Direction 6 – Closing Statements relative to Hearing Commencing 26 February 2024 concerning the RHCYP/DCN and further procedure

In terms of section 17 of the Inquiries Act 2005 ("the Act"), Lord Brodie ("the Chair") of the Scottish Hospitals Inquiry ("the Inquiry") directs that in respect of the diet of hearings which commences on 26 February 2024 ("the hearing"):

1. Following the conclusion of the leading of evidence in the hearing Counsel to the Inquiry shall submit a written closing statement to the Inquiry by no later than **6 May 2024** which statement shall then be distributed by the Solicitor to the Inquiry to all core participants with leave to appear at the hearing;

2. Thereafter, pursuant to rule 10(1)(b) of the Inquiries (Scotland) Rules 2007, core participants with leave to appear at the hearing may submit written closing statements to the Inquiry by no later than **27 May 2024**.

3. Further, also pursuant to rule 10(1)(b) of the Inquiries (Scotland) Rules 2007, core participants with leave to appear at the hearing, and who have given notice of their intention to do so as provided in paragraph 4 hereof, may, on **17 June 2024** and subsequent days make supplementary oral closing statements to the Chair.

4. Core participants wishing to make a supplementary oral closing statement must give notice of their intention to do so to the Solicitor to the Inquiry on or before **3 June 2024**. Such notice should set out the period of time sought for their statement, the maximum permissible being one hour.

5. On or before **10 June 2024** those core participants who have given notice of their intention to make a closing oral statement will be informed of the time available to them.

6. Counsel to the Inquiry shall make an oral closing statement.

7. In framing their written and oral closing statements Counsel and core participants should have regard to the terms of the following **Note** and **Appendix A**.

Lord Brodie – Chair of the Scottish Hospitals Inquiry

22 February 2024

Scottish Hospitals Inquiry – Direction 6 – in respect of the Hearing Commencing 26 February 2024

NOTE BY THE CHAIR

1. Introduction

1.1 It is my current intention that the hearing scheduled to begin on 26 February 2024 will be the final evidential hearing in respect of the Royal Hospital for Children and Young People and the Department of Neuroscience (RHCYP/ DCN) and that, accordingly, the evidence to be led at that hearing together with the full content of the documents and witness statements published on the Inquiry's website, the evidence led at the respective hearings beginning on 9 May 2022 and 25 April 2023, the contents of the Provisional Position Papers and the responses thereto submitted by the core participants, will constitute the whole evidence upon which I will report to Scottish Ministers on the Remit and Terms of Reference in so far as they relate to the RHCYP/ DCN.

1.2 However, I leave open the possibility of seeking to obtain additional evidence if there is a requirement to do so following receipt of written closing statements.

2. Evidence to be led

2.1 The scope of the evidence to be led at the hearing scheduled to begin on 26 February 2024 was set out in the List of Topics for February 2024 hearing in relation to Royal Hospital for Children and Young People and Department of Clinical Neurosciences which has previously been published. For convenience, that List is reproduced as an appendix to this Direction, the topics being listed under the following headings:

2.1.1 The development of the design of the ventilation system for critical care rooms and isolation rooms in the period after financial close (February 2015)

2.1.2 The decision making and governance concerning the agreement reached between NHSL and IHSL on 22 February 2019 (Settlement Agreement No 1)

2.1.3 The financing of the RHCYP/DCN

2.1.4 The decision making and governance structure for the project in the period after Financial Close; particular emphasis being placed on the decision making and governance concerning Settlement Agreement 1, the instruction of IOM Limited, the consideration of the reports produced by IOM Limited and the escalation to Scottish Government

2.1.5 The decision making, and governance, around the decision not to open the hospital in 2019

2.1.6 The changes to the ventilation system required by HVC Notice 107 and made prior to the opening of the hospital

2.1.7 The decision making, and governance, around the decision to open the hospital

2.1.8 Whether the hospital provides a suitable environment for the delivery of safe, effective person-centred care

2.1.9 Changes in Policies, Procedures, Protocols and Governance Arrangements after the project

3. Written closing statements

Counsel to the Inquiry

3.1 Following the conclusion of the leading of evidence at the hearing I require Counsel to the Inquiry to submit a written closing statement with a view to assisting me in fulfilling the Inquiry's Remit and Terms of Reference and reporting to the Scottish Ministers. Counsel to the Inquiry shall include in their closing statement (in addition to anything else they consider relevant and in so far as not having been previously addressed in the closing statement submitted by Counsel following the hearing 25 April 2023):

3.1.1 An overview of the themes which they would submit reflected the evidence led and which are relevant to the Terms of Reference of the Inquiry
3.1.2 Proposed explanations of and, where framed as questions, proposed answers to, each of the topics listed in the List of topics
3.1.3 Proposed answers to the questions which are posed in Terms of Reference 1 to 12
3.1.4 Proposed recommendations identifying any lessons to be learnt to ensure that any past mistakes are not repeated in any future NHS infrastructure projects, all as specified in Term of Reference 13
3.1.5 The proposed material findings of fact (either in narrative form or by reference to the Provisional Position Papers and/or core participants responses thereto) which are relevant to and necessary for the explanation and/or determination of the foregoing matters

Legal representatives of core participants

3.2 My expectation is that core participants will wish to do what they can to assist me in fulfilling the Inquiry's Terms of Reference. I see the submission of written closing statements as one means of doing so: first, by ensuring that I properly understand the evidence led at the hearing and make appropriate findings in fact; second, by explaining the implications of that evidence for the Terms of Reference. All the core participants have recognised legal representatives. Accordingly, I would invite core participants, through their legal representatives, to submit written closing statements following on the distribution to them of copies of Counsel to the Inquiry's written closing statement.

3.3 Should core participants consider that their experience, interests and responsibilities are not such that they are able to assist the Inquiry by submitting a written closing statement, they are at liberty not to do so. I 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 written closing statement.

3.4 Whereas core participants may include in their written closing statements anything that they consider relevant to the Inquiry's Terms of Reference, I would request that the following matters be addressed:

3.4.1 In so far as they differ with Counsel to the Inquiry, what themes they submit have emerged from the evidence which are relevant to the Terms of Reference of the Inquiry

3.4.2 Whether they accept or not Counsel's proposed explanations of and, where framed as questions, proposed answers to, each of the topics listed in the List of topics; and, in the event that they do not accept Counsel's proposed explanations and answers, their reasons for not doing so, their alternative explanations and answers, and reference to the evidence upon which they rely as supporting their positions

3.4.3 Whether they accept or not Counsel's proposed answers to the questions which are posed in Terms of Reference 1 to 12; and, in the event that they do not accept Counsel's proposed answers, their reasons for not doing so, their alternative answers, and reference to the evidence upon which they rely as supporting their positions

3.4.4 Whether or not they agree as appropriate Counsel's proposed recommendations and, if not, why not; and what alternative and/or additional recommendations they propose, identifying any lessons learnt to ensure that any past mistakes are not repeated in any future NHS infrastructure projects, all as specified in Term of Reference 13

3.4.5 Whether they accept or do not accept Counsel's proposed material findings of fact; and in the event that they do not accept Counsel's proposed findings, what alternative and/or additional findings they propose, and reference to the evidence upon which they rely as supporting their position

4. Oral closing statements

4.1 I further require Counsel to the Inquiry to make an oral closing statement and I invite core participants who have submitted written closing statements and who have intimated their intention to do so, also to supplement their written statements by a final oral statement.

4.2 The purpose of providing the opportunity to make oral closing statements is to assist me, as Chair of the Inquiry, to identify and concentrate on what Counsel and core participants consider, in the light of the evidence and the written closing statements, to be the key questions (including questions which are of particular importance to particular parties) which require to be addressed in order to fulfil the Terms of Reference of the Inquiry. Such key questions would include the identification of the principal material facts that are controversial. They would also include the identification of what parties consider to have been materially adverse events or outcomes, the explanation of how they could have been prevented and what recommendations should be made to Scottish Ministers to ensure that any mistakes are not repeated.

4.3 It is not intended that the oral statement should be a repetition of a previously submitted written statement. Core participants are not required to make an oral statement. It is accordingly open to core participants to rest on their written statements.

4.4 On or before 10 June 2024 I will issue a proposed order in which core participants will be invited to speak. At the same time I may also issue a note of matters on which I would particularly wish to be addressed. Counsel to the Inquiry will be invited to speak first. They will also be invited to speak once all the legal representatives of core participants who have chosen to make oral statements have concluded their statements if they consider that appropriate.

5. Symposium or round table meeting

5.1 In his written closing submission following on the hearing beginning on 23 April 2023, dated 2 June 2023, Counsel to the Inquiry proposed that I might wish to consider convening a symposium or round table meeting of interested and qualified parties to discuss the practicality and utility of possible recommendations which might avoid such problems as may have arisen in the course of the project for provision of the RHCYP/ DCN. Core participants have responded positively to this proposal.

5.2 While I see it as presenting a number of logistical challenges, it is an option which I would wish to keep open. It may be that any such symposium is best held at a later stage of the Inquiry once all the evidence has been led in relation to the QEUH. I would accordingly welcome further comment by core participants as to the value of such symposium or round table meeting, how it might best be achieved, whether it would be preferable for any such symposium to take place after the evidence is concluded in the QEUH, and any implications that may have for an interim report on the RHCYP/DCN.

5.3 I will reserve my decision as to whether and how to go forward with this proposal until after I have heard oral closing statements.

Philip H Brodie
22 February 2024

APPENDIX A

List of Topics for February 2024 hearing in relation to Royal Hospital for Children and Young People and the Department of Clinical Neurosciences (RHCYP/DCN)

This list of topics is available on the Scottish Hospitals Inquiry website at - List of topics for February 2024 hearing | Hospitals Inquiry, published 15 December 2023.

Introduction

The Scottish Hospitals Inquiry Team has produced the list of topics to seek to inform the public and Core Participants (CP) of the current focus of the Inquiry Team and the shape of the next hearing diet due to commence on 26 February 2024.

This paper sets out topics to be covered at the hearings diet and some associated issues. The hearings diet should conclude the evidence taking phase of the Inquiry in relation to the RHCYP/DCN.

Overlap with the Investigation into the QEUH

While the hearings diet is concerned with the RHCYP/DCN, to fully address the terms of reference, there may be evidence that overlaps with the aspects of the Inquiry relevant to the Queen Elizabeth University Hospital ("QEUH").

For example:

1. To address Inquiry terms of reference 11 and 12, regarding knowledge transfer arrangements and the opportunity to learn lessons from the QEUH, witnesses may be asked to explain what the perceived issues were with the QEUH and whether there was an opportunity to learn lessons for the purposes of the RHCYP/DCN project.; and

2. To address Inquiry term of reference 13, concerning lessons learnt and potential recommendations, it will be necessary to consider changes made after the completion of the RHCYP/DCN such as the creation of NHS Scotland Assure.

The topics to be covered at the hearing will include:

1. The development of the design of the ventilation system for critical care rooms and isolation rooms in the period after financial close (February 2015)

1.1 The input (if any), provided by Clinicians, Infection Prevention and Control (IPC), Estates, and Technical Advisors, in relation to the design of the ventilation system for critical care and isolation rooms, in the period after financial close.

1.2 The development of the Environmental Matrix in relation to critical care and isolation rooms, including changes made to guidance note 15.

1.3 Issues that arose concerning the pressure regime. In particular, risk assessments relating to the pressure cascades in four-bedded rooms in various different departments of the hospital and whether implications for critical care rooms were considered.

1.4 Correspondence, including an email chain on 18 April 2018, where NHSL indicated that 4 air changes per hour were required for areas in the hospital. In particular, whether this requirement included the multi-bed wards in critical care and, if so, the basis for including those rooms.

1.5 Correspondence sent by IHSL to NHSL on 31 January 2019 confirming that that the ventilation systems had been designed, installed and commissioned in line with SHTM 03-01 together with further correspondence on this issue in February and March 2019.

2. The decision making and governance concerning the agreement reached between NHSL and IHSL on 22 February 2019 (Settlement Agreement No 1)

2.1 Why NHSL agreed to enter into the agreement.

2.2 Why the ventilation parameters set out in the agreement were deemed adequate and appropriate by NHSL and IHSL, with particular regard to their application to critical care rooms.

2.3 The input (if any) obtained by NHSL from Clinicians, IPC, Estates and Technical Advisors on the ventilation requirements to be included in Settlement Agreement No 1, for critical care rooms, in advance of the agreement being concluded.

2.4 Whether the design parameters for the ventilation system set out in Settlement Agreement No 1 were appropriate for critical care rooms.

2.5 Whether the design parameters for the ventilation system in critical care and isolation rooms conformed to statutory regulation and other applicable recommendations, guidance and good practice.

2.6 Whether NHSL agreed to a formal derogation from the requirements of SHTM 03-01 and, if so, whether any prior risk assessment was conducted.

2.7 The procedure followed by NHSL for the approval of Settlement Agreement No 1. In particular, the consideration of the issue by the Finance and Resources Committee and the Board of NHSL.

2.8 What assurances (if any) were sought by and/ or provided to the Scottish Government that: (i) it was appropriate for NHSL to enter into Settlement Agreement No 1; and (ii) that the specification complied with published guidance and best practice.

2.9 Why NHSL agreed that the certificate of practical completion could be issued at the point Settlement Agreement No 1 was concluded.

2.10 Whether the organisational culture within NHSL allowed individuals to raise concerns and issues in relation to the proposed agreement.

3. The financing of the RHCYP/DCN

3.1. Whether the financing arrangements for the project contributed to issues and defects in the hospital. In particular, whether there was a perceived need for the building to be certified as practically complete as soon as possible to ensure the solvency of the project company.

4. The decision making and governance structure for the project in the period after Financial Close

Particular emphasis will be placed on the decision making and governance concerning Settlement Agreement 1, the instruction of IOM Limited, the consideration of the reports produced by IOM Limited and the escalation to Scottish Government

4.1 The decision making and governance processes NHSL had in place to oversee the project and whether they were adequately and effectively implemented.

4.2 Whether the operational management and governance provided by NHSL was adequate and effective for the scale of the project.

4.3 The extent to which decision makers sought and facilitated input from clinical leadership teams, IPC, Estates, technical experts and other relevant parties when making key decisions to ensure that the built environment made proper provision for the delivery of clinical care.

4.4 The steps taken by NHSL's IPC team, in particular the lead infection control doctor for NHSL, to ensure that a validation report that complied with SHTM 03-01 was obtained.

4.5 Contact between NHSL and individuals involved in the Queen Elizabeth University Hospital and whether this had any role in the key decisions made in the period after financial close, including the decision to instruct IOM Limited.

4.6 The reasons for the instruction of IOM Limited by NHSL to conduct testing of the ventilation system.

4.7 The commissioning and testing carried out by IOM Limited and the consideration of the results by decision makers, and governance bodies, within NHSL.

4.8 When concerns regarding the ventilation system at the RHCYP/DCN were escalated by NHSL to Scottish Government.

4.9 Whether there was any deliberate suppression of concerns regarding the ventilation system by any party involved in the project.

4.10 The escalation of NHSL to Level 3 and subsequently to level 4 of the NHS Board Performance Escalation Framework.

4.11 Changes made to the decision making and governance structure including: (i) the appointment of a Senior Programme Director; and (ii) the creation of the Oversight Board.

4.12 Whether the organisational culture within NHSL encouraged staff to raise concerns and highlight issues in relation to the projects at appropriate times.

4.13 Whether there were failures in the operation of systems and, if so, whether that was a result of failures on the part of individuals or organisations tasked with specific functions.

4.14 Whether national oversight and support was adequate and effective.

4.15 Whether there was effective communication between relevant organisations (including NHSL, Scottish Government, and NHS NSS).

5. The decision making, and governance, around the decision not to open the hospital in 2019

5.1 When the Scottish Government became aware of a potential issue with ventilation at the RHCYP/DCN.

5.2 Whether perceived issues with the QEUH impacted on the decision making. This will include consideration of contact from whistle-blowers at the QEUH with the Scottish Government and its relevance (if any) to decisions taken in relation to the RHCYP/DCN.

5.3 The basis for the Cabinet Secretary's decision not to open the hospital, including the material available to her.

5.4 Communications with patients and families. This issue was covered at the Inquiry's first set of hearings in relation to patients and families. The intention is for relevant individuals within NHSL and Scottish Government to have an opportunity to address the issue from their perspective.

6. The changes to the ventilation system required by HVC Notice 107 and made prior to the opening of the hospital

6.1 Why the brief, and agreed strategy, for the ventilation system for critical care rooms and isolation rooms (as at the point of Settlement Agreement no 1) was deemed no longer to be adequate or appropriate.

6.2 Whether lessons were learned from QEUH in relation to the ventilation system.

6.3 The input (if any) from clinical leadership teams, IPC teams, estates teams, technical experts and other relevant parties prior to HVC Notice 107 being issued and Settlement Agreement No 2 being concluded.

6.4 The reasons for NHSL issuing HVC Notice 107 and entering into Settlement Agreement No 2.

6.5 The changes made to the design for the ventilation system for critical care rooms and isolation rooms.

6.6 Remedial works undertaken to the ventilation system in relation to critical care and isolation rooms.

6.7 Whether the remedial works have been adequate and effective. In particular, whether the ventilation system in critical care and isolation rooms is designed, and commissioned, in compliance with published guidance and best practice.

6.8 The testing and commissioning carried out by IOM Limited.

7. The decision making, and governance, around the decision to open the hospital

7.1 The basis for the Cabinet Secretary determining that the hospital should open.

8. Whether the hospital provides a suitable environment for the delivery of safe, effective person-centred care

8.1 The material demonstrating that the ventilation system in critical care and isolation rooms provides a suitable environment for the delivery of safe, effective person-centred care.

9. Changes in Policies, Procedures, Protocols and Governance Arrangements after the project

9.1 Whether NHSL, and the wider NHS, have implemented recommendations from previous reports (including the Grant Thornton report) and whether these are now embedded in the wider NHS.

9.2 Whether there are systemic knowledge transfer arrangements in place to learn lessons from healthcare construction projects and whether they are adequate and effective.

9.3 Whether NHSL and the Scottish Government had an opportunity to learn lessons from the experience of issues relating to ventilation at the QEUH and whether they took advantage of that opportunity.

9.4 The changes in relation to new hospital projects arising from the creation of NHS Scotland Assure.

9.5 Changes introduced by the most recent version of SHTM 03-01, including the creation of the Ventilation Safety Group.

9.6 Lessons learnt to ensure past mistakes are not repeated.

For the avoidance of doubt, the above topics are not intended to be an exhaustive list.