

**THE INQUIRY INTO HYPONATRAEMIA-RELATED DEATHS**

**PROGRESS HEARING**

**ON**  
**WEDNESDAY, 9TH MARCH 2011**

**AT**  
**BANBRIDGE COURTHOUSE**

**CHAIRMAN: MR JOHN O'HARA QC**

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**APPEARANCES**

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**RAYCHEL FERGUSON**

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1 At 11.00:

2 THE CHAIRMAN: Ladies and gentlemen, what I intend to do is to set out, to provide  
3 some more information, and then I will invite observations or representations in  
4 turn from the representatives of the families and then of the public bodies.

5 Over the last few months, in particular over the last few weeks, we have  
6 copied to all of the various interested parties and made available a series of  
7 documents involving my exchanges with the Minister, his response in February  
8 and then, later in February, my letter to you all, together with an update of what  
9 the Inquiry has been doing over the last number of years.

10 What I want to do this morning to start with is to stress what the  
11 continuing relevance and importance of the Inquiry is. It seems to us that there  
12 are three particular strands to the work of the Inquiry - the first is the investigation  
13 into the circumstances of the individual deaths of the children with whom the  
14 Inquiry is primarily concerned. The second strand is what lessons were learned or  
15 should have been learned and weren't learned from the deaths as they occurred,  
16 and what lessons have been learned or should have been learned sooner, if that's  
17 the case, about hyponatraemia. The third broader element is about learning  
18 lessons within the Health Service generally in terms of governance and  
19 communications and co-operation, because although the Inquiry is focusing on  
20 deaths in Northern Ireland, this is part of the UK Health Service and it actually  
21 shouldn't matter, it seems to us, whether a death occurs in Cornwall or Aberdeen.  
22 If there are lessons to be learned those lessons should be carried over throughout  
23 the Health Service not just in Northern Ireland but throughout the UK.

24 In terms of what the Inquiry has been doing since 2008, you will have  
25 seen from the paper which I sent to the Minister on 20th October, and a further  
26 paper which I sent to him in November, what the Inquiry has been doing. I  
27 understand and acknowledge that it isn't generally realised in this Inquiry, as with  
28 most Inquiries, there is a huge amount of work which is done by way of  
29 preparation which is not obvious to the public and sometimes not obvious to the  
30 families and the public bodies who are involved. I hope that we have balanced the

1 picture a bit by setting out what work has been going on and there is now a greater  
2 degree of appreciation. Because, as a result of the extensive preparatory work  
3 which has been conducted, the Inquiry is moving closer and closer to the public  
4 hearings.

5 The Minister's letter of 17th February, which you all should have,  
6 acknowledges the continuing work which the Inquiry has to do, but also, perhaps  
7 understandably in the current economic situation, effectively says the Inquiry has  
8 to be complete in terms of having a report with the Minister by summer of 2012.  
9 He has also put a limit on the budget which was less than we had asked for. To  
10 some extent, in fact to quite an extent, the savings which the Minister has required  
11 can be made by bringing the Inquiry to an end sooner than had been initially  
12 requested, and also there are other areas of saving. But in my letter to you of 25th  
13 February I have advised on the fact that, in effect, the public hearings, which will  
14 be conducted here, have to end by the end of March 2012. For that to happen the  
15 hearings will have to start towards the end of this year and therefore what I am  
16 now announcing this morning is that we intend, unless for some reason it becomes  
17 impossible and I don't anticipate that it will, but we intend that the public hearings  
18 will start in this venue in the week commencing 7th November. We will set aside  
19 an initial week for the Inquiry to be opened and in the following week, which is  
20 the week beginning 14th November, we will call witnesses to give evidence about  
21 the circumstances in which Adam died in 1995. Those hearings will continue in  
22 the following week and, if needs be, into a third week. At that point there will be  
23 a break in the Inquiry during December, and the Inquiry will then resume in  
24 January. Between January and mid-March we will deal in turn with the death of  
25 Claire then the death of Raychel and how that was led into by the death of Lucy  
26 Crawford. Then we will look, in a rather more limited way which we have  
27 already explained, at some of the events surrounding Conor Mitchell's death.

28 We will end the public hearings by having some weeks to look at the role  
29 and involvement of the Department, the Chief Medical Officer and the various  
30 other public bodies. This will particularly cover the area of governance of the

1 Health Service and the responses of the various people in positions of importance  
2 at the senior end of the Health Service to the events as they unfolded. We will  
3 also look, as part of that, at the extent to which the way things happened in the  
4 mid to late 1990's and the early part of the last decade has moved on since then.

5 This will allow the oral hearings to end by Easter next year. When they  
6 end we will receive written closing submissions. I think it is now unlikely, in  
7 terms of the time constraints and also perhaps of budget constraints, that we will  
8 reconvene for oral closing submissions, but we will certainly welcome written  
9 closing submissions.

10 Between Easter and summer next year we will conduct a number of public  
11 seminars. Now I have already indicated on previous occasions that I intend those,  
12 to put it crudely, to be lawyer-free events, because one of the main purposes of  
13 those seminars is to encourage debate about how things can be better organised  
14 and how, using the examples that this Inquiry has shed light on and the  
15 developments generally, how matters can move on in the future in terms of areas  
16 such as lessons learned, communications, for instance communications between  
17 Coroners and hospitals and the Department of Health and the Chief Medical  
18 Officer and so on, and in terms of education and training. On that basis I will then  
19 be in a position to complete a report to the Minister for the summer of 2012. So  
20 that's the way in which the Inquiry will move on.

21 The Inquiry budget, as you will have seen from the Minister's letter, is £5  
22 million. That figure, I should say, covers three main areas - one is what I would  
23 describe rather crudely as the fixed Inquiry costs, the costs of this accommodation,  
24 the cost of the Inquiry office in Belfast and the costs of the office staff such as the  
25 Secretary to the Inquiry and her assistants. The second of the three elements is the  
26 cost of the Inquiry's legal team and myself. The third element is the cost of the  
27 legal expenses for the families who are provided with legal representation which  
28 is paid for by the Department. There is of course a fourth element which is not  
29 included in the £5 million and that is the cost to the Department and the public  
30 bodies of their own legal representation. Their costs also, of course, come out of

1 the public funds and ultimately from the Department itself. That is something  
2 which I know the Minister is conscious of.

3 In 2004 and 2005, in the early stages of the Inquiry before it had to be  
4 stayed for the police investigation, we looked at legal representation on a number  
5 of occasions, I mean legal representation for the families. Eventually, in June  
6 2005, that legal representation was extended to include a full legal team of senior  
7 counsel, junior counsel and solicitor for each of the three families who were then  
8 involved. That was partly on the basis of equality with the public bodies, but was  
9 also partly because there seemed to be emerging some possible conflict between  
10 different families. Sadly, we now have to face the reality that economically times  
11 are worse and the Minister has controlled the budget more tightly. I, for my own  
12 part, do not think, and have been very strongly advised that the Minister will look  
13 coldly on any return from the Inquiry asking for more hundreds of thousands of  
14 pounds never mind millions of pounds for the Inquiry to complete its work.

15 I am determined to maintain legal representation for each family, but one  
16 of the issues that we are going to have to look at, or among the issues are we are  
17 going to have to look at is whether there is, in fact, any conflict between the  
18 families. It is not clear from the work that we have been doing in recent months  
19 and years that there is, in fact, any conflict between the families. We also want to  
20 look at areas in which there can be savings. I should say, as I have been going  
21 through this, that the Inquiry's legal team is not exempt from my obligation to  
22 seek savings. Specifically, what I want to inquire into as part of this budgetary  
23 issue is whether each family needs representation by senior counsel and, if they  
24 do, whether each needs representation by a separate senior counsel because my  
25 concern is that that may be unaffordable.

26 Now, as I said before, related to this is the representation of the public  
27 bodies. What I want to get into later on this morning is the extent to which each  
28 of the public bodies is going to have full and separate legal representation by a  
29 solicitor, junior counsel and senior counsel. If that is to be the case, why is it the  
30 case and is it because there is a conflict between the different public bodies? In

1 this area we should bear in mind that at the public hearings, at the oral hearings,  
2 the main line of questioning of witnesses will be by the Inquiry's legal team, that  
3 is not to say that there will not be questioning by others, although there will not be  
4 repetitive questioning by others if the areas have already been covered by the  
5 Inquiry's team.

6 So in a few minutes, after I go through some other issues, I will ask the  
7 representatives of the various parties today, not for their definitive response to  
8 what I have raised, but for an initial response which I would like to be followed up  
9 in the near future because the budgetary constraints are already kicking in. What I  
10 want to examine, in broad terms, is the extent to which representation can be  
11 shared to control costs without being unfair to anyone. I should, of course, say  
12 that another option is simply to reduce the legal fees, but I suspect that there is a  
13 number of people here today who would not entirely welcome that proposal.

14 Before I move on to some other points let me also say one other thing  
15 about costs. One thing which the Inquiry budget cannot cover is the involvement  
16 particularly of counsel for instance up to September and then a month or two  
17 before the hearings start counsel drops out and is replaced by somebody else who  
18 then has to start reading the papers and extensive files from scratch. That would  
19 be a complete waste of public money because the barrister who has read the  
20 papers, say during the spring and summer and who will be paid from public funds  
21 for doing it, that money and information learned will go to waste if somebody else  
22 has to come in. So unless there are truly exceptional circumstances, if somebody  
23 drops out of the Inquiry I will not agree to that person being replaced by another  
24 barrister for the clock and the cash to start running again.

25 Having said all that, let me now turn on to a number of specific issues  
26 which we have raised in our papers and which mirror some points which have  
27 been raised with us by some of the parties who wrote to us over the last few  
28 weeks. In the paper which I circulated with my letter to you of the 25th of  
29 February I went through a number of issues, one of those - I don't intend to go  
30 through it all again because you should have it available to you if not in front of

1 you - in terms of the list of issues which the Inquiry is investigating, some of you  
2 will remember that in 2008 we had available a general list of issues that the  
3 Inquiry would investigate and then some more tightly defined issues in respect of  
4 each of the children. We have now circulated in Adam's case, which is the one in  
5 which we are most advanced, a more detailed and specific list of issues. I think  
6 we have had one response on behalf of Adam's family from Mr Hunter and Mr  
7 McBrien suggesting one additional point which might be added to that, but that is  
8 the way in which the list of issues will become more focused and develop the as  
9 the Inquiry continues. The next stage will be when we will be moving on, in the  
10 fairly near future, to a similar position in Claire's case. We will produce a more  
11 defined list of issues in Claire's case in light of the advice we receive from our  
12 various experts and that will be reflected in the list of issues which should become  
13 more precise and more focused as some issues swing into focus and some areas  
14 perhaps tend to fade to insignificant.

15 So far as witness statements are concerned, as you will know from the  
16 paper, in Adam's case we have, on the advice of our experts, our expert advisers  
17 obtained reports from experts who will be witnesses at the oral hearings. Their  
18 reports have contributed to finalising the requests for written statements which  
19 have now been issued to the people who were identified by numbers. In the  
20 progress report there were 11 requests for supplementary statements, 24 requests  
21 being made for the first time to people who are now identified as potentially  
22 relevant, and a number of witness statements are being finalised and will be issued  
23 shortly.

24 Perhaps at this point I should clarify what our sources of expert advice are  
25 because I think from some of the correspondence we have received there is a  
26 degree of uncertainty about that. In effect we have three sources of expert input  
27 into the Inquiry. The first source is that we have expert advisers from within the  
28 UK, they will not be witnesses at the hearings, but they are advising us and they  
29 will present to us, in each of the children's cases and in respect of the role of the  
30 public bodies, a written report which will be circulated in advance of the oral



1           hearings in respect of each child and the public bodies. It is not their role to say  
2           that somebody behaved negligently or somebody did not behave negligently, their  
3           role is to identify for us areas of concern which we then have to explore at the oral  
4           hearings. After the oral hearings are over they will write a further report  
5           identifying areas where they suggest to me for the purposes of me finalising the  
6           report the areas which they suggest are still of concern. I am not bound by their  
7           report but obviously with their various expertises they will contribute  
8           significantly. So that's the first source.

9           The second source is that we have international peer reviewers in  
10          Australia, Canada and the United States. If I can put it like this, in essence they  
11          are an international cross-check on the advice which we are receiving from our  
12          expert advisers. In other words, they are confirming to us, or not confirming to  
13          us, that the advice which we are getting from within the United Kingdom does  
14          accurately identify the areas of concern, whether it could be developed more in  
15          some areas or whether some areas are perhaps, from international experience, of  
16          less concern. Again the peer reviewers will provide a report which will be similar  
17          in nature to the report of our expert advisers.

18          Then the third source is expert witnesses. There are some areas where our  
19          advisers and peer reviewers have indicated to us that we need to have expert  
20          reports from witnesses who will give evidence at the public hearings. We have  
21          already obtained a number of these reports in Adam's case. We have requested a  
22          number of reports in Claire's case and we anticipate doing the same in the further  
23          cases. And, as I say, obviously because in effect they are providing us with  
24          experts' reports or otherwise witness statements, their reports will be shared, but  
25          they will be shared and distributed along with the witness statements which we  
26          receive from the people to whom we have written for written statements, in recent  
27          weeks in Adam's case, and who we will continue to do that with in other cases.

28          So far as background papers are concerned, we dealt with this at paragraph  
29          (7) of the progress report which was circulated approximately two weeks ago. We  
30          are almost ready to circulate and, in fact, we will circulate within the next

1 fortnight, papers which we have commissioned about the education, training and  
2 on-going training of nurses and doctors. The nursing papers will be available in  
3 the next two weeks and the doctors' papers will be available immediately after  
4 Easter. The reason for commissioning these papers and then circulating them is  
5 that we wanted to obtain a picture of the extent to which nurses and doctors have  
6 been taught about hyponatraemia and related issues over the last 30 or so years.  
7 The picture, as you will see when you receive the reports, the picture which  
8 emerges is a bit patchy, but we wanted to do that because it helps to set a  
9 background against which witnesses can be questioned at the oral hearings about  
10 the extent to which they were aware of hyponatraemia and what training they had  
11 received.

12 We are also working on a statistician's report in which we have sought and  
13 obtained primary data from nine European countries, including obviously  
14 Northern Ireland, and there are issues which have arisen from that which need to  
15 be developed. In particular, one issue of concern which emerges is that there is a  
16 coding system for deaths, and a potential problem is the accuracy and reliability of  
17 the coding system. Unless the coding system is accurate and reliable it doesn't  
18 give you, whether in hyponatraemia or any other area, a truly accurate report on  
19 the incidence of various conditions such as hyponatraemia.

20 We are also obtaining reports or a report about the reporting systems  
21 between Coroners and hospitals. Those of you who have read into the background  
22 of the Inquiry and know the issues which we have to address will understand how  
23 that is a matter of concern. We want to look at that, how that has been historically  
24 and where it has moved to now because, as I said earlier, the Inquiry doesn't stop  
25 just by looking back on what happened, and we will inevitably have to make  
26 recommendations to the Minister about how things might move forward in the  
27 future.

28 So all of these papers, when they are obtained, will be circulated and will  
29 form part of the background evidence against which the issues which we are  
30 investigating will be considered and against which witnesses who come to give

1 evidence can be questioned.

2 An issue was raised with us again about privilege against  
3 self-incrimination. This came from the lawyers representing the Ferguson family.  
4 We have set out our proposed method of dealing with this in the Progress Report  
5 at paragraph (8). You don't have to respond to that but you may do so if you wish  
6 either briefly today or by follow-up. I am not asking for long written submissions,  
7 legal submissions on it, this is not a particularly novel area, it is standard or at  
8 least normal in various Inquiries to ask the Attorney General for an undertaking of  
9 the sort which we have set out at paragraph (10) of the Progress Report.

10 I make similar observations about the standard of proof. Again this is an  
11 issue which has been considered in recent years by the House of Lords, it has been  
12 considered by the Supreme Court, various Inquiries such as Shipman, Saville and  
13 Robert Hamill, and we have set out at paragraph (13) of the Progress Report the  
14 line which we propose to take on that. Again if anybody wants to respond to that,  
15 either briefly or in writing, they are welcome to do so, but again I suggest it is just  
16 not a particularly controversial area.

17 In terms of bibliography we have set out a proposed method at paragraphs  
18 (14) and (15). And in relation to some other more specific areas I think that all of  
19 the files that we have about Adam and Claire are now available on the Inquiry  
20 website and have been distributed. Many, but not all, of the papers relating to  
21 Raychel are with her family and her family's representatives and we would like to  
22 circulate those sooner rather than later. Those involving Conor are to follow and  
23 those involving the Department I think are at least in part with the families and the  
24 public bodies and again we would like to issue those sooner rather than later.

25 As we move closer to the oral hearings in the autumn we will develop  
26 what we will be referring to as core bundles, that is bundles which contain the  
27 most relevant and most important documents.

28 One other specific issue which was raised with us on behalf of the  
29 Ferguson family is about the manufacture of Solution 18 and connections between  
30 the manufacturers and the hospitals, whether there are any commercial

1 considerations which affected that or, I guess by extension, improperly affected  
2 that. In response to this issue being raised with us we have made contact with the  
3 Medicines and Health Care Products Regulatory Agency and the European  
4 Medicines Agency, and we are engaging with them and with our expert advisers  
5 to determine whether this is an issue which the Inquiry should add to the issues to  
6 be investigated. If the advice we receive is that it should well then it will be  
7 added, if it isn't we will explain why it is not being included. Anyone who wants  
8 to can come in and make representations on that.

9 There are some other issues which have been raised with us but I think  
10 unless anybody wants to make specific points about them I think they are broadly  
11 covered, or most of them are covered in the papers which have been circulated.  
12 Before I turn to the individual representatives let me make two further points:  
13 One is about further hearings such as today's hearing. We accept in principle that  
14 there should be further hearings along today's line and we suggest that the next  
15 one should be at some point in the week commencing 16th May, in other words in  
16 approximately two months' time, perhaps Thursday 19th or Friday 20th May, but  
17 we can finalise that. I think it is probably pretty hopeless to try and arrange a date  
18 whenever everybody is available, there are too many for that, but we will try to  
19 convenience as many as possible. At a review, whether it is in that week or about  
20 that time, we can then decide when the next progress hearing can be or should be  
21 held, whether we need one in late June/early July before people disappear on their  
22 summer holidays or whether we will need not have another one until September.  
23 But in principle we are available from now on for hearings. That's not to say that  
24 there will not be business done outside the context of these hearings because  
25 business, and I anticipate more and more business, will be done through contact  
26 and exchanges between the Inquiry and the various legal representatives.

27 The final point I want to make at this stage is about the absolute necessity  
28 of co-operation from all sides in order to achieve the timetable and stay within the  
29 budget which has been allocated. I entirely accept that there are serious divisions  
30 between various parties, interested parties at this hearing, about the way in which

1 events happened, the circumstances in which children died and the reactions on  
2 various sides to those events. That is exactly what we are investigating or part of  
3 what we are investigating, but that does not prevent and should not inhibit  
4 co-operation between the parties in order that we can achieve a timetable, because  
5 it cannot be in anybody's interest for the completion of the hearings and the  
6 production of my report to be delayed. The immediate deadline which has been  
7 set is that we have asked the people to whom we have sent witness statements in  
8 Adam's case for responses by Friday, 18th March, in other words Friday week.  
9 We want that to be met because that will then lead on to a new flow of work at our  
10 end, we have to compare answers, we then have to decide whether it is necessary  
11 to ask follow-up questions from anybody, and we then have to decide, in taking  
12 account of what our advisers suggest to us, which of the witnesses who have  
13 provided statements are required to give oral evidence in November. We need to  
14 work that out as soon as possible and those involved need also to be alerted as  
15 soon as possible.

16 The other point which I need to mention and emphasize in terms of  
17 co-operation is that the Inquiry issued quite some time ago, a costs protocol. It  
18 has specific provisions, for instance, at paragraph (8) about preparatory work. It  
19 has specific provisions at paragraph (9) about witness statements, and has specific  
20 issues at paragraph (20) about billing. To put it bluntly, you bill in the month after  
21 -- if you do work in April you send your bill in in May. We have received a bill in  
22 the last few days for work done over the last two years. That is entirely  
23 unacceptable. If that happens we lose all control and all track of the Inquiry  
24 budget. I am warning people, those who are seeking payment from the Inquiry's  
25 budget that the costs protocol has to be adhered to. If you want to claim payments  
26 for work done, claim it in accordance with the protocol or else you risk not being  
27 paid.

28 Having said all that, and I hope it has been helpful, let me now turn, and in  
29 the way we have done this in previous hearings I will turn to the representatives of  
30 the families in chronological order and then to the representatives of the public

1 bodies. On behalf of Adam's family Mr McBrien?

2 MR McBRIEN: Well I understand from my solicitor, sir, that there was agreement  
3 between the families that in view of the fact Mr Topolski has come over  
4 especially, he be permitted to go first this morning, in deference to Mr Topolski. I  
5 have no problem with that.

6 THE CHAIRMAN: Whether there is deference to Mr Topolski or not, there is  
7 co-operation right from the start. So Mr Topolski?

8 MR TOPOLSKI: That's the first I have heard of that, so thank you. May I just make four  
9 points only on behalf of the Ferguson family? First of all, in relation to their  
10 approach, it is to be concerned less with what has occurred since the establishment  
11 of this Inquiry in 2004 and to focus now on its future progress. Secondly, they  
12 welcome the Update Report of November 2010, the Progress Report of February  
13 2011 and I know, sir, without having to speak with them now, they will have  
14 welcomed what you have been saying this morning. All of that demonstrates to  
15 them that the long period of silence from this Inquiry, as far as they are concerned,  
16 is now over.

17 Thirdly, we recognise that much has been done and is being done by the  
18 Inquiry. It goes without saying we hope that it will also be recognised that there is  
19 much to be done by those representing the families of these children. We would  
20 ask, indeed we would urge, the earliest possible resolution of the representation  
21 issue which you have focused upon in relation to the families' legal teams.

22 The fourth point is this, their hope before this morning was for a realistic  
23 and structured timetable for the distribution of material and for the ability to  
24 properly and thoroughly prepare and present on behalf of them and other families.  
25 It looks very much like, if we may respectfully say so, that is echoed, sir, in what  
26 you have been saying this morning, and a clearer picture is now emerging of the  
27 way the rest of the year looks. That can only be a good thing. The Fergusons,  
28 through me, warmly welcome it. Thank you for giving me the opportunity of  
29 going first.

30 THE CHAIRMAN: Could I ask you, Mr Topolski, just before you sit down --

1 MR TOPOLSKI: Yes sir.

2 THE CHAIRMAN: I am going to come on to this, but as I understand it you are  
3 obviously senior counsel acting for the Fergusons and Mr Quinn is senior counsel  
4 for the Roberts family. Mr McBrien, you don't have senior counsel, is that right?

5 MR McBRIEN: No. We do, sorry, he hasn't been fully briefed yet. Mr McKay has been  
6 mentioned in despatches, but we have taken on board what you have been saying,  
7 the recent communications, and the matter is being reviewed.

8 THE CHAIRMAN: And Ms Ramsey, you are on your own at present, is that right?

9 MS RAMSEY: Presently, yes sir, but we wish to have the opportunity to consider the  
10 issue in relation to senior counsel.

11 THE CHAIRMAN: Thank you. Mr Topolski, just to go back to you for the moment,  
12 from you have seen of the papers - I am not asking you for an absolute  
13 commitment to this today - do you see any conflict between the families?

14 MR TOPOLSKI: No, no.

15 THE CHAIRMAN: On another point, is there potential for it to be beneficial to share, to  
16 some degree, representation?

17 MR TOPOLSKI: I will answer that by indicating that this very topic has been discussed  
18 this morning in my first meeting with my clients. The answer to that in my  
19 personal opinion and professional opinion is yes, it presents the ability not only to  
20 understand the detail of each case, the inter-relationship between them, so far as  
21 the medicine cuts across all of them. And what could be equally important for the  
22 efficient conduct of the Inquiry is that capacity that one would have to step back  
23 and look at the bigger picture and thereby channel what one is seeking to say  
24 about the various aspects. With that bigger picture very much in mind I  
25 recognise the role of Counsel to the Inquiry, and I am not talking about a situation  
26 which one would be stepping into her territory, I am not suggesting that for one  
27 moment, but if you are asking a blunt question and wanting a blunt answer,  
28 whoever that person is going to be, in my humble opinion and what I have read so  
29 far, one Silk, with adequate support, could represent all of these families.

30 THE CHAIRMAN: Or alternatively there could be two Silks but not four?

1 MR TOPOLSKI: Or two but not four, well I am not going to play a numbers games, I  
2 want to safely be able to get back to the airport.

3 THE CHAIRMAN: Okay.

4 MR TOPOLSKI: I also want to leave this building. But you are asking me an important  
5 question and I am giving you a straight forward, I hope, answer to it.

6 THE CHAIRMAN: That's appreciated. Thank you very much. Mr Quinn?

7 MR QUINN: Mr Chairman, I was going to make some submissions about the experience  
8 and expertise of Silk that is needed in relation to these papers, and there has been  
9 a lot of work put into this case so far. Again, in answer to the blunt question, I see  
10 some overlap in the cases of Adam and Claire, but I don't see much overlap in the  
11 cases that follow on. In my respectful submission, Claire is a case that stands out  
12 in that the inquest was delayed for nine and a half years and therefore the family,  
13 in my respectful submission, need representation to investigate all of the matters  
14 surrounding Claire's death in October 2006, more importantly, the lessons that  
15 were learnt or not learnt in relation to Adam's death that occurred the year before.

16 THE CHAIRMAN: You would say presumably also from Adam's inquest it was just a  
17 few months before Claire's admission to the same hospital?

18 MR QUINN: Exactly. Adam's inquest was in May 2006, sorry June 2006, and Claire's  
19 death occurred four months later. There are a number of doctors involved in both  
20 cases, but I see Claire's case as a case that needs the highest level of representation  
21 though I do acknowledge there is an overlap in those two cases.

22 The points that have been made so far by my learned friend are well  
23 founded. The families want to hear this case started and the sooner it starts the  
24 better for everyone. I know that there are a lot of matters that still have to be  
25 investigated, statements to be taken, but I would welcome a start as early as  
26 possible. The Roberts family were denied an inquest into the death of their  
27 daughter for nine and a half years. The point that comes across from speaking to  
28 my clients is that they want this matter to be investigated as thoroughly as possible  
29 and as quickly as possible. They also do not want to waste public money and they  
30 see that and they have made that point to me.



1 THE CHAIRMAN: When the inquest into Claire's death eventually took place did it  
2 investigate why there had been a delay in the inquest?

3 MR QUINN: No, it didn't.

4 THE CHAIRMAN: So they investigated the circumstances of her treatment and death  
5 but not why there was not an inquest sooner?

6 MR QUINN: Yes. The same doctors who were involved in the inquest were - I won't go  
7 into this in any great depth at this early stage - were the same doctors involved in  
8 discussing with her parents why there was no inquest. In fact, the parents would  
9 make the case that they were dissuaded from the inquest route by the doctors  
10 involved. And there are memos, there are notes and some of the statements  
11 arising from the inquest go to that point. I won't open to those issues now.

12 THE CHAIRMAN: I understand.

13 MR QUINN: From my reading and from my investigations of the matter -

14 THE CHAIRMAN: I am aware of some of what the parents say because they approached  
15 the Inquiry in 2004/2005 so I am aware of some of that background.

16 MR QUINN: I have just been reminded this morning by my learned junior, there are  
17 other documents emerging at the moment on the website that will require further  
18 investigation and a lot of analysis. Perhaps my learned friend and I were going to  
19 write to the Inquiry for the next review in relation to issues that we would see now  
20 being relevant in relation to meetings between doctors that took place immediately  
21 surrounding Claire's death, immediately after Adam's death and leading up to  
22 Claire's admission into hospital.

23 THE CHAIRMAN: Thank you. Mr McBrien, I should come back to you.

24 MR McBRIEN: Sir, we are grateful from the Slavin family, grateful for the time that you  
25 have clearly expended upon this matter. The silence which existed for a number  
26 of months was giving rise to some cause for concern, but many of the issues  
27 which were concerning Mrs Slavin and the family have been addressed in your  
28 recent papers. I have also had the opportunity of speaking with your counsel  
29 putting particular points to them and we are considerably impressed with the  
30 progress that has been made on your behalf.

1           Might I suggest that as regards the on-going nature of the Inquiry and the  
2 reviews, if it wouldn't be too much trouble perhaps if, as and when steps are being  
3 taken, we could be e-mailed by way of an informal newsletter, because that --  
4 perhaps it is now late in the day for it, that would have been of assistance over the  
5 last few months in trying to decipher what was taking place behind the scenes.

6           I have already mentioned to your counsel that one interest of Mrs Slavin  
7 and those assisting her would be to see what terms of reference or briefs were  
8 given to the expert witnesses, but I've already raised this with your counsel and I  
9 won't say more about it. We would just appreciate perhaps a greater degree of  
10 transparency as regards what is taking place.

11           You will appreciate, sir, perhaps from dealing with Mrs Slavin in the past,  
12 that there are very strong feelings relating to Adam Strain's death and the  
13 circumstances following it and some of the personalities involved. Accordingly,  
14 she has her own particular, if I put it this way, shopping list of issues that she  
15 would like to see attended to. Those appear to have been largely addressed in the  
16 progress reports which you have very kindly circulated to us. So we are hopeful  
17 optimistic, at least from Adam Strain's mother's point of view, that her concerns  
18 will be addressed in the way you are moving forward and we are grateful to you  
19 for that.

20           As regards the representation issue, that puts us, from a personal point of  
21 view, in more of a difficult situation as to how address your answer, sir. We have  
22 raised this with Mrs Slavin and she has her own particular views on the matter.  
23 You will appreciate, sir, that we came into this matter, my instructing solicitor and  
24 myself, as replacements for earlier lawyers. I don't wish to say any more on that  
25 particular score. We are aware of what you said about senior counsel. Our own  
26 senior counsel at the moment has not yet been fully briefed, we can perhaps  
27 review the issue as to whether he should be fully briefed and/or whether or not  
28 there should be overlap between the parties.

29           The issues relating to the Adam Strain death, there are two particular  
30 concerns of Mrs Slavin, first of all the particular issues that arose out of the

1           unfortunate night in question when her son was in surgery. And, secondly, her  
2           genuine and very strong desire to ensure that such a thing does not happen again.  
3           You can perhaps understand, sir, from dealing with the other families that this  
4           desire has been thwarted by the on-going number of deaths right up to relative  
5           recent times which seemed to be related to the subject matter of the Inquiry. She  
6           particularly does wish to have her mind put at ease, perhaps as a legacy to Adam,  
7           to ensure that her role in this is to ensure that it doesn't happen to any other family  
8           ever again either in this jurisdiction or indeed any other, because we appreciate  
9           from the inquiries made that quite a lot of the medical world, not just in the British  
10          Isles but further afield, is paying particular attention to the steps being taken in  
11          this Inquiry and also at what the outcome of it will be.

12                 From that perspective I appreciate the lawyer-free aspect of the seminars,  
13                 but it would seem that that was a very constructive and progressive step and  
14                 hopefully if those attending it take heed of what is said it may actually produce a  
15                 constructive response.

16                 One concern that has come across, we don't know yet whether or not this is  
17                 being addressed by the experts, is whilst you can appreciate the medical staff, the  
18                 doctors, surgeons et cetera, the education and training of them is being considered,  
19                 and the training and education of nurses is being considered, what we would  
20                 particularly like to be satisfied on is what steps are being taken to ensure that there  
21                 is cross-communication between the two professions, because our understanding  
22                 has been that, to some extent, doctors and surgeons tend not to treat with the same  
23                 regard, or any regard in some cases, what nurses may be saying or recording and  
24                 that surgeons or doctors may not be looking at nursing notes or paying them  
25                 particular attention to what is being said in the wards. It is from that particular  
26                 education and training perspective that the Adam Strain family would like to be  
27                 particularly reassured that the experts in question, and the seminars which you  
28                 hope to arrange in the New Year, will also look into that rather than the two  
29                 branches of the profession, if I may put it that way, in isolation.

30                 Otherwise, sir, I don't think there is anything I wish to say by way of oral

1 statement today other than we are grateful that you have brought it forward from  
2 January because the earlier, from our perspective, the better.

3 THE CHAIRMAN: Well before you sit down let me make three points in reply. The  
4 first is from our own knowledge of the circumstances of Adam's death and Claire's  
5 death and supported by what Mr Quinn has said on behalf of the Roberts family, I  
6 don't see for a moment that there is any conflict of interest in the same senior  
7 counsel representing Adam and Claire. I urge you and your client to give serious  
8 consideration to that point.

9 MR McBRIEN: Yes sir.

10 THE CHAIRMAN: The second point is you have raised an issue about transparency in  
11 the experts' reports. I have to say that I don't accept that when the Inquiry is  
12 engaging an expert to report on issues which have been raised with it by its expert  
13 advisers and peer reviewers that that briefing document goes out to consultation  
14 before the expert is engaged. If we are advised by our expert advisers that we  
15 need an expert in a certain field to address points 1, 2, 3, 4 and 5, we will engage  
16 that expert, that expert will provide a report, that expert will be at this hearing.  
17 And I am also reluctant, partly as point of principle, that it is the Inquiry which  
18 briefs those experts, and, secondly, the expert will be giving evidence in any  
19 event. If there is some issue arising from his report, which you will have in  
20 advance of oral hearings, if you want to develop in some way or another a point  
21 raised we can alert the expert to that fact.

22 Thirdly, when you talked about the lawyer-free environment of the public  
23 hearings --

24 MR McBRIEN: Of the seminars, yes.

25 THE CHAIRMAN: -- you are very welcome to come along, you just won't be paid.

26 MR McBRIEN: I appreciate that sir.

27 THE CHAIRMAN: Thank you. Ms Ramsey?

28 MS RAMSEY: Mr Chairman, on behalf of the Mitchell family, as the family have only  
29 more latterly than the other families become formally involved in these  
30 proceedings, we would very eagerly anticipate the documentation that you have

1 already outlined will be forthcoming. In fact, from purely a housekeeping point of  
2 view, my instructing solicitor would have a request that hard copies of those  
3 documents could be provided. That certainly would provide some great  
4 assistance. Upon provision of those documents and consideration of them, sir, I  
5 think we can, on foot of consultation with the family, take a view in relation to  
6 whether there are any conflicts of interest which would affect issues pertaining to  
7 the engagement of senior counsel, and also at that stage to really formulate a full  
8 list of issues and proposals that the family would have concerning them.

9 THE CHAIRMAN: Thank you very much. Let me turn to the public side. Mr Shaw for  
10 the Department?

11 MR SHAW: Yes sir, I appear for the Department and also the Chief Medical Officer.  
12 Three observations if I may: First of all, we welcome the meeting today and the  
13 approach that you have outlined towards the prosecution of the matter and the  
14 resolution of it. We wish you well sir, we trust that there will indeed be the  
15 co-operation that you have invited from all concerned so that you might be able to  
16 efficiently and promptly deal with the matter and report to the Minister. That's the  
17 first thing.

18 The second thing, sir, is by way of representation, just as a point of  
19 information, I did appear with Mr Alistair Devlin but he has recently been taken to  
20 Mount Olympus and I have no junior counsel at present, I understand another  
21 junior will be appointed. It allows me to say this, sir, about the representation  
22 issues. There already is a degree of rationalisation on our side in that we appear,  
23 whoever my new junior is and myself, we appear for the Chief Medical Officer  
24 and also for the Department. It seems to us, sir, that's as far as the Department can  
25 extend its net. And with the other public bodies it is a matter for you and they to  
26 consider whether the representations are appropriate there. I say nothing about the  
27 representation for the next of kin, the family. The third observation --

28 THE CHAIRMAN: Sorry, just before you go on to your third point, just to tease it out,  
29 why does the Department require separate representation from, say, the Belfast  
30 Trust or the Western Trust?

1 MR SHAW: Well sir, I think the role that the Department occupies and also the Chief  
2 Medical Officer, stand in a different position, a different tier in the hierarchy. We  
3 take the view that having called the Inquiry and having appointed the Inquiry, sir,  
4 that it would be inappropriate and undesirable that those representing the  
5 Department should also be looking after the interests of those who were involved  
6 in day-to-day matters which give rise to the Inquiry.

7 THE CHAIRMAN: Thank you.

8 MR SHAW: That's that matter. The third issue, sir, I wanted to make observations  
9 about, just by way of clarification, we thank you very much for the explanation  
10 given about the streams of expert advice coming to the Inquiry. I understand from  
11 what you said there really are three, and going in reverse order, the expert  
12 witnesses and the reports will be given by them, they will be attending and  
13 available for cross-examination.

14 THE CHAIRMAN: Sorry, I should say only that I think it is almost certain they will be  
15 attending, the only reason that they wouldn't attend would be if it emerged from  
16 their reports and the statements received from various doctors and nurses that an  
17 issue which they were reporting on was no longer actually an issue. I think that is  
18 a bit of a long shot, but if the issues upon which they have reported are still active  
19 issues for the Inquiry, which I think is overwhelmingly likely, then they will be  
20 witnesses.

21 MR SHAW: Just so I understand the position, sir, that you have outlined. In terms of  
22 those who write reports as witnesses as experts for the Inquiry, they may be  
23 available for the Inquiry as witnesses and subject to the normal cross-examination  
24 and probing and that's very helpful. The second group that you mentioned were  
25 the international peer reviewers, I say nothing about that. But as regards the first  
26 group that you mentioned, sir, my understanding of what you said - I am happy to  
27 be corrected if I misunderstood it - was that certain experts have been engaged by  
28 the Inquiry and they have been giving advice to the Inquiry which was helpful in  
29 informing the Inquiry's approach and refining of its approach to the matter. That's  
30 helpful to know that, sir. But arising out of that, as I understood you, there are

1 documents and papers that those experts prepared for the Inquiry, and it is not  
2 clear to me whether you intend to make those available to the parties and, if so,  
3 whether those, if those give rise to issues, what opportunity there will be, if any,  
4 for concerned parties to test and probe those matters. The reason being this, sir,  
5 that if, if I put it in a cosy way sir, if there is a voice speaking into the ear of the  
6 Inquiry by way of an expert writing a report, whether by way of a backing paper,  
7 that one can't challenge or test it if they find it unacceptable, that that could be a  
8 matter of concern. I simply raise it by way of seeking clarification. I don't want  
9 to make any submissions on it, sir, I simply want to make sure I have understood  
10 it so we can consider the position further on the follow-up if appropriate.

11 THE CHAIRMAN: Let me explain it in this way. Let me take Conor Mitchell as an  
12 example. We had a request from the Mitchell family that Conor's death should be  
13 investigated in full as part of the Inquiry. We got our expert advisers and our peer  
14 reviewers to look at the records and the inquest papers in Conor's death. The  
15 advice we received was that whatever killed Conor was not hyponatraemia, and of  
16 course that is blindingly relevant to a Hyponatraemia Inquiry, but the matter of  
17 concern which emerged was that Conor died after the guidelines had been  
18 introduced and it appeared that the guidelines had not been followed in terms of  
19 record-keeping, or there was a concern that the guidelines had not been followed.  
20 Therefore, on the basis of their advice, Conor is included in the Inquiry but to a  
21 more limited extent than the other families. Before we reach the stage of oral  
22 hearings about Conor we will make available a paper which the experts will draw  
23 together of what their areas of concern are. The same thing will happen in relation  
24 to Adam, Claire and Raychel, they will put together on paper what their areas of  
25 concern are and that is the paper which will be circulated. I do not intend to  
26 circulate all of the exchanges which have gone on with the experts over a number  
27 of years on various issues.

28 MR SHAW: Yes, I simply raise it, sir, (a) by way of clarification and then so we might  
29 consider it and take instructions, but if I understand you right, sir, we will get a  
30 paper?

1 THE CHAIRMAN: Yes.

2 MR SHAW: My simple point is this, that if the paper we receive or any party receives  
3 prompts anxiety or concerns about what is being said by the experts, are they  
4 beyond calling to be tested? It is simply that question, sir, which is at large at  
5 present.

6 THE CHAIRMAN: I think it becomes exceptionally difficult if the experts become  
7 witnesses and that is why, in areas of particular concern, we have engaged, on  
8 their advice, expert witnesses for the very purpose of giving evidence. Expert  
9 witnesses may in their reports say: Well, we were asked to look at five areas of  
10 concern and two of them aren't areas of concern, three of them are and they can be  
11 cross-examined either way on those five points. But it becomes, if you look at it in  
12 the sense that I have to, when the hearings are complete, I have to write a report  
13 and I will take account of all the evidence and the areas of concern which were  
14 identified. My instinct is that the expert advisers will not be witnesses, but if  
15 needs be we will come back to that.

16 MR SHAW: If I could just leave it in that way, sir, thank you very much.

17 THE CHAIRMAN: Yes. Mr Lavery, are you for Belfast?

18 MR LAVERY: Yes Mr Chairman, sir, I appear on behalf of the Belfast Health and Social  
19 Care Trust.

20 THE CHAIRMAN: Can I just ask you to start, you only appear for Belfast?

21 MR LAVERY: Yes, certainly that's the present position, Chairman.

22 THE CHAIRMAN: And with Mr Lavery senior, is that right?

23 MR LAVERY: Yes Mr Chairman, that was previously the Royal Group of Hospitals  
24 Trust.

25 THE CHAIRMAN: The Western Trust, I guess, Mr McAlinden is it - excuse me Mr  
26 Lavery, one second - which was previously --

27 MR McALINDEN: I appear for the Western Trust which was previously the Altnagelvin.

28 THE CHAIRMAN: You are with whom?

29 MR McALINDEN: Mr Simpson.

30 THE CHAIRMAN: That would previously have been, in the Inquiry's initial life in



1           2004/5, that would have been Altnagelvin. But the Erne at that point was  
2           separately represented, was it?

3           MR McALINDEN: The Erne was separately represented by Mr Stitt and Mr Good at that  
4           stage. I think they are now out of the picture so it is really just the Western Trust  
5           is really concentrating on the Altnagelvin, the previous Altnagelvin Trust.

6           THE CHAIRMAN: Okay, if I could ask you to move on, is the Southern Trust then  
7           separately represented in relation to Conor?

8           MS BEGGS: The Southern Trust is represented by Mr Robert Millar who is not here  
9           today.

10          THE CHAIRMAN: Okay.

11          MS BEGGS: There is no senior counsel for the Southern Trust.

12          THE CHAIRMAN: Is that no senior counsel yet or no senior counsel full stop?

13          MS BEGGS: I believe no senior counsel full stop.

14          THE CHAIRMAN: Perhaps going back to you Mr Lavery, why, in the terms of this area  
15          about representation, why are the three Trusts separately represented?

16          MR LAVERY: They were separately represented by different instructing solicitors as  
17          you may recall, Mr Chairman. The last time there was a Progress Hearing in  
18          respect of this matter, Belfast Health and Social Care Trust were represented by  
19          MSC Daly Solicitors who had taken over from Brangam Bagnall & Company  
20          solicitors. But in terms of consolidation of representation, Mr Chairman,  
21          effectively in terms of the solicitor representation, that has now been consolidated,  
22          the Director of Legal Services is now acting for all three Trusts.

23                 I can say, Mr Chairman, sir, that the Director has taken on board the  
24          comments that you made in the letter dated 25th February 2011. As I understand  
25          it, the Director anticipates meeting with the various Health Care Trusts in the next  
26          week or two to come to a final decision as regards the consolidation of counsel.  
27          So that is something that certainly the Director of Legal Services is taking on  
28          board.

29          THE CHAIRMAN: Could I ask, Mr Lavery, that the Inquiry be notified within say a  
30          fortnight what the final position of the Trust and DLS is in relation to

1 representation.

2 MR LAVERY: Yes. I don't think there should be any difficulty with that, Mr Chairman.

3 THE CHAIRMAN: Correct me if I am wrong, but I get the impression that there is  
4 separate representation almost because historically there were different solicitors  
5 involved who engaged different teams, but I don't understand you to be saying  
6 that there is separate representation because there is conflict.

7 MR LAVERY: Well there may be conflict, that is something that is going to have to be  
8 teased out as between the various Trusts, Mr Chairman, and I think the conflict as  
9 and between the Trusts is something that is a little more difficult in comparison  
10 with that as and between the families. You will be aware, Mr Chairman, that  
11 some of the families started off, I think in Raychel's case she started off in  
12 Altnagelvin hospital and then came to the Royal, and that was the position also  
13 with Lucy Crawford who I appreciate now is no longer in the case.

14 THE CHAIRMAN: Well yes but only up to a point because it is the aftermath of Lucy's  
15 death which leads into Raychel.

16 MR LAVERY: Yes.

17 THE CHAIRMAN: Part of that in the very near future, we have to make a final decision,  
18 at what point we pick up the aftermath of Lucy's death, but Lucy was initially,  
19 after her death and in the Royal, there was a death certificate issued from the  
20 Royal which turned out to be inaccurate to put it crudely.

21 MR LAVERY: Yes.

22 THE CHAIRMAN: Sorry, I interrupted you. So we can expect a response within two  
23 weeks from the DLS on behalf of the Trusts on the question of consolidation of  
24 representation?

25 MR LAVERY: Yes Mr Chairman.

26 THE CHAIRMAN: Okay. So beyond that is there anything else that you wanted to say  
27 for this morning's purposes?

28 MR LAVERY: No, just to reiterate what has been said, we welcome the fact there is now  
29 certainty and that is something I am sure that will be welcomed by the clinicians  
30 as well as the families.

1 THE CHAIRMAN: I should acknowledge that it is not only the families who want the  
2 hearings to take place because I presume some of the doctors and nurses have  
3 views and concerns.

4 MR LAVERY: Absolutely Mr Chairman, certainly they do have concerns, it has been  
5 hanging over them as much as it has been hanging over the families.

6 THE CHAIRMAN: Thank you very much. Is there anything else to be said on behalf of  
7 the Trusts this morning?

8 MR McALINDEN: No Mr Chairman, there is nothing.

9 THE CHAIRMAN: Okay. Is there any other representation?

10 MR McMILLAN: Mr Chairman, Roger McMillan from Carson McDowell Solicitors, I  
11 appear on behalf of Mr Patrick Keane separately on instructions of the Medical  
12 Protection Society. Mr Chairman, I am grateful to you for granting me as of  
13 yesterday Interested Party status on behalf of Mr Keane. Mr Chairman, I would  
14 be grateful, in light of that grant, if it would be possible to get all correspondence  
15 passing between the various interested parties in relation to the list of issues to be  
16 considered in respect of the death of Adam.

17 THE CHAIRMAN: Well, this has been - just to inform others, Mr McMillan, there has  
18 been a request made by you as of yesterday afternoon that Mr Keane be made an  
19 interested party and that is in relation to his involvement in Adam's treatment.

20 MR McMILLAN: It is.

21 THE CHAIRMAN: In 1995. And that request was granted yesterday. Just for the  
22 record, so that everybody understands this, this does not involve -- the  
23 representation of Mr Keane is, in effect, paid for by his insurers, is that right?

24 MR McMILLAN: Well, their mutual defence organisation.

25 THE CHAIRMAN: Right, so it is not --

26 MR McMILLAN: It is not at the public expense.

27 THE CHAIRMAN: This is not a matter of public expense.

28 MR McMILLAN: No Mr Chairman.

29 THE CHAIRMAN: Is Mr Keane still an employee of the Trust, Belfast Trust?

30 MR McMILLAN: He is Mr Chairman.

1 THE CHAIRMAN: But he wants separate representation from the Belfast Trust?

2 MR McMILLAN: He does.

3 THE CHAIRMAN: There has been a flurry of correspondence over the last 48 hours  
4 about, requests which you have been making about the list of issues. I am not  
5 going to make a ruling on that now, but we will look at that and come back to you  
6 - what day is today, Wednesday - we will come back to you by Monday on that.  
7 If there is any need for a further exchange that can be continued.

8 MR McMILLAN: Obligated Mr Chairman. We will have submissions to make, subject to  
9 you allowing us to make those late, I apologise for that, but submissions to make  
10 in relation to the list of issues to be covered in Adam's death, specifically to the  
11 inclusion or otherwise of the actual surgical management.

12 THE CHAIRMAN: I think we have written to you about your letter to us which will be  
13 shared with the other parties insofar as it affects a list of issues as to the effect that  
14 surgical management is separate from hyponatraemia and you know our response  
15 was that when we are looking at hyponatraemia since the hyponatraemia  
16 developed out of the surgery we cannot at this point identify a cut-off point  
17 between the conduct management of the surgery and the development of  
18 hyponatraemia. That may or may not emerge later, but anyway that's an issue  
19 which will need be developed.

20 MR McMILLAN: I appreciate that Mr Chairman, and our submission in that regard will  
21 be that there will be a cut-off point at some point that the Inquiry should make  
22 between the surgical and the fluid management.

23 THE CHAIRMAN: Mr McMillan, I am not saying that there isn't, that there won't be, I  
24 am just saying there isn't yet, okay.

25 MR McMILLAN: I appreciate that, Mr Chairman. Mr Chairman, could I address you on  
26 a further point? In relation to "the experts" (in inverted commas) to be called to  
27 the Inquiry hearing, within the papers there is a report from Mr Koffman who  
28 makes clear that surgeons were in no way responsible for Adam's death as they  
29 had no role to play in the decision making in relation to the fluid management; is  
30 it anticipated, Mr Chairman, that Mr Koffman will be called?

1 THE CHAIRMAN: I can't tell you at this stage whether Mr Koffman will be called, but  
2 the point that you are making is that, just to express this more clearly so everyone  
3 understands it, Mr Koffman is suggesting that the surgeons had no responsibility  
4 for fluid management and in effect they say that is the responsibility of the  
5 anaesthetist, right?

6 MR McMILLAN: Yes Mr Chairman.

7 THE CHAIRMAN: And one of the issues that we may have to investigate is the extent to  
8 which there is a joint responsibility or whether the responsibility only lies with the  
9 anaesthetist as opposed to the surgeon. So if this develops and if it is maintained  
10 as an issue then we will call whatever witnesses are required, but I should say, Mr  
11 McMillan, that when the Inquiry forms a view about who the relevant witnesses  
12 are in each case as we go along, we will advise the parties about the witnesses, the  
13 identity of the witnesses who we intend to require to give evidence. And if the  
14 parties or if any of the parties say: Well we don't think you need Mr A but we do  
15 think you need Mr Y, then we will consider whether that is right or whether we  
16 call additional or fewer witnesses. So these are all issues which have to be,  
17 procedures which we will go through in advance of each hearing. And I also  
18 recognise that in terms of, particularly in terms of surgeons, that has to be done  
19 some time in advance because I assume that most of these people are continuing  
20 to operate, we can't just pull them out of an operation the day before and let down  
21 some patient who is waiting to be treated. There will be plenty of notice to those  
22 involved.

23 MR McMILLAN: I appreciate that clarification, Mr Chairman. Finally, in terms of the  
24 expert evidence, my understanding is, although I have come into this fairly late in  
25 the day, is that there has not been a paediatric transplant surgeon engaged by the  
26 Inquiry to report. I know Dr McGleenan made points in relation to this in 1995  
27 and it was suggested at that time that the Inquiry would be relying on the evidence  
28 of Dr Booker in that regard. Mr Chairman, I would caution in relation to relying  
29 on the evidence of a paediatric anaesthetist rather than to deal with surgical  
30 management issues.

1 THE CHAIRMAN: Well, I am going to answer you in this way, Mr McMillan. We  
2 have, as I have indicated generally, we have, the Inquiry has, on the advice of our  
3 expert advisers, engaged a number of experts, but we will not be disclosing who  
4 they are or what their specialty is or their reports until we receive witness  
5 statements from the people to whom requests for witness statements have been  
6 sent out. At that stage the picture will become clearer to you. So you can  
7 interpret whatever you want from what I have just told you, okay?

8 MR McMILLAN: I appreciate that, Mr Chairman. Finally, just overall, we would like to  
9 express our condolences - it is the first time I have appeared before the Inquiry -  
10 express our condolences to all the families on behalf of myself and our client.

11 THE CHAIRMAN: Thank you very much. Is there anybody else who has anything to  
12 raise this morning? I am keen that we do reassemble in May and I think I  
13 suggested the week commencing 16th May. Unless there is some compelling  
14 reason not to I would like to have the next hearing on Thursday, 19th May. I am  
15 sure that will not be convenient to everybody, but unless there is some  
16 overwhelming reason why it shouldn't be can we meet again here? Can we meet  
17 at 10.30 next time? There was a special request made indulging Mr Topolski this  
18 morning.

19 MR TOPOLSKI: Thank you very much, yes, that's fine, I'm sure.

20 THE CHAIRMAN: I should also say that when the hearings do start in November, one  
21 of the small issues we will have to discuss is the starting time, whether it is 10.00  
22 or 10.30 because we need to -- at one point we had considered whether the Inquiry  
23 would sit from Monday to Thursday and not sit on Fridays, we can adjust as we  
24 go along, it may depend on a number of witnesses who are called and the potential  
25 length of evidence, but again that's something we can consider at a later stage.

26 Thank you very much for coming this morning. I hope it has been  
27 informative and useful and we will see you again in the near future. Thank you.

28  
29 *(The progress hearing adjourned at 12.20)*