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Attorney General's Office

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The Rt Hon The Lord Hutton

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12th November 2010

Dear Lord Hutton,

DR DAVID KELLY

I write to acknowledge, and thank you for, your letter of 3rd November enclosing your comments on the memorial of Dr Frost. It is very helpful.

I explained when last I wrote that there may be some other questions we would wish to ask. I am unsure whether you would prefer me to direct these questions to Martin Smith, or even Mr Dingemans, but I am sure you would, in any event, wish to see them.

Before setting out the questions it might assist you to know the thinking behind them. One of the points that has repeatedly been made is that an Inquest would in some way have been "better" than the Inquiry process. The Memorial touches on aspects of this. The most obvious difference is that evidence was not given on oath. Arguably, the Inquiry process was perhaps more thorough than one would have expected of an inquest. The questions are designed to seek to explore that issue.

I also enclose a transcript of the proceedings before the Coroner, Mr Gardiner, when he declined to reopen the inquest following the completion of your Inquiry. He touches on some of the differences.

We have, in addition to the Memorial from Dr Frost, also received a letter from another retired doctor, Dr Watt. I enclose a copy as some of the points he makes are touched on in the questions below.

We would be grateful for assistance on the following matters:


- Are you able to confirm that all medical evidence was disclosed to interested parties?
- Although paragraph 12 of your response deals with aspects of the points made in paragraphs 33 to 41 of the Memorial, is there any comment you wish to make about the issue of pre-Inquiry hearings as set out in paragraph 33 of the Memorial?

- Similarly, do you wish to make any comment on whether you were or may have been hampered by the fact that witnesses did not give their evidence on oath?
- Were there any witnesses that refused to give evidence such that the absence or otherwise of a power to compel evidence was relevant – paragraph 35 of the Memorial?
- Whether there were any people that wanted to give evidence that were refused (including those any Interested Parties wanted called)?
- What was the mechanism for determining the above?
- What was the process of evidence taking.
- Is it correct that Dr Kelly's dentist and Supt Young were not called to give evidence? If so, why and to what degree was their evidence material? (para 36)
- What was the mechanism whereby interested parties cross-examined witnesses? Was leave required? (para 36)
- Is a detailed statement of procedure adopted at the Inquiry available (amplifying what is set out at Chapter 1 of the Inquiry Report)?
- Why were DC Shields, Dr Eileen Hickey and the three Scene of Crime Officers not called?
- Why did ACC Page rather than Roy Green give evidence as to the results of his tests.
- Given that you have only now seen the letter from Dr Watt, are there any other comments you would like to make?

One of the criticisms made of you is that you had never sat as a Coroner. Is that correct? Even if it is, I am familiar with the legal establishment in Northern Ireland and would expect that in your career at the Bar and later as a judge, you would have been very familiar with the inquest process and no doubt have sat on cases in which some aspect of an inquest was being challenged. Is this a fair understanding?

Finally, if the Attorney General should decide not to apply for a fresh inquest he will explain his reasons for not doing so. He will wish to put the papers he relied on to form that view in the Libraries of the House. Of course, the Attorney General may also face challenge by judicial review - although I have serious doubts as to whether the doctors have sufficient locus to bring one. Are you content that the response you have provided and any further response be dealt with in that way? I realise that was not the understanding on which you provided your first response and assure you that no decisions on disclosure have yet been made.

If I can assist in any way, or if you would prefer me to seek this information directly from Mr Smith, please do not hesitate to contact me.

Yours sincerely


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