SCOTTISH HOSPITALS INQUIRY

SUBMISSION ON BEHALF OF

NHS GREATER GLASGOW AND CLYDE

in response to Closing Submission from Counsel to the Inquiry

Following June 2023 Hearings on Evidence

1. A hearing of the Scottish Hospitals Inquiry was held between 12 and 23 June 2023, at which evidence was led from clinicians and other staff at the QEUH and RHC. A closing submission on the evidence led was received from Counsel to the Inquiry on 21 July. The Inquiry has invited responses from core participants.
2. Concerns about the built environment at the QEUH and RHC, and the long-standing nature of these concerns, is a central theme throughout Counsel to the Inquiry's submission. At para 470, the submission states that:

   > *"it is to be hoped that the Inquiry will find a means of addressing these concerns and answering the questions that have been raised. The path to finding that route will be marked by the qualities referred to throughout this closing statement: transparency, openness, candour and accountability. That is where trust will be found."*

3. NHSGGC welcomes the opportunity to continue to assist the Inquiry in addressing these concerns, in that spirit, and in offering assistance with the questions which have been raised, as indeed it has done since the outset of the Inquiry.
4. Following the conclusion of the evidence in June 2023, both Senior and Junior Counsel to the Inquiry stepped down from their respective roles and, as matters presently stand, it is understood that replacement Counsel are yet to be appointed. It is recognised that the task for any new Counsel to the Inquiry to resume the work of the Inquiry's terms of reference will be considerable, not least due to the complexity of issues within the Inquiry's remit, the volume of documentation produced by NHSGGC and the significant chapters of evidence which are yet to be led.

5. The hearings thus far have been restricted to perceptions and experiences of the QEUH and RHC by patients and families and clinicians respectively. The Inquiry has not yet heard any evidence from those responsible for design, build, commissioning, system testing, epidemiologists, microbiologists, infection control and those responsible for communication policy and implementation. Such evidence will be critical to answering the Inquiry's terms of reference. NHSGGC has given assistance to the Inquiry from the outset and continues to do so. From the significant volume of material provided by NHSGGC throughout this process, it is disappointing to note that very little, if any, would appear to have been properly taken into account in the process of leading evidence or in the drafting of the closing submission by Counsel to the Inquiry.

Evidence led at June 2023 hearing

6. The submission of Counsel to the Inquiry describes the September/ October 2021 and June 2023 hearings as the Glasgow 1 and 2 hearings respectively. It was the stated intention that the evidence of these hearings was for the limited purpose of assessing the impact of the issues within the Inquiry's terms of reference upon patients and families, with the "objective validity" of those concerns to be assessed at future hearings.[1] The evidence at the June 2023 hearing was indeed an extension of the evidence of perceptions and experience of the QEUH and RHC. On the restricted evidence led thus far, it is submitted that no facts have been established as to the validity of any concerns expressed about the built hospital environment.
7. Further, and importantly, there was nothing in the evidence of clinicians which was heard in the June 2023 hearing to demonstrate any "cover-up" or collusion on the part of NHSGGC as had been suggested or implied by certain witnesses at the September/October 2021 hearings; on the contrary. The evidence from all witnesses was consistent in this regard; namely that at no time was pressure of any description applied on any individual by NHSGGC, and at no time did witnesses consider that their obligation, and the expectation upon each of them, was anything other than to be

[1] Paper from Counsel to the Inquiry "List of Topics and Associated Issues for the Diet of Hearings commencing 12 June 2023 re QEUH/ RHC"

transparent and truthful. In its closing submission to the Inquiry in December 2021, following the evidence heard in September/ October 2021, NHSGGC refuted any and all allegations which called into question the fundamental integrity of NHSGGC. It is submitted that a conclusion can now be drawn from the evidence that NHSGGC was, at all times, acting in good faith, with no collusion or "cover-up," in circumstances which were both challenging and unprecedented.

8. In terms of the evidence from the June hearing insofar as it is rehearsed in the closing submission, no material issue is taken on behalf of NHSGGC. In particular, the chapters of the submission relative to impact of patient experience, and the significant challenges in undergoing treatment for cancer, are entirely accepted. As has been set out in previous statements to the Inquiry, and which bears repeating at this point, NHSGGC has the greatest sympathy for the distress, anguish and suffering which has been so obviously experienced by patients and families and for the difficulties they have faced.
9. In terms of chronology, NHSGGC remains concerned that the Inquiry's timeline presents a partial picture of its response to the infections identified. It also fails to acknowledge the critical involvement of external bodies. NHSGGC is happy to provide such information as it has to assist in the development of a full and revised timeline.
10. In terms of what conclusions might properly be drawn from any of the evidence beyond that, plainly the evidence which has been led is wholly incomplete as matters stand. That being so, it is submitted that it would be premature to express any view on any substantive evidence heard meantime.
11. This is particularly the case when no expert evidence has yet been heard by the Inquiry. Whilst the submission of Counsel to the Inquiry focuses on what is termed the history of concerns at QEUH and RHC, there has been no evidence led as to whether or not those concerns have any substance to underpin them in fact. The submission of Counsel to the Inquiry fails to take any cognisance of the material which has been produced by NHSGGC in relation to those concerns, including expert opinion in relation to the validity or otherwise of those concerns. It is submitted that expert evidence, when led, will allow the question of validity of concerns to be placed in a proper and factual context.

12. In terms of evidence from clinicians as to concerns regarding the built environment and any link to infection, it is submitted that until such time as expert evidence is led, the weight to be attached to any such evidence from clinicians, or others, cannot be determined. This is particularly the case in relation to assessing whether any of the infections were indeed "unusual". The evidence of clinicians as to their considerable experience over many years in the treatment of children with cancer is, without question, highly valuable. Its import, however, can only be placed in proper context once expert microbiological evidence is led. The closing submission makes reference to the clinicians' perception that the infections were "unusual". Whether the infections were indeed "unusual" will require expert input, comparisons with similar units and factual evidence about Yorkhill.
13. The considerations which apply as to whether or not evidence can be properly categorised as expert evidence are well known[2]: those same considerations apply to evidence before a Public Inquiry as to any other form of evidential hearing.
14. It is acknowledged that views have been expressed as to the adequacy of communications on the part of NHSGGC throughout the period with which the Inquiry is concerned. However, as it properly recognised at para 369 of the submission of Counsel to the Inquiry, "it does not seem likely that the communication question raised by Term 8 can be fairly determined at this point without hearing from those (both within and external to GGC) responsible for key decisions and policies relative to communication." [3] NHSGGC agrees that the evidence which has been led thus far in relation to communication is wholly incomplete at this stage. Information has already been provided to the Inquiry by NHSGGC as to its position on this matter and NHSGGC has provided the names of those witnesses who would be in a position to assist the Inquiry on this issue. The submission from Counsel to the Inquiry acknowledges that further evidence will require to be led on this issue, and NHSGGC trusts that the Inquiry will have regard to the considerable volume of information on this subject which has already been supplied to the Inquiry by NHSGGC, and lead

[2] Kennedy v Cordia Services Limited 2016 SC (UKSC) 59
[3] Paras 369, 378, 380 and 438

evidence from those witnesses who have been identified as being best able to assist the Inquiry in relation to this matter.

Position of NHSGGC on the validity of concerns

15. The submission from Counsel to the Inquiry invites core participants to set out their respective positions on the validity of concerns about the built environment at QEUH and RHC and, in particular, the question of any link between the built environment and any infection caused. It is submitted that NHSGGC has already responded with its position on this question, most recently in its response to PPP5, submitted to the Inquiry in April 2023. That position remains unaltered following the evidence led at the June hearing and is re-iterated.
16. For the avoidance of any doubt, and with reference to those concerns as set out in the submission by Counsel to the Inquiry, NHSGGC does not accept that, on the basis of the evidence currently available, the water, drainage or ventilation systems in the new QEUH and RHC buildings have posed a risk to the safety of patients, beyond that which may reasonably be expected in any comparable hospital environment. As hospitals are not sterile environments, in any hospital there will be infections that may be linked to the hospital environment. With the exception of two discrete cases of paediatric infection in 2016 and 2019, the details of which have already been shared with the Inquiry, NHSGGC does not accept that there was any causal link between the built environment and any infection suffered by a patient within the QEUH in relation to the "episodes of concern."
17. It is both surprising and disappointing that, given the significant material provided by NHSGGC to the Inquiry thus far, there remains a lack of understanding as to the position of NHSGGC on these matters and, importantly, the factual basis for its position.
18. NHSGGC has, to date, provided in excess of 13,000 documents to the Inquiry, including material specifically created in order to assist the Inquiry's understanding of the issues within the terms of reference. In so doing, NHSGGC has expended significant resources, often against tight deadlines, in collating and creating this material and in responding to numerous requests for information and notices in terms of sec 21 of

the Inquiries Act 2005. Clinicians and other staff have made themselves available to Inquiry staff for the purposes of witness statement taking, presentation delivery and guided visits to the QEUH and RHC. Assistance provided to the Inquiry by clinical and nursing staff, at the Inquiry's request, has taken those staff away from their vitally important work of treating and nursing those within their care, as was recognised by Lord Brodie at the June 2023 hearing. In addition to comprehensively meeting all requests which have been made by the Inquiry, information on the issues for the Inquiry has also been produced voluntarily by those acting for NHSGGC in order to further facilitate understanding on the position of NHSGGC as regards the issues for the Inquiry.

19. Against this background, it is particularly frustrating and disappointing that the material and assistance provided by NHSGGC to the Inquiry has been largely ignored by Counsel to the Inquiry in the presentation of evidence and in the content of submissions. A list of all material and assistance provided by NHSGGC to the Inquiry to date is appended hereto.

20. The continued portrayal of QEUH and RHC as having been potentially unsafe environments for patient care is unjustified on the evidence presented to the Inquiry, particularly given the material which has been provided by NHSGGC to the Inquiry which demonstrates that this portrayal is not borne out in fact. Whilst there is always some degree of risk from any built environment, the suggestion in the submission that patients were exposed to an increased risk to their safety from the water, drainage or ventilation systems at the QEUH and RHC, based on the current evidence, is not accepted by NHSGGC. It is a position which has created, and continues to create, unnecessary distress and anxiety for patients, families and staff and, no doubt, for the public at large. That is a matter of regret, exacerbated by the passage of time since the commencement of the Inquiry.

Progress going forward

21. In the closing submission, Counsel to the Inquiry raises a number of further issues to be explored prior to future hearings. NHSGGC will examine these issues carefully and will provide full assistance in addressing these questions through continued cooperation with the Inquiry team and continued provision of information.

22. The process of handover to new Counsel to the Inquiry, when appointed, will doubtless be a task of some significance. By way of assistance, NHSGGC will forward to Counsel to the Inquiry a list of reports which NHSGGC considers to be key documents on the issues for the Inquiry, together with a list of witnesses who are in a position to assist the Inquiry with those issues, in order that Counsel to the Inquiry can familiarise themselves with NHSGGC's position on the material questions within the Inquiry's terms of reference. All material referred to on this list is material which has previously been submitted to the Inquiry. It is intended that these reports and witnesses will assist the Inquiry in presenting evidence relative to the design, build, commissioning and system testing of the QEUH and RHC, together with evidence regarding epidemiology, microbiology, infection control and communication policy and implementation. NHSGGC will continue its co-operation with the Inquiry in working with new Counsel to the Inquiry, in order to assist in the understanding of key documents relative to the issues within the Inquiry's remit as the Inquiry moves forward.
23. By way of further assistance from the perspective of NHSGGC, it is submitted that there are a number of crucial questions which have not yet been considered by the Inquiry, and which should take priority in progressing matters going forward. These questions, which relate to an issue which is at the heart of this Inquiry, focus on the crucial and fundamental issue of whether there was any causal link between episodes of infection and the built hospital environment, and were highlighted and set out in NHSGGC's position paper on Infection, dated 7 April 2023, and in the response of NHSGGC to the Inquiry's PPP5 submission, both of which are appended hereto. It is respectfully submitted that unless and until this fundamental issue is considered in evidence, and the questions posed by NHSGGC are addressed, the Inquiry will be unable to make any meaningful progress towards fulfilling its terms of reference.
24. At para 150 of the submission of Counsel to the Inquiry, in relation to the question of the history of concerns regarding QEUH and RHC, it is stated that there is "a need to find a means of completing the investigation as efficiently and expeditiously as possible." NHSGGC wholly agrees with this proposition. To that end, NHSGGC re-iterates that it will continue to assist the Inquiry in whatever way it can, in order to

assist the Inquiry in fulfilling its terms of reference completely, efficiently and expeditiously.

Peter Gray K.C.,
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and
Andrew McWhirter, Advocate

On behalf of NHSGGC

18 August 2023

ADDENDUM TO RESPONSE

FOLLOWING CONSIDERATION OF

RESPONSES ON BEHALF OF CORE PARTICIPANTS

1. It is respectfully submitted that the approach taken by Counsel to the Inquiry, namely to invite conclusions on the validity of concerns about the built hospital environment to be reached after having led so little evidence, none of which was technical or expert, is an unusual one and one which seems to have encouraged a wider proposition that technical, factual and expert evidence should simply be dispensed with as being unnecessary.
2. The stated purpose of the June 2023 hearing, as set out in Counsel to the Inquiry's paper "List of Topics and Associated Issues for the Diet of Hearings Commencing on 12 June 2023 in relation to the QEUH/ RHC," was to make factual findings about the impact of the history of concerns upon patients and families. It was stated at that time that the objective validity of those concerns would be examined at future hearings, through the leading of factual and expert evidence. The approach now put forward by Counsel to the Inquiry plainly runs contrary to what had previously been stated as being the purpose of the June 2023 hearing.
3. In light of this approach, and insofar as it is endorsed in the responses on behalf of any other core participant, NHSGGC seeks to emphasise two important points. First, far from approaching matters with a lack of candour, transparency and honesty, as has been suggested in some responses to the submission from Counsel to the Inquiry, NHSGGC has provided the Inquiry with a significant volume of technical, factual and expert material to assist the Inquiry with its terms of reference, particularly on the question of any link between infection and the built hospital environment. Where it is suggested in some responses from core participants that NHSGGC has failed to produce evidence in support of its position, this is refuted.
4. The failure of Counsel to the Inquiry to lead, or refer to in submissions, any of this technical, factual and expert material appears to have been equiparated by some core participants with a refusal to provide material to the Inquiry and a general lack of

transparency, openness and truthfulness on the part of NHSGGC. As has been made clear, NHSGGC has provided all material requested of it by the Inquiry and additional significant material in order to assist the Inquiry in determining the facts.

5. Secondly, it is respectfully submitted that the proposition that the evidence led so far is sufficient to create something of a presumption of a link between infections and the built hospital environment, is not one which should be endorsed by the Inquiry. Reference has been made in submissions from some core participants to this presumption arising in the absence of any other hypothesis. The Inquiry is tasked with finding facts and addressing issues which have given rise to serious public concern. It is submitted that the appropriate way to do that is through the consideration of the totality of relevant evidence on the important issues within the Inquiry's remit, rather than to proceed on the basis of presumptions, particularly given the paucity of evidence which has been led thus far.
6. It is respectfully submitted that, rather than endorsing presumptions, the leading of factual, technical and expert evidence should be the preferred course for the Inquiry to take, as the proper route to establishing the full facts relevant to the issues within the terms of reference.
7. Prior to the June 2023 hearing, it was stated in Counsel to the Inquiry's paper on the List of Issues that it was the aspiration of the Inquiry Team to have hearings addressing the validity of the concerns at a diet of evidence in the first half of 2024, with factual witnesses to be heard first at that hearing, followed by expert evidence. Regardless of whether or not that aspirational timeframe is in any way now realistic, the proposition that factual and expert evidence should be led, and led as something of a priority to the Inquiry, is one with which NHSGGC wholly agrees.
8. Where the responses of core participants highlight gaps in the evidential picture as regards communication, NHSGGC agrees. As has been indicated, the evidence as regards communication is, as matters stand, wholly incomplete, and has been inaccurately interpreted. A significant volume of material has been provided to the Inquiry by NHSGGC, as have names of witnesses who can assist on the issue of communication, including the challenges of issuing communications during what was a complex and rapidly evolving situation. NHSGGC trusts that the Inquiry will have regard to this material and evidence when led in due course.

9. Reference has been made in some responses from core participants to a perception that NHSGGC has failed to provide any disclosure or information regarding the DMA Canyon report of 2015. Material has, in fact, been provided to the Inquiry, as have the names of witnesses within NHSGGC who are able to assist the Inquiry on this issue. As with the significant volumes of material provided to the Inquiry by NHSGGC on key issues within the Inquiry's remit, this would appear not to have been, as yet, considered by Counsel to the Inquiry.
10. Where it has been suggested that NHSGGC failed to consider the impact upon children of the decant from ward 2A to 6A, and failed to have children at the centre of its decision making, reference is made to the oral evidence given by Jennifer Rodgers and Jamie Redfern at the June 2023 hearing, from which, it is submitted, it is clear that the decision to decant was made on the advice of the IMT, in very challenging and evolving circumstances, in order to mitigate against the perceived risk to the greatest degree possible and that patient well-being was, at all times, at the centre of the decision making process.
11. Overall, it is clear that the evidence which has been led before the Inquiry has been, thus far, extremely limited and, in relation to a number of issues, highly selective. As has been emphasised, NHSGGC has provided a significant volume of information to the Inquiry in relation to those matters within the Inquiry's remit. As yet, very little, if any, of that information would appear to have been considered in the presentation of the evidence. It is hoped, as the Inquiry proceeds, that it will take a balanced approach with regard to all information which has been provided to it, and ensure that all information relevant to matters within the Inquiry's remit are fully explored in evidence as the Inquiry progresses.
12. Beyond that, NHSGGC re-iterates its commitment to continuing to assist the Inquiry in whatever way it can and to working with new Counsel to the Inquiry, when appointed, to assist them with NHSGGC's position on the material questions within the Inquiry's terms of reference.