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Your Ref:
BMcL-0064-13

Our Ref:
HYP W50/02

Date:
2nd May 2013

Mr B McLoughlin
Assistant Solicitor to the Inquiry
Arthur House
41 Arthur Street
Belfast
BT1 4GB



Dear Sir

**RE: INQUIRY INTO HYPONATRAEMIA RELATED DEATHS-RAYCHEL FERGUSON
PRELIMINARY**

I refer to the above matter and to your letter dated 20th March 2013. We reply as follows: -

- 1) The Trust understands that the Sperrin Lakeland Scrutiny Committee comprised of the Medical Director, Director of Business Services, Director of Personnel, Director of Finance, Legal Representative, and Litigation Officer. However, it is not believed that all members of this committee routinely attended the meetings.
- 2) You will note that our letter of 11th February 2013 explains the nature and purpose Scrutiny committee meetings and asserts privilege over the notes and records of same. By way of clarification I confirm that privilege is claimed on the basis of the content of the documents and not on the purpose of the meeting. The notes/records of the meetings, which are conducted solely for the purpose of providing legal advice in respect of on-going litigation, are a record of the legal advice provided during those meetings. The claim for privilege is based on Litigation Privilege and Legal Advice Privilege.
- 3) We can confirm that the Trust is aware that it may waive privilege. We have considered this and we remain of the view that our client is entitled, in the same way as any other party to the Inquiry, to assert privilege. Our attention has been drawn by the Inquiry Chairman to the Francis Report and we have been asked to consider whether this affects our views on this issue. We do not believe that it does for the following reasons:
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- i) The reference to waiver of privilege related to the statement of a Mr Phair who was an involvement witness as to fact and it is hard to see how the Trust could reasonably withhold that document.
- ii) There are 290 recommendations in the report and it remains to be seen which will be adopted in Great Britain.
- iii) Health is a devolved issue in Northern Ireland.

Finally we would draw your attention to Phipson on Evidence (17th Edition) at 23.16 where it is clear that no adverse inference can be drawn from a party asserting a claim for privilege.

We are instructed that the Trust maintains its claim for privilege.

I trust that this clarifies matters.

Yours faithfully



Joanna Bolton
Solicitor Consultant