



SCOTTISH HOSPITALS INQUIRY

PROCEDURAL HEARING

Monday, 20 March 2023

APPEARANCES

The Right Honourable Lord Brodie KC PC appeared as Chair to the Inquiry.

Mr A Duncan KC appeared as Counsel to the Inquiry.

Ms V Arnott appeared as an Advocate to the Inquiry.

Ms S Rore appeared as Deputy Solicitor to the Inquiry.

Ms L Browne appeared as Assistant Solicitor to the Inquiry.

THE CHAIR: Good morning, and welcome to this procedural hearing in relation to the evidential hearings, which will begin on 12 June of this year in relation to the Queen Elizabeth University Hospital. When saying good morning and welcome, I am directing myself not only to those who are present in the hearing room here in Edinburgh, but those who are following proceedings online or in the livestream. Now, with me immediately on my right is Counsel to the Inquiry, Alastair Duncan KC, and Victoria Arnott, Advocate, instructed by the Deputy Solicitor to the Inquiry, Samantha Rore. On my left, I am assisted by Lesley Browne, who is one of the Assistant Solicitors to the Inquiry.

We are a public inquiry, and it is our purpose to ensure that we are as accessible as possible. As I previously mentioned, these proceedings are being livestreamed; transcripts of oral hearings will be available to be read from the Inquiry website. The core participants will be provided with a hearing timetable in relation to the hearings beginning on 12 June. Now, at that hearing there will be no opening statements. I will mention arrangements for closing statements a little later in the course of my remarks.

Core participants have been asked to submit applications for leave to appear at the oral hearings, and that was done on 14 March. Now, I appreciate that that was a departure from the timetablings that we had set out in the protocol on leave to appear. However, core participants have been cooperative in relation to this, and applications have been dealt with by me, and I would hope the results of my decision on these applications have been intimated.

Now, the oral hearings beginning on 12 June will begin each morning at ten, sit till one, with possibly a break for coffee. We will then adjourn for lunch for an hour, and afternoon sessions will be, generally speaking, between two and four, although this may require to be adjusted, having regard to the state of the evidence. As matters stand, witnesses will provide their evidence in person. For those watching online, there may be a few minutes of a break between witnesses, during which there will be a holding screen.

The core participants have been provided with a list of witnesses, as I understand it, by Counsel to the Inquiry. Now, any core participants having observations in relation to that list of witnesses should notify the

Inquiry Team in writing, and any applications made in respect of witnesses will be then considered. Documents bundled in digital form will be provided, and during the oral hearings counsel will ask the documents team to display documents that are being referred to on the screens in the hearing room.

Now, as provided by Rule 9 of the Inquiries (Scotland) Rules 2007, the questioning of witnesses will be by Counsel to the Inquiry. However, if core participants wish to raise particular topics or questions to a particular witness, as a first step, I would ask their legal representatives to liaise with counsel as early as possible, with a view to proposing any lines of questioning that they may wish to follow. If the legal representatives of core participants are not satisfied with the outcome of that informal approach, they should make an application to me, as Chair of the Inquiry, in terms of Rule 9(4).

Now, such an application should be made not later than 96 hours – four days – before the relevant witness is to give evidence. The application should state that the matter has been discussed with counsel or, if that is not the case, explain why that is so, and any application should set out matters

which appear in Rule 9(5). Now, I may be able to deal with such applications in writing or I may require to be addressed on them. Where I will require to be addressed on them, the hearing on that issue takes place as soon after the application has been received as is practical. If a hearing on an application is required on a day when the hearing of evidence is underway, then the hearing will normally take place at the close of hearing of evidence on that day. Where such an application is granted, then a legal representative of a core participant will be entitled to put questions to the relevant witness directly as opposed to through Counsel to the Inquiry. Generally speaking, the period for that which I will allow will be not in excess of 15 minutes. At the end of such questioning by the legal representative of the core participant, Counsel to the Inquiry may put further questions to the relevant witness, again, for no more than 15 minutes.

Exceptionally, an applicant immediately on the conclusion of the witness' evidence on the day of the oral hearing will be permitted. As I say, exceptionally because I would expect such an application only to be made where a witness has given an

answer or Counsel to the Inquiry has embarked on a line of questioning, which legal representatives but not recently have anticipated, and in hearing such an application, I would expect to be addressed on the reasons why the evidence of which it is sought to question the witness could not reasonably have anticipated the questions that are to be put and the significance of the questions to the Inquiry and the relevance to the investigation. Following such an application, I may have to be addressed by Counsel to the Inquiry. Now, I appreciate that I have given quite detailed information on applications under reference to Rule 9. Core participants or legal representatives will be provided with a statement in writing picking up the detail of what I have just said.

I will not invite oral statements from legal representatives by way of closing statements after the oral evidence has been heard. What I will propose is that Counsel to the Inquiry will provide his written closing statement. Let me start that again. I will invite Counsel to the Inquiry to make his closing statement in writing within three weeks of the conclusion of the oral hearing. That will be made available to legal representatives.

Legal representatives will have two weeks to consider that closing statement and exchange among themselves drafts of their proposed response, anything that they may wish to say in addition in their written statements, and after that two-week period for exchange of written statements, they will be allowed a further two weeks to provide their respective final written statements.

Now, if any questions arise from what I have said, I would invite legal representatives to wait until a Counsel to the Inquiry, who I am about to invite to address the procedural hearing, has concluded what he has to say, and there will then be an opportunity for questions to be directed, both to me and to a senior counsel.

So, can I now turn to Alastair Duncan KC and invite him to address the procedural hearing.

MR DUNCAN: Thank you, Lord Brodie. I want to say something about the June hearing and about the provisional position paper that is soon to be issued, but it may make sense to begin by considering the post-June investigations because that will help explain the Inquiry's overall approach and how the June hearing and the paper fit into that.

Now, "post-June investigations" is

not really an accurate description. Lord Brodie has explained before the Inquiry's investigative work is not confined to what it does at hearings. Although it is intended to hold hearings after June – i.e., in 2024 – the investigations into the subjects to be addressed at those hearings has been underway for a long time and is ongoing.

As Lord Brodie has previously explained, the reason the Inquiry was set up was because of concerns about patient safety. He explained that the issue of whether the built hospital environment created a risk to patient safety would be at the heart of our work. Now, the Inquiry Team sees that issue being capable of being addressed what we are describing as four key questions. These are distilled from the remit and from terms 1, 7 and 8.

The key questions are first, in the point at which there were patients in the hospital, was the water system, including drainage, in an unsafe condition in the sense that it presented an additional risk to avoidable infection to patients? Secondly, from the same point and in the same way, the ventilation system in an unsafe condition. Thirdly, in the same sense, are these systems now in a safe

condition? And fourthly, is there a link and, if so, what way and to what extent is there a link between patient infections and identified unsafe features of the water ventilation systems? I would just emphasise that we are mindful, despite the emphasis to water and ventilation, that we will need to keep in mind whether there are other building systems that may be needed.

Now, the Inquiry's team's aspiration is to have hearings directed at finding out the overall answers to the key questions next year. Broadly, we intend to finish with a hearing at which the experts instructed by the Inquiry will give evidence. Prior to that, have a hearing, or hearings, at which factual witnesses will give evidence.

Now, factual witnesses is also something of a misnomer in the sense that the people to whom I refer are in the main, professional people with expertise in their particular areas, and just to give two examples, I have in mind microbiologists from within the Queen Elizabeth Hospital, and also, the various external consultants, experts, who might have provided assistance or undertaken analysis on matters relevant to the questions. Now, that is the broadest of outlines,

and more details, including how we intend to conclude the ancillary question, will be provided at a conclusion of the June hearing.

Returning to the June hearing, first of all, what is the hearing about? Well, I have set that out in the paper that was circulated on Friday at Appendix A. I wonder if it might be worth saying something about what the hearing is not about. In particular, it should be emphasised that it is not about the quality of the medical care patients received. The Inquiry was not set up to determine what happened in any individual case, and it certainly was not set up to determine the adequacy of medical care. In making the arrangements for the autumn 2021 hearing, the chair and the Inquiry Team were anxious to give the 44 patient and family witnesses that provided statements a forum where they felt safe to share their stories.

Now, I accept that one or two, and it was only one or two, did criticise the medical care that they received, but those are not criticisms the Inquiry Team will be pursuing, and in any event, Ms Arnott and I said in our closing statement, the vast majority of the patient and family witnesses emphasised the quality of the care they received and made clear the high

esteem which they hold the frontline staff at Queen Elizabeth Hospital.

Now, turning to documents, I hope the sheer size of the paper that went out on Friday speaks to the enormous amount of work being done by the Inquiry Team in preparation for the hearing in June. Documents themselves will be shared in early course. I want to say something of their purpose.

We have decided that we will share with you, in thematically organised bundles, material that is not just for use at the forthcoming hearing but will be central to the hearings next year. Now, whether this is something that happens at other public inquiries is not for me to say. We have decided to proceed in a way that you will be familiar with from other legal processes; i.e., when core documents are identified, they are shared in the way that they would be lodged as productions or disclosed civil or criminal proceedings. You may wish to keep that in mind when it comes to the June hearing. I will certainly not be putting every document to every witness; I will be highly selective.

You may also wish to keep in mind the purposes served by the June hearing. Certainly, it is to obtain findings, or rather evidence upon

which findings, might be made about patient impact but, as I said in the paper that you got on Friday, it is also to bring out evidence that might be used for signposting issues to be determined at next year's hearings. You may wish to keep that distinction in mind in deciding whether a particular document or matter needs to be put and requires a Rule 9 application in June or whether the questions you have are better addressed next year. I think, if anything, that illustrates one of the points that Lord Brodie has just made that, as regard to that process, the first port of call should probably be a conversation with me.

Turning to the witnesses, the finalised witness statements will be shared in early course. I have already spoken of the high esteem which this witness group is held by its patients, and the Inquiry Team is acutely aware the first call on the time of those witnesses must be their patients. It is for this reason that it would be my intention not to call everyone on the present list to give evidence and, despite what I said in my paper, the list that you have at the minute does not tell you who currently is not going to be called. Details of that will be provided at the point that the timetable is

shared. In the meantime, I should just record the Inquiry Team's enormous gratitude for the time given up by the frontline staff already in providing statement evidence.

Finally, I turn then to the provisional position paper that we are calling the history of infection concern. I have set out what that is in the paper you already have. It will be produced shortly. I just maybe wish to emphasise two things in the meantime. First, it only sets out expressions of concern. That word "concern" be emphasised. The paper must not be read as indicating any belief on the part of the Inquiry Team, but the concerns set out were or are well-placed. That is precisely what is to be investigated by answering the key questions. Secondly, it is provisional. You may well read it and consider that there are things in it that should not be there, and you may read it and think the opposite, that something has been missed out. In each case, tell us.

Finally, thank you for listening. I look forward to seeing you in June. Please do not hesitate to get in touch in the meantime. I would be happy to speak to anyone this morning at the conclusion of this hearing. Thank you, Lord Brodie.

THE CHAIR: Thank you, Mr

Duncan. Can I add just this? It is in relation to a phase or the activity because it is not as if this is a new phase. As Mr Duncan has said, the Inquiry has been engaged in investigating the four key questions that Mr Duncan has identified for some time, but going forward, can I repeat, but perhaps be a little more specific, what I have said on previous occasions: this is a public inquiry which is being assisted by core participants. Those persons and institutions who have most to do or are most closely concerned with the terms of reference of the Inquiry.

Now, I have said this before that I look for co-operation, collaboration from a core participant, and I have not been disappointed thus far. However, as we move forward, I am particularly interested in hearing what core participants have to say by contributing their expertise, their conclusion, by way of engagement with a view to hearings beyond June. So, at risk of repetition, I am looking for the assistance of core participants in sharing what they know and what they consider is important.

If there is any question in anyone's mind as to what the scope of what senior counsel has in mind with his four key questions, I am confident

that Mr Duncan will welcome informal approaches from legal representatives, with a view to identifying what would assist the Inquiry, and I would encourage core participants to provide that assistance.

Now, as I said earlier, if there are questions, I and Mr Duncan will endeavour to answer them. There appear to be no questions. Mr Duncan, is there anything else that arises?

MR DUNCAN: I do not think so, my Lord.

THE CHAIR: Well, thank you very much for your attendance. I am grateful for that, and as Mr Duncan has said, we look forward to see you in June. Thank you.
