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THE INQUIRY INTO HYPONATRAEMIA-RELATED DEATHS

PROGRESS HEARING

ON
MONDAY, 12th SEPTEMBER 2011

AT
BANBRIDGE COURTHOUSE

CHAIRMAN: MR JOHN O'HARA QC

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FOR THE FAMILIES:

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FOR MR KEANE

Roger McMillan
Carson McDowell

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AT 10.30:

THE CHAIRMAN: Good morning ladies and gentlemen. You will remember our last progress hearing here on 19th of May, on that date we outlined the schedule for the hearings in the latter half of this year and next year. I emphasised the need for the timely return of responses to requests for witness statements. I also dealt at that time with the role of the Inquiry's advisors and the peer reviewers. Since May we have continued to make progress in most areas despite some hiccups and setbacks which have affected the speed at which the work we have been doing has been able to pick up pace. After some unfortunate delay we now have, through to the end of the Inquiry, a new Inquiry Solicitor, Caroline Martin, who is here today, and a new Assistant Solicitor, Brian Cullen, who I think some of you will have met and been introduced to.

Let me turn now to the agenda which was circulated at the end of last week. The cost protocol I don't intend to dwell on, it was issued in draft form, I received one representation only about it and having considered that I have now decided to issue it in the form in which it was originally circulated.

So far as hearing procedures are concerned, I think that this morning as you arrived you will have received a slightly corrected version of the paper which was circulated last week. The only change is a correction at paragraph (3) which as circulated last week didn't make sense I'm afraid because of the consequence of continually amending and then re-amending drafts, but there was no substantive amendment to the document which you received last week. I hope it is self-explanatory and I hope it is reasonably clear. As you will have seen we have invited anyone who has responses or comments to make on it to do so within 14 days. One of the themes which runs through it, as you will have seen, is the fact that I am retaining a discretion rather than trying to set down in stone what the procedures of the Inquiry will be because I acknowledge that it may be, as we go along, that there will be issues which are raised or questions which have to be asked which are perhaps a little bit beyond what was contemplated. I am

1 therefore retaining a discretion to allow questioning. But, having said that, in
2 order to get through the Inquiry in a timely way we need to control and advance
3 the evidence at a reasonable speed.

4 So far as Adam's case is concerned, I hope that as you arrived today you
5 would have received an initial additional bundle of witness statements, there
6 should be more next week. We have sent out various requests for further witness
7 statements and they are due back this week. In that context again I emphasise the
8 importance of people adhering increasingly strictly to the time-scales we have set
9 out in our requests because if we receive the witness statements back this week it
10 will allow the expert witnesses who the Inquiry has commissioned to finalise their
11 statements which can in turn be issued next week. Those will be the crucial areas
12 of evidence which will be explored at the hearings in November.

13 You already have the inquest papers from many years ago, you have the
14 police papers from their enquiries, and you have now had some witness
15 statements. There are significant witness statements which are to be returned this
16 week and when you receive those, and then following on from that our expert
17 witness; statements; you will see more clearly the direction which the questioning
18 is taking and the issues which we are focusing on.

19 The next advantage to adhering to that timetable is that we will then
20 circulate in a fortnight's time, the week commencing 26th September, the
21 consolidated report of our Inquiry advisors. I hope it is clear that as a result of
22 what I said in the hearing in May the Inquiry advisors' document will be of
23 assistance to you but it will not be crucial. The reason that it is not crucial is
24 because the report which I eventually write and any decision I make and criticism
25 I make will not be based on what the Inquiry advisors have said, they will be
26 based on the evidence which we have in oral and documentary form. The focus
27 should therefore be, I suggest to you, on the expert witness statements which the
28 Inquiry has commissioned on the advice of our advisors.

29 Following on from that we will issue a further revised list of issues - you
30 will remember that as the Inquiry has gone along over the years we have issued an

1 initial list of issues and then revised the list of issues as things develop - and that
2 will then be, we hope, finalised to the extent that there is a final list of issues in
3 Adam's case in early October, hopefully the week commencing 3rd October.

4 There is an additional document which you will also receive which I can't
5 quite put a date on, but it will be as early in October as we can arrange, which is
6 the review by the international peer reviewers of the advisors' report.

7 The next step in this type of Inquiry is to put people who potentially face
8 criticism on notice in writing of what that criticism may be. These are called
9 Salmon letters and they will be issued, we expect, by Friday, 18th October. In
10 addition to that there may be parties, apart from the Inquiry, who have areas of
11 criticism to raise. They do that by sending their proposed areas of criticism of Mr
12 A or Dr B or whoever to the Inquiry and the Inquiry then forwards those to the
13 person who is potentially the subject of criticism. Those documents, I should say,
14 are not made public. The purpose of them is to alert a witness before he or she
15 comes to the witness box of the fact that he or she may face criticism and what
16 that area of criticism is. It is an effort to be fair to a party who is not therefore
17 ambushed when they come to give evidence.

18 As you will have seen from the Procedures paper which was circulated, the
19 Inquiry will open on Monday, 7th November, which is eight weeks today. There
20 will be a general opening statement by Ms Anyadike-Danes QC, senior counsel to
21 the Inquiry, and that will be followed up by a case specific statement in relation to
22 Adam. I don't intend to tie Ms Anyadike-Danes down at present about the
23 timescale for that, but in general terms she has indicated that her broad opening of
24 the Inquiry will most likely last for the morning of Monday, 7th November, and
25 that her specific opening about Adam will then run through the rest of Monday
26 and Tuesday and most probably into Wednesday.

27 As we have investigated Adam's death more and more the medical
28 complexities have increased. It may be that in the coming weeks we get some
29 clarification on that which eases them, but it was a complicated scenario which
30 has to be investigated from a number of angles.

1 When Ms Anyadike-Danes finishes her specific opening about Adam any
2 party who is directly involved in Adam's case may make an opening in relation to
3 Adam. This isn't a broad Inquiry opening, it is in relation to Adam. So, for
4 instance, counsel representing Mrs Slavin may do so, counsel representing the
5 Belfast Trust or any of the doctors who are separately, individually represented
6 may choose to make a case specific oral opening statement, but it is not
7 compulsory to do so. It is the history of Inquiries that many parties do not, in fact,
8 make opening statements at all, it is a matter for them. It will however be time
9 limited in the way which we have described in the Procedures document.

10 What will then follow in the week beginning Monday, 14th November, is the oral
11 evidence in Adam's case. We have written, on a preliminary basis, to the
12 Directorate of Legal Services and some other solicitors who represent individuals
13 who were involved in Adam's treatment, to confirm the availability of people who
14 are likely to be witnesses over the three weeks beginning on Monday the 14th.
15 The responses which we have received indicate that the witnesses who we
16 envisage at this stage as being likely to be called are generally available. Our
17 initiative in that correspondence has been because we are aware that some of the
18 people involved will be or may be scheduled to be treating patients perhaps in the
19 Royal or perhaps elsewhere in those weeks and we think it is unfair to patients
20 who are waiting treatment to give comparatively short notice. But the fact that we
21 have written on that preliminary basis does not affect in any way our continuing
22 commitment to the procedure which we had set out before, namely that we will
23 issue a list, a draft list of witnesses, and that will be issued to the parties and any
24 parties may suggest that some of those witnesses are unnecessary or that some
25 additional witnesses are required and we will consider that before finalising a list
26 of witnesses and then finalising the timetable for that evidence to be heard over
27 those three weeks.

28 I should say that unfortunately one of the expert witnesses who we have
29 commissioned is entirely unavailable for the three weeks that I have been referring
30 to and it is therefore virtually certain that we will have to sit briefly, perhaps for

1 one day or at worst two, during the week commencing Monday, 5th December.
2 That, I am afraid, is unavoidable. At that point in early December that will
3 conclude the evidence on what I will broadly call the clinical issues which are
4 relevant to Adam's treatment.

5 Before I go on to describe the next sequence of events let me deal at this
6 point with the question which was raised at the last hearing on behalf of Mrs
7 Slavin and was raised again with us in correspondence last week by Mr Hunter,
8 the solicitor for the family, about the anaesthetic nurse. There are some
9 statements in Adam's case which suggest that there was an anaesthetic nurse
10 present during Adam's treatment or during parts of Adam's treatment who has not
11 yet been identified. That issue has caused some confusion and we have now I
12 think begun to find some clarification of it. Part of the confusion is that in 1995
13 the term "anaesthetic nurse" was not in common use and it seems more likely that
14 if there was a nurse there it was a theatre nurse who helped at some point with the
15 anaesthesia. We have been working with the Directorate of Legal Services but the
16 records which still exist do not disclose who the particular nurse was, we have
17 obtained through the Directorate the names of all theatre nurses who were then
18 employed in the Royal and we have written to each of them to ask whether they
19 were involved in Adam's treatment at the relevant time. If they were then if they
20 confirm, for instance, Nurse A was that nurse then she has been asked a series of
21 questions in relation to the treatment which Adam received and in relation to her
22 knowledge about that treatment or her contribution to it. That will develop over
23 the next few weeks but we hope therefore to be in a position to pin down that
24 issue as soon as possible.

25 Beyond the clinical issues in Adam's case is the governance issue. In
26 rather crude terms the governance issue is what, if anything, should have been
27 done after Adam's death, or what, if anything, should have been done after the
28 inquest into Adam's death in 1996 and what in fact was done. On this aspect we
29 have run into some delay and we will not be able to deal with that aspect of
30 Adam's death most probably until January. We think from our perspective that it

1 is important to deal with that before we look at the treatment of Claire Roberts in
2 1996 in the Royal. We think the sequence should most logically and conveniently
3 be that we investigate the clinical issues in Adam's case, we then investigate the
4 governance issues in Adam's case, we then investigate the clinical issues in
5 Claire's case and the governance issues in Claire's case because, as you remember,
6 after Claire died there wasn't an inquest and an inquest was not held until after the
7 Ulster Television documentary was then broadcast in 2004. To take these issues
8 out of sequence only builds up the likelihood of having unnecessarily to recall
9 witnesses at a later stage of the Inquiry. We want to go through this in sequence.
10 We follow through with that when we then turn to the aftermath of Lucy
11 Crawford's death in 2000 which is, as you all know, the prelude to the Inquiry into
12 Raychel's treatment in Altnagelvin in 2001.

13 Governance is a running issue throughout the Inquiry. For instance, it
14 explains entirely why we have included the death of Conor Mitchell or some
15 aspects of the death of Conor Mitchell. After we proceed through that we will
16 then end up with what we have broadly called at earlier hearings the Departmental
17 governance issues. Now, to a degree the Departmental governance issues will be
18 covered as we go through the earlier sequence of events. For instance, if we are
19 looking at what happened after Raychel's death and what happened before Conor
20 was admitted to Craigavon Area Hospital that necessarily involves inquiring into
21 the role of the Department because the Department did set up a party which
22 introduced guidelines. One of the issues there is how well and effectively the
23 guidelines were circulated and implemented and Conor's death is an illustration of
24 our concern about that.

25 As a result of some delay which we have encountered it will still be
26 possible to deal with the governance in Adam's case then the issues relating to
27 Claire and Raychel and Conor between January and Easter, but it is most likely
28 that we will not be able to start Claire's case as we had planned on 9th January.
29 We will confirm this in the very near future, but what is most likely to happen is
30 that we will deal with the governance in Adam's case probably in the week

1 commencing 30th January. We will then go in Claire's case in the weeks
2 commencing 6th and 13th of February, then Raychel for three weeks commencing
3 27th February and then Conor the week commencing 19th March. The result of
4 that is that what remains to be investigated of the Department's role - and I am
5 using Department in a broad sense because it may go beyond the Department to
6 various remaining issues about Trusts and Boards - that area of work or
7 investigation will most likely have to be deferred until after Easter, but by the time
8 we reach Easter next year we will have the children's deaths investigated and we
9 will then do what we need to do with the Department, most probably in the weeks
10 commencing 16th and 23rd April.

11 That leads into the issue of closing submissions which are dealt with at
12 paragraphs 7 and 8 of the Procedures paper which has been issued to you. At this
13 stage because of the restrictions which have been imposed by the Minister in
14 terms of the length of the Inquiry and in terms of budget, it is not certain that we
15 will be able to have written submissions or closing written and/or oral
16 submissions. It would certainly be an advantage to me if we did have them
17 because I think by the end of the evidence positions may have changed and some
18 issues may have become more important while others may have receded in their
19 significance. It would certainly help me at the end of the hearings to have some
20 input from the representatives of the parties so that they may, on either side,
21 concede that something is no longer significant or contend that something is now
22 more significant than might have appeared earlier. I will do everything I can to
23 ensure that that part of the process happens, but you will all understand that at a
24 time when the Minister is facing huge difficulties in keeping Accident &
25 Emergency and Casualty units open, the idea of going back to ask for more money
26 for this Inquiry is rather unattractive.

27 The other issues on the agenda which I want to turn to, I think item 12, we
28 are still working on the core bundles.

29 So far as IT training is concerned, you will be flattered to know that the IT
30 specialist said that if you teach lawyers about IT more than a week before you

1 start a hearing they forget about it. So we are going to have the IT training, it will
2 be here obviously and we will arrange it for the week before the hearing starts, in
3 other words the week beginning 31st October.

4 Before I turn to any other specific issues I should say that if we require a
5 further progress hearing it will be held here on Friday, 14th October, that is if it is
6 required. It may be that things need to be tidied up at that stage which will be
7 approximately three weeks before we start, but if we can do without it and deal
8 with issues by correspondence we will, but perhaps you'd just pencil into your
9 diaries for now, Friday, 14th October.

10 I think that that's really all that I want to say at this stage. If you don't mind I'll
11 take the usual approach of going round the various representatives. Mr Hunter is
12 here. Mr Hunter, I think you wrote to us last week raising a number of issues. I
13 think I have dealt with them, both from what I have just said and from the
14 Procedures paper. I think the only one I haven't specifically referred to is your
15 third point - the statements will not be on searchable PDF files. Is there anything
16 beyond that that you want to raise?

17 MR HUNTER: I would like to raise a few points if I may, Mr Chairman. Firstly, thank
18 you for the hearing protocol document, that certainly has clarified matters in
19 relation to the oral hearings for us. If we have anything further to add to that we
20 will let you have our response within the timeframe.

21 THE CHAIRMAN: Thank you.

22 MR HUNTER: The second matter can I ask you about is in relation to the Salmon letters
23 and the proposed criticism letters? Do you anticipate that we will have the peer
24 reviewers' report before you require the letters of criticism from us? I think you
25 intend to have those from us before 18th of October

26 THE CHAIRMAN: Yes.

27 MR HUNTER: Is it anticipated we will have the peer reviewers' reports before that?

28 THE CHAIRMAN: I hope so. I can't put it more than that but I do hope so.

29 MR HUNTER: Thank you, because then that will be of assistance to us when we are
30 preparing any potential letters of criticism.

1 Again if I can mention the matter of the witnesses, we have obviously not
2 received a list of witnesses yet. I have concerns in relation to one particular
3 witness. I wrote to you some time ago giving you our proposed witness list, and I
4 am not sure whether you have it on your witness list but there is one witness in
5 particular I want to flag up at this stage, that is Dr Montague, the anaesthetist who
6 was assisting Dr Taylor. I am flagging it up, Mr Chairman, because as far as we
7 know Dr Montague is working or he was last known to be working in Dublin. If
8 you recall, certainly at the time when the police were trying to obtain statements
9 and interviews they had considerable difficulty in contacting and in getting a
10 statement from him at that time. My concern is given that we are fast approaching
11 the date of the oral hearings - I am assuming he is on your list - certainly from the
12 family's point of view he is an absolutely crucial witness and we would absolutely
13 insist that he be here.

14 THE CHAIRMAN: Well can I say, Mr Hunter, two points about that? I have not been
15 shown many of the witness statements which have been received because the idea
16 is that I stand back from the preparation, but I understand that Dr Montague has
17 provided witness statements. That is point 1. Point 2 is unless you can show me
18 something to the contrary, my power to compel somebody to come from outside
19 Northern Ireland to give evidence doesn't exist. That does not mean he would
20 necessarily refuse a request to attend. But my understanding is that my powers do
21 not extend --

22 MR HUNTER: Yes, well perhaps if I could help you on that point, Mr Chairman. There
23 is a document which I will provide to the Solicitor, it is a document emanating
24 from the GMC in 2006 which details the responsibilities and duties of doctors
25 registered with the General Medical Council. In fact I have a copy of it, I will
26 certainly make it available this morning actually. There is a paragraph in that
27 document which states that all doctors should co-operate with matters such as
28 Inquests and Inquiries and they should make themselves available. I would
29 suggest to you, Mr Chairman, if there is any difficulty in obtaining Dr Montague
30 that perhaps an approach could be made to the GMC on that basis, perhaps the

1 GMC could contact Dr Montague.

2 THE CHAIRMAN: Okay, I will look at the document. That's rather different from me
3 compelling him to attend. What, in fact, you are suggesting is the GMC could
4 compel him to attend or threaten him with consequences if he doesn't attend.

5 MR HUNTER: Yes.

6 THE CHAIRMAN: But to be fair to Dr Montague, just to put on the record, he has
7 responded to requests for witness statements from the Inquiry, so I wouldn't like
8 there to be a feeling abroad that somehow he is evading the Inquiry, he hasn't
9 been.

10 MR HUNTER: I understand that, but I am sort of thinking ahead, Mr Chairman, because
11 again you know there are about seven weeks to go to the oral hearings and given
12 the fact that he is out of the jurisdiction I just would be concerned that...

13 THE CHAIRMAN: Well there are eight weeks to go until we start and nine weeks to go
14 until we give evidence so we have got a little bit more time than you are
15 concerned about.

16 MR HUNTER: The matter in relation to the anaesthetic nurse, thank you, I received your
17 letter last week which is helpful in clarifying that. It would seem that it may have
18 been the case that there were theatre nurses who doubled up in the role as
19 anaesthetic nurses.

20 THE CHAIRMAN: I think the confusion comes because the statements that refer to them
21 as anaesthetic nurses were made at a later time when the terminology changed.

22 MR HUNTER: Yes, although partly it was Dr Taylor himself referred in his interviews
23 to the police to an anaesthetic nurse and he was fairly sure it was a 'she'. Of
24 course, the other two nurses also refer to the fact that they would have expected an
25 anaesthetic nurse to be there, but I do take the point and in fact it is rather helpful
26 in clarifying it, that there may well have been a theatre nurse as such. I hope that
27 if there is that she can be identified.

28 THE CHAIRMAN: The slight hiccup in that is that the Royal no longer has the rotas for
29 who was on at the time, but we have got a list of the theatre nurses who were
30 employed by the Royal at the time, therefore the enquiry at this point is a general

1 one to those employed theatre nurses: You were employed by the Royal at this
2 time, were you on duty when Adam was being treated, and setting out the dates
3 and times.

4 MR HUNTER: In relation to the statements in general, sir, you say you hope to have
5 more statements next week; would that be the bulk of the statements in relation to
6 the clinical witnesses?

7 THE CHAIRMAN: Yes, if people respond within the time-scales that we have asked for
8 you will have the major statements next week because the majority of them are
9 due back this Friday.

10 MR HUNTER: Hopefully then we would have sight of those?

11 THE CHAIRMAN: It won't take long to copy them and to send them out.

12 MR HUNTER: Okay, thank you for that.

13 One final point, in relation to a revised list of issues I wrote to you, sir, in
14 July suggesting that perhaps you might consider the matter of people responsible
15 for CPD training of doctors and people from appropriate bodies to explain why
16 action wasn't taken earlier. Would you consider, sir, putting such matters as that
17 or consider putting such matters as that into your revised list?

18 THE CHAIRMAN: We will consider that yes, but we will not guarantee they will go in,
19 but we will consider it.

20 MR HUNTER: Thank you sir.

21 THE CHAIRMAN: Thank you Mr Hunter. Mr Quinn?

22 MR QUINN: Mr Chairman, thank you very much for the information given this morning.
23 Two or three points arise in Claire's case. When are we likely to receive a list of
24 witnesses in relation to Claire's case, a final list?

25 THE CHAIRMAN: That is unlikely to happen, certainly it is unlikely to happen before
26 December.

27 MR QUINN: You mentioned that Claire's case is to be moved back because of problems
28 that you have with time-tabling, it is fully understandable, it is moved back until
29 the 6th to the 13th of February I picked up. That is one week whereas the --

30 THE CHAIRMAN: No, the weeks commencing the 6th and the 13th. I haven't cut you

1 short Mr Quinn, don't worry.

2 MR QUINN: In relation to the governance hearing, Mr Chairman, are you going to
3 release further papers before Claire's case commences in relation to Adam's
4 governance?

5 THE CHAIRMAN: Yes. The delay, to spell it out, the delay we have had is from the
6 expert - I am not blaming the expert - but we don't yet have the expert witness
7 statement or governance in relation to Adam. We are trying to use the same
8 governance expert through all the cases for continuity. So what will happen is
9 that you will get -- and this statement I am talking about will not be one of the
10 ones which comes out over the next week or two, it is not likely to come out until
11 probably October, but that then feeds into requests for witness statements about
12 governance in Adam's case, but it is obviously bound to be relevant to Claire's
13 case given she was treated at the same hospital and the overlap between Adam's
14 treatment and death, the inquest in Adam's case and then Claire coming in a few
15 months later.

16 MR QUINN: That's why I see it as so important to my case. That's why I am asking the
17 question because we will need time to prepare and preparation in relation to that.

18 THE CHAIRMAN: Yes, but we will also then ask for that expert to deal with a statement
19 about Claire's case.

20 MR QUINN: Yes, I understand that as well.

21 THE CHAIRMAN: And in due course he will do one about Raychel and Conor.

22 MR QUINN: Obligated. Thank you.

23 THE CHAIRMAN: Mr Coyle?

24 MR COYLE: One point sir, if I may. In terms of the Salmon letters, if I have understand
25 you correctly, if I haven't I apologise, the Salmon letters are to be with the Inquiry
26 by 18th of October; is that in all cases as a preliminary?

27 THE CHAIRMAN: No, I am not expecting -- sorry, you are quite right to pick me up on
28 that. That will be in relation to Adam's case. I don't expect you at all to have the
29 notice of intended criticism letters, for instance, from you and your solicitor in
30 Raychel's case at that time.

1 MR COYLE: Do you have any date in mind? Would approximately about four weeks
2 before be a workable protocol?

3 THE CHAIRMAN: Yes. We have to give people sufficient notice for them. We suspect
4 at least some of these people will be alerted to what the criticisms are likely to be,
5 but they should still have adequate notice to be able to respond, so four weeks
6 would be a working target.

7 MR COYLE: Round about the 20th January so that we know what we are working
8 towards here?

9 THE CHAIRMAN: Yes.

10 MR COYLE: Thank you very much sir, that's all I wish to raise at this juncture.

11 MR QUINN: Just one point in Conor's case, I take it, Mr Chairman, that the Conor
12 Mitchell hearing will be moved back appropriately in relation to Claire's hearing
13 coming first and then the sequence of events will be that Conor will be moved
14 back, I take it at least four weeks?

15 THE CHAIRMAN: Sorry, I thought I'd given a date. Conor is likely to be the week
16 commencing Monday, 19th March. I know this delay is regrettable, but the
17 critical thing about is that that means that all of the children's deaths which were
18 to be investigated and that investigation completed by Easter that will remain the
19 case. The only outstanding area of investigation will then be whatever is left over
20 with the Department which hasn't been dealt with in previous periods.

21 MR QUINN: Obviously I make the point on behalf of the families that I represent that
22 they are very anxious to have this dealt with as quickly as possible. I make the
23 point also on behalf of Conor's family that having looked at the matter and having
24 discussed it with junior counsel Ms Ramsey and my solicitor, it seems to be that
25 one week may not be enough time for that. Now when I first was briefed on
26 behalf of Claire Roberts the timetable that I had actually stated that that case was
27 lasting two weeks, sorry, that element of the case, Conor Mitchell's case. I
28 assumed that was a misprint. I had 27th February to 2nd March brackets two
29 weeks. Then when I got the papers from my solicitor in Conor's case I realised it
30 was a one week window of opportunity. I am just flagging up to the Inquiry that

1 that may not be enough time. I am simply flagging it up at this stage.

2 THE CHAIRMAN: Okay.

3 MR QUINN: For information Mr Chairman, if I could just pass up my scribbled upon --

4 THE CHAIRMAN: I think I am just being reminded - sorry Mr Quinn, just give me one
5 second. The week I have told you about is the week commencing 19th March.
6 There is another week before you run into the Easter period.

7 MR QUINN: Yes I know that, that's why I am flagging it up. I realised that from my
8 own diary. I am just saying that it may well be necessary to use that just so long
9 as you aware of it Mr Chairman. Thank you.

10 THE CHAIRMAN: Belfast Trust?

11 TRUST REPRESENTATIVE: I have nothing to add.

12 THE CHAIRMAN: On behalf of the Department?

13 DEPARTMENT REPRESENTATIVE: Mr Chairman, we have nothing to add. Thank
14 you for your clarification.

15 THE CHAIRMAN: On behalf of any individuals? Mr McMillan?

16 MR McMILLAN: Mr Chairman, thank you very much for the clarification today, just a
17 couple of points. The timetable that you have mentioned today and the
18 governance issues particularly, I think you described it as the aftermath of Lucy's
19 death, where do you envisage that coming in in the timetable?

20 THE CHAIRMAN: The reason why we have set aside three weeks for Raychel is that
21 that element of the public hearings will start with the aftermath of Lucy's death
22 and will then run into Raychel's treatment in Altnagelvin and then run into the
23 response from Altnagelvin and the Department to that. So that runs from after
24 Lucy's death in effect to the introduction of the guidelines which in turn takes us
25 into Conor's case.

26 MR McMILLAN: That sounds entirely sensible Mr Chairman, thank you very much for
27 that. In terms of the Hearing Procedures document that you have provided I just
28 want to flag up a potential problem in relation to 6(ix). That relates to the
29 potential for a party to call "an expert" to appear. The problem that I envisage is
30 that if the Salmon letters aren't being issued until on or around 18th of October - I

1 believe that is the date - and 28 days' notice is required from a party who may or
2 may not wish to call an expert, that potentially runs into a time-tabling difficulty, I
3 believe, prior to commencement of the Inquiry.

4 THE CHAIRMAN: Okay. Well we will face that if it comes to it, Mr McMillan, but I
5 would have thought that any - let me just give this as an example - any doctor will
6 know whether he is potentially facing criticism when he sees the expert witness
7 statements coming in, which should be within a fortnight. I accept your point on a
8 narrow basis, the Salmon letters will be coming out around about the 18th, but Dr
9 X will know from the Inquiry's expert witness statement in all probability whether
10 he is facing any criticism. So the Salmon letter is a specific confirmation of that.
11 I accept the principle behind Salmon letters being issued, but if you have a client
12 who is criticised in an expert witness statement and you intend to engage an expert
13 you don't need to wait for the Salmon letter to start that process.

14 MR McMILLAN: I appreciate that, Mr Chairman. Of course, any additional issues
15 raised in the Salmon letters can be addressed by an expert already engaged.

16 THE CHAIRMAN: But let me just emphasise this again, the criticisms are based on the
17 evidence, so the evidence has to point to the criticism or be the basis of the
18 criticism. This is emphasising again the difference between the expert witnesses
19 and the advisors, it is the witnesses. We have been focusing before, I think
20 perhaps excessively, on the role of the expert advisors. They have directed us and
21 they have taken us in certain directions, but it is the expert witnesses who are
22 critical to this, okay?

23 MR McMILLAN: Obligated Mr Chairman. Finally, has any consideration been given to
24 the timetabling of witnesses? For example, if a clinician was subject to criticism
25 has the Inquiry turned its mind as to whether or not that clinician should give
26 evidence towards the end of the two or three week period provided for to enable
27 that clinician to have the opportunity to hear the evidence that is being given and
28 the criticisms?

29 THE CHAIRMAN: Well the reason why we wrote I think over the last fortnight, I think
30 to yourself probably for one and to the DLS and to some other solicitors, was to

1 try to sort out the availability of witnesses because, for instance, some doctors are
2 regularly in surgery on Monday and Tuesday, we would try and arrange it that
3 they will be here on a Wednesday or Thursday because we don't want to disrupt
4 the treatment that patients are waiting for. So having got that information and
5 now having a better feel for who is likely to be available when, we will now turn
6 to the issue that you have raised. I should say that we are grateful because the
7 information which we have received is that, subject to certain limited times when
8 people have unavoidable commitments like surgery, there is a general willingness
9 of potential witnesses to be available and that makes our task of timetabling
10 easier. But again when we start exchanging our draft witness list and people come
11 back with their responses we can then see how much or how easy it is going to be
12 if we do this. If we look at one aspect of the clinical treatment to be given, break
13 it down, say there are two doctors to give evidence and we have one expert
14 witness, can you segment that to do those witnesses consecutively then move on
15 to another part, or is there too much of an overlap to make that possible, but we
16 will work with everybody as best we can.

17 MR McMILLAN: Obligated Mr Chairman, thank you.

18 THE CHAIRMAN: Is there anything else that needs to be raised? If there isn't thank you
19 very much for coming. As I say, we have a pencilled date in October if needs be,
20 but in the meantime please keep in touch with the Inquiry as we will be keeping in
21 touch with you. Thank you very much.

22
23 *(The hearing adjourned at 11.15)*