland,
2 among others.

3 DR DEENY: I am here, Mr O'Hara, because I am very
4 concerned. There is a serious issue of concern about
5 healthcare management in my area, which indeed will
6 show -- it has been going on for some years, and did in
7 a major way contribute to the death of one particular
8 individual.

9 I would say that only for two particular people, ie
10 Stanley Millar and Mr Leckey, the Coroner, only for
11 those two individuals -- the actions of this group of
12 healthcare managers, which to me has been beyond the law
13 for some years. That is my opinion, that is my opinion.

14 THE CHAIRMAN: Dr Deeny, whatever your opinion is, it is not
15 a matter for today, which is about procedures. Before
16 you arrived I referred to the fact that, whatever
17 people's views are, whether they are right or wrong,
18 that is a matter that I will have to sort out as this
19 Inquiry proceeds.

20 Today, for certain, I am not going to get involved
21 in these issues, and I am certainly not going to allow
22 you to cover ground which I did not allow anyone else to
23 cover, by making assertions and allegations against
24 various people. That is not today's business. Whether
25 it is in fact part of the Inquiry's business is

1 something which I will form a view on after I read your
2 submission and by reference to the terms of the Inquiry.
3 Because one thing I cannot do, because it is simply
4 beyond the scope of this Inquiry, is to conduct
5 a general review into Sperrin Lakeland going back some
6 years. But of course I will take your paper --

7 DR DEENY: You talk about all issues of concern and all
8 related matters; is that not a part of the Inquiry, all
9 issues of concern? All the issues of concern have led
10 to this tragic -- this whole series of events. Surely
11 they are issues of concern.

12 THE CHAIRMAN: I will look at your paper on that, and I will
13 then decide.

14 DR DEENY: On procedural matters, Mr O'Hara, can I take it
15 that I can contribute to your Inquiry?

16 THE CHAIRMAN: I will welcome contributions from anybody who
17 has contributions to make on the issues which I decide
18 are within my Terms of Reference. If I am satisfied
19 from looking at your paper that you have a contribution
20 to make in that, I will invite you to provide whatever
21 documents you have, I will then invite you to make
22 a written statement, and, if required, I will then
23 invite you and a number of other people to give oral
24 evidence. Okay?

25 DR DEENY: What happens at this particular stage -- what is

1 the procedure as regards the Police investigation? Does
2 it take place first in relation to the unfortunate death
3 of Lucy Crawford?

4 THE CHAIRMAN: You are in the unfortunate position, we all
5 have the advantage over you in that you, for a good
6 reason, were not able to be here this morning. We have
7 discussed that position this morning, and I think
8 the position which I have to finalise is likely to be
9 that certainly at this stage the Inquiry will not
10 proceed into the investigation of the circumstances
11 surrounding Lucy's death and the immediate aftermath of
12 that. That will be kept under review as the weeks and
13 months go on to see what progress the Police have made,
14 and the DPP, and how that ties in with the progress of
15 the Inquiry.

16 Rather than go over everything that happened today,
17 I think I can indicate that a transcript of what has
18 taken place today will be available probably at some
19 point tomorrow on the Inquiry's website, and you will be
20 able to catch up on it. But I hope you understand that
21 it is not terribly productive for anybody here to sit
22 and for me to go through with you the various issues
23 which were discussed this morning. But, in general
24 terms, it looks almost certain that the Inquiry into
25 Lucy's death will be deferred for the moment, but will

1 be kept under review.

2 DR DEENY: Thank you. One final question. On the second
3 page of the Minister's statement, it does say that:

4 "In addition, Mr O'Hara will have the discretion to
5 examine and report on any other relevant matters which
6 arise in connection with the Inquiry."

7 Do I take that to be correct?

8 THE CHAIRMAN: Yes.

9 DR DEENY: Thank you.

10 THE CHAIRMAN: Ladies and gentlemen, that brings an end to
11 today's proceedings. I will see the transcript I think
12 at some point tomorrow.

13 Dr McGleenan, you indicated that you might be
14 putting in a paper to us about expert evidence; is that
15 right?

16 DR MCGLEENAN: I do not think I suggested a paper, but
17 we will reflect on our position and correspond.

18 THE CHAIRMAN: This does not apply specifically to you but
19 to everybody. We want to finalise our position and
20 issue it as soon as possible. If anybody does have any
21 reflections or further observations on the events which
22 have arisen today and points which have emerged from that,
23 could I impose a deadline of, say, next Wednesday for
24 that to be done? Wednesday 9th. Following that,
25 we will start working on what we already have.

1 Following that, we will try to have the next paper on
2 procedures by the end of the following week, which will
3 be the 18th. We will try to have it circulated at least
4 by Friday 18th.

5 What I do want everybody to understand, a point
6 I made earlier on, is that the various possibilities
7 which are clear to us now about procedure, they might
8 turn out in three or six or nine months to be
9 inappropriate or to change in some way. What is decided
10 now will not necessarily cover every eventuality which
11 might arise in the months ahead. These will be kept
12 under review and, if it is appropriate, changes will be
13 made, but not without the families and the various
14 interested parties and the public generally being
15 notified.

16 Thank you for your attendance today.

17 (3.25 pm)

18 (The hearing concluded)

19 **Addendum to transcript -**

20 After the oral hearing the Inquiry was notified by Desmond J
Doherty & Co, Solicitors for the Ferguson family, that while
the transcript was correct a mistake had been made in the
course of submissions on behalf of the family. At P37 the
reference to 'other deaths' should be replaced by "other cases
in which serious injury was caused", Mr Doherty had not been
notified of other cases in which deaths had occurred.

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