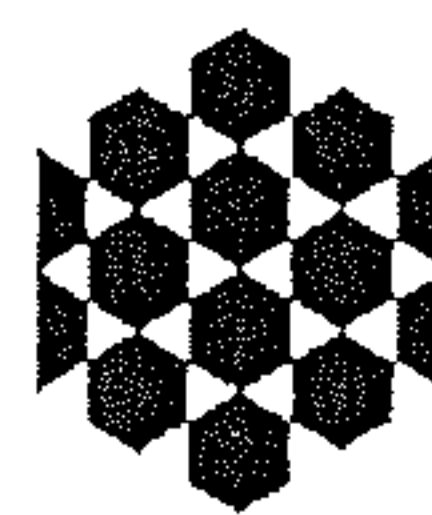


From the Permanent Secretary
Clive Gowdy CB

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Department of
**Health, Social Services
and Public Safety**

An Roinn

**Sláinte, Seirbhísí Sóisialta
agus Sábháilteachta Poiblí**

www.dhsspsni.gov.uk

From: CLIVE GOWDY
Date: 12 November 2004

cc Mr Hamilton
Dr Carson
Mr Maguire

Minister

INQUIRY INTO DEATHS FROM HYPONATRAEMIA

Issue: The Terms of Reference for the Inquiry and how it will be taken forward.

Timescale: Urgent.

Recommendation: To agree the draft Terms of Reference for the Inquiry and the basis on which it will be conducted.

Background

1. Following your announcement of the appointment of John O'Hara QC to conduct an Inquiry into the allegations raised concerning the deaths of Lucy Crawford, Raychel Ferguson and Adam Strain, we have been discussing with Mr O'Hara the terms of reference and the basis on which the Inquiry should be conducted.
2. There is considerable interest in the terms of reference of the Inquiry and the way in which it will be taken forward. A number of PQs have been tabled by Iris Robinson and she has also written to you on the subject. The Western Health and Social Services Council have urged that the Inquiry should be sufficiently wide to encompass all of the issues raised by the Insight Programme. In particular the

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Council has emphasised that the Inquiry must be open and transparent, and have the power to call on all of the key people involved and that it should be a full public independent Inquiry. The families have also demanded that it should be in public.

3. This submission seeks your approval to the proposed scope and Terms of Reference of the Inquiry. It clarifies the powers of the Inquiry and makes recommendations regarding how it will be taken forward.

Scope and Terms of Reference of the Inquiry

4. The allegations made in the UTV Insight programme raised issues of major public concern about the care and treatment of children in our hospitals and the response of the NI health care system to their deaths. Undoubtedly the programme has damaged public confidence in our health care system and if public confidence is to be restored it is essential that the Terms of Reference of the review are set sufficiently broadly to enable the concerns of the families and wider public to be fully addressed. I believe that the draft Terms of Reference at **Tab A** provide the necessary degree of breadth.
5. It is appropriate to set some time parameters for the Inquiry, not only to assure the public that the process will not be unduly prolonged but also to fit with my responsibilities as Accounting Officer regarding the potential costs involved. Following discussion with John O'Hara, I have set a completion date of 1 June 2005. However, in recognition of the uncertainties over the length of time needed, I have provided some flexibility in that regard.

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Powers of the Inquiry

6. The powers of the Inquiry to compel relevant people to give evidence and furnish documents are also a matter of public interest. The Inquiry is being established under Article 54 and Schedule 8 of the 1972 Health and Personal Social Services Order 1972. Under this legislation the person appointed to hold the Inquiry has wide ranging powers to require any person to attend and give evidence or to furnish information to any matter in question at the Inquiry. In that regard therefore public concerns should be assuaged. We will wish to emphasise the statutory powers of the Inquiry in the press release.

Conduct of the Inquiry

7. In keeping with Cabinet Office guidance, it is proposed that the Inquiry is conducted using an inquisitorial rather than adversarial approach. This will avoid detailed cross-examination of witnesses by opposing parties and keep to a minimum (but not entirely exclude) legal representation of the various witnesses. Some witnesses (particularly the families) are likely to wish to have access to some form of legal representation and advice in preparing their case and to protect their interests during the course of the Inquiry. The proceedings will allow for this and, again in accordance with Cabinet office guidance, the involvement of legal representation during the course of the proceedings is a matter for the discretion of the Inquiry.
8. Regarding the detailed arrangements for taking forward the Inquiry, this is primarily a matter for Mr O'Hara. Our understanding is that the initial phase will be to collect and analyse relevant information before moving into the inquisitorial phase in which specific individuals will be formally called to give oral evidence.

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Legal representation may be required in the initial phase for the preparation of statements from individuals for the Inquiry team's examination and Mr O'Hara believes that he will need to engage Counsel to conduct the questioning on his behalf in the inquisitorial phase.

9. Cabinet Office guidance provides for the cost of legal representation to be met from public funds, and principles and procedures will need to be established governing the claiming and approval of legal expenses incurred by witnesses. It is proposed that the Chair of the Inquiry will have discretion, within parameters agreed in advance, to determine the degree to which such costs incurred by witnesses should be met.
10. A particularly important issue is the extent to which the Inquiry should be conducted in private or in public. Advice from the Cabinet Office points to inquiries into matters of public concern being conducted in public unless there are strong public interest grounds for them to be conducted in private (eg national security). There are pros and cons in relation to conducting the inquiry in public, but my considered view is that the public interest would be best served by doing so and consequently I recommend that the Inquiry is conducted in public. This has the support of John O'Hara
11. In addition to the proceedings being conducted in public, I would also recommend that all formal statements provided to the Inquiry should be placed in the public domain; and that the final report from the Inquiry should be published.

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The Inquiry Team

12. We will now need to formalise John O'Hara's appointment as Chair of the Inquiry through the issue of a letter from myself as Accounting Officer, setting out the terms of his engagement. As this is a statutory Inquiry we will also have to accompany the letter with a Minute of Appointment confirming the appointment and the authority under which it is made.
13. Beyond the appointment of Mr O'Hara, we do not envisage you appointing any other formal members of the Inquiry team. Mr O'Hara will, however, wish to have access to professional paediatric and NHS general management advice. We have provided him with a list of appropriate candidates from both disciplines. To avoid any possible conflict, it will be important that the advice is secured from outside Northern Ireland and that the source of advice is determined independently by Mr O'Hara himself. We will of course meet the expenses involved.
14. An Inquiry secretariat has been established. The team (led by Ambrose Owens) have been freed up from their current duties, and will be located in non-departmental accommodation in Adelaide Street, Belfast. This will emphasise the independence of the Inquiry team from Government.

PSNI Investigation

15. You should also be aware that the PSNI are currently conducting investigations into some aspects of the matters to be considered by the Inquiry. These investigations may lead to future criminal proceedings and you will wish to know that once the Terms of Reference are announced, the PSNI may ask us to defer the Inquiry until such times as they complete their own investigation. John O'Hara

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has already met with the PSNI officers conducting this investigation and is not unduly concerned by this. A number of possibilities exist in respect of the PSNI scrutiny and some aspects of our Inquiry's work will not be affected by the PSNI investigation. John O'Hara will reflect on this further if the PSNI officially seek a suspension of all or part of his Inquiry and will discuss it with us at that time.

Financial Arrangements

16. The costs of the Inquiry will be borne by the Department. It is difficult to estimate these with accuracy. The costs of the Human Organs Inquiry amounted to some £400,000 and we have no reason to assume a different outturn for this Inquiry.
17. We have informed DFP of the imminent commencement of the Inquiry, and we are seeking their approval to provide an indemnity to the Chair, Counsel, advisors and secretariat of the Inquiry to protect them against legal challenge. This will involve the laying of a Minute before Parliament and is in line with accepted practice.

Press Announcement

18. We will need to issue a press release to announce the terms of reference and the powers of the Inquiry. It is proposed to do so, if you are content, on Thursday 18 November. John O'Hara has confirmed that he would be content with this.
19. There is considerable press interest in this, mainly from UTV, and you are likely to be asked to give an interview. However, the main focus should shift to Mr O'Hara and he is ready to respond as necessary. If you are content to proceed on 18 November, a draft press release will be submitted for approval early next week.

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Recommendation

20. You are invited to

- (i) approve the Terms of Reference for the Inquiry;
- (ii) note the statutory powers of the Inquiry;
- (iii) note the arrangements for legal representation of witnesses and that legal expenses will be reimbursed by the Department;
- (iv) agree that the Inquiry will be conducted in public and that the final report of the Inquiry will be published;
- (v) note that Mr O'Hara will secure professional and general management advice from outside Northern Ireland;
- (vi) note that Mr O'Hara will wish to employ counsel to the Inquiry;
- (vii) note the establishment of the secretariat;
- (viii) note the potential implications of the PSNI investigations;
- (ix) note the potential costs and financial arrangements pertaining to the Inquiry;
- (x) to agree to the issue of a press release announcing the powers and Terms of Reference of the Inquiry on 18 November 2004.

David Gowdy

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DRAFT TERMS OF REFERENCE

DEPARTMENT OF HEALTH, SOCIAL SERVICES AND PUBLIC SAFETY

THE HEALTH AND PERSONAL SOCIAL SERVICES (NORTHERN IRELAND) ORDER 1972

In pursuance of the powers conferred on it by Article 54 and Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972, the Department of Health, Social Services and Public Safety hereby appoints Mr John O'Hara QC to hold an Inquiry into the events surrounding and following the deaths of Adam Strain, Lucy Crawford and Raychel Ferguson, with particular reference to:

- (i) The care and treatment of Lucy Crawford, Raychel Ferguson and Adam Strain, especially in relation to the management of fluid balance and the choice and administration of intravenous fluids in each case.
- (ii) The actions of the statutory authorities, other organisations and responsible individuals concerned in the procedures, investigations and events which followed the deaths of Adam Strain, Lucy Crawford and Raychel Ferguson.
- (iii) The communications with and explanations given to the respective families and others by the relevant authorities.

In addition, Mr O'Hara will:

- (a) Report by 1 June 2005 or such other date as may be agreed with the Department, on the areas specifically identified above and, at his discretion, examine and report on any other relevant matters which arise in connection with the Inquiry.
- (b) Make such recommendations to the Department of Health, Social Services and Public Safety as he considers necessary and appropriate.