Scottish Hospitals Inquiry
Witness Statement of
Alan Morrison

Introduction

1. I am Alan Morrison. I am a civil servant employed by the Scottish Government as the Deputy Director of Health Infrastructure and Sustainability, a Scottish Government Health and Social Care Directorate.

2. The purpose of this witness statement is to address the questions raised by the Inquiry in relation to the Scottish Ministers' involvement with the establishment of NHS Scotland Assure, the role of NHS Scotland Assure and whether lessons have been learned following the delay of the opening of the Royal Hospital for Children Young People / Department for Clinical Neuroscience ("RHCYP/DCN").

3. The Inquiry already has evidence within the witness statements provided previously by myself and Mike Baxter (dated 11th and 20th April 2022, 14th February 2023, and 4th April 2023) and in Mike Baxter's oral evidence to the Inquiry on 16th May 2022 as to the Scottish Government's (and the Scottish Government's Health and Social Care Directorates' ("SGHD")) role and responsibilities in relation to the design and delivery of large healthcare projects, including the RHCYP/DCN.

Professional Background and Qualifications

4. I am a civil servant employed by the Scottish Government. My background is in accountancy, and I have a professional accountancy qualification from the Chartered Institute of Public Finance and Accountancy which I obtained in 1998.

5. I have been employed by the Scottish Government since April 2003. During that time, I have worked in the Health Finance Directorate in a number of different

roles as a qualified finance professional. Between January 2015 and March 2020, I was the Capital Accounting and Policy Manager for Health Infrastructure.

6. I am currently the Deputy Director of Health Infrastructure and Sustainability for the Scottish Government and have held this role since March 2020. While my job title changed between January 2015 and the present day, the duties have remained broadly the same, the main duties of which are:

- Developing and delivering the Capital Investment Strategy for the Health Portfolio, ensuring that it aligns with the infrastructure priorities of the wider Scottish Government, including delivering sustainable economic growth and delivering a lower carbon economy.
- Managing the portfolio's capital budget of £0.5 billion, ensuring that a breakeven position is delivered each year, that the expenditure supports the portfolio's strategic priorities and that value for money is delivered.
- Chairing (from December 2015) the Scottish Government Health and Social Care ("SGHSC") Capital Investment Group ("CIG") which oversees the review and scrutiny of all business cases submitted to SGHD, as well as being the lead official for the national infrastructure board.
- Interpreting HM Treasury and Scottish Government capital accounting and budgeting guidance and subsequent provision of advice to NHS Scotland finance professionals through working groups and written guidance.
- Leading the development of strategic advice to Ministers on the options and opportunities for prioritising, financing, and delivering infrastructure investment, including how it can help enable service reform and support clinical priorities.
- Managing and developing the capital accounting and policy framework for NHS Scotland that ensures compliance with HM Treasury and Scottish Government accounting, budgeting, and legislative requirements. This includes effective management of the capital investment programme and of property transactions, as well as performance management.
- Managing assurance processes in respect of major capital programmes of work by health boards: as well as engagement with internal stakeholders, one of my key responsibilities in this regard is to develop and maintain links

with a range of external stakeholders including other national groups, applying specialist knowledge and skills to review, analyse and manage risks.

7. As regards the setting up of NHS Scotland Assure, I sat on the NHS Scotland Assure Design Reference Group. A copy of the Reference Group's terms of reference are produced at **(A46528256 - NHS Scotland Assure Service Design Reference Group Terms of Reference – 5 July 2021 – Bundle 13, Volume 4 - Page 203)**. The terms of reference explain, amongst other things, the purpose, function and remit of the Reference Group. I was a member of the Reference Group, as a co-sponsor (along with a Deputy Director from the Chief Nursing Officer Directorate) on behalf of the Scottish Government. However, I did not really influence the plans beyond commenting upon and helping to shape their proposals.

The Background Surrounding the Establishment of NHS Scotland Assure

Early Discussions Surrounding the Creation of What Later Became NHS Scotland Assure

8. The Scottish Government were first notified about the issues with non-compliant ventilation in the critical care unit at the RHCYP/DCN on 2 July 2019. At that time, the Scottish Government was also aware of issues at the Queen Elizabeth University Hospital ("QEUH") where patterns of infection had been associated with the built environment. It was concerning to the Scottish Government that two newly constructed healthcare projects had defects in the built environment. This concern caused the Scottish Government to review the effectiveness of the build assurance process that was then in place for healthcare projects. Ultimately, this review led to the creation of NHS Scotland Assure.

9. I have been referred to an email chain attaching a note from the Cabinet Secretary to the First Minister concerning the RHCYP/DCN project dated 5th July 2019 **(A41448002 - RE_Update to First Minister – Bundle 13, Volume 4**

- Page 216). The draft note itself can be found at **(A44264335 - Edinburgh Children's Hospital – Note from Cab Sec to FM dated 5 July 2019 – Bundle 13, Volume 3 - Page 1144**). Within that note at page 1147 of the Bundle, it discusses the *"Role of HFS in all future builds for NHS Facilities".* It states *"My officials have today received a proposal from NSS which is currently being reviewed. There will be resource/capacity implications to consider for this and the other Sick Kids' reviews, given existing commitments to QEUH review, etc."* This appears to confirm that there was a discussion around 5 July 2019 with NHS NSS on the future role of Health Facilities Scotland ("HFS"). I recall that, at that time, the Cabinet Secretary, Jeane Freeman, was aware that she was accountable to the Scottish Parliament for delivery of healthcare in Scotland, including the built environment. Consequently, she wanted to be clear that there was a robust assurance process underlying the construction of healthcare projects.

10. I note the email dated 19th July 2019 to the First Minister on behalf of the Cabinet Secretary, Jeane Freeman, **(A41232311 – Health Finance and Infrastructure – Edinburgh Children's Hospital – First Minister - 19 July 2019 – Bundle 13, Volume 4 – Page 225)** attaching the note dated 19th July 2019 **(Bundle 13, Volume 4 - Page 226)**. I can see that I am not copied into the email, but I believe, looking at the format of the note, that it is one that I drafted. I note that at number 14 of the note it states *"Running in parallel, NSS will also provide assurance that current and recently completed major NHS capital projects comply with national standards. This work will take a risk-based approach and will inform development of the potential expansion of the current function and services provided by Health Facilities Scotland; including providing assurance going forward that NHS buildings meet extant standards."* At this point the detail as to how NHS NSS would deliver the "assurance" noted was not known, albeit the ultimate objective was clear (**Bundle 13, Volume 4 – Page 227**).

11. I have been referred to **(A41225838 – Email from Rowena Roche to Barbara Crowe attaching an action list that Health Resilience were maintaining as part of the initial response arrangements around the delay to the RHCYP**

migration – 22 July 2019 – Bundle 7, Volume 2 (of 3) - Page 9) which is an email chain dated between 18th and 22nd July 2019. I am copied into both emails in the chain. Attached to the email to Rowena Roche, which I am cc'd into, is an 'Action List' **(A41225838 – NHS Lothian – Edinburgh Children's Hospital – Action List Closure – Bundle 7, Volume 2 (of 3) - Page 11)**. At number 18 it states, *"Provide acknowledgement to NSS to proceed to the next stage of development of the Centre for Expertise on Infection Control".* By this time, we were taking what can be broadly characterised as a 'two-pronged' approach. One prong posed the question "what are we doing immediately to get the hospital open?" The other posed the question "what do we need to do to make sure that it doesn't happen again?"

12. By this time, the Scottish Government was speaking to NHS NSS on a regular basis regarding the development of the Centre of Expertise, as it was known then (now NHS Scotland Assure). I was not involved in the majority of those conversations. I think that Christine McLaughlin (Chief Finance Officer NHS Scotland and Director of Health Finance, Corporate Governance and Value) led on these discussions on behalf of the Government. I am not sure who was leading the initial discussions at NHS NSS' end.

13. I have been referred to the Cabinet Secretary's statement to the Scottish Parliament of 11 September 2019 **(A41229927 – DH Statement 190911 – Bundle 7, Volume 3 (of 3) - Page 544).** The statement regarded the ongoing developments surrounding the RHCYP/DCN project. At page 556 the Cabinet Secretary states *"There have been many major infrastructure projects delivered by NHS boards in Scotland – on time, on budget and in compliance. However, we cannot have a repetition of the problems we see today – that's not right for the public purse and it's not good enough for patients or staff…. In line with the Programme for Government, we will move swiftly to establish a new national body for reducing and effectively managing risks in the healthcare built environment. The new body will have oversight for the design, planning, construction and maintenance of major NHS infrastructure developments – not least in order to ensure effective infection prevention and control."*

The 2019-20 Programme for Government

14. In September 2019, the Scottish Government published the Programme for Government ("PFG") **(A46528785 - Scottish Government Programme for Scotland 2019-20 – 3 September 2019' – Bundle 13, Volume 4 - Page 229)**, which included the following at page 17 of the document (**Bundle 13, Volume 4, Page 247**): *"To ensure patient safety we will create a new national body to strengthen infection prevention and control, including in the built environment. The body will have oversight for the design, construction and maintenance of major infrastructure developments within the NHS and also play a crucial policy and guidance role regarding incidents and outbreaks across health and social care."*

15. The aim of the commitment was to ensure that NHS buildings are, as far as is possible, compliant with the best available guidance in all aspects of safety; and that healthcare facilities are designed and built to be safe at the point of initiation of services; and maintained on an ongoing basis as such. The vision for the next five years was set out on page 11 of the Target Operating Model ("TOM") as follows: *"To be an internationally recognised centre of expertise for reducing infection and other risks in the healthcare-built environment and ensuring they are fit for purpose, cost effective and capable of delivering sustainable services over the long term."* **(A32341688 - Target Operating Model document for the Centre of Excellence – Bundle 9 - Page 14)**.

16. Following publication of the PFG, NHS NSS established a dedicated team to develop the detail as to how the proposal could be delivered, and to report thereon to the Scottish Government.

The Target Operating Model ("TOM") / Quality in the Healthcare Built Environment

17. NHS NSS's commission from the Scottish Government was to support the creation of Quality in the Healthcare Built Environment ("QHBE"). QHBE later became known as NHS Scotland Assure. The service was designed to improve the management of risk in the built environment across Scotland,

providing greater confidence to stakeholders. The model was enabled by establishing robust relationships across the system, having joint accountability alongside health boards and, in due course, providing a structured forum that will enable construction professionals and clinical colleagues to work in an integrated manner to ensure that the healthcare-built environment is safe, fit for purpose, cost effective and capable of delivering sustainable services over the long term. TOM was published on 26 February 2020 **(A32341688 - Target Operating Model document for the Centre of Excellence – Bundle 9 - Page 4)**.

18. In March 2020, the Cabinet Secretary, Jeanne Freeman, met with Jacqui Reilly (Director of Nursing at NSS and senior responsible officer for the NHS Scotland Assure Project), and her development team, to discuss their initial views for the NHS Scotland Assure project. At the time, the Cabinet Secretary's principal concern with the existing model was that she wanted it to be clear that Health Boards would be unable to proceed through key stages of project delivery without sign off from QHBE.

19. Consequently, the TOM was modified so that a project could not proceed without explicit sign off from QHBE at key stages. Despite the additional level of assurance brought about by the QHBE sign off process it must be recognised there was no intention to move the accountability for delivery of healthcare projects away from the local NHS board. Local boards, as opposed to the Scottish Government or NSS, retain responsibility for the delivery of healthcare projects. The TOM **(A32341688 - Target Operating Model document for the Centre of Excellence – Bundle 9 - Page 23)**, the sets out the expected benefits of this investment as:

- *Increased patient safety by reducing the risk of healthcare associated infections and other avoidable harms such as burns, electrocution, ligature injury, and medical gas intoxication.*
- *Reduced costs in relation to building retrofit costs, delays to opening new hospitals and additional length of stay in hospital settings due to healthcare associated infections.*

- *Increased public confidence through the creation of a national body of expertise which will be a trusted independent voice. This will enhance confidence in how healthcare environments are built, refurbished and maintained, to minimise the risk to the public in relation to the wider built environment risk, but also in relation to how the risk of infection is managed across the healthcare environment.*
- *Sustainability by ensuring more flexibility, adaptability and 'futureproofing' of infrastructure, and also finding innovative solutions to energy efficient hospital design.*
- *Strengthened clinical outcome-focused relationships in the built environment through creating a whole system approach in healthcare; relationships will be strengthened nationally and locally.*
- *International leadership with increased connections with expertise across other countries.*

20. The benefits of this approach were demonstrated during the construction of NHS Louisa Jordan (April 2020), which was completed quickly, but in a way that ensured that the hospital complied with all relevant guidance.

NHS Scotland Assure's Role

21. NHS Scotland Assure's role is to seek to ensure compliance with all relevant guidance and to help health boards demonstrate this at key review stages of a facility's design and build process. NHS Scotland Assure focusses on new builds and major refurbishments within the healthcare estate. NHS Scotland Assure also considers projects that are identified as complex due to the needs of patients using the facilities.

22. NHS Scotland Assure's engagement does not change accountability for the projects: health boards remain accountable for their delivery and NHS Scotland Assure will be accountable for the services it provides that support delivery of the health board's projects.

23. NHS Scotland Assure works closely with health boards to identify where a Key

Stage Assurance Review ("KSAR") may be required for projects under their delegated authority, utilising a triage system to assess risk and complexity of projects. The KSAR focuses on key topics covered by SHTM guidance, specifically – infection control, water, ventilation, electrical, plumbing, medical gases installations and fire. The aim is to ensure that projects are designed, installed and functioning from initial commissioning of a new facility and throughout its lifetime (as far as is possible). Health boards are required to have appropriate governance in place at all stages of the construction procurement journey. Each health board will be fully responsible for the delivery of all projects, and its own internal process and resources for carrying out internal reviews and audits of its activities. The KSAR is seen as a complementary independent review, and not as a replacement for the responsibilities of the health board. I discuss KSAR and how they are linked to the Scottish Government's business case review process later in this statement.

The Relationship / Function Between NHS Scotland Assure and the Scottish Government Health Directorate (SGHD).

24. NHS Scotland Assure work closely with the Scottish Government and meet regularly to discuss progress with key projects. The performance of all NHS Boards is reviewed by SGHD at annual reviews. Annual reviews provide an opportunity for members of NHS Scotland Assure to highlight the achievements of the year whilst discussing issues with members of the SGHD. The agenda of the annual reviews are set by the SGHD and are based on national standards and local performance targets.

25. In addition to the annual reviews, there is a general monthly catch up, which involves Julie Critchley (Director of NHS Scotland Assure), her key technical staff, plus me and a couple of people from my team (normally Alan Gray and Paul Mortimer). The monthly meetings allow NHS Scotland Assure to keep the Scottish Government up to date on their work. The meetings also provide a forum for discussion on business cases that are in development and projects that are past the business case review process and are now in construction

(the SGHD business case review process is described in my statement of 11 April 2020 (**A37810661 – Witness Statement of Alan Morrison dated 11 April 2022 – Bundle 13, Volume 4, Page 396 to 402**)). Those meetings predominantly focus on the business cases that are due to be coming to the CIG in the near future. The meetings will also touch on other issues.

26. At the time of providing this statement, there have been issues with projects in construction surrounding The Baird Family Hospital and The ANCHOR cancer centre in Aberdeen. NHS Scotland Assure, who are able to bring their experience from other capital build projects, are a key part of resolving the challenges that have presented at these hospitals.

27. We also meet with NHS Scotland Assure on an ad hoc basis about specific projects if they are particularly challenging. It is usually the same people who attend (give or take inevitable diary / leave restrictions). A collaborative approach is taken. Interactions tend to be about working together to move an issue forward, rather than thinking about who reports to whom or where accountability lies.

28. There are also informal lines of communication between the CIG, National Infrastructure Board ("NIB"), Strategic Facilities Group ("SFG") and NHS Scotland Assure. I speak with members of NHS Scotland Assure whenever necessary and invite the same open communication from them through those arenas.

The Scottish Capital Investment Group ("CIG") and How it Interrelates with NHS Scotland Assure

29. NHS Scotland Assure works with the health board during the preparation and presentation of its business case. NHS Scotland Assure review business case proposals to ensure compliance with relevant technical standards and guidance. After 1st June 2021, all health board projects that require review and approval from the CIG, need to engage with NHS Scotland Assure to undertake KSAR. This was set out in our letter of 27th May 2021 **(A43494369 – Letter dated 27 May 2021 from Richard McCallum, Director of Health Finance and**

Governance to NHS Board Chief Executives and others – Bundle 9 - Page 70). Approval from CIG requires the KSAR to have been satisfactorily completed as well as for the CIG to be content with the business case. The KSARs have been designed to provide assurance to the Scottish Government that guidance, such as SHTMs, has been followed. The Scottish Government may also commission NHS Scotland Assure to undertake reviews on other healthcare-built environment projects where considered appropriate. For example, works are underway at the QEUH to replace internal cladding. NHS Scotland Assure are supporting NHSGGC with this work and providing the Government with assurance in relation thereto.

30. The Inquiry has also heard evidence about KSAR undertaken by the Scottish Futures Trust ("SFT"). The KSAR undertaken by SFT is a separate process to that undertaken by NHS Scotland Assure. In any event, SFT only provide advice on revenue funded projects (public private partnerships) and there have been no revenue funded business cases considered by CIG since the creation of the NHS Scotland Assure KSAR.

31. I chair the CIG. There is wide representation on the group from across the Scottish Government alongside other organisations. NHS Scotland Assure and SFT are two external bodies that feed into the collective. NHS Scotland Assure KSAR is the starting point for any discussion on any business case. The first question we ask is, effectively, "What is the KSAR status?". In practice, all business cases have gone through the KSAR before their business case reaches CIG. In other words, if the KSAR has not been signed off, we are very unlikely to be reviewing the business case.

32. In practice, NHS Scotland Assure does a lot of work through the KSAR process before the business case reaches CIG. Prior to the business case reaching CIG the relevant KSAR will be discussed at our monthly meeting with NHS Scotland Assure. This allows any issues to be flagged early in the process so that when the business case is ultimately presented any "loose ends" of the KSAR process that were outstanding at the monthly meeting are "tied off". Prior to the creation of NHS Scotland Assure we had similar meetings with NSS to

discuss the NHS Scotland Design Assessment Process ("NDAP") process. I describe NDAP in my statement of 11 April 2022 (**A37810661 – Witness Statement of Alan Morrison - In response to a Rule 8 Request dated 3 March 2022 - 11 April 2022– Bundle 13, Volume 4, Page 1329**). The KSAR process undertaken by NHS Scotland Assure supplements the NDAP process.

33. When it comes to the actual discussion at CIG on the merits of the business case all participants present, whether that be NHS Scotland Assure, the Chief Nursing Officer, the Scottish Futures Trust, the Health Finance Directorate or other members from across SGHD, are offered the opportunity to provide their assessment on the business case. Everybody is encouraged to talk about the whole business case. I speak to Health Finance issues when the finance elements are discussed. NHS Scotland Assure will comment on technical assurance or areas concerning aspects of project management. Their voice is particularly important in that respect.

34. The final decision whether CIG is supportive of a business case going to the next stage is a collective one. It tends to be quite clear whether a business case is going to be approved or not. If we are supportive of the business case, I then draft a letter for the Director General saying that CIG recommend that the business case be approved. It is then for the Director General to decide whether to accept the recommendation and approve the business case; in my experience the Director General always accepts the recommendation from CIG. Where a business case is deemed not to be approvable it is my role, as the current Chair of CIG, to explain to the senior responsible officer for the project where we think it needs improvement. Depending on what the issues are, the members of CIG would subsequently help resolve them. We would work with the owners of the business case to work through the weaknesses that we saw. Once those weaknesses are resolved, the business case would come back, and we go through the same review process again.

35. Everything needs to be aligned before we make the decision to recommend approval of the business case. It is possible that NHS Scotland Assure can say that they are content with the proposal, but the business case does not proceed

after reaching CIG. That is particularly so when there are questions surrounding whether the project is affordable or not. Those questions can override any sign-off from NHS Scotland Assure.

36. CIG is not a rubber-stamping governance body. During the first three or four years of my chairmanship of CIG about half the business cases were not approved. There were varied reasons why we did not approve business cases, including affordability, the service model not being sufficiently developed and failure to demonstrate that the building could meet net zero environmental targets.

37. I brought Paul Mortimer (Head of NHS Strategic Capital Investment) into my team specifically to work with NHS boards on their business cases. He reports directly to me. He is on secondment from NSS. He has a background in strategic business case development. Paul has made an enormous difference since coming in. His role is to get upstream and have a conversation with the NHS board six months before their business case is due to be submitted to the CIG. It is unpleasant to have to tell somebody who has spent two years of their life working on a business case that their business case is not good enough. I think that, because we have taken that extra step, the number of business cases that are not being approved is reducing. However, I also think that is also partly because we are reviewing fewer business cases because of a reduction in available funding for healthcare projects.

38. I have been asked whether the involvement of NHS Scotland Assure in CIG has had an impact in terms of the number of business cases being submitted. NHS Scotland Assure, through the KSARs, have created an additional process for health boards. This may mean that it takes boards longer to develop and submit their business cases than previously. However, I don't think the creation of NHS Scotland Assure has led to a reduction in the number of business cases being presented to CIG.

National Infrastructure Board ("NIB") and its Interrelationship with NHS Scotland Assure

39. The Terms of Reference for NIB can be found at (**A46527805** - **National Infrastructure Board – Terms of Reference – February 2018 – Bundle 13, Volume 4 - Page 415)**. The terms of reference explain, amongst other things, the purpose, function, membership and remit of NIB. Those terms provide:

> *The purpose of the Board is to provide strategic leadership and expertise in driving forward a National Strategy for infrastructure change, as well as providing national oversight on the continued safe and effective operation of the retained estate.*
>
> *It will develop a National Infrastructure Strategy in support of emerging national clinical service plans and emerging regional plans to form a nationally prioritised programme of infrastructure change. It will also provide oversight, influence and challenge on how this is implemented across Regional Boards, NHS Boards and Integrated Joint Boards through their strategic service plans, Local Delivery Plans, Property and Asset Management Strategies, and individual business case submissions.*
>
> *It will be the national authoritative body for mandating action by NHS Boards on strategic infrastructure, asset management and facilities service related statutory compliance, technical, performance, and governance matters.*

40. The NIB was established about five years ago. It's relatively new in governance terms. NIB was the idea of Christine McLaughlin (then Director of Health Finance). She thought that it would be appropriate to have a governance group that was focused entirely on health infrastructure issues. What is discussed at NIB is infrastructure, in the widest sense of the word. It is not simply about buildings. It is about the equipment, the digital environment, primary care, and e-health. It was set up to have a focus on the risks and opportunities that exist with our infrastructure.

41. NIB was originally co-chaired by Christine McLaughlin and Alan Gray (the then Director of Finance at NHS Grampian). Alan Gray retired from his post at NHS

Grampian and now works within the Scottish Government as an Infrastructure Planning Lead. Alan Gray now co-chairs NIB with Richard McCallum (current Director of Finance). However, in practice, Alan Gray takes the lead on matters discussed at NIB.

42. What we try to do at NIB is think about our long-term asset management strategy. We think about where our priorities should be and where we should focus our limited resource in terms of new builds, refurbishment, and digital equipment. It could be said that NIB collectively provides a layer of governance and scrutiny around some of the issues that all its members are individually managing.

43. NIB is similar in structure to CIG. It has a reasonably wide representation, including:

- Director of Health Finance at Scottish Government
- NHS Chief Executives – Territorial Boards
- NHS Chief Executives – National Boards
- The Director of NHS Scotland Assure
- Representation from NHS Directors of Finance
- Representation from the Strategic Facilities Group ("SFG")
- Representation from the Strategic Planning Forum
- Chair of the NHS Capital Investment Group
- Chief Executive of Scottish Futures Trust
- Deputy Director of Infrastructure at Scottish Government
- Chair of NHS eHealth Leads

44. NIB follows a similar process to CIG in terms of making decisions collectively. The reason why we want that wide variety of skills and experiences in the group is so that we can get a wider perspective on what we should be doing. For example, it allows us when making decisions, to prioritise digital over equipment or acute over primary care. It allows us to make informed choices and enables us to easily have informed discussions with representatives who can provide relevant information.

45. Julie Critchley (Director of NHS Scotland Assure) is also a member of NIB. NHS Scotland Assure is a key part of our infrastructure programme. Julie Critchley is treated no differently to the NHS Chief Executives or the NHS Directors of Finance in the group. Her views all go into the melting-pot when discussions take place. She provides a different and important perspective. As a group, we use her, and NHS Scotland Assure's, expertise in relation to technical matters. By way of example, one of the things that we are conscious of is managing risk in the NHS estate. Julie Critchley, supported by her technical colleagues in engineering and infection control, will highlight where the risks are. She will input what we can do to mitigate and manage those risks. She provides that input over and above the other people present in the group.

46. The NHS Chief Executives have a very broad understanding of things. They are very aware of infection control risk, the backlog of maintenance and so on. Likewise, the Directors of Finance have a broad understanding. They are involved in managing the estate so have all sorts of other knowledge related thereto. They all see what the challenges are and can contribute.

47. HFS and NHS Scotland Assure have had an interchangeable role within the group. The technical function that either HFS or NHS Scotland Assure have provided have always been part of the NIB. NIB has only been in existence for around five years, so NHS Scotland Assure has had an involvement with NIB for most that time. Because of that it is difficult for me to say what impact it has had on the group. Prior to NHS Scotland Assure's existence, there was a presence in the form of HFS. Tom Steele (then Director of HFS) was a founding member of the original NIB. When he moved to NHS Greater Glasgow and Clyde to become their Estates Director, he was replaced by Gordon James at HFS. He, in turn, was replaced by Julie Critchley when NHS Scotland Assure was established.

The Strategic Facilities Group (SFG) and how it Interrelates with NHS Scotland Assure

48. The SFG is a meeting of NHS Directors of Estates and Facilities, along with NHS Scotland Assure and Scottish Government representatives. The Director of NHS Scotland Assure chairs the meeting. The terms of reference for SFG can be found at **(A44601013 – NSFG-2023-01-04 National Strategic Facilities Group TOR Pack number 7 – Bundle 13, Volume 3 - Page 722)**. SFG is, in essence, the Director of Estates and Facilities' forum to discuss relevant issues. It is chaired by Julie Critchley. NHS Scotland Assure manage and lead the group. They set the agenda, chair the group, and do all the administration. It's up to them to decide what is on the agenda and what should be discussed.

49. There are four sub-groups of SFG – the Soft Facilities Management Group ("SFMAG"), the Scottish Engineering Technology Advisory Group ("SETAG"), the Scottish Property Advisory Group ("SPAG") and the NHSS Environmental Advisory Group ("NESG"). The four groups identify the main risks and the Director of Estates, NHS Scotland Assure and I discuss what they are doing to mitigate them. During the meeting I provide an update on some of the wider issues. The financial and capital position is clearly of interest to the group. I highlight anything that I think is of relevance that they might be interested in.

50. I have been asked by the Inquiry if SETAG would be the, or at least a forum at which a need to revise / improve / modernise guidance applicable to building services (such as SHTM 03 01 on ventilation) might be discussed / proposed / suggested? Yes. SETAG would lead on such issues.

The Structure of NHS Scotland Assure as Understood From the Scottish Government's Perspective.

51. NHS Scotland Assure was formally established on 1st June 2021 (though an Interim Review Service had been running since early 2020). NHS Scotland Assure is a division of NHS NSS. NHS NSS is the "Common Services Agency" created under section 10 of the National Health Service (Scotland) Act 1978. It is not part of the Scottish Government and is independent thereof. It is, however, accountable to the Scottish Government. NHS NSS provides a range of services to the NHS in Scotland. NHS NSS are best placed to explain the

administrative arrangement underlying its various divisions, including NHS Scotland Assure.

52. When NHS Scotland Assure was launched, it was described by the Scottish Government as bringing together experts *"A new national service has been established to improve the quality and management of healthcare construction and refurbishment projects across NHS Scotland. NHS Scotland Assure brings together experts to improve quality and support the design, construction and maintenance of major healthcare developments. This world first interdisciplinary team will include microbiologists, infection prevention and control nurses, architects, planners, and engineers. Commissioned by the Scottish Government and established by NHS National Services Scotland, the service will work with Health Boards to ensure healthcare buildings are designed with infection prevention and Control practice in mind, protecting patients and improving safety."* **(A46527816 – Scottish Government News – NHS Scotland Assure – 1 June 2021 – Bundle 13, Volume 4 - Page 420).**

53. Internal reporting arrangements (between NHS NSS and the bodies it serves) are a matter for NHS NSS to decide and the Scottish Government are not involved in this area. In the past, NHS Scotland Assure has formed part of the Strategy, Performance and Service Transformation directorate within NHS NSS, however, I understand that the Director of NHS Scotland Assure currently reports direct to the Chief Executive of NHS NSS, Mary Morgan.

54. I am not the person best placed to describe in detail the structure and remit of NHS Scotland Assure, however, I am aware that it is set out in **(A43406095 - NHS Scotland Assure Organisational – Bundle 9 - Page 78)**. Julie Critchley is likely be able to provide a more thorough overview. By way of broad comment, the document above details the outline of organisations that now sit within NHS Scotland Assure. In broad terms, the professional areas included in NHS Scotland Assure are NHS Scotland Assure Senior Management Team, Property and Capital Planning, Sustainability, Facilities Services, Research and Engineering, NHS Scotland Assure Programme Team, Antimicrobial Resistance and Healthcare Associated Infection ("ARHAI") and Fleet. I was

not involved in the decision to incorporate ARHAI and HFS within the structure and cannot comment on the rationale behind that. Engineering support was provided as part of HFS which preceded NHS Scotland Assure. This service was more of an advisory service than an assurance service.

55. NHS Scotland Assure will not

- *"address or seek to change legal responsibilities of NHS Boards or primary legislation.*
- *create a Central Building Division as NHS Boards need to remain accountable for their projects and current estate. Doing this would mean that accountability would move from boards to a central function, and this would need legal changes.*
- *address non-NHS Healthcare environments e.g., private dental practices.*
- *develop an inspection function"* (**A47071914 – About NHS Assure – Bundle 13, Volume 4 - Page 424**)

Whether NHS Scotland Assure Has Any Enforcement Powers; What Happens if NHS Scotland Assure and a Health Board Disagree During a KSAR; and the Scottish Government's Role Where Disagreements Remain Unresolved

56. There has been no substantial disagreement between a health board and NHS Scotland Assure to date, as far as I am aware. That is not to say that the health boards always agree with NHS Scotland Assure, however, where there have been disagreements NHS Scotland Assure and the health board have always managed to work together to resolve any differences. This is the expectation of health boards that is set out within my letter dated 6 February 2023 **(A45691872 - Letter dated 6 February 2023 from Alan Morrison, Deputy Director of Health Infrastructure, Investment and PPE to NHS Board Chief Executives and others – Bundle 9 - Page 75)**.

57. There is not a formal process for disagreements to be escalated to the Scottish Government. There is a possibility that if a health board says "No, we're just not doing it" then we would need to react. That said, I have had no pushback

to my letter.

58. In practice, the Scottish Government would not expect any situation to reach the stage where there was such a profound disagreement between NHS Scotland Assure and a local NHS board that it could not be resolved; but if that situation did arise, the Scottish Government would weigh all of the available evidence before taking a view on the most appropriate way to proceed, noting that strong reliance would be placed upon the evidence presented by NHS Scotland Assure if the disagreement related to matters within its expertise. I am comfortable that the system allows sufficient flexibility to address occasions where there is disagreement between the parties without the need for a more formalised escalation process.

NHS Scotland Assure's Access to Legal and Procurement Expertise

59. NHS Scotland Assure does not directly employ procurement experts or lawyers to provide input and assistance on briefing documents. The Central Legal Office ("CLO") are a division of NHS NSS and provide legal services to health boards and all NHS bodies. Specialist legal services that they offer to NHS bodies includes: (i) advice on regulatory compliance, including choice of procurement procedure; (ii) drafting tender documentation and negotiating contracts; (iii) guidance during the procurement process and (iv) advice on procurement and post-contract award issues (**A47072325 – CLO Commercial Contracts – Bundle 13, Volume 4 - Page 425**). We liaise with the CLO on some of the issues that we manage around property and there is a representative from the CLO on SPAG, adding to oversight on property matters. That is one of the groups that feeds into the SFG. NHS National Procurement Services, NHS Scotland's national procurement service, are also available to provide expert advice and support to NHS bodies on procurement matters.

60. I have been asked whether NHS Scotland Assure should have additional professionals such as procurement professionals and lawyers to review the standards specified in contracts. In response to this, I would observe that NHS Scotland Assure is an NHS body and my understanding is that, in the normal

way for NHS bodies, if legal advice was required then advice would be sought from the CLO, which is a separate division in NHS NSS. Any procurement advice should be sought from NHS National Procurement. Of course, health boards are not solely reliant upon NHS NSS to provide them with legal and procurement services when delivering health care projects and will more often than not appoint external specialist independent advisors to assist with complex projects (as was the case with NHSL in relation to the RHCYP/DCN project. The availability and appointment of professional advisers is part of the governance arranges considered by CIG in the business case review process.

NHS Scotland Assure's Involvement During the Procurement Stage

61. I have been referred to page 56 of the TOM **(A32341688 - Target Operating Model document for the Centre of Excellence – Bundle 9 - Page 59)** which states alongside a section on "Procurement" *"Current procurement processes are not fit for purpose…Boards do not have ability to check what contractors are delivering…Responsibilities and liabilities need to be reviewed…Boards do not have the legal right to have control over the day-to-day activities of the build."* I have been asked whether there is any difference in the way in which large-scale projects are now procured following the introduction of NHS Scotland Assure. I am not best placed to comment on this as procurement is not my specialist area.

62. The KSAR takes place before the final business case is approved. If a health board has tendered for design and construction and design phase was concluded, the KSAR pre-final business case would have involved NHS Scotland Assure's review of the contractual documentation, so far as is within their expertise (noting my comments above). If the design had not been finalised, they would probably say "The design is not finalised; we are not providing the KSAR approval."

63. It has been put to me that, in the broadest terms, the issues on the RHCYP/DCN project potentially arose from a lack of clarity in the contractual specification for the technical aspects of the ventilation system. I have been asked to comment on whether NHS Scotland Assure, in their review of contract

documents as part of the KSAR, would be looking at technical specifications (for example, for the ventilation system) as technical experts rather than as lawyers. I have been specifically asked to address whether there is any gap in NHS Scotland Assure's procedures and systems. NHS NSS are probably best placed to answer these questions, however, the KSAR relates to technical compliance with guidance. That is the remit of NHS Scotland Assure. If a contract contained a misspecification, such that the design of a healthcare facility was non-compliant with technical guidance, I would expect NHS Scotland Assure to identify this as part of the KSAR. Accordingly, and in so far as the questions are directed at ensuring technical compliance with guidance, then I do not see there being a gap in NHS Scotland Assure's processes. NHS Scotland Assure would not check for things that lawyers would check for like "does the commercial deal work?" or "is there a failure to follow the procurement process appropriately?" – that is not their role.

64. I am asked what my present view is on whether there might be changes in the future about the way health projects are procured. Whilst I cannot predict the future, I do not currently anticipate any immediate change in how projects are procured. Likewise, I do not have any current information to suggest that NHS Scotland Assure's role will be subject to significant change either. I think it is essential that local NHS Boards retain overall accountability and responsibility for the delivery of capital projects, and it is important that NHS Scotland Assure continues to support them through that process.

Resourcing and NHS Scotland Assure

65. The key difference, when it comes comparing what resources were available at the time of the RHCYP/DCN being developed from an assurance perspective to what is present now, is that NHS Scotland Assure is much bigger than HFS (the division of NHS NSS that is most closely related to NHS Scotland Assure). Resourcing a workforce is, in some ways, the defining challenge of the NHS at the moment. There is no magic solution because there is a shortage of staff in specialist areas, alongside the financial challenges.

66. To have an expansion of any service, the first thing an NHS board will confirm is whether the budget will be coming from the Scottish Government to support it. I think the Scottish Government provided NHS NSS with funds in the region of £6 million to develop what became NHS Scotland Assure. The budget then varied on an annual basis depending on their vacancies and recruitment. Unfortunately, no matter how much funding we provide, it doesn't alter the fact that there is currently a shortage of engineers and infection control specialists. If you speak to anyone within the NHS, workforce is the biggest challenge at all levels. I would suggest that Julie Critchley would be able to provide an appraisal of recruitment for all parts of NHS Scotland Assure.

67. What I can say, as Chair of the CIG, is that I have not found that availability of NHS Scotland Assure resource has caused the delay of submission of business cases to the CIG. Nor am I of the view that, in each business case submitted to the CIG following the introduction of the KSAR process, lack of resource has resulted in the KSAR being undertaken by NHS Scotland Assure to be anything other than thorough and professional.

Engineering

68. NHS NSS would, again, be best placed to comment on whether they have sufficient engineering resource to perform their functions. I am aware, through discussions with NHS NSS, that they would like more. However, I am not aware of a lack of resource causing NHS NSS not to do anything that they ought to be doing. NHS NSS, and in particular NHS Scotland Assure, are skilled at managing risk. Accordingly, they will manage their workload in a risk based and proportionate way.

Infection Control Specialists

69. NHS NSS would be best placed to comment on whether they have sufficient infection control specialist resource to perform their functions.

70. I have been told that the Inquiry has heard evidence to suggest that the creation

of NHS Scotland Assure has further compounded issues surrounding resourcing when it comes to infection control specialists. The availability of workforce is an issue for all parts of the NHS. As far as I am aware, infection control is no different. The creation of a body that requires infection prevention control specialists is, from a common sense perspective, going to result in the spreading of resource more thinly. In my view, however, that is not an argument against creating a specialist body to perform the functions of NHS Scotland Assure. Instead, it should incentivise and drive the need to increase the pool of available specialists and to work collectively across organisations.

Final Thoughts

71. I would not say engineers or infection control specialists are unique when considering the challenges surrounding recruitment within the NHS. I believe that NHS Scotland Assure are probably at the higher end of the STEM spectrum in terms of getting people from the backgrounds they need. However, that is simply my anecdotal observation and NHS NSS might be better placed to comment. In my view, NHS Scotland Assure have done well in recruiting more engineers.

NHS Scotland Assure and the Production/ Revision of Guidance.

72. I have been informed that the Inquiry understands that there was an issue in relation to the RHCYP/DCN project as to whether commission and validation should be undertaken against a contractual standard or against standards of public guidance. I have been asked what the current process surrounding reviewing guidance is and how NHS Scotland Assure overcomes such issues moving forward. NHS Scotland Assure work closely with the NHS boards. I am not sure I can comment on technical matters such as the ones posed in the question. This question would be better directed to NHS NSS. It would be NHS Scotland Assure's role to highlight issues as are raised in this question to the Scottish Government.

73. I have limited insight into how NHS Scotland Assure manage the process of

updating guidance, how that's structured or what resources they have. Again, NHS NSS would be best placed to advise the Inquiry on such matters.

The Grant Thornton Report and its Recommendations

74. I am referred to the Grant Thornton Report dated July 2020 **(A32512442 – Grant Thornton Report – NHS Lothian Internal Audit Report – Report for the Audit and Risk Committee 31 July 2020 and the NHS Lothian Board, 12 August 2020 – Bundle 10 - Page 4)**. I have been asked to comment on the recommendations set out from that page onwards and the associated 'Management Responses'.

75. This was an internal report prepared for NHS Lothian and it was not shared more widely across NHS Scotland; there was no expectation that other health boards would need to comply with the recommendations.

76. Similarly, whether the recommendations were implemented or not, would be for NHS Lothian to manage. The report was shared with the Scottish Government in advance of publication and NHSL made clear that they would accept and action all recommendations and the Scottish Government expected all recommendations to be actioned.

77. I am not best placed to comment upon whether the recommendations were taken forward more widely within the NHS. Local reports prepared for one health board, would not normally be expected to be actioned by other boards, unless the Scottish Government put out a communication to that effect (which we did not do for this report).

What Involvement NHS Scotland Assure Would Have Had, Had They Been in Existence When The RHCYP/DCN Project Took Place.

78. If NHS Scotland Assure had existed when the RHCYP/DCN project took place, then the KSAR process would have been followed, as currently happens with all major NHS Scotland construction projects. It will be for the Chair of the

Inquiry to determine whether any issues of ambiguity would be identified and resolved earlier in the process now that NHS Scotland Assure is in place. I do not wish, nor would it be appropriate for me, to presuppose the findings of the Inquiry Chair. In general terms, however, NHS Scotland Assure's role assists with identifying and resolving such issues at an early stage in the process.

79. If there was an issue as to whether commissioning and validation should be done against a contractual standard or against the standards of published guidance, then NHS Scotland Assure would look to align the contractual standard with the published guidance, unless there was an agreed derogation.

Whether the Issues That Gave Rise to the Problems with the RHCYP/DCN Have Now Been Addressed Through the Creation of NHS Scotland Assure.

80. I have been asked whether I think that issues, such as those that prevented the RHCYP/DCN opening as planned, would be eliminated now that NHS Scotland Assure is in place. Eliminated is a strong word. It implies that we will never have an issue ever again. I think the risk of such things happening again has certainly been reduced.

81. I consider NHS Scotland Assure to be an appropriate, proportionate, and sufficient resource to address the problems that arose on the RHCYP/DCN project (and the QEUH). However, it is important to be mindful that the mere existence of NHS Scotland Assure does not guarantee that every NHS Scotland construction project will avoid problems. Building a major piece of health infrastructure is a complicated and demanding undertaking and, even with a qualified assurance body like NHS Scotland Assure, problems and challenges will inevitably arise. The purpose of NHS Scotland Assure is to minimise problems and risk as much as possible, by introducing a comprehensive assurance review at each stage in the process, but also to provide NHS Boards with a supportive body that can assist them in dealing with a range of challenges that they are likely to face.

Concluding Remarks

82. The KSAR process focuses on ensuring that infection prevention and control are key considerations by evaluating issues of water and drainage, ventilation, electrical, medical gases and fire. A report is produced at the end of each KSAR process, which is shared with the health board. The health board then reviews the findings and provide feedback. Following this an action plan is drafted, which is then submitted to the Scottish Government together with the report. The KSAR report, action plan and any lessons learned are then shared with NHS Scotland Assure. Throughout the KSAR process, all reports are sent to me and to Alan Gray (Chair of the NIB). KSARs are now an integral part of the governance process and so I spend a lot of time considering issues raised in them, particularly when there are challenges that must be resolved before a project can progress.

83. At present, there are not any exceptions to the KSAR process in large-scale health build projects. However, if any NHS Board or NHS Scotland Assure considered that a KSAR was not necessary then it would be considered and discussed on a case-by-case basis. There have been no circumstances where a KSAR was considered not to be necessary since the KSAR process was introduced.

84. The NHS Scotland Assure process will take time to bed in and, already, we are learning lessons from projects going through that process. In my view, there is a balance between how much government invests in new infrastructure and how much is invested in existing facilities in a challenging financial environment. As investment in new infrastructure reduces (as may be the case over the medium term), I expect the focus to be on maintaining existing estate.

Declaration

85. I believe that the facts stated in this witness statement are true, that this statement may form part of the evidence before the Inquiry and be published on the Inquiry's website.