

PROTOCOL No.3

WITNESSES PROTOCOL

1. Evidence for the Inquiry

- 1.1 The evidence for the Inquiry includes both documentary evidence and the testimony of Witnesses.
- 1.2 The Inquiry has already received a considerable amount of material, including:
 - Medical notes and records of the children who are the subject of the Inquiry;
 - Correspondence, Reports and other contemporaneous documents generated by or for the hospitals and authorities concerned
 - Depositions from the Inquests and Reports commissioned by the Coroner
 - Statements from the Police Service of Northern Ireland (PSNI) investigations and Reports commissioned by the PSNI
 - Statements and transcript from the General Medical Council (GMC) proceedings
 - Witness Statements from some of those involved in the care of the Children or who otherwise have relevant information
 - Documents held by the families of Adam, Claire, Raychel, Lucy and Conor
 - Correspondence and transcripts from Ulster Television plc
- 1.3 The Inquiry has commissioned from independent Experts a series of 'Background Papers', such as on medical education and training to provide a context within which to consider issues such as the knowledge and competence of the medical practitioners that treated Adam, Claire, Raychel and Conor.
- 1.4 The Inquiry will seek Witness Statements and may require Supplemental Witness Statements. Some of those Witnesses will be called to give evidence during the Oral Hearings.
- 1.5 The Inquiry may also commission reports from Expert Witnesses and may call those Experts to explain their views during the Oral Hearings. Those reports will be incorporated within their Witness Statement. In addition the Inquiry may also require some of the Experts that have already provided

Reports to the Coroner or PSNI to explain their views during the Oral Hearings.

2. Identification of Witnesses

- 2.1 The first step is to identify those persons that have information that is likely to be of relevance to the Revised Terms of Reference and the List of Issues. The initial identification is largely based upon the Revised Terms of Reference, the List of Issues and the material that the Inquiry has received. The Revised Terms of Reference and the List of Issues will be available to view at the Inquiry website at www.ihrdni.org.
- 2.2 Those persons identified by the Inquiry as likely to have relevant information will be asked to provide a Witness Statement on a Witness Statement Template that will be given to them or their legal representatives.
- 2.3 Not everyone who provides a Witness Statement will be required to give evidence at the Oral Hearings. The Inquiry may need no further information than that set out in the Witness Statement.
- 2.4 The Inquiry may require evidence at the Oral Hearings from those that have not been asked to provide Witness Statements. The requirement for such evidence may be clear from other material that the Inquiry has, for example Depositions to the Coroner or Statements to the PSNI.
- 2.5 Anyone who believes that they have evidence that is relevant to the work of the Inquiry should contact the Inquiry. Alternatively a Witness Statement Template may be downloaded from the Inquiry's website at www.ihrdni.org, completed and sent to: The Inquiry into Hyponatraemia-related Deaths, Arthur House, 41 Arthur Street, Belfast BT1 4GB.
- 2.6 It is for the Inquiry to decide the Witnesses Statements that it will use and those persons that will be called to give evidence at the Oral Hearings.

3. Significance of Witness Statements for the Inquiry

- 3.1 The Inquiry will largely decide who to call to give evidence at the Oral Hearings on the basis of the Witness Statements (or any Supplemental Witness Statements), the views expressed in any Expert Witness Reports that it commissions and the guidance received from the Inquiry's Advisors.
- 3.2 However, the provision of a Witness Statement is not simply a means of enabling the Inquiry to determine who to call as a Witness. A Witness

Statement is an important source of information in its own right and the Inquiry will expect to be able to rely upon it as an honest account of a Witness's evidence. It is important that the Witness Statement contains the full truth about the matters with which it deals and does not, for whatever reason, present a partial or biased account.

4. Compellability of Witnesses

- 4.1 The Inquiry was established under the Health and Personal Social Services (Northern Ireland) Order 1972 and continues by virtue of section 23 of the Interpretation Act (Northern Ireland) 1954 (as amended).
- 4.2 The Chairman has the very broad discretion set out at Schedule AI to the Interpretation Act (Northern Ireland) 1954 (as amended by the Inquiries Act 2005) to compel the attendance of Witnesses and the provision of documents and information. The Chairman's powers are reinforced by the fact that it is a criminal offence to fail to respond appropriately to his notice to attend and produce documents and/or provide information:

Powers to require persons to give evidence etc.

4 (1) Subject to sub-paragraphs (2) and (3), the **person appointed to hold the inquiry may by notice require any person—**

(a) to attend at the time and place set forth in the notice to give evidence or **to produce any books or documents in his custody or under his control which relate to any matter in question at the inquiry;** or

(b) to furnish, within such reasonable period as is specified in the notice, such **information relating to any matter in question at the inquiry as the person appointed to hold the inquiry may think fit,** and as the person so required is able to furnish.

(2) A person shall not be required, in obedience to such a notice, to attend at any place which is more than 16 kilometres from the place where he resides unless the necessary expenses are paid or tendered to him.

(3) Nothing in this paragraph shall empower the person appointed to hold the inquiry to require any person to produce any book or document, or to answer any question, which he would be entitled, on the ground of privilege or otherwise, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.

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Offences

6 Any person who—

(a) **refuses or wilfully neglects to attend** in obedience to a notice under paragraph 4, or to give evidence; or

(b) **wilfully alters, suppresses, conceals or destroys or refuses to produce any book or document which he may be required to produce** by any such notice; or

(c) refuses or deliberately neglects to furnish any information which he is required to furnish under paragraph 4(1)(b);

shall be **guilty of an offence** and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 2 on the standard scale.

(Emphasis added)

- 4.3 The Chairman has made it clear that he will not hesitate to use his powers to compel the attendance of Witnesses.

5. Preparation for a Witness Statement

- 5.1 A number of persons that the Inquiry has identified as likely to have relevant information have been contacted. They have been provided with Witness Statement Templates which both indicate the areas that the Inquiry wishes to be addressed and invite the provision of any additional information relevant to the Revised Terms of Reference of the Inquiry and the List of Issues.
- 5.2 It is improper for a Witness to be coached or trained about the evidence to be provided. A Witness can, however, seek general information on the procedure for submitting a Witness Statement.
- 5.3 Witness Statement Templates have been sent to the Solicitors for the interested parties who can liaise with their Clients and/or the employees of their Clients in obtaining the required Witness Statements. However, any Witness is entitled, independent of such assistance, to prepare their own Witness Statement. The Inquiry will send out a fresh Witness Statement Template directly to the Witness if requested. You can contact the Inquiry by telephone on 028 9044 6340 or by e-mail at inquiry@ihrdni.org or post at: The Inquiry into Hyponatraemia-related Deaths, Arthur House, 41 Arthur Street, Belfast BT1 4GB.

6. Structure and Content of the Witness Statement

- 6.1 Witnesses can and should refer to relevant documentation and must attach a copy of all such documentation, unless it is already displayed on the Inquiry website. References to documents on the website should include the unique document reference number, for example 020-003-006.
- 6.2 Anyone providing written evidence to the Inquiry must do so by way of a Witness Statement Template issued by the Inquiry. The Template will provide a structure for the evidence but Witnesses should bear in mind that their evidence will be far easier to deal with if it is kept straightforward and, so far as possible, in chronological order, with dates and individuals being clearly identified. Technical terms should be clearly explained and the use of acronyms either avoided or kept to a minimum.

7. Level of Belief

7.1 It is extremely important that the Witness Statement clearly identifies the Witness's level of knowledge of an event:

- Actual knowledge (ie knowledge gained first-hand)
- Belief (including the basis of it)
- Conclusion or deduction from other events (describing those events)
- Information received from someone else (identifying the person and the circumstances)

7.2 Actual knowledge is very helpful but the other bases for the information provided (belief, conclusions or deductions and information received from someone else) can also be very useful, especially where the basis is properly explained. Such information should not be excluded by Witnesses in the mistaken assumption that only 'actual knowledge' will suffice.

8. Statement of Truth

8.1 Witnesses will be required to date their Witness Statements and to sign the statement of truth endorsed on them.

9. Returning the Witness Statement

9.1 Where possible the completed Witness Statement should be e-mailed to the Inquiry Secretariat at inquiry@ihrdni.org and the signed original sent by post to: The Inquiry into Hyponatraemia-related Deaths, Arthur House, 41 Arthur Street, Belfast BT1 4GB.

9.2 If a Witness does not have access to e-mail facilities, then the original completed and signed Witness Statement should simply be sent by post to: The Inquiry into Hyponatraemia-related Deaths, Arthur House, 41 Arthur Street, Belfast BT1 4GB.

9.3 Witnesses and their legal representatives should keep a copy of any Witnesses Statement submitted as the Inquiry may seek Supplemental Witness Statements requiring the Witness to refer back to the evidence given previously.

10. Supplemental Witness Statements

10.1 The Inquiry may ask a Witness to clarify matters in their Witness Statement, expand on certain issues or deal with further matters. The

Inquiry will make it clear what further is required in its Supplemental Witness Statement request.

- 10.2 The provisions of this Protocol also apply (where appropriate) to all subsequent Witness Statements.

11. Publication of Witness Statements

- 11.1 The Inquiry will forward witness statements which it receives to the Interested Parties in advance of the public hearings on their undertaking that those statements will not be disclosed by the Interested Parties at that stage. The statements will then be published on the Inquiry website when the public hearings reach the specific issues to which the statements relate.

12. Oral Evidence

- 12.1 The Inquiry will publish a list of those persons it intends to call and will also accept representations about whether other persons should be called too.
- 12.2 At the oral hearing witnesses will be questioned by Counsel for the Inquiry, Monye Anyadike-Danes QC and/or Jill Comerton BL. They can then be cross examined by other Interested Parties, subject to constraints which have already been accepted by all parties as to duplication, repetition etc. Witnesses may then be questioned by the Chairman. Finally Interested Parties can be questioned by their own legal representative.
- 12.3 A witness who is to be called will be notified in advance by the Inquiry of the areas upon which he/she will be questioned and any area of likely criticism.