

SCOTTISH HOSPITALS INQUIRY

Closing Statement on behalf of Multiplex Construction Europe Limited

Hearing Diet: 20 September 2021 to 5 November 2021

1 Introduction

- 1.1 This closing statement on behalf of Multiplex Construction Europe Limited ("Multiplex") seeks to meet the expectation of the Chair set out in Direction 4 of 4 November 2021 that core participants will do what they can to assist the Inquiry in fulfilling its terms of reference. It also seeks to respond to the specific questions posed by Counsel to the Inquiry in their closing statement.
- 1.2 Multiplex explained its interest in this hearings diet in its application to be given leave to appear at the hearings which was made in July 2021. In particular, Multiplex submitted to the Inquiry that in light of its role in designing and constructing the Queen Elizabeth University Hospital ("QEUH") campus it had a direct and significant interest in evidence which relates to the hospital environment. In addition, as a result of Multiplex's role in the design, procurement, construction and commissioning of the new facilities at Royal Hospital for Children and Young People ("RHCYP") and the Department of Clinical Neurosciences, Multiplex has a direct and significant interest in evidence relating to the unavailability of these facilities.
- 1.3 Multiplex acknowledged that the evidence of patients and families, both oral and documentary, would assist it in understanding the impact that those individuals consider the hospital environment in Glasgow; and/or the unavailability of the facilities at RHCYP and DCN in Edinburgh had on them and their treatment or care.
- 1.4 Multiplex did not make an opening statement at the commencement of this diet of hearings.
- 1.5 Further, as with other core participants with leave to appear, Multiplex did not apply to have questions put to anyone who gave evidence. It did not do so because (a) it was conscious of the fact – noted in Direction 4 and in the closing statement of Counsel to the Inquiry – that the purpose of the diet was to hear evidence about the perceptions of patients and family members; and (b) in almost all cases it would not have had a basis on which to put questions challenging that evidence and it would have therefore been inappropriate for it to attempt to do so.

2 The evidence of patients and their families

- 2.1 Multiplex was represented by counsel and/or solicitors throughout the diet of hearings. It wishes to acknowledge the courage and dignity of those who gave evidence to the Inquiry. No one who was present for that evidence could have failed to have been moved by it.
- 2.2 The challenges that patients and their families faced in responding to very serious childhood illnesses were made significantly more difficult by a number of factors relating to their experience of the hospital itself.

3 The ability of Multiplex to respond to the evidence

- 3.1 Direction 4 notes that where "core participants consider that their experience, interests and responsibilities are not such that they are able to assist the Inquiry at this stage by submitting a closing statement, they are at liberty not to do so. The Chair would, however, anticipate that any core participant whose conduct or the conduct of whose employees has been the subject of evidence would wish to submit a closing statement".
- 3.2 The closing statement by Counsel to the Inquiry invites core participants to confirm whether there are any areas of the narrative provided by the patient and family evidence that is capable of agreement. It also invites core participants to say whether they consider that there is evidence that either establishes or indicates links between infections and the built hospital environment.
- 3.3 Multiplex is conscious that, so far as it understands the evidence given by patients and their families, the evidence did not identify any individual officers or employees of Multiplex as the subject of criticism. Nevertheless, the evidence did refer on various occasions to the design and construction of the QEUH (including the Royal Hospital for Children: "RHC") and to perceived deficiencies in the built environment at QEUH.
- 3.4 In light of that evidence Multiplex considers that it is appropriate to make a closing statement. In doing so it attempts to address the questions posed by Counsel to the Inquiry. Its ability to do so effectively is constrained by a number of factors. Those include:
 - 3.4.1 the fact that the experiences of patients and their families were (understandably) not communicated to Multiplex directly prior to this diet of hearings but, to the extent that they were made known to Multiplex, were mediated through Greater Glasgow and Clyde Health Board ("GGC") representatives;

- 3.4.2 the fact that Multiplex does not have full information about the perceived issues with the construction of QEUH. In particular (i) Multiplex does not have access to all of the reports that were referred to during the hearings; (ii) certain of the issues raised (for example flooding of bathrooms) were not brought to the notice of Multiplex at the time they are said to have occurred; by GCC and (iii) certain other issues (such as availability of wifi and televisions) would be matters for the hospital's facilities management providers post-completion;
- 3.4.3 the fact that further investigation is required to understand whether perceived issues with the hospital environment are attributable to the design and construction of the hospital and/or to the maintenance and operation of the hospital post-construction.
- 3.5 Multiplex has attempted to respond to the matters raised by Counsel to the Inquiry candidly by reference to the information and knowledge it has at this stage in the Inquiry's work.
- 3.6 Separately, this closing statement does not attempt to contest or analyse the evidence given by patients and their families. Multiplex notes that where the evidence concerned the design and construction of QEUH, RHCYP and DCN, the opportunity will be given at later stages in the Inquiry's work for a response to be made to that evidence.
- 3.7 To the extent that this diet of hearings was intended to assist the Inquiry to fulfil Term of Reference 8 – which focuses on examining the physical, emotional and other effects of the issues identified on patients and their families and determining whether communication with patients and their families supported and respected their rights to be informed and to participate in respect of matters bearing on treatment – Multiplex considers that it is not in a position to make detailed submissions on those matters.

4 Glasgow Questions

- 4.1 **Question 1:** Multiplex agrees that the closing statement by Counsel to the Inquiry accurately summarises the accounts given by witnesses.
- 4.2 **Question 2:** Multiplex makes the following submissions on the question whether any areas of the narrative given by witnesses is capable of agreement:
- 4.2.1 **Glazing:** the closing statement by Counsel to the Inquiry refers to risk of injury from glass panels falling from height (page 4), to a window or decorative glass panel having fallen from the 10th floor of the QEUH and smashed on the ground

close to the QEUH entrance (page 32) and to a photograph of what a patient perceived to be loose seals around windows and glazed panels (page 33).

- 4.2.2 Multiplex was first notified of a failure of a glass panel in May 2017. In the period between May 2017 and July 2019 it was notified on an ad hoc basis of the failure of 10 panels (two of which were attributable to impact damage). In July 2019 issues about failures of glazing panels at QEUH were the subject of discussion and correspondence between representatives of GGC and Multiplex. The correspondence refers to glass panel failures in May 2017 and to an apparently spontaneous failure of a glass panel at in June 2019. The correspondence can be made available to the Inquiry if that would assist it. The correspondence refers to an expert report obtained by GGC from G.F. Linsley.
- 4.2.3 Multiplex has not been provided with information confirming the existence or nature of loose seals around windows and glazed panels. It has not seen the report prepared by G.F. Linsley.
- 4.2.4 Multiplex agrees that there have been 10 glass panel failures, the cause of which has not yet been established.
- 4.2.5 **Cladding:** the closing statement by Counsel to the Inquiry refers to evidence that witnesses were awoken by workmen outside patient bedrooms who were working on the cladding at the RHC (page 31), to communications about cladding works (page 31) and to scaffolding being erected in connection with cladding works (page 110).
- 4.2.6 Multiplex agrees that cladding replacement works were carried out during the operational phase of the hospital.
- 4.2.7 Multiplex can provide the Inquiry with documents that confirm that (i) these works were carried out in 2018 and 2019; (ii) they were carried out to QEUH Core G tower and the East and West elevations of the tower block (February 2019 to August 2019) and to the entrance area of the RHC (July 2018 to December 2018); and (iii) they were carried out under the instruction and guidance of the GGC and that GGC agreed that the works should be paid for as additional works.
- 4.2.8 It is possible that (a) an element of the cladding works described above, or investigative or preparatory works to enable those works, were what was witnessed by Leann Young in 2018; and (b) the note issued to witnesses advising

them to use the QEUH Discharge Lounge entrance related to the works to replace cladding and insulation at the RHC entrance.

- 4.2.9 **Ventilation:** the closing statement by Counsel to the Inquiry refers to ventilation as an issue at the forefront of the Inquiry's investigations. It refers to evidence from witnesses who had been told that works were being undertaken to upgrade ventilation and to Professor Cuddihy's evidence about a report prepared for GGC by Innovated Design Solutions Ltd in October 2018 which concluded that the installed ventilation system in Wards 2A and 2B was not designed to cater for immunocompromised patients" (page 84 of closing statement).
- 4.2.10 Multiplex has not seen the Innovated Design Solutions report referred to by Professor Cuddihy. Multiplex has however had sight of the report of the Independent Review commissioned by the Cabinet Secretary for Health and Sport and led by Dr Andrew Fraser and Dr Brian Montgomery. Representatives of GGC also referred to problems with the hospital's ventilation systems in meetings with representatives of Multiplex, including in April 2019.
- 4.2.11 Multiplex agrees that investigations were carried out into the ventilation systems. Multiplex did not give evidence or make submissions to the Independent Review. Multiplex is not able to agree with its findings because (i) GGC has not yet particularised its technical complaints about the ventilation system or produced an expert report describing those complaints and in what respect they are said to involve a failure by Multiplex to meet its obligations; and (ii) until GGC does so, the experts appointed by Multiplex cannot conduct their own investigations. The Independent Review does not fully address these issues.
- 4.2.12 Multiplex does not have information as to the works carried out to modify the ventilation system during the closure of Wards 2a and 2b.
- 4.2.13 **Water system:** the closing statement by Counsel to the Inquiry refers to alterations to tap and shower facilities, including filters added to taps and showers on ward 2A (page 38); to the evidence of witnesses who believed that works were required because "bugs were sticking to the plastic in the pipes" (page 41); to the evidence of witnesses that they were told they could not use the water to wash (page 45). Evidence was also given by witnesses that they were told not to drink tap water.
- 4.2.14 The closing statement also refers to three reports by DMA Canyon Ltd relating to water issues and a suggestion that "the 2015 report, although provided to staff

within Estates and Facilities, was subsequently 'lost'. The 2015 report is said to have "made recommendations about steps which should be taken" to address "serious concerns about the safety of the water supply" (page 83).

4.2.15 Multiplex attended a meeting in 2019 at which it was advised that investigations had been carried out into QUEH's water systems. As the result of a freedom of information request made on its behalf in July 2020 to the Scottish Government, Multiplex also obtained a partially redacted copy of a DMA Canyon Ltd report dated May 2015 entitled "Legionella Risk Assessment". This report notes a number of recommendations in respect of the water system at the QUEH. Multiplex assumes that this report is available to the Inquiry: if not, it can provide a copy.

4.2.16 Multiplex was not provided with a copy of the May 2015 DMA Canyon Ltd report at the time it was prepared.

4.2.17 Multiplex agrees that investigations were carried out in relation to the water system at QUEH. It is not able to agree (because these matters are not within its knowledge) the nature of the measures that were taken in response to those investigations or the reasons for those measures.

4.3 **Question 3:** Multiplex agrees that there is evidence that *indicates* links between infections and the operation and maintenance of the hospital. As Counsel to the Inquiry note (page 4) witnesses reported very serious infection incidents including some "where clinical staff and/or managers appeared to acknowledge a link between the infection and the hospital environment." In addition, evidence was given that the Case Note Review concluded that the possibility (at least) of a link had been established (page 7).

4.4 Multiplex cannot conclude from the evidence so far given to the Inquiry that the evidence (a) clearly establishes such links or (b) establishes whether, if there were such links, they were a consequence of issues with the design and construction of QUEH or were a consequence of other factors such as the choice of site for the hospitals (Term of Reference 10) and the manner in which QUEH was maintained after its construction. These are matters Multiplex note require further investigation by the Inquiry.

4.5 Multiplex is conscious of the evidence that was given by a number of witnesses about their concerns as to infection control measures at QUEH including concerns about (a) the cleaning regime (in the wards used for the care of immunocompromised children and in the hospital more generally); (b) inconsistency in the approach of clinical staff to, for example, hand-washing and the use of devices such as mobile phones that might be sources of infection;

(c) inconsistency in the approach of QEUH to requiring parents and other visitors to maintain high standards of hygiene and to take precautions to prevent infection.

4.6 As it has made clear in earlier correspondence to the Inquiry, Multiplex considers that, as the Inquiry will be investigating events which occurred a number of years after commissioning was complete at both the QEUH and RHCYP and DCN, maintenance of the ventilation, water and drainage systems are highly relevant to fulfilment of the Inquiry's Terms of Reference.

5 Edinburgh Questions

5.1 **Question 1:** Multiplex agrees that the closing statement by Counsel to the Inquiry accurately summarises the accounts given by witnesses.

5.2 **Question 2:** The closing statement of Counsel to the Inquiry refers to the delay to the opening of the new RHCYP in Edinburgh and to evidence that "as at the beginning of July 2019 preparations for the move were at an advanced stage" (page 94).

5.3 Multiplex is conscious that this closing statement is not the place for the giving of evidence on its behalf. However, by way of explanation, on 22 February 2019 the Commissioning Completion Certificate and Certificate of Practical Completion were issued by the Independent Tester confirming that the Completion Criteria under the building contract had been achieved.

5.4 On the morning of 4 July 2019, Multiplex learned of the delay to the migration of the RHCYP via a Scottish Government announcement entitled "Update on Royal Hospital for Children and Young People". Multiplex assumes that this announcement is available to the Inquiry. The announcement states, among other things that the decision to delay the move "was taken following final safety checks which revealed that the ventilation system within the critical care department in the new hospital requires further work to meet national standards."

5.5 Multiplex understands that the "...further work to meet national standards" referred to above concerned additional works (over and above those that Multiplex was obliged to provide under its contract). Multiplex understands that these additional works were carried out at the RHCYP by another party appointed by the Board.

5.6 Multiplex understands that over the period 2019 to 2021 NHS Lothian also carried out enhancement works to haematology / oncology wards; fire dampers; corridor walls and doors to sleeping accommodation; and critical care pendants. However, Multiplex is not aware of the precise scope of those works.

- 5.7 Multiplex agrees that the Scottish Government announced a delay to the migration of the hospital on 4 July 2019 and that works were carried out to various aspects of the new RHCYP by the Board prior to the full opening of the hospital in 2021. Multiplex has limited awareness of the extent of these works.
- 5.8 Multiplex had no involvement in the operation of the old RHSC and DCN facilities. It cannot speak to the evidence that was given about the preparations made at those facilities for the transfer to the new facilities or to communication with patients and families about the move.

Christine O'Neill QC

17 December 2021