

The Inquiry into

Chairman

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Our Ref: JOH-5-2004

Date: 29 November 2004

Dear Mr & Mrs Ferguson

When I met you and Mr and Mrs Slavin on 18 November you gave me a list of questions and asked for written answers. During our meeting I went through my powers under Schedule 8 to the Health and Personal Social Services NI Order 1972 with you and I gave you a copy of that Schedule. By now you will also have received the Statement which I made that afternoon at the press conference. I believe that it deals with some the specific questions which you have asked me to respond to and I would be grateful if you would read this letter in conjunction with the excerpt from the 1972 Order and my public statement.

I will now deal with the outstanding issues from your list of questions:

Point One

- a. None of the families have been consulted over the setup of the Inquiry, why?

As I hope you now understand, this is really a question for the Minister rather than for me. However I hope that your discussions with me and the Minister have now reassured you on this issue.

- b. Is the Inquiry public and, if not, why?

In my statement on 18 November I set out at paragraph 7 the outlines of the procedure which is likely to be followed. You will have seen from paragraph 7c that I anticipate that save in exceptional circumstances oral evidence will be given in public. That stage will be reached after I have gathered all available documents and records and after I have obtained written statements from various people and bodies.

RF - FAMILY

Secretary: Ambrose Owens Deputy Secretary: Sharon Lindsay

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- c How can this Inquiry be called independent when it has staff from the same Health Board (Department) that is to be investigated when there is real potential that senior members of the Board (Department) could be implicated? Are all concerned appropriate qualified to hold a position on the panel? Who picked the members of the panel?

After I was approached to Chair the Inquiry, I sought reassurance that I would be provided with offices outside the Department and that I would have experienced and skilled staff to support my work. I was offered the services of Mr Owens and Ms Lindsay and was glad to accept that offer. I believe that it is positively helpful to me to have people working in the Secretariat who are familiar with the Health Service in Northern Ireland, particularly given their experience and their management and administrative skills. I emphasise however that each member of the Secretariat will work to me, not to the Department and I do not believe that there is any potential for conflicts of interest on their part.

- d. Why have you and the Health Minister made it as difficult as possible for the families to have a meaningful participation in the Terms of Reference of the Inquiry?

As with question (a) above, this is really a matter for the Minister rather than for me. However I understand from what the Minister has said that if anybody has concerns that the Terms of Reference are too narrow, they can approach her and ask her to extend them. I will similarly consider any such approach and, if appropriate, then make representations to the Minister myself. Having said that, I believe that the Terms of Reference are sufficiently broad to enable me to investigate all relevant issues.

Point Two

Are the families going to be allowed legal representation? And if so, who decides who they are?

As you are now aware, the question of legal representation will be decided at an early stage. I envisage that each family will have legal representation. The issues to be decided are the extent of that representation and the role of the legal representatives in view of the fact that I will be appointing Counsel to the Inquiry who will be playing the lead role in the questioning of each witness. I anticipate that the areas upon which any witness will be questioned will be notified to that witness in advance. Similar notification will be given to the families who

will then be entitled to suggest that additional areas need to be addressed with the witness. Any such suggestions will be considered by me and Counsel to the Inquiry.

Point Three

It is highly important that aside from the investigation into the cover-ups that there is also a proper investigation into deaths of the children and indeed the circumstances of their deaths, can you confirm that this will be done?

Yes.

Point Four

Will the police investigation hold up your investigation?

I dealt with this point during our meeting on 18 November and at paragraph 8 of my statement that day. I will do all that I can to ensure that the Inquiry makes progress as soon as possible but there is clearly a risk that any police investigation will delay the Inquiry.

Point Five

What are the powers of the Inquiry?

Since you prepared that question I have outlined to you what my powers are and I hope that you are now reassured on this point. If you believe that there are individuals who I should interview/investigate, you will be able to provide me with the names of those people so that I can consider your point. If I share your view that the people identified should be interviewed/investigated, that will happen. So far as cross examination by your legal representatives is concerned, that is an issue that will have to be resolved but I do not currently anticipate that there will be cross examination by lawyers representing the families though as I have said above you will have an opportunity to suggest alternative or additional areas of questioning in respect of witnesses.

At the conclusion of the Inquiry I will prepare a report which will include conclusions where it has been possible to draw them and recommendations for the future. It is not for me to decide what actions will be taken on foot of my recommendations. That Report will be submitted to the Minister who, I understand, has publicly committed herself to publishing the Report.

Point Six

Since the Inquiry is potentially into some senior members of the Health Board and the GMC (Henrietta Campbell and John Jenkins) in respect of cover-ups does the Inquiry not feel that it would be diligent and appropriate for the said individuals to stand down from their appointments to allow for proper investigation? And if so can the Inquiry recommend such actions to be taken?

I have no view on whether individuals need to stand down in order to allow for a proper investigation. That is a matter for them and their employers.

Point Seven

Has the Inquiry got any time or budgetary restrictions?

As you now know the target date for the Inquiry to report is 1 June 2005 or such other date as may be agreed with the Department. So far as budgetary restrictions are concerned, I have been assured that appropriate resources will be made available but I have a responsibility to ensure that public money is properly spent.

Point Eight

Where will the Inquiry be held and have the families got a point of contact?

As you now know, the Inquiry will be based at Premier Business Centre, 3rd Floor, 20 Adelaide Street, Belfast, BT2 8GB. I had previously intended to ask either Mr Owens or Ms Lindsay to be your contact point. However in view of our discussions, I am trying to arrange an alternative point of contact who would then have access directly to me. I hope to come back to you on this in the very near future.

Point Nine

Will all the cases be scrutinised equally, including the death of Adam Strain?

Yes.

In conclusion I hope this letter is of some assistance to you in clarifying issues which you were not clear about before. As I have indicated above, I will be in contact with you in the near future on the question of identifying a person who can be a point of contact for you. I will also be in contact with you with a more detailed draft proposal about how the Inquiry will be conducted, including the question of legal representation.

I am also copying this letter to Mr & Mrs Slavin.

I am also forwarding a copy of my reply for information to Mr & Mrs Crawford.

Separately, I enclose a copy of a Public Notice which I hope to have inserted in the daily and some weekly newspapers in the near future.

Yours sincerely

John O'Hara

MR JOHN O'HARA QC
Chairman

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