

SCOTTISH HOSPITALS INQUIRY
WRITTEN CLOSING STATEMENT RELATIVE TO HEARING
COMMENCING ON 20 SEPTEMBER 2021

on behalf of

THE SCOTTISH MINISTERS

Introduction

1. On 4 November 2021 the Chair of the Scottish Hospital's Inquiry ("the Inquiry") issued Direction 4 under and in terms of section 17 of the Inquiries Act 2005 ("the Direction"). In terms of that Direction core participants may submit written closing statements to the Inquiry. A Note attached to the Direction sets out the terms to which core participants should have regard in framing such closing submissions.
2. As mentioned in the Note, the scope of the evidence to be led at the hearing was set out in terms of Direction 3 and, in summary, comprised the matters which the Inquiry is required to investigate under Terms of Reference 8. In particular, the evidence led at the hearing was to investigate the perception of patients and their family members as to the physical, emotional and other effects on them of issues arising in relation to ventilation, water and drainage and other matters adversely impacting on patient safety and care and the communication with patients and their families in relation to those issues. As identified in the Note, the evidence led at the hearing may be considered relevant to other of the Inquiry's terms of reference.
3. In accordance with the expectation of the Chair, the Scottish Ministers wish to assist the Inquiry in fulfilling its terms of reference, and to that end submit this closing statement as one means of doing so.
4. The Scottish Ministers are grateful to the families and patients who have given evidence to the Inquiry of their own experiences, the effect of those experiences on them, and their perception of the communication with them and their families. They acknowledge that that was very difficult evidence for the witnesses to give, and that it took courage for them to do so.

5. The approach taken by Counsel to the Inquiry in their closing statement of focussing upon the preponderance of the evidence is acknowledged as a practical way of allowing a close look at the issues raised. However, as emphasised by Counsel to the Inquiry, that does not reflect any lesser weight being placed upon other elements of the evidence. The entirety of the evidence has been read and listened to with care on behalf of the Scottish Ministers. All of the evidence has been helpful in identifying potential areas capable of agreement, as set out below.
6. It is recognised that certain themes emerged from the collective perception of patients and their families regarding the care received at the Queen Elizabeth University Hospital, and the effect of the delay in the move to the Royal Hospital for Children and Young People. The Scottish Ministers would seek to avoid trespassing on the role of other core participants who would be better placed to respond to issues directly involving them and those for whom they are responsible. In that context it is acknowledged that the parts of the evidence which potentially involved the Scottish Ministers were limited. It is respectfully submitted that in some instances the suggested involvement of the Scottish Ministers may be based upon a misperception of their role and function in relation to the issues raised. As to their role and function, areas of potential further investigation are proposed below on which it is suggested it would be appropriate for the Inquiry to hear evidence.
7. The Scottish Ministers are grateful for the recognition by the Chair that the evidence of the perception of patients and their families was not challenged, and any challenge would have been inconsistent with the stated intention to lead evidence of perceptions. The opportunity afforded by the Chair to ensure that the Inquiry fully understands the issues, by allowing the Scottish Ministers to respond to the evidence heard during this phase, either during the course of the Inquiry's investigation or at future hearings, is appreciated.
8. In this Written Statement the Scottish Ministers set out (i) a response to those restricted areas of the evidence which relate to their actual or perceived involvement in the issues raised, (ii) suggestions of some additions to the timeline helpfully prepared by Counsel to the Inquiry in their Written Statement, and (iii) some proposed lines of enquiry which may assist the Inquiry in fully understanding the issues raised at this stage in so far as they relate to the Scottish Ministers.
9. The Scottish Ministers agree with Counsel to the Inquiry's selection of the themes that emerged from the evidence heard in this phase of the Inquiry.

Response to Evidence Relating to The Scottish Ministers

10. There were limited instances in the evidence where the actions of the Scottish Ministers were directly addressed and this part of the submission is restricted to responding to those particular points in the evidence.

Communication

11. The Scottish Ministers note from the evidence that patients and their families appear to have been aware of measures put in place by the Scottish Ministers (and also in important instances actively engaged with them) to address the perceived lack of communication, such as the meetings with Ms Freeman and the Communication sub-group of the Oversight Board.
12. In many instances witnesses expressed frustration with the level of communication, in relation to both Hospitals, but the Scottish Ministers note and agree with Counsel to the Inquiry's conclusions at paragraph 249 of their Written Statement that:
 - (1) "There was a limited amount of evidence heard in relation to the involvement of the Scottish Ministers."
 - (2) As to the meeting with Ms Freeman in relation to Glasgow, specifically, "most [witnesses] felt she listened to their concerns before agreeing to find the 'answers they deserved'."
13. At paragraphs 91, 243, and 249 of Counsel to the Inquiry's Written Statement concerns are raised based on the perception of some witnesses that information may have been available to the Scottish Ministers which would have been at odds with public statements made by Ministers. If the Inquiry is minded to place weight on that perception, the Scottish Ministers would seek to be allowed the opportunity to address these issues in evidence.
14. At paragraphs 277 – 284 a number of issues are generally raised about patients' and families' perceptions of the communication of Scottish Ministers to them about the delay in the transfer to the RHCYP and DCN. Again, it is respectfully requested that the Scottish Ministers be allowed to address these issues in evidence, and if so allowed the Inquiry may hear evidence about the respective roles of the various decision making bodies for communication, and in particular communication with patients and their families.

15. The Scottish Ministers would draw specific attention to paragraph 102, which may be inadvertently misleading, insofar as it may be taken to suggest that the Cabinet Secretary herself reported the absence of bacterial infection associated with the incident. Rather, she reported what she had been told by NHS GGC, telling the Parliament:¹

“I am sure that the overriding concern of all of us is the wellbeing of the children and families in the affected areas. I have spoken today with the board’s chair and chief executive, who were clear that no patient is giving any cause for concern as a result of bacterial infections associated with the incident. However, the board, with support from Health Protection Scotland, is taking appropriate precautionary measures to ensure that any infection is contained and addressed. Following identification of the bacteria, testing of water from the water tank that supplies both the Queen Elizabeth university hospital and the Royal hospital for children has been negative. A range of control measures has been put in place, which include some taps and shower heads being taken out of use for chemical disinfection, and point-of-use filters are in the process of being installed. Filters are due to be in place by close of play today, and sampling will be undertaken to ensure that the water is deemed safe.

I have asked Health Protection Scotland to co-ordinate a thorough investigation as a matter of urgency to review all those matters and to make any recommendations for the national health service. I will ensure that that review is reported to Parliament.”

Criticism of Individuals

16. In so far as the evidence of certain witnesses suggested criticism of individual senior civil servants or other representatives of the Scottish Ministers, it is respectfully submitted that such criticisms would be misplaced. The Scottish Ministers would invite Counsel to the Inquiry to investigate the matters raised, and if considered appropriate or necessary, to allow the Scottish Ministers, and the particular individuals concerned, to provide their evidence to the Inquiry in respect of these particular matters.

¹ Official Report of the meeting of the Scottish Parliament for that date, at 14.14: <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=11430> (emphasis added).

Suggested Additions to the Timeline (in respect of QEUH)

17. The Scottish Ministers are content with the timeline proposed, on the understanding that it will be supplemented on an ongoing basis in light of the additional evidence to be heard by the Inquiry.
18. At this stage the suggestions below are proffered as relating to matters specifically mentioned by witnesses in evidence at the hearing, but in respect of which no chronology has currently been provided:
 - (1) 20 March 2018 – the Scottish Ministers invoked national support framework, requiring Health Protection Scotland (“HPS”) to lead an investigation of the infections at the Hospital, and provide support to the board of NHS GGC;
 - (2) 31 May 2018 – HPS submit an initial report to the Scottish Ministers who request a further report due to the ongoing and complex nature of the investigation;
 - (3) 22 January 2019 – the Cabinet Secretary announces in Parliament an Independent Review in relation to the design, commissioning, construction, handover and maintenance of the Hospital to identify where issues should have been raised and to make recommendations in relation to the current maintenance programmes;
 - (4) 29 January 2019 – Healthcare Environment Inspectorate (“HEI”) unannounced inspection of QEUH begins and HEI to report back to the Cabinet Secretary;
 - (5) 22 February 2019 – HPS report published;
 - (6) 5 March 2019 – Dr Andrew Fraser and Dr Brian Montgomery are appointed as co-Chairs of the Independent Review commissioned by the Scottish Ministers;
 - (7) 17 September 2019 – Public Inquiry announced by the Scottish Ministers;
 - (8) 1 October 2019 – HPS carry out a retrospective review of paediatric haemato/oncology unit’s Gram-negative data at the request of the Scottish Ministers;
 - (9) 4 October 2019 – Professor Craig White, Divisional Clinical Lead in the Healthcare Quality and Improvement Directorate appointed to act as dedicated liaison for patients and families and review their concerns and to facilitate provision of appropriate information to patients and families when requested to do so;

- (10) 30 October 2019 – the Cabinet Secretary provides answers to questions from families posed at meeting in person, published on NHS GGC’s website;
 - (11) 22 November 2019 – the Director-General of Health and Social Care/Chief Executive of NHS Scotland escalates NHS GGC to Stage 4 of the performance framework; The Director-General of Health and Social Care/Chief Executive of NHS Scotland then establishes Oversight Board chaired by Professor Fiona McQueen, Chief Nursing Officer;
 - (12) 27 November 2019 – first Oversight Board meeting takes place;
 - (13) 3 December 2019 – first meeting of sub-group established under the auspices of the Oversight Board to look at technical issues with a particular focus on key infrastructure issues, including the NHS GGC’s approach to water safety;
 - (14) 11 December 2019 – first meeting of Infection Control and Governance Sub-group established under auspices of Oversight Board;
 - (15) 12 December 2019 – first meeting of Communications and Engagement Sub-group established under auspices of the Oversight Board;
 - (16) 15 December 2019 – the Chief Nursing Officer and Professor Craig White invite Professor John Cuddihy to join the Communications Sub-group as the Patient and Families representative; and
 - (17) 28 January 2020- the Cabinet Secretary commissions a Case Note Review to be undertaken by a panel of independent experts to investigate bacterial infections acquired by patients.
19. It is appreciated that Counsel to the Inquiry may wish to consider addition of the above suggested items in the timeline only following specific evidence having been led in respect of the same.

Proposed Lines of Enquiry

Role of the Scottish Ministers in the Approval and Implementation of Capital Projects

20. Written or oral evidence relating to: (i) the process detailed in the Scottish Capital Investment Manual by which the Scottish Ministers receive and approve business proposals for

capital projects, such as the constructions of the Hospitals and provision of services to a local population; (ii) the extent of the involvement of the Scottish Ministers Capital Investment Group in the initial agreement, approving an outline business case proposed by a health board, and the external partners involved in that process; (iii) the funding route applicable to projects of this size and the impact that has on the timescales for submission of the outline business case and then the full business case; (iv) the competing priorities for such a project—the balance to be struck between scrutiny of a project and efficacy in delivery the project; (v) the implementation at the construction phase and the roles and responsibilities of the chair, Capital Investment Group members and senior Scottish Government officials; (vi) the extent of the remit of the Capital Investment Group at the construction phase and the bases on which the Scottish Ministers would have the authority to intervene in the project management by a health board; (viii) the significant steps which have been taken since the events which are the subject of this Inquiry to introduce an additional level of assurance review both at the business case stage and as part of the construction process.

21. The principal witnesses identified by the Scottish Ministers who would be able to provide testimony to the Inquiry in relation to these matters include (a) Alan Morrison, Deputy Director for Health Infrastructure and (b) Mike Baxter (former Deputy Director for Capital and Facilities).

Steps taken by Scottish Ministers in Response to Issues arising at QEUH

22. Written and oral evidence in respect of: (i) the extent of reporting of infection issues to the Scottish Ministers prior to March 2018; (ii) the reasons for and purpose of the Health Secretary commissioning an investigation as a matter of urgency by Health Protection Scotland; (iii) steps taken to monitor the investigation and handling of infection control issues at QEUH pending publication of the HPS findings; (iv) the conclusions of the Health Protection Scotland report produced in February 2019; (v) the reasons for and purpose of the appointment in January 2019 by Scottish Ministers of an Independent Review; (vi) the reasons for and purpose of commissioning HPS to undertake a review of the paediatric haemato/oncology data; (vii) the reasons for and outcome of meetings in September and October 2019 by the then Cabinet Secretary for Health, Ms Jeane Freeman, with patients and families; (viii) the purpose and outcome of a meeting between the Scottish Ministers and the medical and nursing staff affected; (ix) the appointment of Professor Craig White,

the Divisional Clinical Lead in the Healthcare Quality and Improvement Directorate, to review the concerns of patients and families and act as a dedicated liaison person in respect of these issues; (ix) the reasons for the escalation of NHS GGC to Stage 4 of the performance framework; (x) the establishment of the Oversight Board in November 2019 and purposes of the same; (xi) the outcome of the various steps initiated by the Oversight Board.

23. The principal witnesses identified by the Scottish Ministers who would be able to provide testimony to the Inquiry in relation to these matters include (a) Jeane Freeman, Cabinet Secretary for Health and Sport between 26 June 2018 to 20 May 2021, (b) Professor Fiona McQueen, former Chief Nursing Officer, (c) Shona Robison MSP, Cabinet Secretary for Health and Sport between 21 November 2014 and 26 June 2018 and (d) Professor White, Divisional Clinical Lead in the Healthcare Quality and Improvement Directorate.

The Issues arising in respect of RHCYP and DCN

24. Written and oral evidence in respect of: (i) the knowledge available to the Scottish Ministers regarding the identified problem with the ventilation system which delayed the opening in July 2019; (ii) the steps taken by or on behalf of the Scottish Ministers to provide support in investigating and solving the issues uncovered; (iii) the responsibility of the relevant parties for dealing with the delay, and in particular, the responsibility for communication with patients and their families affected by the delay.
25. The principal witnesses identified by the Scottish Ministers who would be able to provide testimony to the Inquiry in relation to these matters include (a) Alan Morrison and (b) Jeane Freeman, former Cabinet Secretary.

Response to Specific Questions Posed by Counsel to the Inquiry

26. Counsel to the Inquiry have posed the following questions to Core Participants:
- (1) Do Core Participants accept that in the above summary, and in what follows, this closing statement accurately sets out the accounts given by witnesses (and if not can they identify where)?
 - (2) At this stage, are Core Participants able to identify any areas of the narrative provided by the patient and family evidence that is capable of agreement?

- (3) On the particular question of infection risk, are Core Participants able to say whether they consider that there is evidence that either establishes or indicates links between infections and the built hospital environment?

Queen Elizabeth University Hospital

27. The Scottish Ministers agree with and endorse what is said in paragraph 5 of Counsel to the Inquiry's written statement. With that in mind, and in the same spirit:

- (1) As to question 1, Counsel to the Inquiry's summary of the perceptions of those who gave evidence appears to be an accurate distillation of the evidence (subject to the points made above about the weight to be placed on that evidence as to the accuracy of arrangements between the Scottish Ministers and other entities, and potential inferences about the extent of information available to the Scottish Ministers at specific points).
- (2) As to question 2, the Scottish Ministers bear in mind Counsel to the Inquiry's observation at paragraph 7 that their summary is not intended as a series of proposed findings in fact. That said, subject to the obvious limits of their direct knowledge of many of the issues dealt with, they do not take issue with the narration of perceptions summarised in paragraph 7(i)–(xvi) of Counsel to the Inquiry's summary. As to paragraph 7(xiii), in particular, they would suggest that the Case Note Review is likely to provide the best available evidence as to the possibility of links between the hospital environment and the infections acquired by the patients in question.
- (3) As to question 3, the Scottish Ministers note that significant investigations have already been carried out by healthcare professionals, expert in the field of infection control, into the likely source of the infections of the patients concerned. The Case Note Review in particular considers the possibility of links between the hospital environment and the acquired infections.

Royal Hospital for Children and Young People

28. Counsel to the Inquiry pose questions 1 and 2 in relation to Edinburgh as they did in relation to Glasgow, *mutatis mutandis*.
29. As to question 1, the Scottish Ministers refer similarly to their response at paragraph 27(1) above.

30. As to question 2, the Scottish Ministers would similarly be content to agree the whole of the summary provided at paragraph 259 of Counsel to the Inquiry's Written Statement.

Written Closing Statement on Behalf of The Scottish Ministers

Isla Davie QC, Senior Counsel to Scottish Ministers

Stephen Donnelly, Junior Counsel to Scottish Ministers

17 December 2021