

Tuesday, 27 October 1998

The Inquiry opened at 10.30 a.m.

THE CHAIRMAN: Ladies and gentlemen, good morning, before I open this preliminary hearing, it is well to remember what has brought us to this room today. Given the rights and wrongs, a number of children have died and a further number remain very ill. I wonder whether I could ask you to stand with me for a few moments of silent reflection.

(A moment's silence)

THE CHAIRMAN: Thank you, I am very grateful. Ladies and gentlemen, good morning again. What I am going to do is read out my opening statement as Chairman of this Public Inquiry. It will last for about 45 minutes. Then I shall be happy to hear from legal representatives on the matter of costs. Then I am anxious to hear from anyone who wishes to address us today, although, as you will hear, once this preliminary hearing is over, the Inquiry team will be available at any time, to anyone, who wants to assist the Inquiry in whatever way. My intention is to adjourn at 1 o'clock at which point I will be happy to speak to members of the Press and, if necessary, we will reconvene at 2.

This is a preliminary hearing. It is the first formal stage of the Public Inquiry into the tragic events arising from complex paediatric cardiac surgical services at the Bristol Royal Infirmary between 1984 and 1995. What I am going to do today is to introduce the Inquiry team to

explain the nature of the Inquiry and its procedure and to consider applications to be legally represented at public cost. I should say at the outset copies of this opening statement and details of how to contact the Inquiry are . 4

available to take away. So there is no need to try to catch such things as names or addresses or telephone numbers. May I also say that I intend to conduct the Inquiry as sensitively and informally as I possibly can. For example, if it is more comfortable, please feel free to remain seated to address us.

I am acutely aware that we will be exploring matters which, for many of you, are almost too painful to contemplate. Just by looking into them, the pain will flood back. Sometimes we will be looking at matters which are harrowing. It will be a gruelling time for us. I cannot banish the pain, nor can I avoid it being caused. What I can do is give you, all of you, my assurance that I will do everything in my power to make sure that the process and the practical arrangements make it as bearable as possible.

I will spell out the details of some of the arrangements later, but I will say here is that you must feel free to contact the secretary of the Inquiry if you think anything should be changed.

Now, let me introduce myself. My name is Ian Kennedy, I am a Professor at the University College London. I specialise in medical law and medical ethics and health policy for nearly 30 years and have some experience of public service in these areas. Sitting with me today are Rebecca Howard and Mavis MacLean and perhaps you would like to introduce yourselves.

MRS REBECCA HOWARD: Good morning. My name is Rebecca Howard.

I am the Executive Director of Nursing for the Manchester Children's Hospitals. I am a registered sick children's nurse and have worked exclusively with children for over . 5

20 years. I have previously contributed to national policy on children's services and my special interest is paediatric intensive care. Good morning again.

MRS MAVIS MACLEAN: Thank you. My name is Mavis MacLean and

I work as a Senior Research Fellow in the Faculty of Law in the University of Oxford, but I am also qualified as a sociologist so my field of expertise is socio-legal, that is the way that legal rules work out in society. From this perspective, I have studied or written about compensation for accident victims, and I now work primarily in family law where the best interests of children are primarily concerned. So good morning.

THE CHAIRMAN: Thank you, I am very grateful to my colleagues

here for agreeing to serve on the Inquiry team. Clearly the Inquiry team must also have a medically qualified member.

I am happy to say that the Secretary of State for Health will be inviting such a person to serve on the Panel.

I expect an announcement to be made in due course.

We will be working together and our Report will be produced jointly by us. All of us are independent of Government. I should add that for the duration of the Inquiry, the members of the Panel would not normally be available to give interviews or to engage directly with those taking part other than when we hold our oral hearings.

This will help to ensure fairness and protect our independence.

We will have available to the Inquiry for the purposes of consultation a team of experts qualified in a variety of areas of expertise, such as paediatrics, cardiology, surgery, intensive care, anaesthesia, epidemiology,

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statistics and management. Clearly their views will be made public not least so as to allow them to be subject to scrutiny by those with an interest in this Inquiry.

The Inquiry is supported by a Secretariat and a legal team. The Secretariat is headed by Una O'Brien. She was previously seconded to the Cabinet Office. As Secretary to

the Inquiry she is responsible for organising it and generally for enabling the Inquiry to fulfill its terms of reference.

The Treasury Solicitor has appointed Peter Whitehurst from his Department as Solicitor to the Inquiry. He is assisted by Charlotte Martin, also from the Treasury Solicitor's Department. They will have a considerable back-up staff. They are responsible for investigating the documentary material and for liaising with witnesses. There is a council to the Inquiry, Brian Langstaff QC. His role is strictly impartial. It is to assist the Panel in its investigation of the facts and its search for the truth. It is not his role to prosecute nor to prove a particular case. Instead, he is there to present all the evidence thoroughly and rigorously, and to advise me and the Inquiry members on matters of law and evidence. He is assisted by Eleanor Grey and Alan MacLean, also of the independent Bar.

Now our Terms of Reference: on 18th June 1998, the Secretary of State for Health announced to Parliament the setting up of this Inquiry under Section 84 of the National Health Service Act 1977. Our terms of reference, published in August, are:

To inquire into the management of the care of children receiving complex

cardiac surgical services at the Bristol Royal Infirmary between 1984 and 1995 and relevant related issues; to make findings as to the adequacy of the services provided; to establish what action was taken both within and outside the Hospital to deal with concern raised about the surgery and to identify any failure to take appropriate action promptly; to reach conclusions from these events and to make recommendations which would help to secure high quality care across the NHS.

As for the status of the Inquiry, the objective of the Inquiry is to understand what happened in Bristol, why it happened and what lessons can be learned for the benefit of the National Health Service as a whole.

No-one is on trial in this Inquiry; it is not a trial nor a court, nor a disciplinary hearing. It is not a law suit in which one party wins and another loses. There will be no parties. It is not the same as the legal process in a criminal or civil court. We are a team of independent persons working within our terms of reference which involve, as I have said, trying to discover first what happened, secondly why it happened, and thirdly, what lessons can be

learned and recommendations made.

One of our functions, inevitably, will be to offer constructive criticism. If criticisms are levelled at organisations or individuals which are relevant to these issues, we shall of course consider them and make any . 8

necessary finding. It is not our purpose, not the purpose of the Inquiry to sit in judgment.

I hope, therefore, that everyone concerned both at the Inquiry and outside it will play their parts responsibly and without rancour. We want to find the facts and learn from them and, as the Secretary of State told Parliament, to do so with all reasonable speed.

It follows from this that, as befits an Inquiry such as this, an inquisitorial rather than adversarial approach is most suited to our purpose and is the one we shall adopt.

Finally, while the Inquiry was set up by the Secretary of State for Health, it is independent of the Department of Health and of any Health Authority or medical organisation.

The Department of Health, the various organisations and individuals involved and others who have an interest in the events we are concerned with, will be included amongst those who we shall invite to assist us in our Inquiry.

I turn now to the structure of the Inquiry. At this point we see the Inquiry as having two phases. In the first

phase we will focus on services provided at the BRI between 1984 and 1995 for the care of children with complex cardiac problems. We will be concerned with the full range of services including, for example, how the children were referred for surgery, interactions with parents and the management of post-operative care. We will also examine how concerns about surgery were raised and handled, both within the Hospital and elsewhere. For this phase, which is already underway and is likely to last for most of 1999, we will draw on written statements and oral hearings. Hearings will be held in public unless, and I do not foresee this, it is

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inappropriate to do so.

As we begin to draw conclusions from the Bristol experience, and so as to enable us to formulate recommendations, we will begin the second phase of the Inquiry. This will involve an examination of relevant wider issues so as to ensure that our recommendations fulfill the requirement in our terms of reference: "to help secure high quality care across the NHS". This phase will also help us to make sure that our recommendations are relevant and appropriate to the NHS as it will then be, not as it currently is.

It is likely to last a period of months and will be

based both on written and published submissions and public seminars and may also involve a range of visits by the Inquiry team.

May I say a final word about our terms of reference?

First the dates: while it is not our intention actively to seek information about paediatric cardiac surgical services before 1984 and after 1995, clearly if information comes to light about events before or after those dates which is relevant to our terms of reference, then we shall consider it. Secondly, we have also been asked whether the terms of reference extend to adult cardiac surgery and to other surgical procedures. The answer to that is much the same: if, in the course of our investigation, we judge it relevant to fulfilling our terms of reference to consider other services then we shall do so.

Now, I turn to call for papers, issues of confidentiality and an "Issues List". We made an initial request for papers in September and we are grateful to those

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individuals and organisations who have already responded.

This has allowed us to begin the process of collecting papers and files which may be relevant to our work. We will continue to need full cooperation to ensure that the collection of relevant documentation can be conducted as fully and efficiently as possible. Section 84 of the

1997 (sic) Act gives me the power to order the production of documents. I trust I will not have to use this power, but I will, of course, if it is necessary for the efficient and effective running of the Inquiry.

We are very conscious of the issue of medical confidentiality. We recognise the families' concerns over the protection of their privacy and the wider public interest in respecting and maintaining medical confidentiality. However, we also recognise the competing public interest in ascertaining the facts and learning lessons from what occurred at the Bristol Royal Infirmary. Consequently, my team will be discussing with all of those who have legitimate interests in this area how best to deal with matters of medical confidentiality so that the wishes of the families are respected.

At this juncture, all of those who have relevant documents should forward them to the Inquiry for our use, without seeking to edit them in any way. No document will be disseminated further by the Inquiry team until issues of confidentiality have been fully resolved. In the meantime, we must have the full picture in order to prepare for the public hearings; only unfettered access to all documents will suffice. I, therefore, urge all those who have not yet forwarded documents because of their concerns over

confidentiality to do so immediately.

Lastly, early in 1999, I published an "Issues List" for consultation. This will outline main issues as we understand them at that point and will serve as a guide to those to whom we are looking to assist us in the Inquiry.

I turn now to our procedure. The methods which the Inquiry will adopt will be those best suited to enable the truth to emerge. We have a duty to act with due concern for fairness and thus to adopt procedures which are fair and impartial. We also have a duty to proceed with all due speed so that we can complete our task within a reasonable period of time. This is crucial so that those affected by these tragic events can find a place for them and be helped to get on with their lives. It is also important that any lessons which are learned to be translated into action within the National Health Service as soon as possible.

If people have suggestions for the improvement of the proposals I am about to describe -- and I stress this -- I would be pleased to hear from you. They should write to the Secretary to the Inquiry.

The main elements of the procedure are as follows: as I mentioned earlier, the Inquiry will be conducted using a combination of evidence handed in, documents, written statements and oral hearings. I will now describe the procedure in some detail, as I must. It is somewhat

technical in places, I am afraid.

Written evidence: the written evidence will be gathered in a number of ways. Initially, anyone -- and I stress anyone -- who considers that he or she may have information or evidence of relevance to this Inquiry should write to the

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Secretary of the Inquiry at this address:

Room LG07 Wellington House

135-155 Waterloo Road

London SE1 8UG

There is also a special local rate telephone number:

0845 3000 613 and an e-mail address.

These and other contact details are in information packs which have been made available.

I should make it clear it is not necessary to engage a solicitor in order to write an initial letter to the Inquiry. Anyone who has anything to say should feel free to make one. Equally, we would be most grateful to hear from those who believe they could identify people who have expertise or knowledge of events in such that they should be invited to make a statement to this Inquiry.

Anonymous information is unlikely to be acted upon, but anyone coming forward may request their identity not to be disclosed publicly (that is, beyond the Inquiry team) and I

shall give consideration to any such requests. Where it will assist the Inquiry, those who contact the Inquiry may be invited to make a formal written statement.

Additionally, from our analysis of the documentation supplied by the main organisations involved, we will identify individuals who we consider have a contribution to make to the Inquiry, either because of their involvement with children's cardiac surgery at the Bristol Royal Infirmary during the relevant period, or because their expertise could be of assistance. We will make contact with these people and ask them to make a formal written statement to the Inquiry. In doing so, we will indicate the main areas

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we wish their statement to address. The Inquiry legal team will assist with this as required.

In certain circumstances, it may be appropriate for individuals to have independent legal advice, other than the advice of the Inquiry solicitors, in preparing their formal written statement.

All formal written statements will be reviewed by the Inquiry legal team. Where a formal written statement makes any reference to an individual which the Inquiry team judge to be critical of that individual, the person will be shown a copy of the reference or be made aware of the substance and be given an opportunity to comment formally in writing.

All these formal written statements, and formal comments on them made by those persons referred to critically in them, will be made public, whether or not individuals are called to give oral evidence.

The timing of the publication of these formal written statements will be as follows: expert evidence will be published as soon as possible after it has been received. As to factual evidence, the following procedure will be adopted: where we decide it will not be necessary to call a witness to give oral evidence, then that witness's statement will be made in public once that decision is made. Where witnesses are to be called to give oral evidence, their formal written statements will be made public at the time they give their oral evidence. However, in advance of publication, these formal statements will be made available, confidentially, to the legal representatives of others with an interest in the Inquiry who will, therefore, have an opportunity to comment in writing.

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Now a word about oral evidence. I have said that with the assistance of my advisors, I will decide (from amongst all those who have submitted formal written statements) from whom we wish to hear further in public hearing. No witnesses will normally be called to give evidence in oral hearings

unless they have first given a formal written statement.

If called to give oral evidence, witnesses will be told in advance of the areas which their oral evidence should be expected to address. If, in the course of giving oral evidence, a witness refers to an individual in a way which we regard as critical of that individual, that person will be invited to comment on what was said in the hearing, normally by submitting a formal written comment or, exceptionally, and at my discretion, by appearing before the Inquiry to give oral evidence with a legal representative should they so wish. Any formal written comment will also be made public.

Let me now deal with the conduct of the oral hearings.

The procedure which we shall adopt at the oral hearings will be as follows: each witness called to give evidence may be accompanied by a legal representative. The witness will be questioned by Counsel to the Inquiry whose job, as I said, is to ensure all the evidence is before the Inquiry and all the facts are investigated thoroughly. This questioning will be supplemented by questions from me and from members of the Panel. At the end of this questioning, the witness's legal representative will have an opportunity to put questions to the witness by way of re-examination. The purpose of this is to clarify any area which the legal representative feels may have been left unclear and to enable the legal

representative to ensure that the witness has given a proper account of him or herself. It is not intended as an opportunity merely to repeat that which has already been put to the Inquiry, whether orally or in a formal written statement.

For that reason, we would expect it to be rare for any such re-examination, if taken advantage of, to exceed 15 or 20 minutes.

In addition, the witness's legal representative may make a short submission to the Panel on the day following the end of that witness's evidence, ordinarily in writing but exceptionally, and at my discretion, orally. Where the submission is made in writing and it raises a matter, in the Panel's view, that is unclear, we will seek clarification.

Furthermore, any such written submission will be made public.

The main examination of witnesses, known as examination in chief, will, therefore, be carried out by Counsel to the Inquiry. There will not normally be cross-examination by others, except where demanded by the requirements of fairness or by the need to resolve otherwise intractable disputes of fact to assist us in fulfilling our terms of reference.

Finally, once the process of gathering the evidence is

complete, those witnesses who choose to do so, by themselves or through their legal representative, may make a short final presentation in writing or, at my discretion, orally.

As before, any presentation in writing will be made public.

So much for our procedure. I turn now to the Inquiry Report. Our task, as I have said, is not to conduct a trial

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of those associated with the events under scrutiny but to inquire, make findings and draw lessons. For this reason, and because there is no appeal against that Report, it is clearly fair that those who may be criticised should be aware of our concerns. The approach we intend to adopt, therefore is as follows:

(i) where, at the time a witness is questioned, there is already evidence which we feel may prompt us to criticise him or her, and it is convenient to do so, we may put the substance of that evidence and potential criticisms during the questioning. If the Inquiry has formed a provisional view critical of the witness, then that may be put to the witness for comment at the conclusion of the witness's evidence as to fact.

(ii) Additionally, once we have prepared a first draft of the Report, we will write to the witnesses, briefly setting out intended criticisms with notice of the evidence on which they are based, giving them a fixed period of 21 days to

respond, subject to an appropriate undertaking as to confidentiality.

(iii) Where the Panel considers it appropriate to do so, in fairness to the witness, a statement or representation by a witness in response to proposed criticism may be included in the Report, either wholly or in part in the text or as an appendix.

Legal advisors will need to understand from what I have just said that the procedure to be adopted is not that of a trial. I say again, this is a Public Inquiry, there are no parties, no witnesses to be called by one side or another. Indeed, there are no sides. The Inquiry is here to inquire.

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All may make representations to it. Witnesses are the Inquiry's witnesses. Experts are the Inquiry's experts. The Inquiry seeks to discover the truth and identify the lessons to be learned. It is not here to find in favour of any side. We expect to start public hearings in the Spring. The general pattern we intend is to sit on four days a week, Mondays to Thursdays. We will use the Fridays for all the necessary preparation and planning. We will hear evidence in blocks of time according to the issues, with intermittent breaks to assemble papers and prepare for subsequent evidence. The first set of oral hearings will be in Bristol.

Some hearings will be held in London, but as you will see when I explain the use we intend to make of information technology, our aim is to make arrangements for those who are interested to follow the hearings at other locations so as to reduce the need to travel to Bristol or to London as the case may be.

When we hold the hearings in Bristol, they will not be held here. We have identified suitable premises in both the centre of Bristol and in London which will meet our requirements. Obviously, I will keep everyone informed of progress and of the facilities which will be available. It will be possible for witnesses who are to give oral evidence to visit in advance of the day on which they are going to give evidence, if they wish, to familiarise themselves with the hearing room. The Inquiry staff will be available to assist with the practical arrangement for all those giving oral evidence, both before and on the day that they are attending the hearing.

As far as possible, and I have been told it is not

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completely possible, I want to make this a paper-free Inquiry. We will use the latest available technology to manage documents and to capture each day's proceedings electronically. As I just mentioned, we are also investigating the possibility of making the hearings

accessible to as many people as possible by, for example, using live video links to a number of dedicated locations in the South West and in Wales, and between Bristol and London.

It should be possible to maintain a bank of transcripts also at these locations, so that those who are interested may refer to the transcripts of previous days' hearings should they wish. We have set up a website for the Inquiry on the Internet and we will also place the daily transcript on the Internet each evening.

Thus while everyone who wishes is, of course, welcome to attend the public hearings in person, I hope these measures will mean that people who live a long way from Bristol or London will be able to follow proceedings without regularly having to travel long distances, and that as many people as wish will be able to follow the Inquiry as it progresses. It may also mean that legal representatives may not regard it as necessary to attend each day's hearing in person.

Turning now to our handling of cases. All cases of children receiving complex cardiac surgery at the Bristol Royal Infirmary between 1984 and 1995 will be taken into account in the Inquiry. We will write to as many families as we can trace, and will encourage them to take part, where they are willing and it is relevant to do so, by writing letters, making formal written statements and giving oral

evidence.

Whilst part of our work will necessarily involve looking at the quality of clinical decision making and care of children receiving complex cardiac surgery at the BRI, I need to make it clear at the outset that it is not our role, nor would it be possible, to make a judgment about the standard of care in each and every case. We are not in the same position as a judge deciding claims for compensation in medical negligence cases. Our role and our focus are much wider than that; they are to seek out what we can learn about cardiac surgical services as they were organised in Bristol. In looking at the services provided as a whole during the period of 1984 to 1995, we will necessarily take into account every child's case. Where it is necessary for us to choose a case to look at in more detail, then the reason for choosing that case will be open and transparent. I hope that this description of our role will reassure families that all cases will be taken into account. We will do our very best to get to the bottom of things and suggest a way forward.

I must now say a word about legal costs. Here, again, some of the matters are, I am afraid, rather technical.

Under Section 85 of the 1977 Act, the Secretary of State for Health has the power to order the payment of costs out of

the public purse, if we so recommend. He has prepared, on my recommendation, to make awards out of the public funds towards the reasonable legal costs of anyone from whom the Inquiry wishes to hear, who, in our view, would otherwise be unable to take part. The Secretary of State has also authorised me to say that he will order the payment out of

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public funds of the reasonable travel and subsistence expenses of all witnesses who have to travel to give oral evidence to the Inquiry.

In keeping with the established conventions in Inquiries of this sort, public bodies, commercial organisations, trade unions and other bodies with substantial funds will themselves, or on behalf of those whom they support, have to meet their own costs unless there are special circumstances.

Where costs are to be met at public expense, they will be paid on the standard basis, subject to advice agreement of hourly rates, brief fees, refreshers and so on. Prior approval of disbursements including any expert's fee, above a minimal level, will also be necessary. Any unresolved disputes will be subject to the process known as "taxation".

Full details of these matters and other points such as periodic reviews, capping and regularity of submissions of

accounts, will be regulated in a separate, detailed note which shortly will be published by the Inquiry's Solicitor. There may be some risk of duplication in the representation of those who wish to take part. Legal representatives are here to assist the Inquiry in elucidating the facts and to safeguard both those with an interest and those against whom criticism is levelled. Where there are no significant conflicts of interest or other justification, the appearance of multiple teams of lawyers (solicitors and counsel) will be unnecessary and, consequently, it would be difficult to justify any recommendations that the cost of such duplication be met from public funds.

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Thus, it may be appropriate for a small number of solicitors to ensure that focused legal representation is available on an appropriate geographical or otherwise basis.

Solicitors should join together to instruct the same counsel, as far as possible, in order to minimise costs, while achieving the maximum efficiency.

On the matter of the relationship of this Inquiry to other proceedings, may I emphasise again that this is not a medical negligence trial, nor a disciplinary hearing, nor a criminal court trial. It is not the purpose of this Inquiry to determine whether anyone is entitled to compensation, or

to act as a professional disciplinary body, or to consider issues of criminal liability.

What other bodies have done, or may do, is a matter for them and has no bearing on how we proceed and what we conclude.

May I say a word now about the Press. I have said that I intend this Inquiry to be open, accessible and inclusive, as inclusive as possible. I am aware that the issues will attract considerable attention in the media. We recognise the legitimate interest which the media have in reporting, on behalf of the public, what takes place at the Inquiry. It is my intention and desire to extend every assistance that can properly be given to the media to aid them in their role. To that end, I propose, except in exceptional circumstances, for copies of formal statements made by a witness to be made available to the media at the time they are made public and, as I outlined earlier, to provide daily transcripts of evidence. As I have already said, we also intend to place the day's transcript on the Internet each

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evening.

There will also be practical arrangements including a dedicated seating area in the hearing room and a media room in the building with facilities which will help journalists

to do their job. We will also keep the news media regularly updated with relevant information about the Inquiry and the timetable.

That said, some of the evidence to be given will be on a very delicate and sensitive nature. Many involved with the subject matter of this Inquiry have suffered and continue to suffer. In particular, I would ask the media to respect the dignity and the privacy of the families -- both inside and away from the Inquiry chamber.

I have powers under Section 84 of the 1977 Act to take evidence on oath or affirmation. In accordance with the usual procedures, the media should not seek to interview any witness who has started to give evidence until that evidence is completed.

Turning to the question of whether oral proceedings should be broadcast, I have already spoken about the particular need to respect the privacy of the families and other individuals involved. I have also taken into account the sensitive nature of much of the evidence. These considerations have led me to decide not to allow any photographer or broadcasting, either by radio or television, of the proceedings during the hearings.

May I offer some concluding comments? Let me end this Statement by drawing together, very briefly, some of the themes which I have tried to stress. First, this Inquiry is independent of Government, The Department of Health, any

Trust or Health Authority or any other organisation or body.

Second, we recognise the need to respect and be sensitive to the feelings of those who have suffered and whose suffering goes on. We will do our best in the procedure we adopt, the way in which we conduct the hearings and in the various practical arrangements which we make to reflect this need.

Third, the Inquiry will be open, inclusive and fair. Fourth, this is a Public Inquiry with specific terms of reference.

It is not, nor is it a substitute for, a trial or disciplinary hearing. Its goals are much broader; nothing less than an examination of the state of affairs which could lead to such tragedy in Bristol, indeed, an examination of the very culture in which health care in the NHS operated in the relevant period.

From this examination, we must then distill proposals and recommendations which will aim to see to it that there is never another Bristol, nor anything like it.

That, ladies and gentlemen, is the end of my opening statement. As I indicated, what I intend to do now is turn to the question of payment of legal representation out of public funds. Then, as I have indicated, when I finish my conversations with legal representatives, there may be some who would wish to say something and they should feel free to

do so. Anyone who takes part in the Inquiry may appear with legal representation, should they so wish.

My concern here is with those who wish to apply to have their legal costs paid from the public purse, and I understand that there are a number of legal representatives who wish to be heard today.

Once I have heard them all, I propose to consider their

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applications and to communicate my decisions in writing and make them public by 20th November. If there is anyone who is not yet ready to make an oral application, I will consider an application in writing if received by 13th November and, likewise, a decision will be communicated in writing and public.

I recognise that application for costs may also arise during the course of the Inquiry. These will be dealt with as they occur. All subsequent responses for application for costs will equally be communicated in writing and public.

My purpose today is to deal with as many applications as possible in these early stages.

You will recall that my responsibility is only to make recommendations to the Secretary of State, but I am sure he will pay due attention to them.

May I call on representatives of the various legal representatives in turn as I have them before me. If you

will allow me, I will sit and allow them to sit or stand.

First, Simeon Maskrey.

MR SIMEON MASKREY QC: Good morning, sir. Good morning, Panel.

I appear today representing those parents who are the members of the Bristol Heart Children's Action Group. This is a Group that represents and coordinates the interests of something in the order of 300 families. It is a Group that is open, without charge, to any parent of any child who underwent paediatric cardiac surgery at Bristol. The Group is not funded by Government or any other institution, and, sir, you will appreciate that its members are ordinary people with the ordinary calls among their resources that ordinary people have.

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Sir, they have already, as you will appreciate, spent an enormous degree of time, energy and money in engaging upon a desire to seek to help the Public Inquiry, and also in dealing with the interests of parents, both emotional and practical, who have been devastated by what has occurred in Bristol.

I seek your recommendation that the costs of their representation at this Inquiry, and the costs of the Action Group itself in assisting the Inquiry, be met from public funds.

In brief, I am requesting that representation by two firms of solicitors. The Action Group has taken on board what you, sir, have said concerning duplication of legal representation and feel that it would be appropriate if you so recommend that there should be a lead firm, namely Messrs Tozers of Exeter, lead by Mr Laurence Vick, supported by Messrs Toller Beattie of Barnstable headed by Mr Mervyn Fudge. The two firms, it is hoped, working together will be able to provide the local assistance and advice that is necessary speedily and, as I say, locally.

I am also requesting that the costs of representation by counsel, including Queen's Counsel, be recommended by you, sir.

Finally, I am asking that you recommend that the Action Group's solicitors be able to obtain the advice and assistance of experts, again, funded from public funds. The experts would assist to explain and interpret the material which became available, advise upon what material had not been made available, and help identify and formulate issues for investigation and challenge.

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Sir, may I stand back for a moment from the dry request for the costs of representation and simply reiterate a point that you, yourself, have already made? The death and serious injury of so many children at the Bristol Royal Infirmary

has had a profound impact upon a great number of families. There has been an emotional effect which has been intense and, at times, catastrophic. To these families, the children concerned were not, and are not, simply names, statistics or case studies. They were, and are, individuals with their own personalities and they were precious. They have been taken away; even those who have survived have been taken away in the sense that they will never be the same children as they were.

Brain damage, unexpected and unexplained, has destroyed the lives of the children concerned and often the lives of their families. For these parents, for these families, the death or profound injury of their children has brought grief, despair, frustration and anger. They have had no explanation. They still do not know how it was that they were let down by so many professionals in so many positions of trust and authority.

The Action Group, therefore, hope that through this Inquiry the parents will have the opportunity first to find out what actually happened at Bristol, not simply in the theatre or in the intensive therapy unit, but in the committee rooms, in the sitting rooms and beyond. They want to find out what happened and why death and serious injury occurred over and over again, year upon year.

They hope, through this Inquiry, to have an opportunity

to challenge those who they feel they were let down by or

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mislead by, sidelined or ignored. They hope to be able to explain what they were told, how they were misled, how they have been ignored and, at times, patronised by those who had a responsibility to listen and to help.

Most important, sir, this Action Group wishes to have the opportunity to assist in the formulation of regulations that will ensure that the ethical and clinical standards of the medical profession and those who oversee the profession are raised and maintained, and it is in order to achieve these aims that the Action Group will need representation, advice and assistance.

Sir, it is hoped you will agree that the team should be of sufficient size and experience to be able to cope with the anticipated workload efficiently and effectively, and for counsel to have time -- and this is most important -- to have conferences with parents both on a group basis and individually.

It is anticipated that there should be as little duplication of work or attendances as possible and, perhaps, it could be put in this way: the conflicts that exist within the Group should be managed rather than avoided so again, a cohesive and coherent approach is put before the tribunal.

Sir, this is an important Inquiry; it is not merely a

retrospective analysis of what went wrong at the Hospital.

It is anticipated that recommendations will be made that will effect the organisation and authority of Royal Colleges, University departments, the GMC, Trusts, Health Authorities, The Department of Health.

Whilst it is accepted that the Inquiry team would carry out the investigation, the lawyers representing the parents

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must be able to assimilate the information that the Inquiry team intend to place before the tribunal, and it must be in a position to consider unused material in order to make representations, if need be, as to the adequacy of the material intended to be placed before you.

They need to be sufficiently equipped to be able to question witnesses effectively on matters that are of particular concern to the parents, and to do so expeditiously. They need to be able to assist the Inquiry team in identifying relevant issues and they need to be in a position to make positive proposals for change.

This Inquiry is of great concern to the parents. In previous hearings, they have, effectively, been sidelined.

At the GMC, they were not permitted to see, let alone assist in, the formulation of charges, and they were prohibited from having any input into the evidence led on behalf of the

GMC or in the questioning of witnesses. Whether as a matter of law or practice that was appropriate is not a matter to investigate at this stage. Suffice it to say that having been sidelined once, my submission is that it should not happen again.

The appointment of a sufficient team of experienced solicitors and counsel and the funding of those lawyers should ensure that the parents' concerns are laid to rest.

Sir, in determining the size of the parents' team, it is submitted that one should not make comparisons with other Inquiries where single participants, whether corporate, Group or individual have been represented. It cannot be overemphasised that even within the Action Group there is a wide diversity of views and approaches. The team will have

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much to do in terms of conciliation and management of those views and approaches. This is not a case where there will be a single set of instructions or a single goal or where the size of the group that is represented is an irrelevance. All those who intend to give evidence, whether orally or in writing, are entitled to speak with their solicitors and counsel.

Furthermore, I cannot overstate the technical complexity of the evidence that will be given. Much of it concerns complex surgical procedures and statistical

material. The evidence will have to be assimilated and understood and it will be necessary for the lawyers to come to grips with that material.

Sir, finally this: I appreciate that this Inquiry is an attempt to discover what happened and why. I appreciate that the Inquiry should not be turned into a witch-hunt or a labourious forensic display of advocates' abilities.

I appreciate that time is important and there should be no unnecessary delay. I appreciate that the approach should not be adversarial.

The Action Group intends to assist the tribunal in whatever way it can. It, too, wishes to discover the truth.

It is to be hoped that with such an assurance, the tribunal will feel able to assist the Action Group to play a central role in this Inquiry. The Action Group hopes to be granted the resources and opportunities that will enable it to make a contribution that, in the end, would be invaluable.

Sir, those are my submissions to you.

THE CHAIRMAN: Thank you, Mr Maskrey. I will, of course, let you have my response to the application for costs in due course,

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as I indicated. I think it is already clear, and I make it clear, that this will be an inclusive Inquiry which we would allow you the input of the Group you represent; that must be

clear. There is no question of anyone being excluded.

Indeed, we would greatly appreciate the assistance that you have offered and I know it will be of great help.

It will be a matter for discussion as to the scope and extent of the legal representation you may need and the funding you may need for that and I would intend to have such discussions with you prior to the date on which we reach our final conclusion, but thank you.

Now I will hear from Steven Miller.

MR STEPHEN MILLER QC: Sir, I do not have an application for costs to be paid. I have three matters I want to raise. It is a question whether I do it now or at the conclusion of the other applications. I am in your hands.

THE CHAIRMAN: Mr Miller, you are very kind. I confess I cannot hear and that is my problem because I am a little deaf.

Please -----

MR STEPHEN MILLER QC: Sir, I don't have any application for costs for legal representation. Gregory Chambers and I have been asked to advise and represent the United Bristol Healthcare NHS Trust. We shall share that responsibility over this long Inquiry and we will not duplicate that responsibility. I have put in a short document simply identifying matters which we wish to raise at this preliminary hearing and I can deal with them quite shortly. The three items which are in that document are documents itself, confidentiality and witnesses. Can I deal

with the last one first because it is very simple?

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THE CHAIRMAN: Please.

MR STEPHEN MILLER QC: We are a long way, obviously, from identifying who will be asked to give statements to assist the Inquiry. I have spoken to Mr Langstaff and we will help the Secretariat in preparing witness statements and make those available for any decision as to whether or not people will be called forward to give their evidence before the Inquiry.

So far as the documents are concerned, unfortunately there are probably hundreds of thousands of potential documents that have come into existence over the period between 1984 and 1995 and they are held, principally, at the premises of the Trust. We are, as we have made clear before today, anxious to cooperate with the Inquiry team to devise an efficient method of collating those documents, the relevant ones and useful ones, and a method of presenting that documentary evidence.

Sir, may we leave it in this way: the doors are open, so far as the Trust are concerned, to anybody who wishes to inspect the original documents. It is much more sensible to, perhaps, deal with it that way rather than copying in advance, particularly if you are to use computer scanning

rather than photocopying. But we will deal with the Inquiry team and the Secretariat to find some sort of method of dealing with the copying and production of those documents.

The third issue or the third matter which I wish to raise and have given notice that I want to raise at this stage, is patient confidentiality which you touched on in your opening statement. We acknowledge that the Inquiry team is entitled to access to all patient records and, of course,

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access will be freely given to the Inquiry team. We are obviously happy to leave to the Inquiry itself the responsibility of preserving that confidentiality unless it is waived by any individual patients. It is a matter for the Inquiry itself how it uses...(inaudible)..., patients records, but, sir, you will know that proceedings for damages have started in some cases and applications for preliminary discovery of documents have also been made in some cases and orders have been made by a High Court Judge in one case for disclosure of records outside the particular patient's records for the purpose of that litigation.

I think I am correct in saying that all those involved in that litigation have given undertakings to the High Court not to use documents produced or information derived from those documents for any other purpose apart from the High Court proceedings. That clearly, on the face of it, will

have the effect of preventing those parties contacting the Inquiry and telling their side of events as it affects them and their families. Of course, we have no wish to prevent families and patients from contacting and discussing matters with the Inquiry team. We do not wish to prevent access of any person to this Inquiry.

We have contacted the solicitors acting for the Group and, in some cases, individual solicitors acting for individual patients in that litigation, releasing them from those undertakings given to the Court, save as to the confidentiality of other patients and the details of other patients' medical records which may have been disclosed in that litigation.

So, rightly or wrongly, we saw, and I see, a

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distinction between, on the one hand, legal proceedings in which there are two opposing parties and a plaintiff has to prove his or her case on the evidence and the documents made available, and a Public Inquiry where all of the records will have been made available to the Inquiry and counsel for the Inquiry, Mr Langstaff, will be able to explore any issue that arises from those records.

So for that reason we have limited the release from the undertaking to individual patients, individual plaintiffs,

and their records in the course of the litigation. In the end, obviously it is a matter for you, sir, to decide what you see the reference of patients, and our only concern in raising the matter at this stage is they are or were patients, some of whom may not wish to play any part in the Inquiry, and for that reason we feel that we should put the matter up at the earliest possible opportunity so you can see that question at this time.

Sir, that is all I want to say, except to say we don't consider it appropriate to make any opening statement to the Inquiry at this stage. We do not have issues or any framework to address you upon but we hope that we may be given the opportunity to address the Inquiry when it begins to hear evidence in the Spring of next year.

THE CHAIRMAN: Mr Miller, thank you very much. Thank you for that. I find that very helpful, particularly taking the point you made. I am grateful for the offer as regards witnesses and, of course, we will try to coordinate it so as not to put the Trust at a disadvantage with the staff and staffing levels and so forth. Thank you for those.

As regards documents, I understand informal contact has

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already been made between the various legal representatives.

We have the resources and we have the personnel to look at and classify every document, at some point to scan, as you

suggest. So what I would suggest is that I leave it to my solicitor to liaise with your legal advisors so as to carry that particular process forward.

On the third matter of confidentiality, I am grateful for the release of undertaking, as I understand it, having been made, but I am led to believe that there is still, as you adverted to here, matters which may need further clarification. It would be unwise for me here, as it were, to issue particular guidelines. I would prefer if there could be further consultation between your instructing solicitors and my solicitor and all those others who may be involved, so that we can sort what needs to be sorted out and do it as soon as possible to the mutual advantage of all, then a framework can be put to me which I will decide upon and issue directions accordingly. I hope that is satisfactory.

MR STEPHEN MILLER QC: Yes, that is.

THE CHAIRMAN: I now call on Simon Chen.

MR SIMON CHEN: Good morning, sir. I make no application on behalf of James Wisheart for legal costs in this matter. My role today is merely to keep a watch.

THE CHAIRMAN: Thank you. I now call on Alison Troake.

MS ALISON TROAKE: Good morning, sir. I am here this morning on instructions from the Medical Defence Union on behalf of Dr Roylance. Having heard your opening statement, I will

take further instructions in relation to any application for costs, but it is not my intention to make that application

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this morning.

THE CHAIRMAN: Thank you very much. Should I also hear Simon Eastwood?

MR SIMON EASTWOOD: Good morning, sir. I am here this morning under general instructions from the Medical Defence Union, not in regard to any specific members of the Medical Defence Union. My view of your comments this morning, particularly as to individuals who may be invited to assist later and in the context of what you said about legal costs and matters that may arise at a later time, I have no specific representation or application to make today.

THE CHAIRMAN: Thank you. Mark Wilson. Is Mark Wilson for The Department of Health here?

MR MARK WILSON: Yes, sir, we have no representations or applications.

THE CHAIRMAN: I am grateful. Michael Brooke?

MR MICHAEL BROOKE QC: Good morning, sir, members of the Panel.

I appear for the Avon Health Authority instructed by Bevan Ashford where it is Bill Broadford and

Joanne...(inaudible)... May I say, Avon Health Authority is also the successor entitled to the preceding District Health Authorities. I am instructed to tell the Inquiry Panel that

they may count on the Health Authority's full cooperation in the enormous task ahead of you. I have no further representations to make.

THE CHAIRMAN: I am grateful, Mr Brooke. Thank you very much. Now Phillip Havers.

MR PHILIP HAVERS QC: Good morning, sir. Sir, I represent Mr and Mrs Stewart and I apply, on their behalf, for public funds for legal representation for them and for their son;

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representation, that is, by solicitors and one counsel and for such expert assistance as may be necessary and appropriate.

You already have our letter of 13th October setting out the application in writing. May I say that briefly now, orally, to you. As you know, Ian Stewart was born in May of 1993, and some four months after he was born he underwent surgery for a condition known as trunkus arteriosis (phonetically spelled).

In the course of that surgery, he underwent and he sustained profound and permanent brain damage.

Mr and Mrs Stewart have been so concerned about the outcome of that operation that they have been, I think it is fair to say, at the forefront of bringing the events which you are now to investigate into the public domain.

They both gave evidence at the GMC investigation and they are very anxious to assist your Inquiry and to make representations to you as appropriate and submit material to you, as appropriate, which they hope and believe you will find to be of value to them.

The detailed grounds of the application I can summarise in this way: firstly, the operation which their son underwent under the hands of Mr Wisheart was one that very few children underwent. It is different from most of the other operations. It was scarcely put at all at the GMC investigation. As we understand it, there may be only one or two other children whose cases you are likely to consider, in any detail at any rate, who underwent the same operation, and it may well be that Mr and Mrs Stewart are the only parents who will wish to play an active part in your

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Inquiry, and thus they are, it seems, to be fairly distinguished from the other parents who have already applied for legal representation or funding for legal representation through Mr Maskrey.

As I say, the GMC didn't consider this operation at all ultimately, and didn't consider many of the issues that arise from it.

Those issues, and this is the second ground that I come to briefly, cover a wide range from questions of consent to

questions of audit. Of course those are issues which are likely to rise in many, if not most, of the other cases, but what, perhaps, can be said to distinguish Ian's case from those other cases is the different consideration which may need to be given to those issues in the context of the very different heart operation which he underwent.

Thirdly, Ian's parents believe, as do we, that they can make a contribution to the Inquiry, especially -- and I stress this -- in connection with the particular operation; for example, they have already discovered a fair amount of detailed analysis into the detail of the operation and previous operations for the condition which they would hope to submit to you at an appropriate time for your attention.

Fourthly, I ought to say this: they used to be represented by one of the two firms of solicitors who have applied to you today through Mr Maskrey, and indeed by Mr Maskrey himself, but from their standpoint, their relationship with them broke down and as a result they withdrew their instructions and transferred them to their present solicitors. For, I hope, obvious reasons I don't propose to say anymore than that other than to add this, for

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what it is worth: I am satisfied that those views are genuinely held by Mr and Mrs Stewart and it is clear to me

that it would be hopeless to expect them, in reality, to revert again to their previous legal team. They are not minded to do so and, indeed, they would not now contemplate doing so.

Sir, that is to say Mrs and Mrs Stewart do not have the funds to pay for legal representation themselves, nor do they have the expertise or experience to provide the sort of service which they believe experienced lawyers would be able to provide, and it is for those reasons that the application is made.

Can I stress this, particularly in the light of the role that you have outlined you would expect the lawyers to play on the Inquiry: it is clear that any lawyers for whom they were to receive public funding would have a limited role to play which may be relevant to the application itself because it may be relevant to the costs that will be incurred. Obviously, they would be likely to wish to be present when Mr and Mrs Stewart give their evidence, if you invite them to give evidence. They may wish to be present when some of the most important other witnesses, for example Mr Wisheart, give evidence, and, no doubt, they may wish to be present at submissions at the end of the Inquiry, but it is difficult to see that there would be an ongoing role for the lawyers instructed on their behalf during the whole part of the Inquiry. They will be able to download the transcript on the Internet, like everyone else, and keep abreast of the

progress of the Inquiry in that way.

So that is all I wish to say in support of the

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application. May I, while I am here, just say something very briefly on the question of confidentiality since Mr Miller has raised it on behalf of the Trust? Mr Stewart is one of the sets of parents who have given undertakings in separate legal proceedings. As they understand the present position, the Trust proposed to release them from that undertaking insofar as it will enable them to refer to the documents which they have received when discussing their son's case with the Inquiry, when putting material relevant to their son's case to the Inquiry. But the release of the undertaking does not extend to enable them to discuss the fact of any other child's case to the Inquiry or to put material to the Inquiry derived from an analysis, for example, of any of the other cases, and particularly any of the other operations for this rather rare condition from which their son suffered. That is a point that concerns them deeply because without being released from that part of the undertaking there is the necessary limit to the assistance that they think they can give to the Inquiry.

I stress again they believe that they have a considerable amount of assistance that they can give. They

certainly would not wish to identify any of the other patients, and it is all too easy to anonymise those other patients in order to protect their identity, as I appreciate, but you cannot direct the Trust to waive any obligation of confidentiality in what are separate proceedings, but we will be inviting you, sir, to invite the Trust strongly to waive the balance of the parents's undertaking so that they can assist the Inquiry by referring to the details of other patients in the way that I have . 40

indicated.

I won't say anymore because you have indicated how you would like this matter to be dealt with by way of discussion later on.

THE CHAIRMAN: Thank you, Mr Havers. I am particularly grateful to you for raising the issue of confidentiality. Again, clearly there still remains something to be sorted out. I will say no more than that, save that it would be really most unfortunate if the needs of the Inquiry were frustrated by anything happening elsewhere.

May I just respond very quickly to your points. It is obvious that one would be most anxious to hear from your client, as from anyone else, who has something to help us with. This is our intention; to be as open and inclusive as possible. Thus I will give very careful consideration to

your application. We may need to discuss, as you intimated, the extent and scope of it in time. Thank you very much.

May I identify Andrew Simms, please?

MR ANDREW SIMS: Good morning, sir. Sir, I represent the Bristol Surgeons' Support Group and I apply that it be legally represented at this Inquiry at public cost, both in respect of counsel and solicitors.

By way of background, the Group was formed shortly after the outcome of the General Medical Council Inquiry, an outcome considered by many, and those in my Group, to be unjust and influenced by the media.

As the name suggests, the Group's aim is to support surgeons who are kind, caring, conscientious and dedicated.

The Group represents some 459 families; some having suffered bereavement themselves when their children died following

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operations at this hospital. It does have over 500 members.

The thread that binds everyone together is the good care received by them or their loved ones from two surgeons.

Membership covers a wide geographical area, virtually the whole of the southwest from Cornwall to Oxfordshire, parts of South Wales and one or two from abroad.

Now, in respect to the application, sir, I understand there are two questions that I might address first; whether

we have any separate funding and the answer to that is no, there is no agency or union or other group behind this organisation which relies purely upon donations from the families.

Secondly, it may be suggested the Group, perhaps, does not have an interest sufficiently different to other Group or Groups who are represented here. For example, I said initially that the aim was to support surgeons. The question may be said, should our Support Group's efforts be channelled through the surgeons themselves? If that question is asked, my answer to it is a firm "no". The Group is an independent body, sir, not formed by or through the surgeons. It is galvanised by people who wish to be heard at this Inquiry and having an independent voice.

In my submission, it may well be best for the Inquiry, both in terms of speed, costs and its effective running, to have a coordinated representation from this Group rather than many individuals all seeking to be heard, although, of course, we can't guarantee that some will wish to speak independently of our Group.

The Group and its members can and wish to be heard independently on such issues as management of the care of

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children and the adequacy of the services provided, matters within the terms of reference and which are wide. You,

yourself, mentioned this morning the terms of reference are very wide indeed, not simply limited to the matters of the surgeons and here, members of our Group can help dealing with care and service of the whole hospital. The Group can assist this Inquiry.

The Secretary of State and yourself this morning invite all parents to have their say and the Group represents a reasonable number of them. It is important this Group continues to have an independent voice and that will be greatly assisted by help from the public purse and for legal costs.

As, sir, we are at the preliminary stage, I wonder whether I can please reserve the right within your timescale of 13th November to make further representations on top of those I have made today, but I do ask for your favourable consideration.

THE CHAIRMAN: I am grateful, Mr Simms. I ask you to put forward an application which will set out as fully as you wish, by 13th November, if you so choose, and then, of course, we will give it appropriate consideration. Thank you.

Now, may I call on Barry Cotter?

MR BARRY COTTER: Sir, I appear on behalf of the Royal College of Nurses. The role of the Royal College is hoped to be assisting your Inquiry and that is twofold. Firstly, to represent any individual nurses, rather than a specific case

and that you should consider, outstandingly and on a broader generic basis, looking at the wider issues within the remit of your Inquiry.

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Sir, my application today is for consideration of the recommendation to the Secretary of State for Health in regard to costs. Sir, the RCN at the College, is not a government-funded body. It is a charity principally Trade Union with reliance totally, solely upon members and subscriptions. So to use a topic analogy, they are professional 'think cats'. Sir, they have all the usual correspondence sources.

In seeking assistance, sir, we now have to bear in mind what you say in relation to established convention but, sir, I can add little to the submissions we have now sent to your legal team last night.

I hope that comprehensively covers the arguments that we would urge upon you in seeking that recommendation. So I can really add little at this stage unless you have any specific questions that you would wish to put.

THE CHAIRMAN: I have no questions and I am very grateful to you for that submission. We will let you know our decision when we reach it. Thank you.

The last organisation on my list who may have legal representation today is the General Medical Council. Do I

have anyone appearing for them? No.

Are there any other legal representatives whom I have not called whom I should have called? I am grateful.

We have now dealt with the technical but very important matter of legal costs and now it is really a matter for me and my colleagues to listen and hear what anyone has to say to us. Although, as I have said in my statement, hereafter the Inquiry team will be available at more reasonable times to anyone on any matter, and you should feel free to

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identify them today if you have not already done so, and to ensure that you learn how you can make contact.

Should anyone now wish to say anything, I would be happy to hear them. May I ask one thing only and that is you wait for a microphone which will appear, and then hold it away from your body and tell me who you are and if you represent anyone or any organisation, please tell me that as well.

MR JOHN McLORINAN: Thank you. My son was twice operated on successfully by Mr Wisheart and I thank you for the comments you made to the Press about confidentiality and sensitivity.

I was sitting at home a couple of months ago watching a programme and to my horror I saw my son's name flicked up on the screen in some papers the doctor was going through.

With the greatest of respect, on page three, I think, in this paragraph you seem a bit vague where it says you will be discussing legitimate interests to deal with this matter of medical confidentiality. I presume people will be saying things to you and you will have to go back to check records and that.

I was just wondering who would have access to my son's records and to what extent they might be made in the public domain?

THE CHAIRMAN: I can give you the assurance or repeat the assurance that I have made already: no document will be released into the public domain without the permission of the family and the consultation of the family. Now, documents may be made available to the Inquiry team, but not go in.

MR McLORINAN: So this will just remain within the domain of the . 45

team?

THE CHAIRMAN: While the necessary negotiations take place as to how to protect confidentiality, that is the case.

MR McLORINAN: Thank you, sir.

THE CHAIRMAN: Yes, over here.

MR IAN HAM: Sir, ladies and gentlemen, my name is Ian Ham. My daughter was operated on in 1976 by James Wisheart. She died. On Friday last I received my daughter's medical

records and was very surprised to see that Janarden Dhasmana's name was on the operating list as one of the surgeons.

Over the last 22 years, we thought that James Wisheart operated on our daughter. Now, I don't know the surgeon who operated on my daughter. James Wisheart and Janarden Dhasmana have been a team since 1976. I believe that the team should be investigated from the very beginning. I am perfectly happy with my daughter's case to be fully investigated. Thank you, sir.

THE CHAIRMAN: Thank you. There were two or three people there.

FROM THE FLOOR: I am a member of the Surgeons' Support Group and I would just like reassurance, really, that this Inquiry is going to be unbiased. The Action Group were filmed this morning in the Council Chamber about 6.30. We were told we were not allowed in here until quarter to ten. It does not indicate non-bias and we would like reassurance, really, this will be non-biased and you will hear all sides before any decision is made.

THE CHAIRMAN: Should you require, after what I have said, some reassurance about impartiality, I am happy to give it.

MR DAVID YOUNG: My name is David Young. I was operated on twice

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by Mr Wisheart, successfully I may add, and repeating points

about children operated on by these surgeons and I belong to the Surgeons' Support Group. I am very concerned that they get a fair hearing, these surgeons. I am sure you are aware that the media, television, newspapers, while the GMC Inquiry was going on, the distorted picture that was painted of these surgeons was disgraceful and it was certainly bias. I would like to redress that balance and I hope your Inquiry comes to that conclusion, and even when what you said this morning has indicated that there was a lot of things wrong at Bristol Royal Infirmary, there are a lot of people who actually say that Bristol Royal Infirmary is an excellent hospital and it suits the Health Service very, very well. That needs to be recognised because the BRI has had tremendous damage done to it.

I know when I was referred to the Bristol Royal Infirmary, my doctor, Mr Wisheart, and his colleagues in surgery were regarded as some of the finest in the country, but the adverse comments and the way it has been presented in the Press has been very, very damaging to these surgeons, and even the Health Minister, I think, personally, with his comments on television, led to the dismissal of the other surgeon last week. So I do think that when we look at this, my heart goes out to the parents who have lost children and I think anybody would feel that, but I do think it is wrong to suggest that every hospital that has undertaken operations on infants, that there is 100% success rate. That

simply is not true. It is a very, very complex operation.

The last thing I would add, if surgeons undertake major heart surgery on infants as young as two days old, that

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infant is dying and they fail to save the lives of those children.

I am a supporter of Mr Wisheart. I think he is a fine, caring man as well as a surgeon who has a very good track record and we need to look at all the operations that he undertook and how many were successful. Thank you.

THE CHAIRMAN: I am grateful, thank you.

FROM THE FLOOR: I am a member of the Bristol Support Group as well. My husband had a five way by-pass in 1996 performed by James Wisheart. The reason Mr Wisheart performed on my husband was that he was a high risk case. I feel, with my colleague here, that there has been so much bias in this entire case.

I would like to ask one question: the terms of reference state that the appointment will be -----

THE CHAIRMAN: I am afraid I can't hear you.

FROM THE FLOOR: The terms of reference state that there will be a medically qualified member added to the Panel. Can I have an assurance that the further member appointed to the Panel will have relevant specialist knowledge of paediatric

cardiac surgery, please?

THE CHAIRMAN: I can't give you any assurance of that. The fourth member of the Panel will be invited by the Secretary of State and I am sure he will take appropriate advice and what background is appropriate to help us on the Panel. I have also made it clear that the Inquiry team will have available to it a panel of experts in a wide range of various expertise.

That is important and as we have heard from various legal representatives, they also would wish us to hear from . 48

other experts. This is an inclusive Inquiry. We want to hear whatever others who wish to tell us. We have no view now. We reach views after the evidence rather than before.

FROM THE FLOOR: My daughter was successfully operated on by Mr Wisheart. We live in Cornwall so it is a long way to travel to listen to what is going on. If live video links are established, are applications to be made for the site of locations of these links, for example in Cornwall?

THE CHAIRMAN: Thank you. If I heard you correctly -- please forgive me, the acoustics are very poor here for my hearing. You asked will there be a possibility of video links in Cornwall?

FROM THE FLOOR: Or Devon or South Wales?

THE CHAIRMAN: That is certainly being looked into. There is

every intention to make the Inquiry as accessible to as many people as possible so as to obviate the need to come to Bristol or London, and appropriate sites are being identified and those will be provided, with facilities and transcripts or whatever. Though I can't say specifically yes or no because I am not aware of the arrangements, I am sure what you have just said will be taken into account.

FROM THE FLOOR: My concern is -----

THE CHAIRMAN: May I ask you to identify yourself?

FROM THE FLOOR: I belong to the Surgeons' Support Group. My concern is that you are not opening the Inquiry beyond the years that you are doing. My son was operated on in 1978 by Mr Wisheart. He had a very complex open heart operation which Mr Wisheart had not performed before on a child.

Richard was only eight weeks old, was only given four months to live and because you are not enlarging the Inquiry for

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those years, I feel I don't get the chance to have support in what is said.

I want to know whether there is any chance that anybody from '76 onwards will have a chance to say anything?

THE CHAIRMAN: You may recall that when I read out what I had put into the preliminary statement, and you will have a copy of it and can see it, it says as regards dates that although

we will not specifically be seeking information about services before 1984 or after 1995 -- may I repeat again what I said -- that clearly if information comes to light about events before or after those dates which is relevant to our terms of reference, then we shall consider it.

Therefore, it is open to you to seek to persuade us to look at that, if so persuaded.

JENNY TURVEY: My name is Jenny Turvey. My daughter Katie Newby was operated on in 1984 and she died four days after her operation. I just want to say how really grateful I am that we are having this Inquiry because all I want is the truth and I am sure that must be the same for every parent I have spoken to. We are not after a witch-hunt, we just want the truth.

THE CHAIRMAN: May I say how grateful I am for that.

FROM THE FLOOR: I am a Vicar in Bristol and have close connections with a child who was operated on by James Wisheart. My question for the Panel is this: it seems to be giving a great deal of legal support. Is it under the terms of reference to the Panel to provide pastoral support to families who have found their own inquiries really distressing and are dealing with the pain?

THE CHAIRMAN: I am grateful to you for raising that point. We

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have had already discussion within the Panel and with some

representatives as to what is the most appropriate way of meeting what is undoubtedly a very real need. We will continue to have those discussions so as to come up with what we think will fit the bill, and you have my assurance that I am very conscious of that and that I will do whatever I can to make appropriate arrangements. Thank you again.

PATRICIA MOTTON: Hello, my name is Patricia Motton. My son and daughter died in 1979. I would like to say Mr Wisheart performed the operations and he said it was straightforward operations, a very slight chance of them dying. I believe that put precious children's lives in his hands and both died. My daughter died six weeks after my son. I had to reopen my son's grave which Mr Wisheart put my other daughter into. That is all I would like to say.

THE CHAIRMAN: Thank you. Yes?

FROM THE FLOOR: Bristol Surgeon's Support Group. I would like you to explain the great emphasis on the family who are very independent as an Inquiry yet you have been brought in by Mr Frank Dobson. It makes it very strange to find that you are actually independent of the Government given that they appointed all of you.

THE CHAIRMAN: I can only repeat that we are independent and we will remain independent.

If there aren't any other contributions from the floor, may I -- madam, please.

FROM THE FLOOR: I am with the Surgeons' Support Group and I would just like to say hearing the statements today, I am concerned about the unbiased approach that you mention when there are phrases like "lessons we must learn", "the way to . 51

go forward", "that Bristol will never happen again". I don't know if I am mistaken, but it does not sound unbiased.

THE CHAIRMAN: I can understand your point, I think. I think it is fair to say that in the views of many of what transpired was appropriate to describe as a tragedy, for some at least.

In those circumstances, if there is a tragedy there are lessons to be learned so as to avoid them again. It might not have been a tragedy for others and that is a matter of rejoicing. It still does not take away from the fact that it was a tragedy for some. I hope that helps you.

If there are no other formal comments from the floor that this brings to an end the preliminary hearing. We will now adjourn until we reconvene to begin our public hearing, oral hearing stages which will be, as I already said, in the Spring. May I thank you very, very much, all of you, for coming. May I thank the legal representatives for helping me in the way they have and for those of you who spoke. We have listened. Thank you very much again.

The Inquiry concluded at 12.10 p.m.

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