Scottish Hospitals Inquiry

Witness Statement of

Professor John Gerard Connaghan CBE

Introduction

1. My full name is John Gerard Connaghan. I am the Chairman of Lothian Health Board (NHSL), having been appointed to the role in July 2021.

2. In this statement I address the following:

    a. Professional Background and Qualifications
    b. Chief Performance Officer NHS Scotland
    c. Letter from the Scottish Government to Chief Executives, dated 25 January 2019
    d. The decision to delay opening RHCYP/DCN
        i. January to July 2019
        ii. 2 July 2019
        iii. 3 July 2019
        iv. 4 July 2019
        v. 6-8 July 2019
    e. Escalation of NHSL on the Scottish Government's Performance Framework
    f. Some reflections on my engagement with the RHCYP/DCN Project

Professional Background and Qualifications

3. I have the following academic and professional qualifications:

    - BA, Economics, Politics and Statistics, Glasgow Caledonian University (1976).

- PG Diploma – Management Science with manufacturing as the main topic, Strathclyde University (1980).
- MBA, Strathclyde University (1984).
- The Cabinet Office Top Management Programme, which was a 2-year course run by the Cabinet Office (2009).
- Visiting Professor – Management Science – Strathclyde University (since 2015).

4. Following graduation from Glasgow Caledonian University in 1976 I worked as a production manager within the publishers Wm Collins and Letts until 1987. I then joined the NHS, where I held a number of Chief Executive posts, principally Chief Executive of the Victoria Infirmary Trust, Chief Executive of the Western General Trust, and Chief Executive of Fife Acute Hospitals Trust until I left in 2006.

5. In 2006 I joined the Scottish Government as the Director of Delivery for NHS Scotland. In 2012/13, I became the Acting Director General of Health and Social Care for a period of about 11 months, pending the appointment of a new DG. Derek Feeley left the role in 2012 and Paul Gray was then appointed as Director General of Health and Social Care in 2013.

6. In 2016 I left NHS Scotland to join Health Service Executive for Ireland, serving as Director General of the Irish Health Service, with responsibilities for £16 billion and 165,000 staff.

7. I returned to the Scottish Government in January 2019, taking over the role of Chief Performance Officer, with a specific remit to improve the performance of frontline services, such as Unscheduled Care, Elective Care, Mental Health and Cancer Services.

8. I was asked to become Chief Executive of NHS Scotland in March 2020, to handle the operational response to COVID-19. In July 2021 I left Scottish

Government to take up the post of Chairman of the Lothian Health Board, and that is my position to date.

Chief Performance Officer – NHS Scotland

9. As Chief Performance Officer of NHS Scotland my remit covered engagement with health boards to produce their annual operational plans (known as "delivery plans") with a view to driving and improving performance. These plans set out how the health boards planned to deliver the services required of them in line with government's expectations and targets. My department also issued guidance to health boards associated with the preparation of these plans.

10. I had regular contact with the boards, both in the wider chief executive's forum as well as individually, with each chief executive and their top team, on the progress that we were making through the year. I had oversight as to the boards' performance against these plans, in relation to workforce, integration, unscheduled care, scheduled care, cancer, and mental health. My department would use the delivery plans to hold boards to account against their performance objectives.

11. The delivery plans were one-year forward-looking plans and were tied into the delivery of good financial governance in terms of developing a board's budget. These delivery plans were distinct from longer term strategic plans for the boards. The longer-term plans look forward 10 or 15 years.

12. At the time (January 2019 to July 2021), I was not an employee of Scottish Government. I was an employee of Greater Glasgow Health Board on a secondment basis into government with a two-year contract to improve the performance of the NHS. As a secondee and having the title of Chief Performance Officer, I sat alongside the heads of the various Scottish Government Health Directorates (Chief People Officer, Chief Nursing Officer,

Chief Medical Officers etc) reporting to Malcom Wright as the Director General of Health and Social Care and Chief Executive of NHS Scotland.

13. I have been asked by the Inquiry what my understanding was on how the Royal Hospital for Children and Young People/Department of Clinical Neurosciences (RHCYP/DCN) project was progressing, following my appointment in 2019. My role as Chief Performance Officer did not involve, in any particular detail, the delivery of healthcare buildings. That is a matter more for the Capital and Facilities Health Care Directorates. I was aware that there was a building progressing but that was about the extent of my involvement. The building did not form part of the annual performance plans I describe at paragraphs 9-11 above.

Letter from the Scottish Government to Chief Executives, dated 25 January 2019

14. I have been shown the following document by the Inquiry, **(A35270542 – Letter from DG Health & Social Care and CE NHS Scotland to NHS CEs setting out a set of actions about an ongoing incident (Cryptococcus infections) in QEUH – dated 25 January 2019 – Bundle 4 - Page 8)** and asked my thoughts on why assurances were sought from Chief Executives around ventilation systems in operation. At the time that this letter was sent I would only have been acting as Chief Performance Officer for a week. I had no involvement in the drafting of this letter. I note the letter references the Queen Elizabeth University Hospital (QEUH) in Glasgow. My principal engagement with NHS Greater Glasgow and Clyde at that time would have been in and around their Unscheduled Care and Elective performance.

15. I have been asked by the Inquiry if there were any expectations of me in my role as Chief Performance Officer to implement any lessons learned from the QEUH, across other health boards. This is not something that was within my remit.

Period between January 2019 and July 2019

16. I have been asked by the Inquiry regarding what I knew of the planned migration date of 9 July 2019 for the RHCYP/DCN project. Prior to 2 July 2019, my understanding was that DCN at the Western General and the Sick Kids Hospital at Sciennes were going to move to the new site at Little France on 9 July. To the best of my knowledge, I believe everything was on track for that to go ahead at that time. I do not recall being told anything to suggest otherwise.

Scottish Government Discovery of Critical Care issue on 2 July 2019

17. On 2 July I was in the then Director General of Health and Social Care and Chief Executive of NHS Scotland, Malcolm Wright's, office when he took an urgent call from NHSL's Chief Executive, Tim Davison. Malcolm took the call in my presence but not on speakerphone. After the call Malcolm explained that Tim had told him that a significant issue had been identified at the RHCYP/DCN. He explained that Tim had told him that it had been discovered that the ventilation in the critical care unit of the RHCYP did not meet the standard required in technical guidance and that this may impact the planned migration to the new site on 9 July 2019.

18. I recall reflecting upon how we were going to deal with this issue so that the hospital could be occupied as planned on 9 July 2019. At that time, I wondered if a standalone critical care unit could be sourced that would allow the migration to continue. It seemed to me, from a common sense point of view, that it would not be possible to migrate all other services without the hospital having a critical care unit as the provision of critical care is integral to the safe operation of the whole hospital. Hence my thought that we might only be able to proceed if an alternate source of critical care provision could be identified.

19. I spoke with Tim Davison later that afternoon and asked about the possibility of moving to the new site if a suitable modular critical care unit could be sourced to facilitate the provision of critical care. Tim advised that he would consider whether this was an option.

20. The next day I contacted a company called Vanguard that I had previously dealt with. I knew that Vanguard supplied modular operating theatres so I thought that they could probably supply a critical care unit. I made initial enquiries with Vanguard and ascertained that they could supply a modular critical care unit that could, among other things, deliver the requisite 10 air changes per hour.

21. I have been asked by the Inquiry what my immediate reaction was on being told about the issue in the critical care department. My initial thoughts were, if it is an isolated part of the entire unit that is the problem, can we find a solution? The option of the standalone modular unit would probably facilitate the move going ahead, if not on 9 July, a couple of weeks later. As we subsequently found out, and as I explain in more detail later in the statement, this was an option that was not feasible and would not have been supported by NHSL so Vanguard was stood down.

22. At that time, I did not know what the extent of the issue was and began to form thoughts towards the end of that day, such as, “Is this the only issue that might be arising?”

23. I have been informed by the Inquiry that members of NHSL’s staff may have been aware of the issues within the ventilation at the critical care unit as early as 24 June 2019, and if this were the case would I have expected escalation to Scottish Government at that time. I can’t speculate as to what may or may not have been known on 24 June 2019 and without doing so it is difficult to answer the Inquiry’s question. However, I would have expected NHSL to notify the Scottish Government at the point in time that they were aware that there was an issue that was likely to jeopardise the planned migration to the RHCYP/DCN on 9 July. I would have expected initial contact to have been with the Scottish Government’s Health Finance Directorate as the Directorate with oversight of significant capital healthcare projects.

Events of 3 July 2019

24. On 3 July my former colleague Alan Morrison, then Interim Deputy Director of Health Infrastructure at the Scottish Government, attended a meeting with representatives from NHSL and NHS National Services Scotland (NHS NSS), which incorporates Health Facilities Scotland (HFS) and Health Protection Scotland (HPS), to discuss the risks associated with the move of critical care only to the new site. A summary of this meeting is within **(A41020637 – Email from B Elliot (on behalf of DG Health & Social Care) to Malcolm Wright summarizing the main risks associated with the move of ICU to the new RHCYP – dated 3 July 2019 – Bundle 7 - Volume 1 - Page 48)**, which I was copied into.

25. Following this meeting NHSL held an internal meeting, which I attended. A draft note of this meeting and what was discussed is found at **(A35827798 – Draft meeting note (14:00 hrs) on Commissioning and Ventilation issues at RHCYP/DCN - dated 3 July 2019, Bundle 7 - Volume 1 - Page 57)**. This meeting provided an opportunity to further explore all available options following the discovery of the issue with the critical care unit. It was my understanding that at that point in time these discussions related just to the critical care unit. At the meeting I was keen to press discussion on the possible use of the modular critical care unit. I wanted to understand whether or not a modular unit could be used to safely open the hospital pending any remedial works being undertaken in the critical care unit. After discussion, it was clear that NHSL did not view a modular critical care unit as a viable option. The draft note of this meeting records a summary of NHSL's reasons as:

- "Disruption would be caused even if a modular unit was proposed as drilling etc would still be required and this was a material factor in terms of patient care
- Space, time and movement relationships were critical
- The timescale of 6 months was similar to the timescale for delivering a permanent solution without incurring the cost of modular units

- The relationship with the rest of the hospital and mutual support as well as clinical adjacencies were important."

26. I cannot recall if I asked to attend this meeting or was invited. If I hadn't been invited, I would have asked to attend. I saw the meeting as an opportunity to provide NHSL with my thoughts, on behalf of the Scottish Government, regarding the potential for installation of a modular critical care unit.

27. I also wanted to make clear that both Malcolm Wright and the Cabinet Secretary would require to be comfortable with NHSL's proposal for opening the RHCYP/DCN given the significant potential for disruption. I had not been asked to do so by Malcolm or the Cabinet Secretary but, nonetheless, thought it was appropriate to make the position clear. Ultimately, Ministers are accountable to parliament for provision of health services in Scotland. Accordingly, it was only right that the Scottish Government and Cabinet Secretary were engaged in NHSL's decision making process.

28. I made it clear to Tim and NHSL that the Scottish Government would require to review and interrogate NHSL's plans. If the Scottish Government was not comfortable with NHSL's proposals they would retain the right of veto and to provide NHSL with direction as to how to move the project forward. The Government would, as part of its interrogation of NHSL's proposals, take advice from the expert services provided by NHS NSS in relation to infection prevention control and building safety. Such advice could be obtained promptly and without delay.

29. I have been asked by the Inquiry if the procuring of the modular units from Vanguard was the option I favoured. At the time of this meeting, I did not have a favoured option. Procurement of the modular unit was one option that I thought should be considered and discussed. Until the option had been discussed and considered alongside alternatives it wouldn't have been possible to identify it as a favoured approach.

30. During this meeting we discussed the need for a communications plan. It was clear that there had been a lot of communications to patients and staff about the planned move and we recognised the need to communicate any alternative proposal if the move was delayed. Patients and staff would need to know where they would be going. I advised NHSL that there would need to be carefully choreographed communication given the complexity of the task. It was agreed that Judith Mackay (Head of Communication at NHSL) and Suzanne Hart (Head of Health Communications in Scottish Government) would discuss how to develop and deliver this plan in order to ensure that internal and external communications were aligned, clear and consistent.

31. Any delay, whether in full or in part, to migrate to the new hospital would attract significant public and political interest. I advised those at the meeting that I would be meeting with the Cabinet Secretary later in the day to brief her on the outcome of the meeting. I stressed the importance that no communications were issued until I had reported back the outcome of the meeting to my colleagues from capital planning.

32. It was important that the Scottish Government and NHSL were aligned as to the communications approach. This approach was inextricably linked to the decision to be made to delay the move to the new hospital. For example, if NHSL determined, without governmental approval, that there would be a phased migration on 9 July and communicated this position to staff and patients any decision by Scottish Government not to allow for such a migration would require to be re-communicated. Such a position would, undoubtedly, have led to confusion amongst patients and staff. I should add, however, that at no stage was it suggested by anyone that communications should not be aligned.

33. Following the conclusion of the meeting I advised those in attendance that I would personally contact Tim Davison and update him on the outcome of discussions with the Cabinet Secretary that were scheduled for the following day. I also asked Tim Davison to produce a short note for myself and Malcolm,

detailing NHSL's proposal and rationale, including consideration of any alternative options, for opening the RHCYP/DCN.

34. I did not speak to the Cabinet Secretary on 3 July 2019. A meeting with the Cabinet Secretary had been scheduled for the next day. I would have briefed Malcolm Wright at some point following the meeting. I would have advised Malcolm that NHSL were not supportive of progressing the "modular unit option" and that further information would be provided by Tim in writing. I would have relayed to Malcolm that we needed to have a joint communications approach that centered around, what was the right option to pursue. At that time, I was unable to make any suggestion as to the preferred option because NHSL had not presented any detailed options appraisals at the meeting.

35. The Inquiry have asked me about an email from Tim Davison, sent on 03 July to myself and Malcolm Wright **(A41020529 – Email from Malcolm Wright to DG Health Social Care on commissioning and ventilation issues at RHCYP/DCV – dated 3 July 2019 – Bundle 7, Volume 1 – Page 66)**. I have considered this email and believe that it is, in general, a fair summary of what was discussed at the NHSL meeting described at paragraphs 25 to 33 above.

36. This email highlighted, in my mind, three areas of concern.
Firstly, communications to patients and staff needed to be clear and consistent to avoid confusion. Secondly, I worried that the concept of split site working may prove problematic given the scale of the moves. My third concern was whether or not the critical care ventilation issued was the only problem we had on the site.

37. I note that within that document Tim Davison writes "Following my meeting with senior colleagues this afternoon (which John attended), we agreed the following immediate actions." This included the following; Clinically risk assess and plan the re-phased moves described in option 4 (phased migration over a number of weeks). I do not recall this being discussed at that meeting and do not see reference to it in the draft meeting note **(A35827798 – Draft meeting**

note (14:00hrs) on Commissioning and Ventilation issues at RHCYP/DCN - dated 3 July 2019, Bundle 7, Volume 1 - Page 57). I do not recall any discussion on timescales for a phased move or what services would move at the meeting. I had been very careful during the meeting to make clear that the Scottish Government would have the ability to veto NHSL's proposals if we did not agree with them.

38. From my recollection of the meeting there was a general comment about moving some services to the new building. That is clear from the draft meeting note where I am noted as raising a question about staff rotas and providing my thoughts about split site working. Split site working is not normally recommended. Medical professionals may require to respond to an emergency at very short notice so it is not ideal to have professionals split across sites, particularly, if such split site working might inhibit an emergency response.

39. In the penultimate paragraph of **(A41020529 – Email from Malcolm Wright to DG Health Social Care on commissioning and ventilation issues at RHCYP/DCV – dated 3 July 2019 – Bundle 7, Volume 1 – Page 66)**. Tim Davison identifies as one of the actions he had agreed with senior NHSL colleagues, "Clinically risk-assess and plan the re-phased moves described in option 4." I do not recall any significant discussion around 'option 4' at the meeting. It is possible it was raised at the very end of the meeting after I had left.

40. I have been asked by the Inquiry if I had any concerns upon receiving this email as it appears that NHSL were under the impression that they would be making the final decision as to how matters were going to proceed. In my view, it was made clear at the meeting of 3 July 2019 that the Scottish Government would require to approve NHSL's plan. This is apparent from the draft note of the meeting, which concludes "John Connaghan would personally contact Tim Davison and update him on the outcome of his discussions with the Cabinet Secretary." Had the conversations I was to have with Malcolm and the Cabinet

Secretary simply been to provide an update for ‘noting’ there would be no need for me to contact NHSL’s Chief Executive directly with the outcome.

41. I have been asked by the Inquiry if I recall making a telephone call to Tim Davison at 2030 hours on 3 July, where I advised him that a planned communication for the following morning should not go ahead until further notice. I do not remember this telephone call, but it is consistent with the views I expressed at the meeting earlier that day that no communications should be made without Scottish Government approval. I may have called Tim on re-reading the first bullet point under ‘option 4’ (“Develop a communications plan between SG and NHSL for implementation tomorrow morning”) of his email to re-iterate this point.

42. I have been asked if making a call at that time of the evening would have been unusual. Working in the evenings was part of the job I performed at that time.

Events of 4 July 2019

43. I have been asked by the Inquiry if I have a recollection of a meeting I chaired at St Andrew’s House, on the morning of 4 July, which was attended by Judith Mackay, Suzanne Hart, Alan Morrison, and Brian Currie. I cannot recall the detail of that meeting but it was probably called in preparation for the meeting scheduled with the Cabinet Secretary later that afternoon. As both Judith and Suzanne were present at this meeting it was likely that I was looking for an update on the communications plan. I did not want anyone jumping the gun before any meeting with the Cabinet Secretary that afternoon. I am not quite sure why Brian Currie and Alan Morrison were there, and I do not recall any discussions about the technical details of the project at this meeting.

44. I have been asked by the Inquiry, did the Scottish Government, as a result of this meeting, release a statement at 12 o’clock that same day advising that they would be leading on communications in respect of the RHCYP/DCN project. I do not recall the detail of what was discussed at this meeting but I think that it is

unlikely that a decision to issue such a statement would have been made at the meeting without clearance from the Cabinet Secretary.

45. Later that day I attended the scheduled meeting with the Cabinet Secretary and other ministerial advisors (Malcolm Wright, Professor Gregor Smith [Chief Medical Officer], Diane Murray [Chief Nursing Officer], Shirley Rodgers [NHS Scotland's Chief People Officer and Scottish Government Workforce and Strategy Director] and Alan Morrison). After the meeting Malcolm wrote to Tim Davison **(A35827763 – Letter from Malcolm Wright to Tim Davidson confirming that the Cabinet Secretary has taken the decision – dated 4 July 2019 – Bundle 7, Volume 1 – Page 79)**. This letter accurately records what was discussed at the meeting and the decisions made by the Cabinet Secretary. As is clear from the letter, NHSL were required to take a number of urgent actions. Those actions related to delaying migration to the new hospital building, putting in place a suitable communications plan in relation to the delayed move (to be approved by the Scottish Government) and taking a number of actions to provide assurance that the hospital, when it did open, would be a safe environment for patients and staff.

46. The Cabinet Secretary was provided with advice from all of those who attended the meeting. My input during the meeting was that we needed a good communications plan; that migrating with a critical care modular unit was not feasible; and highlighting my concerns over split-site working. Development of the communications plan would not be in my remit, that would fall to Suzanne Hart. Clinical advice would have been provided by Dianne Murray and Gregor Smith.

47. At the meeting the four options proposed in Tim Davison's email would have been discussed, but I cannot recall the precise details of those discussions.

48. Personally, I did not have a preferred option at that stage, but the primary focus of any decision making would be patient safety, as it always has been.

49. I have been asked by the Inquiry if I recall discussions related to NHSL's preferred option and why that was not considered viable. I can only refer to what is written within **(A35827763 – Letter from Malcolm Wright to Tim Davidson confirming that the Cabinet Secretary has taken the decision – dated 4 July 2019 – Bundle 7, Volume 1 – Page 79)**. There were concerns that this option would involve a partial move of services. The Scottish Government would need assurances that there were no patient safety issues associated with that – patient safety issues from the perspective of operational delivery and split-site working but also, more importantly, patient safety issues in terms of meeting the required technical standards.

50. I have been referred to the letter from Malcolm Wright to Tim Davison **(A35827763 – Letter from Malcolm Wright to Tim Davidson confirming that the Cabinet Secretary has taken the decision – dated 4 July 2019 – Bundle 7, Volume 1 – Page 79)** which sets out that the decision has been made by the Cabinet Secretary to delay the move in its entirety, in light "of further information that has emerged over the course of yesterday and last night." I am not aware of any further information being made available to me during the course of the evening of 3 July 2023. This may relate to information gathered by others from, for example HFS, in relation to technical matters that are outwith my remit.

Events of 6 and 7 July (weekend)

51. I have been asked by the Inquiry if I recall two teleconference meetings on 6 and 7 July and to explain my role within these meetings. I have limited recollections of these meetings. I think these meetings related to staffing and patients. My participation at these meetings would have been as part of the Scottish Government team. In my role as Chief Performance Officer, I would have been interested in the number of patients that might be impacted and whether or not there was a plan for addressing those impacts. I would have wanted to make sure that if patients turned up at the wrong site, we would have a transport plan to move them to the correct site, and I would have certainly

been interested in listening into the discussion about the impact on staff and leave.

52. I have been asked by the Inquiry for my thoughts on the DCN migration feasibility study held on 8 July by Fiona Halcrow of NHSL, and how it reconciled with the notion that the move was delayed in the interest of patient safety. I did not attend this event, however, my opinion on phased migration is per Malcolm's letter of 4 July. It specifies:

> "I require an assurance that there are no other material specification deficiencies in the building, that any re-sequence of moves at all occur only once we have received clearance that all facilities meet the required technical standards."

53. Without assurances that the new hospital provided a safe environment for patients and staff, it was not considered feasible for any migration of services to that site. The DCN had operated successfully from the Western General site for many years. If there were risks at this site, they could be mitigated. Many of the potential risks at the new site were unknown which makes mitigation against them very difficult.

Escalation of NHSL to Levels 3 and 4

54. The NHS Scotland support and intervention framework is used by the Scottish Government as part of its performance and risk management toolkit. In essence, the framework utilises an evidence-based approach to identify when health boards across Scotland require additional support to deliver and improve performance. The framework is overseen by the National Planning and Performance Oversight Group, a sub-group of the Government's Health and Social Care Management Board (HSCMB). The framework applies to NHS territorial boards only.

55. The NHS Scotland: Support and Intervention Framework is one of the key elements of an evidence-based approach to monitoring performance and managing risk across the NHS in Scotland. The framework was first published on 10 June 2021. There have been several updates, the latest being on 27 November 2023. **(A46674602 – NHS Scotland: Support and Intervention Framework – as updated 27 November 2023 - Bundle 13 – Vol 3 – Page 687)**

56. On 12 July 2019, Malcolm Wright advised NHSL that they had been escalated to level 3 of the Scottish Government's Performance Framework **(A41263551 – Letter to Tim Davidson, copying in Brian Houston, from Malcolm Wright – dated 12 July 2019 – Bundle 7 - Volume 1 – Page 339)**. On 13 September 2019, Malcolm Wright advised NHSL that, in respect of the RHCYP/DCN project, NHSL had been escalated to level 4 of the Scottish Government's Performance Framework **(A41231071 - Email from Calum Henderson attaching a letter from Malcolm Wright regarding the level 4 escalation – dated 13 September 2019 – Bundle 7 - Volume 3 – Page 563)**.

57. I have been asked by the Inquiry to describe my role in the HSCMB and the reason for escalating NHSL to Level 3 of the National Performance Framework. HSCMB provides an opportunity for Directors and other key participants to formally meet to discuss strategic, practical, and operational activities which contribute to the delivery of health and care services across Scotland. It also provides a platform for the Director General/Chief Executive of NHS Scotland to seek assurances on the progress of work, seek assurances that mitigations are in place for any identified risks, and seek advice that enables them to carry out their functions as accountable officer. A number of sub-groups report in to HSCMB on various workstreams at regular intervals. I was the principal advisor to HSCMB about the level of escalation that was required for NHS Boards in line with the Framework. **(A41029115 - HSCMB-85-2019 – Board Performance Escalation Framework NHS Lothian – dated 10 July 2019 – Bundle 13 – Vol 3 – Page 683)** is a report prepared by my

team for discussion at the HSCMB meeting that took place on 10 July 2019 at which NHSL's escalation to level 3 was discussed. The report contains information about the operational challenges facing NHSL at the relevant time.

58. I highlight that escalation should not be seen as punitive. It should be viewed as a support measure. The Scottish Government reserve the right to put in place external help for a board that we consider might have multiple issues. For example, it was not uncommon for me to ask experts in unscheduled care to do a piece of work onsite to take a look at the flow dynamics, the capacity issues, whether there are any bottlenecks, and to produce an expert report on where we could alleviate those and have better flow through the system. That is an illustration of the kind of thing that we would offer under Level 3.

59. Escalation of a health board is given serious consideration before decisions are made. At this moment I think there are five health boards in Level 3 and one in Level 4. These are unusually high numbers but reflect the pressures in the system post-COVID.

60. The higher the escalation level the more the Scottish Government are involved, culminating in Level 5, which is essentially full control. When a health board reaches Level 4 escalation, it is usually because of a serious service failure in one critical service area or, for a combination of services where the Scottish Government is of the view that the management team need general support. With NHSL, the subsequent escalation to Level 4 on 13 September 2019 for the RHCYP/DCN project, arose because of a combination of risks between operational aspects of the health board, which needed to have full-time focus for the management team, as well as the focus on resolving the hospital ventilation and other issues of the new RHCYP/DCN project.

61. Following the escalation to level 3, I chaired regular meetings with NHSL on the operational performance aspects of the escalation (scheduled and unscheduled care, Mental Health, and Cancer services). As I explain later in this statement,

any issues associated with the RHCYP/DCN, which had been escalated to level 4, would be co-ordinated through the Oversight Board chaired by Christine McLauglin. In my engagement with NHSL, or any other board that was escalated for operational reasons, I would assess the milestones we would want to make in terms of improvement, and what resources the Scottish Government could make available to help that improvement.

62. When implementing NHSL's escalation to level 3, I would have been assisted by the heads of service who reported to me. These were the head of Scottish Government Cancer Services, head of Unscheduled or Emergency Care and head of Elective Care. I would also have been assisted by others in the Scottish Government who did not report directly to me such as those with specialisms in mental health, maternity, and paediatrics. There are divisions within the Scottish Government with policy responsibility for these specialist areas and provide advice to ministers.

63. On 13 August 2019, I wrote to Tim Davison in regard to the NHS Board Performance Framework and Lothian Health Board's escalation to level 3. **(A41227221 – Email from Jackie Marr to the Director General for Health and Social Care attaching a copy of a letter to the CEO of NHS Lothian regarding level 3 escalation – dated 13 August 2019 – Bundle 7, Volume 3 – Page 26)**. This letter followed correspondence from Tim to Malcolm dated 16 July 2019 requesting a package of tailored support. Within this letter I propose that the Scottish Government forms an Oversight Group to maintain regular contact with Tim Davison and his lead Directors for their respective aspects of the Recovery Plans. This Oversight Group was separate to the Oversight Board that was later appointed to address issues arising in relation to delivery of the RHCYP/DCN project. As can be seen from its terms of reference **(A41348347 – Terms of reference of the Executive Steering Groups – dated 23 August 2019 – Bundle 7, Volume 3 – Page 180)**. The purpose of this Oversight Group was to support NHSL in the development and delivery to Scottish Government of a formal single recovery plan with clear milestones which included the following areas which had been identified for improvement:

(a) mental health, specifically at the Royal Edinburgh Hospital, but also the design and delivery of services across NHS Lothian;
(b) cancer waiting times;
(c) scheduled care;
(d) unscheduled care;
(e) delayed discharges; and
(f) paediatric services at St John's Hospital.

64. I would chair the Oversight Group meetings which met every couple of weeks. My role was to examine the recovery plan that NHSL provided for the areas of operational performance that were considered to be underperforming and to determine if there was any additional support that was needed to make improvements. Thereafter, I monitored progress against that recovery to ensure that the board was on track and on plan, on time, and if not, what could we do to address that. Improvement would be monitored against NHSL's annual delivery plan as well as more specific plans concerning the areas resulting in escalation.

65. As I explained earlier, on 13 September 2019, as a result of the reports produced by NSS and KPMG, and the scale of the challenge in delivering the new RHCYP/DCN project, NHSL was escalated to Level 4 of the performance framework for that specific project only **(A41231071 - Email from Calum Henderson attaching a letter from Malcolm Wright regarding the level 4 escalation – dated 13 September 2019 – Bundle 7, Volume 3 – Page 563)**. I was concerned about the cumulative issues facing NHSL as they had to address not only the performance issues covering scheduled and unscheduled care, Mental Health and cancer but also addressing the delay to the migration of the RHSC, hence I supported the move to Level 4 for this project.

66. I have been asked by the Inquiry if the NHS NSS review and KPMG audit were factored in the decision making for escalation to Level 4. I cannot recall being involved in any decisions about the materiality of those reports and would have

been focussed on the other performance aspects of escalation at that time. I note the report prepared by Christine McLaughlin in respect of escalation **(A41225979 – Item 178.1 – HSCMB_NHS Lothian escalation – Dated 11 September 2019 – Bundle 7, Volume 3 – Page 441)** provides:

> *"*Since Escalation to Stage 3, an Oversight Group has been established, chaired by John Connaghan, SG Chief Performance Officer, NHS Scotland and NHS Lothian re currently developing a recovery plan which is due in the first week of November 2019.
>
> We have also received the two independent reports into the Royal Hospital for Children and Young People (RHCYP). Taken together and based on advice from the Oversight Board for the RHCYP, our assessment is that there are a broader range of issues that require to be addressed before the building can be fit for occupation.
>
> The additional leadership capacity that will be required to deliver this programme may have an impact on the broader capacity of the Board in managing the Stage 3 escalation on a number of performance areas. There are also concerns about the management control of the project in the light of the points raised in the two reports.
>
> The issue has been identified in the Scottish Government accounts as a serious control failure."

67. As a result of the Level 4 escalation Mary Morgan was appointed Senior Programme Director to oversee the successful delivery of the RHCYP/DCN project. She reported to the Oversight Board and to Christine McLaughlin. I had no further involvement in the project in respect of any remedial works.

Reflections

68. I have been asked by the Inquiry what actions do I consider would have mitigated against the delayed opening of the RHCYP/DCN in consequence of the installation of defective ventilation in the critical care unit at the RHCYP. I

understand that the issue with ventilation in critical care arose because of a human error made early in the project as regards the specification of air change rates in this part of the hospital. This error resulted in a conflict between the number of air changes specified for the critical care unit and the number recommended by technical guidance. That error might have been identified earlier if there had been an assurance process that checked the design and installation of the ventilation systems against both contractual specification and guidance, with appropriate governance arrangements to ensure that discrepancies are remedied where appropriate.

69. I have been asked by the Inquiry how satisfied was I with how NHSL handled matters, following discovery of the critical care issue. Personally, I was at the time, relatively happy that they had reacted in that week to take matters exceptionally seriously. In dealing with Tim Davison in the early stages of this, and then latterly with his officers as we sought to get more information, I personally found that NHSL were open to answering any questions that I had on various aspects of communication or operational issues. At no point did I feel NHSL were anything other than open and transparent.

70. I have been asked by the Inquiry if I was satisfied with the Scottish Government's handling of matters in the aftermath of the discovery of the critical care issues. Looking at the timelines, I believe the Scottish Government reacted appropriately to the facts that were presented to them. As you can see from the timeline set out above, we reacted on the same day, looking at what the alternative options might be available to NHSL to avoid delayed migration. We engaged with NHSL the following day and laid out our expectations as part of that engagement. I am satisfied that further down the line when we had the chance to reflect, that our decisions on escalation for both the hospital and the RHCYP/DCN project were correct. I am also satisfied that we put in as much as we possibly could in terms of external facilitation from NHS NSS, HFS and any other expert advice, and I reflect on the fact that this led, in part, to the creation of NHS Assure.

71. I have been asked by the Inquiry how could the Scottish Government have handled matters differently in the aftermath of the discovery of the Critical Care issue. I don't think it could have handled matters differently. From my perspective, I think we were consistent with our advice to NHSL, supportive both operationally and from the building point of view.

72. I have been asked by the Inquiry if there were anything I would change about how I handled matters. My involvement with the immediate aftermath of the delay spanned about a week to a week and a half and, as a pro-active director, I would invite myself along to meetings because I wanted to know what was going on. I think my interaction with NHSL and my briefings to Scottish Government colleagues were unbiased and neutral in respect of where we should go and what should be done. On reflection I would not alter anything that I did in terms of my judgement.

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