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INQUIRY INTO HYPONATRAEMIA-RELATED DEATHS

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PROGRESS HEARING

chaired by Mr John O'Hara, QC

held at

Spires Conference Centre, Church House,

Wellington Street, Belfast, BT1

on Thursday, 23rd June

commencing at 1.30 pm

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1

Thursday, 23rd June 2005

2 (1.30 pm)

3 MR O'HARA: Ladies and gentlemen, can I ask everyone to take  
4 their seats so we can start this afternoon's hearing?

5 Thank you for coming along this afternoon. The purpose  
6 of this hearing, which was not originally scheduled when  
7 we last met in February, is to update everyone on what  
8 progress the Inquiry has made and to give a clear idea  
9 of what the schedule will be for hearings from October  
10 onwards.

11 Before I start I would like to welcome and introduce  
12 to you the panel of experts who the Inquiry has  
13 appointed. They have been here since yesterday. You  
14 will have seen their names on the website, but to  
15 formally introduce them to you, on my left is Dr Peter  
16 Booker, paediatric anaesthetist at the Royal Liverpool  
17 Children's Hospital, who has been a consultant since  
18 1982. He is also a senior lecturer in paediatric  
19 anaesthesia at the University of Liverpool since 1992  
20 and an Honorary Research Fellow in the Department of  
21 Child Health from 1998 to 2005.

22 On my right is Dr Harvey Marcovitch, who was  
23 a consultant paediatrician in the National Health  
24 Service from 1977 until 2001, and an Honorary Senior  
25 Clinical Lecturer at the University of Oxford. From

1 1994 to 2002 he was the editor of the leading paediatric  
2 scientific journal "Archives of Disease in Childhood".  
3 He is now an associate editor of the BMJ and he sits on  
4 and chairs Fitness to Practise Panels of the General  
5 Medical Council. He is also an expert witness on  
6 a regular basis in medical negligence cases, usually  
7 overwhelmingly retained by plaintiffs or claimants, but  
8 also occasionally acting for defendants.

9 Again to my left is Carol Williams, who is the  
10 Inquiry's nursing adviser. She is a consultant nurse in  
11 Paediatric Intensive Care in Guy's and St Thomas'  
12 Hospitals in London. She has previously been an expert  
13 witness in the inquiries into Brompton and Harefield  
14 Hospitals and the Bristol Royal Infirmary. Carol is the  
15 Chair of the Royal College of Nursing and Paediatric and  
16 Neonatal Intensive Care Forum, in which capacity she has  
17 given evidence to the House of Commons Select Committee  
18 on Child Health. She has also been involved in  
19 developing the national service framework for paediatric  
20 intensive care nursing.

21 Sitting to my right again, Mary Whitty is the  
22 Inquiry's adviser on health service management and  
23 systems. She retired from full-time work in the  
24 National Health Service in 2002, having been involved in  
25 health service management since 1973. Until 2002 she

1 was the Chief Executive of Brent and Harrow Health  
2 Authority in London. From 2002 to 2004 she was a member  
3 of the Department of Health Inquiry into the conduct of  
4 Dr Clifford Ayling and since 2002 she has also worked on  
5 a part-time basis for the Health Protection Agency.

6 As you are aware from documents which have been  
7 placed on the website, the experts were chosen by the  
8 Inquiry on the basis of their established expertise in  
9 their own field, their independence of the various  
10 interested parties and their willingness and ability to  
11 commit the time which will be required for this Inquiry.  
12 They will be here for as much as possible of the  
13 evidence, but inevitably there will be parts of the  
14 evidence which will be less directly relevant to each of  
15 their areas of expertise and they will not necessarily  
16 be there for those parts. There will also be occasions  
17 when they have unavoidable commitments elsewhere, but in  
18 the event that they miss any of the days' hearings they  
19 will be able to follow what happened on the Internet.

20 One of the roles of the experts will be to prepare  
21 a preliminary paper identifying the areas which cause  
22 them concern. This will then be sent to a number of  
23 peer reviewers who have been engaged by the Inquiry, who  
24 work abroad, and the peer reviewers will be asked for  
25 their comments on this preliminary paper. The final

1 paper, put together between the experts and the peer  
2 reviewers, will then be made available publicly well in  
3 advance of the oral hearings on 3rd September\* and  
4 hopefully in or about mid-August of this year. After  
5 the oral hearings are complete the experts will give me  
6 their final report on the areas which the Inquiry has  
7 taken evidence on. This report will be peer reviewed  
8 and will be used as a major contribution to the final  
9 drafting of the ultimate Inquiry report.

10 The idea of peer reviewers was raised at an early  
11 stage by a number of representatives. The Inquiry has  
12 taken up that suggestion, and I can confirm that we now  
13 have committed in principle to be peer reviewers  
14 Dr Arieff in California and Dr Bohn in Canada, who  
15 between them will cover the areas of paediatrics and  
16 anaesthesia.

17 We are in the process of engaging a nursing adviser  
18 and expect to have developments from Australia within  
19 the next week or so on that front. We would also engage  
20 a peer reviewer on the area of health service management  
21 if we decide that that is also required.

22 The peer review system has two particular advantages  
23 it seems to us. The first is that it provides the  
24 Inquiry and the public of Northern Ireland with  
25 reassurance that the Inquiry is receiving high quality,

1 independent advice from our own panel of four experts.  
2 The second advantage is that we hope that the peer  
3 reviewers will be able to help us to learn how things  
4 are done differently or better outside the United  
5 Kingdom so that when we come to make recommendations to  
6 the Minister, we will be able to incorporate in those  
7 recommendations any lessons which might usefully be  
8 gleaned from abroad.

9 I should not move on from the issue of the  
10 appointment of our experts without specifically  
11 referring to the fact that there were objections  
12 received to the appointment of Dr Harvey Marcovitch  
13 largely based on an article that he wrote six years ago  
14 in the British Medical Journal. That article, as those  
15 of you who have read it will see, was written in strong  
16 terms, but it also clearly relates to a particular  
17 campaign or issue, and Dr Marcovitch was at pains in the  
18 article to emphasise that he distinguished that  
19 particular campaign from the vast majority of genuine  
20 concerns which members of the public have about medical  
21 treatment. In these circumstances, and especially now,  
22 given the role of peer reviewers, I intend to continue  
23 to use Dr Marcovitch as an expert adviser for this  
24 Inquiry.

25 There is I should acknowledge one specific

1 outstanding issue on experts, which is the suggestion  
2 made on behalf of Mr and Mrs Slavin that it would be  
3 appropriate for the Inquiry to engage a renal consultant  
4 to advise on some of the issues relating to Adam's  
5 treatment. Dr Peter Booker, who is our adviser on  
6 paediatric anaesthesia, has only just recently become  
7 involved in the Inquiry. I will discuss that in detail  
8 with Peter Booker and we will come back to Mr and  
9 Mrs Slavin and their legal representatives and try to  
10 tease out with them what specifically the role of the  
11 renal consultant might be and how that would add to the  
12 work which will be done by Dr Booker and others.

13 One other suggestion which has been made to us is  
14 that it might be helpful both to the experts and to the  
15 interested parties if a meeting with the experts could  
16 be facilitated before the Inquiry starts. After  
17 discussions this morning we are able to propose  
18 a meeting along those lines and our suggested date,  
19 subject to the availability of various people, is that  
20 those meetings can take place on Thursday, 25th August.

21 Now what I should emphasise about such a meeting is  
22 that its purpose will not be to preview the evidence  
23 which is likely to be given at the oral hearings, and it  
24 will simply not be possible for the experts to start  
25 giving expert advice to the various people -- to anybody

1 who comes to those meetings, but in particular in so far  
2 as the families may have additional concerns which they  
3 feel are not fully or adequately reflected in the paper  
4 which will then be available from the experts and from  
5 the peer reviewers, they will be able to raise that at  
6 the meeting. They will also be able to meet the experts  
7 in perhaps a slightly less formal setting than we are  
8 going to have when this Inquiry starts.

9 Since the families are being offered a meeting along  
10 those lines on 25th August, an equivalent invitation  
11 will be issued to the representatives of the Trusts and  
12 the Department, if they wish to take up on that. That  
13 is a matter for them. That issue can be discussed  
14 further.

15 Let me turn now to the accommodation which we have  
16 in this building. Although it seems very easy from the  
17 outset to say, "We will have the Inquiry in ..."  
18 a certain location, it has taken some considerable time  
19 to identify and pin down this fine hall as the place  
20 where the Inquiry's oral hearings could be conducted.

21 I should say at the start that the hall is not set  
22 out today in exactly the way it will be in October, but  
23 today's appearance is broadly similar. One of the  
24 differences is these trestle tables are not the tables  
25 which we will be using in October from October onwards,



1 and there will be smaller desks than those. People who  
2 feel perhaps fairly far away from us will be moved in  
3 closer.

4 The set-up, however, will be broadly the same. The  
5 Solicitor and Counsel to the Inquiry will sit in the  
6 middle. The families' representatives will be on one  
7 side and the representatives of the public bodies will  
8 be on the other side.

9 There has been a plan or a map of the proposed  
10 layout circulated. We welcome comments on that, and  
11 that can be revised or tweaked in any way which appears  
12 necessary.

13 The legal representatives will have laptops, which  
14 will be provided by the Inquiry. There will also be  
15 screens on their desks which will show any particular  
16 document which is being referred to at any one point in  
17 the evidence. There will be screens elsewhere in the  
18 hall so that the proceedings can be followed in full by  
19 the members of the public, by the families and by other  
20 potential witnesses, and these two large screens to my  
21 left and right, they have been tested this morning and  
22 they can accommodate the documents which will be put up  
23 on those screens. So it should be possible for everyone  
24 who is present here to follow the proceedings in some  
25 detail.

1        If it is necessary, there will also be screens on  
2 the balcony above so that if there is an overflow from  
3 the hall into the balcony, the proceedings can be  
4 followed from there too.

5        For the information of anyone who requires this,  
6 there will be a training day at a date to be arranged in  
7 September, probably mid-September, at which everyone  
8 will be given a guide as to how the laptops and the  
9 screens can be used.

10       Apart from the facilities within this hall, there  
11 are some rather limited rooms outside the hall, which  
12 can be used for consultations between the various legal  
13 representatives and the families and the Trusts and  
14 Department and their witnesses. We are not sure if we  
15 have enough rooms available for everybody and that is  
16 something we will have to discuss with the various  
17 representatives in the weeks ahead. If there is not  
18 room for everybody and more room is required, we will  
19 seek accommodation somewhere very close by.

20       Let me turn now to the progress which has been made  
21 in terms of evidence-gathering by the Inquiry. We have  
22 received thousands of documents from many sources,  
23 primarily the Department itself and the Trusts which are  
24 centrally involved in the issues which give rise to this  
25 Inquiry. Many of these documents can already be found

1 on the website. In particular, documents relating to  
2 Adam's and Raychel's deaths are there along with many  
3 more documents about the response and the reactions of  
4 the Department and other bodies.

5 Legal professional privilege has been claimed for  
6 some documentation. That is an entitlement which  
7 parties have under Schedule 8 of the 1972 Health and  
8 Personal Social Services Order, which specifically  
9 restricts the right which everyone has to see documents  
10 to -- the paragraph states that:

11 "Nothing in Schedule 8 empowers [me] to require any  
12 person to produce any document or to answer any question  
13 which that person would be entitled on the ground of  
14 privilege or otherwise to refuse to produce or to answer  
15 if the Inquiry were proceeding in a court of law."

16 I am not sure of the extent to which there are  
17 tensions about that, and it may be an issue which needs  
18 to be addressed at some point in the near future.

19 Apart from documents for which privilege has been  
20 claimed, which means that they do not have to be  
21 produced at all, there are other documents which we have  
22 been provided with but which we have decided either to  
23 redact in part or to omit entirely for various reasons.  
24 Those reasons might be that the documents are not  
25 actually terribly relevant or relevant at all to the

1 work of the Inquiry. Another reason might be that they  
2 interfere with patient confidentiality. You will  
3 understand that in the events that have happened there  
4 are some references to other patients, and it would be  
5 entirely unfair for documents relating to other patients  
6 not involved in the Inquiry to be made public. This is  
7 an entirely normal process. It happens in all  
8 Inquiries, but to the extent that some concerns have  
9 been expressed about that, the Inquiry has responded to  
10 those concerns and will continue to respond to them.

11 By way of example, we have shown to one of the  
12 families some of the documents which we redacted or  
13 which we decided were not relevant in order to reassure  
14 them about the type of document which they were not  
15 being shown.

16 The next development has been that we have published  
17 and circulated a list of key issues which the Inquiry  
18 will be focusing on as its work continues. They are  
19 contained in a nine-page document which was circulated  
20 in the recent past. We have already had some responses  
21 to that with some suggestions about how it could be  
22 added to or improved. I think we have responded to  
23 those suggestions, sometimes on the basis that the very  
24 specific issues which are raised are already encompassed  
25 in the document as it stands and sometimes by suggesting

1 that it is unnecessary to make the changes which are  
2 proposed.

3 The next fundamental piece of evidence-gathering is  
4 by way of witness statements. You will know that we  
5 have identified a long list of people from whom we have  
6 sought witness statements on general and specific issues  
7 relating to Adam's death, Raychel's death and the role  
8 of the Department and various public bodies. Replies  
9 have started to come in. I do not intend to make  
10 a major issue about this today, but I emphasise the fact  
11 that I expect the replies to come in much more quickly  
12 in the next ten days or so, and I will not accept that  
13 replies can be delayed until well into the summer  
14 holidays. It is important to remember that this Inquiry  
15 is working to certain deadlines and it is essential, if  
16 those guidelines are to be met, that the replies are  
17 received during next week and the week after.

18 One of the reasons why that is important is that  
19 when we receive these replies, we have to scrutinise  
20 them. We have to compare replies with written evidence  
21 and statements from other people. We may then have to  
22 seek follow-up or clarifying statements from the  
23 witnesses who have given us their information. We will  
24 then have to consider the paper which we will get from  
25 our own experts and from the peer reviewers and then

1 decide, taking all of that together, who we require to  
2 give oral evidence.

3 Let me emphasise this. If doctors or nurses or  
4 health service administrators do not give us their  
5 witness statements in good time, they cannot later  
6 complain about getting short notice that they are  
7 required to give evidence when the Inquiry starts its  
8 oral hearings in October.

9 I have now to mention in particular the position in  
10 relation to Lucy Crawford's death. You will be aware  
11 from correspondence that we have published that the  
12 police investigation file was forwarded to the Public  
13 Prosecution Service on 23rd May. That is rather later  
14 than we had hoped, though in saying that I am not in any  
15 way criticising the police, because it appears to us  
16 from what little we know about what has happened that  
17 there has been some efforts to contact at least one  
18 particular witness which have so far been somewhat  
19 unsuccessful.

20 The next stage is that a decision will have to be  
21 taken by the Public Prosecution Service about whether  
22 there will be any prosecutions of any people involved in  
23 Lucy's treatment. We have been informed by the Public  
24 Prosecution Service that it is difficult to know when  
25 those decisions will be taken, because they have to go

1 through a number of steps before forming their final  
2 view. We do understand, however, that if there is to be  
3 a prosecution, it is unlikely that the trial will start  
4 before the end of this year.

5 The Inquiry has had to consider how this will affect  
6 our work overall. In an ideal scenario we would  
7 consider the three deaths which we are specifically  
8 investigating in chronological order. That means we  
9 would start with Adam's death, we would move to Lucy's  
10 death and then we would go on to Raychel's death. We  
11 would then follow up on those specific inquiries by  
12 looking at any other deaths which might fall to be  
13 investigated and we would also look at a number of  
14 specific issues.

15 For instance, we will certainly be examining the  
16 role and responsibilities of various public bodies. We  
17 will be examining the responses of the public bodies.  
18 We will be looking at the introduction of the guidelines  
19 after Raychel's death and the way in which those  
20 guidelines have been implemented and steps which have  
21 been taken to ensure that they are effective. We will  
22 also be looking at the education and training and at the  
23 continuing education and training of nurses and doctors.

24 It seems, however, that because of the delay which  
25 has been brought about by the criminal investigation

1 into Lucy's death we will not be able to follow that  
2 ideal route. For the moment at least, subject to  
3 anything that is presented to us today, we intend to  
4 defer our investigation of Lucy's death. I have to  
5 acknowledge immediately that this is particularly  
6 disappointing for the Crawford family. This is not the  
7 news they wanted to hear. I also acknowledge at the  
8 same time it will be disappointing for a number of other  
9 people who were involved in the events at that time and  
10 who we anticipate will undoubtedly have things which  
11 they want to say to this Inquiry. It seems to us,  
12 however, that it is an unavoidable problem.

13 If a decision is taken that there is to be no  
14 prosecution in Lucy's case, we will examine the  
15 circumstances of her death as soon as possible and we  
16 will fit it into the timetable which I am about to  
17 outline in respect of the Inquiry's other work so that,  
18 although the investigation is delayed, it will not be  
19 put off indefinitely. If, however, there is  
20 a prosecution, and since we have been specifically asked  
21 by the police not to take statements either from the  
22 Crawford family or from people who may be involved as  
23 witnesses in the prosecution, we believe that in the  
24 event of a prosecution we will not be able to proceed at  
25 least for the moment into inquiring into the



1 circumstances of Lucy's death.

2 The timetable which I am about to outline is the  
3 timetable which will be followed at least in the first  
4 place.

5 The public hearings will start on Monday, 3rd  
6 October. The Inquiry will sit each week from Monday to  
7 Thursday. This is partly to facilitate our expert  
8 witnesses from England, who have their own jobs to go  
9 back to, and we will try to release them on Thursday  
10 evening so they at least have one day a week at their  
11 jobs in England. In addition to that sitting four days  
12 a week can be a considerable strain not only for the  
13 Inquiry team but for the legal representatives and also  
14 for the witnesses, the families and the public  
15 representatives.

16 So what we will do is we will start by examining the  
17 circumstances of Adam's death on Monday, 3rd October.  
18 We will sit from Monday to Thursday that week and from  
19 Monday 10th to Thursday, 13th October the following  
20 week. It is our target to hear all the evidence we need  
21 to hear about Adam's death in that two-week period.

22 On Monday, 17th October we will start our  
23 investigation and taking oral evidence into Raychel's  
24 death and that will continue along the pattern which  
25 I just outlined in the week beginning Monday 17th and

1 Monday 24th, and again our target is to complete that on  
2 Thursday, 27th October.

3 Beyond that the schedule has to be confirmed.  
4 I have outlined the sort of issues that we will be  
5 looking at. As I have already indicated, in the event  
6 of there being no prosecution in Lucy's case we will fit  
7 in the investigation of Lucy's death during probably  
8 November/December. November might be a bit optimistic,  
9 but hopefully December. We will also look at any other  
10 deaths which may turn out to be necessary to inquire  
11 into. We will conduct that business in the  
12 quasi-judicial, quasi-adversarial system which this hall  
13 has been set up for.

14 Towards the end of our public hearings, and in order  
15 to help us consider recommendations about what future  
16 practice might involve, we anticipate that we will  
17 probably hold a number of seminars or open meetings to  
18 facilitate discussion, and our view at this stage is  
19 that if we have taken all the evidence that we can take  
20 in the manner which I have just described, it might be  
21 better to try to get ideas and recommendations about  
22 future practice in a non-adversarial setting rather than  
23 having somebody coming to give evidence and be  
24 cross-examined and so on.

25 We have the hall available to us until Thursday,

1 15th December. In the event that there are sittings  
2 continuing until that time Thursday, 15th December will  
3 be the last day before Christmas, but I should say that  
4 because the hall had already been booked for various  
5 other purposes, there will be no sittings of the Inquiry  
6 from Thursday, 10th November to Monday, 21st November  
7 inclusive. Since we are losing Monday, 21st November  
8 and on the assumption that the Inquiry is continuing to  
9 sit in late November, that week the Inquiry will sit  
10 from Tuesday 22nd to Friday 25th.

11 Although that timetable is provisional in some  
12 respects and therefore subject to alteration, I cannot  
13 currently envisage any circumstances in which we will  
14 not adhere to it in terms of Adam's and Raychel's  
15 deaths. Therefore everyone should now take it as read  
16 that the inquiry into Adam's death will start on 3rd  
17 October and the inquiry into Raychel's death will start  
18 on 17th October. This means that those who are involved  
19 in any way in those deaths should now take it as read  
20 that if they are required to give evidence, they will be  
21 required to give that evidence in either of those two  
22 fortnights. I hope that on that basis those who have  
23 alternative commitments -- and I acknowledge there must  
24 be some doctors in particular who have alternative  
25 commitments -- can organise them in such a way as to be

1 available to give the evidence which is essential to  
2 this Inquiry.

3 I also confirm that we will confirm with the various  
4 parties who are required to give evidence that they are  
5 required to do so at least one month before the 3rd  
6 October in Adam's case and 17th October in Raychel's  
7 case.

8 At this stage there is nothing very much that I want  
9 to add. There are a couple of specific points which  
10 I want to raise with various parties, but I think at  
11 this point I now invite the families to raise any issues  
12 which they want to do.

13 Miss McDermott, is there -- please sit down. Today  
14 I understand that you are representing the Crawford and  
15 Ferguson families. Is that right?

16 MS MACDERMOTT: That is right, sir.

17 MR O'HARA: I have introduced you already, but I wonder  
18 could future speakers for the benefit of the  
19 stenographer identify themselves before they start  
20 speaking?

21 Can I ask do you need a few minutes to talk to your  
22 clients about what I have just outlined or are you  
23 content to go straight ahead?

24 MS MACDERMOTT: I do, sir, on one or two topics.

25 MR O'HARA: Okay. Do you want to stop for a few moments?

1 MS MACDERMOTT: Yes.

2 MR O'HARA: Okay. We'll break for a few minutes.

3 (Short break)

4 MR O'HARA: Are we ready to resume? Miss MacDermott, just

5 before you start may I make one minor correction? Among

6 many other things which I introduced Carol Williams as

7 was the Chair of the Royal College of Nursing Paediatric

8 and Neonatal Intensive Care Forum. In fact, that is a

9 post from which she has moved on. Just to fill that

10 blank in her diary, she is now the Nursing President of

11 the European Society of Paediatric and Neonatal

12 Intensive Care just for the record.

13 Now ...

14 MS MACDERMOTT: Eilish MacDermott. I am appearing today

15 with Mr John Coyle for the family of Raychel Ferguson,

16 deceased. We are instructed by Desmond Doherty &

17 Company, Solicitors. For the family of Lucy Crawford,

18 deceased is Mr Ivor McAteer, instructed by McCartney &

19 Casey, Solicitors.

20 Sir, we are grateful for the time, which has been

21 usefully spent. In relation to the issue of legal

22 professional privilege I have had the opportunity of

23 speaking to Mr Stephens, who appears on behalf of the

24 Altnagelvin, and we hope that this matter will be able

25 to be resolved satisfactorily between parties. Should

1 that turn out not to be the case, we will then in due  
2 course ask the Inquiry to sit on a date before the oral  
3 hearings are due to begin in order to resolve any  
4 outstanding issues --

5 MR O'HARA: Right.

6 MS MACDERMOTT: -- but at the moment we are hopeful that  
7 that will not be required.

8 MR O'HARA: Thank you.

9 MS MACDERMOTT: In relation to the timetabling of the  
10 Inquiry into the events surrounding the death of Lucy  
11 Crawford, the Crawford family are, of course, as the  
12 Inquiry anticipated, disappointed, but they fully accept  
13 that in the circumstances there is no alternative but to  
14 proceed in the way that the Inquiry has suggested.

15 I would only say in relation to that that they  
16 expect that solicitor and counsel on their behalf will  
17 be able to listen to the evidence and the submissions  
18 that are made in relation to the Inquiry into the events  
19 surrounding the death of Adam Strain and also of Raychel  
20 Ferguson.

21 I think, sir, for the moment those are all the  
22 matters that I wish to raise.

23 MR O'HARA: Can I just make one point which I should have  
24 made earlier and I did not? There is an issue -- I do  
25 not know if this will happen, but let us suppose that

1 all the evidence is heard by December of this year so  
2 that the Inquiry is in a position to prepare a report on  
3 everything except Lucy's death in accordance with the  
4 original timescale set down by the Minister, which was  
5 March of next year. I will then have to make  
6 a decision, if the prosecution is ongoing, about whether  
7 I do an interim report to the Minister on all of the  
8 other issues or whether everything is parked to wait for  
9 the outcome of the prosecution. I am not sure I want  
10 a reaction from you, but I think you will understand it.  
11 Since we know or expect that if there is to be  
12 a prosecution, it will not start this year or there will  
13 not be a trial this year, we could potentially be  
14 looking at a very considerable delay in the production  
15 of any sort of report. While that would add to the  
16 Crawford's disappointment, I can imagine that the  
17 Slavins, the Fergusons and various other people on what  
18 I will describe as the other side of the fence would be  
19 anxious for a report on the issues which concern them.  
20 That is something we will keep under review in the  
21 autumn.

22 MS MACDERMOTT: I am obliged, sir. Sorry. Might I be  
23 allowed a moment? That is all. Thanks.

24 MR O'HARA: Dr McGleenan?

25 DR MCGLEENAN: Thank you, Chairman. My name is Tony

1 McGleenan. I am counsel for Adam's family,  
2 instructed by McCann & McCann. I have a number of  
3 points I wish to address you on.

4 Firstly, in relation to the peer review process,  
5 I am instructed to welcome the introduction of that  
6 safeguard against any apparent conflict of interest,  
7 bias or appearance of such. However, I would  
8 respectfully submit that it would be important that all  
9 documentation is submitted to both peer reviewers rather  
10 than it being compartmentalised by specialism, and  
11 I make the point for this reason. The death of Adam was  
12 a complex event clinically and it involved from our  
13 analysis an overlap of anaesthetic issues, renal  
14 transplant issues and other issues of surgical  
15 management. It is not immediately apparent where the  
16 boundaries are to be drawn there. So for that reason we  
17 feel it would be important that documentation be  
18 submitted where appropriate to both peer reviewers.

19 MR O'HARA: There is no problem about that, and there will  
20 be at least three reviewers.

21 DR McGLEENAN: Moving on to a point we had previously raised  
22 both in correspondence and at the previous oral hearing,  
23 which is on the issue of renal expertise, and you have  
24 touched on that in your opening address this afternoon,  
25 in relation to that we note that you intend to take the



1 advice of Dr Booker as to the issues which may or may  
2 not arise in relation to renal expertise. I would  
3 simply ask that you refer to the detailed response we  
4 submitted on the statement of issues, where we raised  
5 four specific points of concern, and we went into some  
6 detail, in particular on our fourth point, about renal  
7 transplantation management, and we would ask  
8 respectfully that you present Dr Booker with  
9 our specific concerns as an aid to analysing where there  
10 is an appropriate need for renal expertise.

11 MR O'HARA: I will make sure that happens. You will  
12 understand that Dr Booker is the last expert retained  
13 because the number of paediatric anaesthetists is very  
14 small and because they know each other much more than --  
15 even better than other specialists such as nurses and  
16 paediatricians and so on do, but I will make sure --  
17 I am not sure if Dr Booker has had a chance yet to see  
18 all the documents. I will make sure that that document  
19 is specifically drawn to his attention.

20 DR McGLEENAN: Chairman, I have a further issue which I wish  
21 to raise with you and that relates to a matter which we  
22 also addressed you on on 3rd February hearing. That is  
23 the question of senior counsel representation for Adam's  
24 family.

25 You will recall on the first occasion where we had a

1 public hearing that the position was presented that the  
2 Crawford and Ferguson families were content to be  
3 represented by a single senior counsel and that we were  
4 expressly instructed to reserve our position on that,  
5 which we did, and we have subsequently written to you  
6 presenting a series of seven principled and practical  
7 arguments as to why we should have separate senior  
8 counsel for the presentation of Adam's case. Of course,  
9 you have made a ruling on that and noted that you feel  
10 that there are clear advantages to a single counsel  
11 representing the families.

12 If I could augment the seven arguments I have  
13 already presented to you with one or two other points  
14 ...

15 MR O'HARA: Of course.

16 DR McGLEENAN: The very obvious principal question is one of  
17 equality of arms, and I would invite you, Chairman, if  
18 you simply glance to your right, to look at the desks  
19 arrayed in front of you, the array and range of legal  
20 representation for the public authorities in this  
21 Inquiry, and contrast that with the relative paucity of  
22 representation, particularly for Adam's family.

23 We say in principal terms that, given the fact that  
24 many of the public authorities are represented by both  
25 senior and junior counsel, applying a simple equality of

1 arms' argument, it stands clear that we ought to have  
2 a similar platform from which to mount our case.

3 In addition, we say that while we note your view  
4 that there are advantages to a single senior counsel  
5 representing the families, the position that was  
6 presented to you in February, which was that the  
7 Ferguson and Crawford families were content with that  
8 view, may not be the same position that persists today,  
9 and we are also aware that there may be a possibility of  
10 a fourth family or perhaps more becoming involved in  
11 this Inquiry, at which point the apparent advantages of  
12 a single senior counsel we say somewhat dissipate.

13 Therefore, we repeat our request for representation in  
14 those terms.

15 It is also apparent that for reasons beyond your  
16 control, Chairman, the chronology of this hearing may  
17 well be somewhat fractured, given the potential  
18 prosecution, and we also say that that stands against  
19 whatever advantages there appear to be from having  
20 a single senior counsel.

21 We note your observation that the Inquiry is  
22 represented by a single junior counsel, but in crude  
23 terms we do not see the Inquiry as a comparator to  
24 ourselves and we do not see the Inquiry as in opposition  
25 to ourselves, but it is apparent in this

1 quasi-adversarial system that we ought to be compared  
2 quite clearly with the public authorities. So we renew  
3 our request with those additional arguments and I invite  
4 you to reflect on that issue.

5 MR O'HARA: I will.

6 DR McGLEENAN: Chairman, one further point. You did invite  
7 a comment on the forum which had been chosen for this  
8 particular hearing, and we note that it is presently  
9 a rather ad hoc arrangement, which will be modified in  
10 due course.

11 To assist you in reflecting on those modifications,  
12 I am instructed on behalf of Adam's family to invite you  
13 to consider where an appropriate place might be for the  
14 families at this hearing. We say that it will be  
15 important for the families to be seated in a location  
16 which reflects their importance not just as a party but  
17 as the most important party at these hearings. We say  
18 it would be important for them to have a location which  
19 allows them to have a clear view of the attitude and  
20 demeanour of those who are giving evidence in relation  
21 to the deaths of their loved ones. I am instructed to  
22 ask you to consider positioning them appropriately in  
23 this room within the obvious physical confines with  
24 which you have to work.

25 MR O'HARA: Can I indicate that where the stenographer is

1 sitting today will be where the witnesses give evidence  
2 from. It seems to me, subject to anything you have to  
3 say, that that is a very visible position for everyone  
4 in this hall. I think, as I explained to somebody  
5 before the hearing started, the set-up today roughly  
6 approximates to what we will find in October, but the  
7 desks will be smaller. People on the outside will be  
8 closer to the middle. If the witness is sitting where  
9 the stenographer is, can I take it that that satisfies  
10 the concern that you have just expressed?

11 DR McGLENNAN: I think the concern is more about where the  
12 families are positioned, Chairman.

13 MR O'HARA: I think you will find the families want to be  
14 positioned where they can see the demeanour of the  
15 witness. I presume everyone can see the stenographer  
16 sitting today.

17 DR McGLENNAN: I will take precise instructions on the  
18 families' concerns.

19 MR O'HARA: We have circulated a plan showing how the hall  
20 will be laid out for the hearings. If you have any  
21 alternatives to that, we will consider them, and if  
22 anyone else has any alternatives, but it seemed to us it  
23 was drawn up after a lot of effort to accommodate  
24 everyone's interest.

25 DR McGLENNAN: Yes, indeed.

1 MR O'HARA: Thank you very much. I turn now to the  
2 Department. Mr Kelly, have you anything?

3 MR KELLY: Noel Kelly for the Department. The Department is  
4 content with the procedures and the timetable as set out  
5 today, but if I could possibly clarify one issue. You  
6 have indicated that in the two fortnights during  
7 October, that is the period from 3rd to 27th, the  
8 Inquiry will be looking at firstly Adam's death and then  
9 Raychel's. Does the Inquiry anticipate departmental  
10 witnesses being called during that period?

11 MR O'HARA: It depends on the witness statements. You know  
12 that we have asked for a large number of witness  
13 statements from the Department, and whether or not they  
14 are called during that period will depend on the  
15 responses which we receive. It also depends on how many  
16 witnesses we need to call, because, for reasons which  
17 should be self-explanatory, we are trying to fit Adam's  
18 inquiry into a two-week period, which is really eight  
19 days, in evidential terms, and Raychel's into eight  
20 days. It might be, therefore, that while we can touch  
21 on some of the issues that concern the Department, it  
22 might be more logical for the Department's witnesses to  
23 follow immediately after that. It will not be quite as  
24 broken up as I have indicated, because, for instance, if  
25 on the second week of Raychel's death a witness gives

1 evidence let's say on the Wednesday and then  
2 a Departmental witness gives evidence on Monday or  
3 Tuesday, that will all feed into all of the evidence  
4 which is considered on each of these points. So it  
5 depends on the number of witnesses and the sequencing of  
6 those witnesses. That will become clear as the summer  
7 goes on.

8 MR KELLY: Right.

9 MR O'HARA: Can I just ask one question, because it is  
10 something which the Inquiry would welcome clarification  
11 on? The Chief Medical Officer I understand is partly  
12 represented by the Department and partly represented for  
13 what have been described as professional purposes by  
14 private solicitors, Tughans. Let me ask you this to  
15 illustrate it. If the Chief Medical Officer comes to  
16 give evidence at this Inquiry, which of those  
17 representatives will be questioning her or do you know  
18 yet?

19 MR KELLY: Well, that is a problem that might be resolved if  
20 a single counsel is instructed both by the Medical  
21 Defence Union and by the Department. It is not  
22 anticipated -- in fact, we are quite clear that there  
23 will not be a conflict of interest between the  
24 Department and Tughans, who are instructed by the  
25 Medical Defence Union. Therefore the most likely

1 resolution of that issue will be that a single counsel  
2 will be acting on behalf of both.

3 MR O'HARA: Okay. It would also help us if we could have  
4 some clear definition of what the difference is between  
5 her role as Chief Medical Officer, on the one hand, and  
6 her professional interests, on the other, which is the  
7 basis upon which she is represented by Tughans, as we  
8 understand it. That need not necessarily come today,  
9 but it would be helpful if that could be clarified for  
10 us. At least if the Chief Medical Officer understands  
11 that there is something of a difference between those  
12 two, we will want to know if the Department recognises  
13 the difference between those two. Okay?

14 MR KELLY: Yes.

15 MR O'HARA: Mr Lavery for the Royal?

16 MR LAVERY: Thank you, sir. My name is Michael Lavery.  
17 I appear with Mr MC Lavery on behalf of the Royal Group  
18 of Hospitals, instructed by Messrs Brangam Bagnall &  
19 Company.

20 There is one matter that is giving us some concern.  
21 We have no concern with the process which involves the  
22 peer assessors -- peer reviewers, but what we are  
23 concerned with is that a considerable amount of  
24 documentation, if we have understood the matter  
25 correctly, including preliminary reports, will have been



1 generated before there is a final report which will be  
2 circulated.

3 Our concern is that this is material which obviously  
4 will be seen by the Tribunal, which will obviously be  
5 important in generating the genesis of the ultimate  
6 report. We would suggest that as a matter of first  
7 principle we ought to see it if it is relevant material,  
8 if it is material that in some way leads to the  
9 formation of a conclusion by these experts, which will,  
10 of course, carry a considerable amount of weight at the  
11 Tribunal.

12 MR O'HARA: Well, the preliminary paper from the experts and  
13 peer reviewers will be distributed, but the final  
14 report -- I think I touched on this in February. Some  
15 enquiries have been conducted on the basis that before  
16 a final report is issued which is critical of anyone  
17 that that person is specifically advised of the  
18 criticism and given a chance to answer it. I indicated  
19 in February that I foresee major problems with that,  
20 because I think the families can then say, "How come you  
21 issue a draft report, you take an excerpt from it, you  
22 give it to Dr X, Dr X replies and persuades the Inquiry  
23 to back off on the first two criticisms but keeps, say,  
24 the third and fourth criticism?" That seems to me to  
25 lack the transparency which is part of the Inquiry's

1 procedure.

2 On that basis I will not circulate the final advice  
3 and report of the experts before the final Inquiry  
4 report is published on the basis that they will be  
5 advising me on issues which I should take into account,  
6 but I will adhere to the undertaking which I gave in  
7 February that before anyone comes to give evidence they  
8 will be advised of what issues of concern or potential  
9 criticism they face, and that the report will not be  
10 published without a witness having had a chance in their  
11 oral evidence to respond to those concerns or  
12 criticisms.

13 MR LAVERY: I think our concerns are at an earlier stage  
14 with reports that may be generated before the --

15 MR O'HARA: Before the oral hearing?

16 MR LAVERY: Yes.

17 MR O'HARA: That was indicated. That preliminary paper will  
18 be distributed.

19 MR LAVERY: And then -- I may not have fully understood the  
20 process -- there will be a process whereby they are  
21 reviewed by the peer reviewers.

22 MR O'HARA: These experts who are here with me today, they  
23 will draw up their paper of preliminary concerns.

24 MR LAVERY: And that will be circulated?

25 MR O'HARA: That paper will then go to the peer reviewers to

1 see if they have anything to add to it or any different  
2 take on it. There will then be a combined paper, which  
3 will be circulated. So everyone will know before the  
4 oral hearings start what concerns have been identified  
5 by the experts. If the peer reviewers have any  
6 additional points to raise, they can either be accepted  
7 by my experts or alternatively they can be added. If  
8 the peer reviewer adds an issue which the experts do not  
9 actually agree with, if the peer reviewer adheres to  
10 that, the paper will indicate that that is a  
11 specific point raised by that peer reviewer.

12 MR LAVERY: But we will be seeing the preliminary reports as  
13 well?

14 MR O'HARA: Yes. That combined paper from these experts and  
15 from the peer reviewers will be circulated. We hope to  
16 have it circulated, depending on the peer reviewers'  
17 availability and timetable, in mid to late August, so it  
18 will be at least five or six weeks before the oral  
19 hearings start on 3rd October.

20 MR LAVERY: Thank you, sir.

21 MR O'HARA: Mr Stephens?

22 MR STEPHENS: Sir, my name is Ben Stephens. I am instructed  
23 on behalf of the Altnagelvin Health & Social Services  
24 Trust by the Directors of Legal Services, and I appear  
25 with Mr McAlinden.

1       May I say at the outset that I am grateful for the  
2       discussion that has taken place in relation to  
3       discovery. We will try to resolve that matter in the  
4       near future and we will facilitate any hearing in  
5       relation to any problem that might arise at further  
6       notice, as short notice as necessary.

7       Sir, may I also add that we do have some concerns  
8       about the role of the peer reviewers? Unfortunately  
9       I am still a little uncertain as to whether we see the  
10      actual thought process that ends up with the final  
11      outcome of the experts' report. As I understand it,  
12      there is an expert report before the oral hearing --

13   MR O'HARA: Yes.

14   MR STEPHENS: -- into which there is input from both the  
15      experts and the peer reviewers, but that we do not see,  
16      nor do the families see, how the experts arrived at that  
17      conclusion and what the differences are or may be  
18      between the peer reviewers and the experts.

19      I emphasise on behalf of the Trust that it is our  
20      duty to assist this Inquiry and to arrive at an  
21      appropriate result for the benefit of the community. In  
22      order to facilitate that, I would be somewhat concerned  
23      that if we do not see the thought processes but end up  
24      with the experts' report, that our role and indeed the  
25      role of our people in this Inquiry will be inhibited.

1        May I say also that that is perhaps the same with  
2        the next peer review stage, that is after the oral  
3        hearings take place, because at that stage we do not  
4        know, nor does anybody who has given evidence to this  
5        Inquiry know, what input has been given. There is no  
6        opportunity to clarify or to correct. I did make  
7        available to the Inquiry one short authority. It is a  
8        matter which it may not be appropriate to deal with at  
9        this stage, but I would like to flag that up as an  
10       issue.

11 MR O'HARA: Yes. It seems I have not clarified things as  
12       well as I had hoped. The experts at either side of me  
13       are going to give us a paper hopefully by mid-July. Let  
14       us suppose it contains twenty areas of concern which  
15       they identify which they specifically want us to take  
16       up. We will circulate that. Those will certainly be  
17       identified and that will be part of the oral evidence.  
18       The proposed list of issues which we have prepared, we  
19       very much hope that it probably encompasses all of that  
20       already. If we are working along the right lines, it  
21       certainly should. If the peer reviewers then say, "We  
22       think there are five more areas of concern", my experts  
23       will look at those. Let us suppose they agree with  
24       three of them. We will therefore present twenty-three  
25       areas of concern. If they disagree with the other two,

1 we will then say, "These two areas of concern have been  
2 identified by the peer reviewers". So you will see the  
3 extent to which there is agreement among the experts and  
4 the peer reviewers and you will see the extent to which  
5 the peer reviewers are saying, "Maybe you should push  
6 things a bit further".

7 MR STEPHENS: Yes.

8 MR O'HARA: So far as your concern about the final report is  
9 concerned, we will have to finalise our thinking about  
10 the publication of that final report from the experts,  
11 which is reviewed by the peer reviewers, but it will not  
12 be circulated in advance, with the result that people  
13 will not have a chance to give fresh evidence or  
14 correspond with us on those issues, but I say that  
15 subject to what you have just said to me, what Mr Lavery  
16 said to me and subject to reviewing the authority which  
17 you have been good enough to provide this afternoon.

18 MR STEPHENS: Yes. If I may leave it on that basis at  
19 present. I am very grateful indeed. Apart from that,  
20 sir ...

21 MR O'HARA: I should say this. This does take us back to  
22 the point that I made in February, when I know you were  
23 not involved in the Inquiry, about the -- in a sense  
24 what I am doing is departing from what has happened for  
25 a number of years, but I think it is fairer to the

1 public and to the families that the people who are  
2 potentially the subject of criticism do not get  
3 a private last shot at deflecting or preventing that  
4 criticism before the report is published. We might have  
5 to come back to that.

6 Mr Stitt?

7 MR STITT: May it please you, sir, my name is Michael Stitt.

8 I am representing the Sperrin Lakeland Health & Social  
9 Services Trust. I am instructed by the Central Services  
10 Agency and I appear here with Mr Good.

11 There are two short matters, sir, which I would wish  
12 to bring to your attention.

13 The first relates to the question of the written  
14 statements. It is clear that my Trust has specifically  
15 been injunctioned from preparing statements. The formats  
16 have not been sent to them. We do not know and you do  
17 not know when that is going to happen. It is dependent  
18 upon the inquiries which are ongoing.

19 I would like to make the point, however, at this  
20 juncture that it is anticipated that, with the best will  
21 in the world, it is going to take a lot of work and  
22 a little bit of time to ensure that they are properly  
23 presented and that they are given to you in advance of  
24 our hearing. You do not know and we do not know when  
25 that is going to be.

1       Can I just make the point that what we are concerned  
2       about is the possibility of being sandwiched between the  
3       end of the four-week period that has been discussed and  
4       putting us in immediately thereafter, but perhaps  
5       because of that, and bearing in mind the fact that the  
6       hall will not be available from a certain date in  
7       December, and for obvious reasons you, sir, will wish in  
8       that hypothetical circumstance to deal with the Sperrin  
9       case, the Crawford case, at that time, I just want to  
10      flag up the point that we have a concern that we could  
11      be tight on time as regards statements, but I cannot say  
12      any more than that, but at least I have made the point,  
13      and if we need to revisit it, we can do so.

14 MR O'HARA: I understand.

15 MR STITT: Thank you. The second point is much more prosaic  
16      and it is simply this. We have a large number of hard  
17      copy documents in ring binders. I am thinking of the  
18      mechanics of storing them and perhaps having meetings  
19      and so on. You did refer to the facilities which are  
20      somewhat limited within this otherwise grand building.  
21      I would be grateful if every effort could be made by  
22      those in administrative positions to see that all  
23      representatives have reasonable facilities for storing  
24      overnight their documents and for retiring.

25      I noticed, for instance, that when Miss MacDermott



1 was consulting on a number of matters earlier, she was  
2 basically outside the doors at the back, which is  
3 perhaps a little unsatisfactory, and I am not  
4 suggesting, of course, that that would be the height of  
5 consultation facilities, but I am sure one thing we will  
6 all agree about is we would like, if at all possible, to  
7 have some space that we can retire to consider the many  
8 and various issues which are undoubtedly going to crop  
9 up?

10 MR O'HARA: There will not be enough room for everybody in  
11 this building. I think, broadly speaking, we have maybe  
12 three rooms available to us, one of which the Inquiry  
13 will need. There are likely to be two others of  
14 differing sizes. If you divided one, say, as the  
15 families' room and one as the public bodies' room, they  
16 are probably not both big enough for that purpose. We  
17 will make enquiries to see what alternative facilities  
18 are available nearby. It is likely to mean that  
19 somebody is going to have to be leaving the building.  
20 Hypothetically it might be across the road in Jury's  
21 Hotel. There might be a room set aside there. That is  
22 the sort of issue that we face. It is not as convenient  
23 as being in this building.

24 MR STITT: That certainly would not be a problem, sir. I am  
25 thinking of the security of documents and to facilitate

1 discussion. I am grateful for the response. If you  
2 would just give me one moment, sir ... Thank you.

3 MR O'HARA: Is there anybody else on the public side of the  
4 house who has anything to add?

5 Can I just come back to one issue that I raised  
6 earlier, the option of meeting on 25th August with the  
7 experts? Have the families had time to consider whether  
8 that date is suitable?

9 DR McGLEENAN: On behalf of Adam's family that date is  
10 suitable at present.

11 MS MACDERMOTT: If you could allow a moment, sir ...  
12 I forgot to ask. (Pause.)

13 So far as the Crawford family are concerned, sir,  
14 they are not able to say at the moment that that suits  
15 them. The Ferguson family can attend at that time.

16 MR O'HARA: Can we do it in this way? You will understand  
17 we have been working on a whole series of dates, because  
18 the experts have different work commitments and  
19 different holidays, and Thursday, 25th might be the only  
20 day in August when they can meet. What we might do that  
21 day is go ahead with as many people as we can meet that  
22 day. Then we can make alternative arrangements if the  
23 Crawfords cannot make it that day. The Crawfords can  
24 meet at a later point, but they will have the same  
25 facility available to them as the others do at an

1 earlier stage. I know that is not ideal. I certainly  
2 do not want the Crawfords to think that yet again they  
3 are suffering in this, but it will be available to them.  
4 MS MACDERMOTT: I am also asked to enquire as to whether it  
5 is the position that the experts will not be asked to  
6 write a report about Lucy's case --

7 MR O'HARA: At the moment?

8 MS MACDERMOTT: -- pending all the witness statements  
9 becoming available.

10 MR O'HARA: At the moment they will not be. One of the  
11 reasons for that is the simple reason that we have a lot  
12 of documentation about Lucy's death which has not yet  
13 been distributed --

14 MS MACDERMOTT: Yes, indeed.

15 MR O'HARA: -- because it cannot be as long as the criminal  
16 investigations continue.

17 If there are no other issues, thank you all very  
18 much for coming. We will certainly be here on 3rd  
19 October. We will be here for a training session on the  
20 technology before that. That date will be notified to  
21 you, but is likely to be in the week or two weeks before  
22 the hearing starts. Unless there is anything else, that  
23 concludes today's business.

24 (Hearing concluded at 3.05 pm)

25 --ooOoo--

\* This should read 3 October\*