



SCOTTISH HOSPITALS INQUIRY

**Procedural Hearing
Glasgow IV**

Tuesday, 11 March 2025

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THE CHAIR: Good morning, everyone, both those who are here in the hearing room in Edinburgh and those who are following proceedings on the YouTube feed. Now, this morning is a procedural hearing. Now, that means there will be no evidence led, but its purpose is so that I and counsel to the Inquiry, Mr Mackintosh immediately to my right and Mr Connal sitting beside him, can obtain the assistance of the legal representatives of core participants as to the manner in which the Inquiry goes forward. By that I mean what evidence, in addition to the evidence heard at previous hearings, requires to be heard and, in some cases, what are the consequences of that and how it will be best done.

Now, the agenda will address publication of the existing-- well, when I say "existing," the closing statements that were received by the Inquiry following the hearing which finished in the latter part of last year; it will consider witnesses and documents for further hearings; there is an application to be heard, put forward on behalf of NHS Greater Glasgow and Clyde; and there, following on that, will be a consideration of the implications of that application; there are some matters which I would incidentally raise arising from closing statements, and there will be consideration of core participants'

requests in relation to the evidence to be led at future hearings.

The way in which I propose that we deal with this is that I will first call upon Mr Connal to deal with the first three items on the agenda. I will then ask for responses from the legal representatives of core participants, and I hope the legal representatives have had notice of the proposed running order. I will ask legal representatives to come forward to the microphone opposite me in order that they can be heard, particularly by me.

So, with that, by way of preliminary explanation, I would ask Mr Connal to address the Inquiry procedural hearing and will then turn to the legal representatives of the core participants. Mr Connal.

Submissions by Mr Connal

MR CONNAL: Thank you, my Lord. It may not be necessary, as it turns out, for my Lord to hear from other legal representatives until we turn to Item 3 on the agenda, which is the application by NHSGGC. The first item on the agenda relates to the potential publication of the closing statements following what has become known as Glasgow III, the hearing which finished in the latter part of last year.

In paragraph 1.2 of the agenda for

today's meeting, my Lord indicated that you were minded to direct publication of these closing statements in unredacted form with one exception about patient names, which we needn't go into, but that it would be necessary to hear argument if there was opposition to that. I can advise, my Lord, that no party has intimated an objection to publication, and given that this is a public inquiry, my submission to my Lord is then quite straightforwardly that my Lord should proceed as indicated. You were minded to do so by publishing these on the website.

I should perhaps just add this, that in my submission, the informed visitor to the website will readily understand that what is being published is no more and no less than submissions by various parties and that none of these submissions, including those from counsel to the Inquiry, amount to my Lord's views, which have yet to be formulated, and that, in my submission, will be clear.

In addition, if, following today's proceedings, a decision is made to receive certain further evidence as proposed by NHSGGC, then all of the closing submissions may in a sense potentially become provisional because some of the issues they cover may be impacted by that further evidence, and

that also, in my submission, ought to be understood by visitors to the website. So I have nothing further, therefore, to say on agenda item 1.

THE CHAIR: Thank you.

MR CONNAL: My Lord, so far as agenda item 2 is concerned, again, I need say relatively little. What was envisaged by agenda item 2 was that counsel to the Inquiry would, having heard from various core participants, produce a provisional list of witnesses for the remainder of the intended evidential sessions of the Inquiry. Now, that has been done. A provisional list of witnesses has been produced.

However, for the purposes of the present item on the agenda, I say no more about that, in part because the contents of those witness lists may be impacted by any decision which may or may not be made following later agenda items, and also because, in the course of the run-up to this procedural hearing, there have been a number of discussions with a number of parties about suggestions for witnesses which are still under consideration in some cases, and what I'm proposing is I say no more about it at this stage. A number of these matters will be touched upon by Mr Mackintosh when he deals with the possible practical consequences of any decision which my Lord makes on

agenda item 3.

THE CHAIR: Legal representatives have been given notice of, as things stand at present, the witnesses that counsel would commit to leading.

MR CONNAL: Yes, yes. In a number of cases-- By way of oral evidence, in a number of cases, the proposal currently is that witnesses would simply be taken by a written statement.

THE CHAIR: Right, yes.

MR CONNAL: So, again, I have nothing further to add on agenda item 2.

Agenda Item 3, which, with the consequences subsequently dealt with, is probably the main function of this preliminary hearing, relates to the application made by NHSGGC to receive the evidence of three witnesses, Professor Hawkey, Dr Agrawal and Dr Drumright, in respect of a report that they together have prepared, and I'll simply refer to that for ease as "the report" to avoid stumbling over the names, no doubt. Now, that application has been received, and it falls for consideration today.

My Lord, I think the first thing I ought to say as counsel to the Inquiry before I turn to the substance of my submissions about that request is that it has to be recognised that if a decision is taken to admit this evidence, this report, there is, as is now painfully obvious, a

consequence in delay and disruption to what would otherwise have been planned by the Inquiry, and a number of comments have been made pointing out that any such delay and disruption impacts on families, who are of course at the heart of this Inquiry, and indeed on a number of other participants who have already had to put a great deal of effort into what has gone before, and I recognise at once that those impacts are-- and I struggle for a suitable word. I have the word "unfortunate" written down, but I don't believe it properly encompasses the consequences, but let me just stick with that. These are unfortunate and regrettable. However, we are, as they say, where we are.

The position before your Lordship is this, that a fresh application – so this is not the previous application renewed, this is a fresh application to admit the report and hear the witnesses – has been made, of course, by NHSGGC, and that is supported by a note dated 20 February which has been circulated to all core participants. On a point of detail, the note in support correctly points out that the issue, quite apart from being considered as a standalone application, might also be considered under certain provisions of Direction 9 issued by my Lord earlier in the process of the Inquiry.

For my part, I submit it's not

necessarily the case that the criteria under Direction 9, were we not where we are, might be the same, but I suggest it's unnecessary to deal with it under that heading. We can simply deal with it as a standalone application.

The other point that is now, in my submission, clear is that following the judicial review in the Court of Session determined by Lady Wise, the details of which are very familiar to all present, and to which I return again in a few moments, it is clear from the discussion in that opinion and from the interlocutor which followed it that, in any strict sense, there is no current legal obligation on the Inquiry to grant a fresh application, and no order has been made by the court seeking to compel you, as the chair of the Inquiry, to grant that application. However, what the court's opinion – and I needn't ask my Lord to look it up, but it's covered in paragraph 39 – makes plain is that the way the court's ruling is framed means that the chair is now free to consider the matter afresh, unconstrained by any previous views expressed.

My Lord, I have considered the terms of the note lodged in support by NHSGGC, and I say three things at this stage. Firstly, at this stage – and, I stress, as information stands in the hands of counsel to the Inquiry today – I accept that the authors of the report have

relevant expertise in their fields but, beyond that, I specifically make no other concession, simply because it's not appropriate for me to do so as of now. Secondly, and no doubt very understandably, the note of 20 February on behalf of NHSGGC sets out at points what might be regarded as arguments which, in due course, NHSGGC will wish to urge on the Inquiry.

THE CHAIR: Sorry, I think-- Entirely my fault, Mr Connal. I missed a sentence there.

MR CONNAL: Sorry.

THE CHAIR: You accepted the authors' relevant expertise, but beyond that you make further concessions.

MR CONNAL: I make no concessions.

THE CHAIR: Yes. What did you go on to say?

MR CONNAL: The second point is simply a point of information, if no more, that all I was indicating was that, understandably, the note in part sets out what I might regard as arguments, propositions, submissions, if one likes, that in due course NHSGGC might wish to urge on the Inquiry in its final conclusions; and for the purposes of today, in my submission, it's inappropriate that I should comment on any of these. That would be premature.

The second element of the same

point, if you like, or the third element in the series here, is that at points the note also suggests what, in the view of NHSGGC, might ultimately prove to be the value of the report. Again, at this stage, it's inappropriate, in my submission, for me as counsel to the Inquiry to comment on that. I say nothing about whether it's good or not good. I simply am not commenting on it at this juncture.

So far as the substantive content of the report which they seek to have admitted, I will deal with that only very shortly, and I make clear at once that I don't propose to advance a submission that the report should be admitted in part and rejected in part. I'm not going deal with the matter in that way. However, I mention briefly two parts. Chapter 7 of the report does set out a view, particularly about comparative infection rates in different locations, which has not, in that form, hitherto been considered by some of the witnesses from whom the Inquiry has heard, and to that extent may be regarded, therefore, as a relevant piece of information.

And then chapter 8, which deals with aspergillus infections in certain populations of patients over certain dates, what I say about that is that there are issues about aspergillus. Some issues have been raised about that topic by

other core participants as well, and it may be that the material set out in chapter 8 could also be regarded as relevant to any further inquiry into that area.

My Lord, what then should the Inquiry do in response to the application? I have had the benefit of noting the positions adopted by a number of core participants. Not all have sought to adopt a position. Some have adopted a neutral position, and I need say no more about that.

Others have made points and, in a sense, I can see some force in these, that to the issue of lateness, difficulty in explaining the timing of these reports-- this report rather, and so on have force. There are arguments that the matter, or at least some of the matters, contained in the report could have been dealt with as early as the receipt of the case note review report by NHSGGC, or certainly pursuant to some of the views being expressed in the course of the second of the hearings of evidence in the Glasgow inquiry when evidence was heard from physicians and others.

So I recognise the force of some of these submissions, and of course there are also general questions of cost and time and the need to complete the task which my Lord has of responding to the terms of reference. However, in my submission, the principal driver for the

decision which my Lord has to make today ought, in my respectful submission, to be a proper consideration in the round of what should be taken from the ruling of the Court of Session on the judicial review which related to the previous decision about admission of that report.

Now, I don't intend to take up time today by going through the whole of that decision. It is well known to the participants here and to my Lord, and that wouldn't be worthwhile time to take up. However, my overall submission is that a reading of the ruling as a whole indicates a view that the court considered that fairness might require the admission of the report.

Now, I needn't ask my Lord to look up the document at this stage, but I'll give paragraph references for later consideration if required. There is a view expressed in the decision at the end of paragraph 33 that once it was known that there was – that's contrary to views expressed by others to the Inquiry – contrary technical scientific evidence available, and I quote, "It is difficult to regard its complete exclusion from consideration as fair."

In addition, the word "balance" appears on several occasions in the discussion in the court, and there was another section I would direct my Lord to where, in paragraph 34, the court

indicates that the existence of contradictory expert evidence would be a significant matter when considering the need for balance. I'm slightly paraphrasing the words there. So these are two passages which, in my submission, support the overall view I have reached.

But, in addition, I note that, at the end of paragraph 36, the court suggests that one, in effect, advantage – and that's not the phrase the court uses, but that's what I take from it – of admitting the report might be to assist the Inquiry in making robust and defensible finding. That being so, and taking a view in the round, it is my submission that the appropriate course for my Lord to take, which I accept is entirely a decision for my Lord to make, is now to admit these reports, and I do not intend to add anything else to that. Others may wish to respond to what I've said, not only representatives for NHS GGC but a number of other participants.

And the only other thing I would just say for completeness, in case I forget, is that I'm conscious that in the note in support of admitting the reports, NHS GGC very helpfully attempt to create a timetable of events, which they suggest might be one possible way of moving forward. I can probably indicate at this stage that if the reports are admitted,

then timetabling will be necessary, it will require to include some of the steps indicated by NHSGGC, but it may operate on a different timetable regulated by my Lord following discussions with counsel to the Inquiry, and Mr Mackintosh may have more to say on that when he deals with some of the possible practical consequences should the reports be admitted. And I have nothing further to add, therefore, at this stage, unless my Lord wishes to raise anything.

THE CHAIR: Thank you, Mr Connal. As I understand it, that is what you propose to say at this stage.

MR CONNAL: That is what I propose to say at this stage. If there are matters that emerge consequentially, as it were, in the submissions of others, it may be that Mr Mackintosh can conveniently deal with these, because he's going to be speaking after that on practical matters.

THE CHAIR: Thank you, Mr Connal. Mr Gray?

Submissions by Mr Gray

MR GRAY: My Lord, dealing therefore with Item 3 on the agenda and the application made on behalf of NHSGGC, I would formally invite my Lord at this juncture to receive the expert report dated 24 July 2024 of Professor Hawkey, Dr Agrawal and Dr Drumright.

That report of course relates to the risk of infection from the water and ventilation systems at both hospitals, and in making this application, my Lord, I do so for the reasons set out in the written statement, which was provided on 20 February. And I should say at this stage, my Lord, I'm very grateful to counsel to the Inquiry for the helpful submissions which they have just made.

My Lord, having regard to the reasons set out in the written statement, I would invite my Lord to accept that it would be appropriate in all the circumstances for the report to be received. In my submission, the report is one which is directly relevant to the issues with which my Lord is concerned in terms of Term of Reference 1 and, by extension, the four questions posed in the Inquiry's Direction 5. In my submission, the report directly addresses the question of whether the built environment exposed or exposes patients to an increased risk of infection and does so in a number of ways, including, as counsel to the Inquiry has indicated, by conducting a comparison with infection rates in other hospitals. My Lord, in my submission, each of the authors are recognised experts in their respective fields – bacteriology, haematology and clinical informatics – and are in a position to assist the Inquiry on the crucial questions

with which the Inquiry concern.

My Lord, insofar as the conclusions reached by the experts are concerned, they are, of course, very different to those which the Inquiry has heard to date, and it is submitted that the existence of contradictory expert evidence on such a crucial issue should be regarded as a significant development, and I would invite my Lord to conclude that the receipt of such evidence is likely to be of assistance to my Lord in the determination of these matters. At the very least, my Lord, it is respectfully submitted that it is in the interests of both fairness and balance that such a report should be received, in particular having regard to the fact that the application is presented by a core participant for whom, as Lady Wise noted, the risks of any adverse finding, including loss of public confidence, are incalculable.

My Lord, I accept, of course, that if my Lord is minded to accede to the application that I make, that it results in delay of some length, but I would invite my Lord to accept that whilst that is singularly unfortunate, that the factors to which I have referred and rely upon in the written statement outweigh that---

THE CHAIR: I'm sorry, Mr Gray, entirely my fault. When you drop your head-- It's my hearing rather than your enunciation. When you drop your head,

I'm not hearing you as well as previously.

MR GRAY: I was just saying, my Lord---

THE CHAIR: Excellent.

MR GRAY: I was just saying, my Lord, that whilst I entirely accept that if my Lord is minded to accede to the application that I make, that it would result, of necessity, in delay in the Inquiry. However, I would invite my Lord to accept that whilst any delay is singularly unfortunate, that the factors upon which I rely and the reasons set out in the written statement should be viewed to outweigh that unfortunate consequence.

My Lord, insofar as how the application may be received and considered if my Lord is minded to grant the application, that is an issue which was required to be considered under Direction 10. I would invite my Lord to receive the report and for the authors to be led as witnesses by counsel to the Inquiry, and for questions by core participants to be proposed in the normal way under the informal Rule 9 procedure which has been followed hitherto.

As counsel to the Inquiry has indicated in the written note, a suggested timetable at section 4 has been put forward. It is one which follows the same format as the procedure which has been adopted in relation to other expert

evidence and would, in my submission, at least potentially enable the report to be considered by all parties in advance of the proposed hearing of 19 August, but I entirely accept that counsel to the Inquiry may have their own views and be in a more informed position as to the practical way forward. At section 4, I've simply put forward what is potentially a way of proceeding to ensure fairness.

My Lord, I was also required to consider the issue of the availability and of documents that may be required by counsel to the Inquiry to consider fully the expert report, and that includes datasets. I can confirm, my Lord, that all data has been provided and, as I understand, all documentation that was provided to the experts has also been provided but, of course, if my Lord is minded to accede to this application, counsel to the Inquiry will be able to liaise directly with experts in relation to any other additional information that they seek to recover.

THE CHAIR: Can I just make sure I'm following that? You confirm that the dataset – in other words, the underlying raw material relating to all the hospitals – considered in Dr Drumright's portion of the report has already been made available to the Inquiry?

MR GRAY: Yes, as I understand, my Lord.

THE CHAIR: Second step, does

that mean that any core participant who wishes to have access to that dataset may have it?

MR GRAY: That, my Lord, will ultimately be a decision for counsel to the Inquiry if my Lord accedes to the application. As I understand, at this juncture, there are perhaps two core participants who may seek access to the data, and that is a matter which has been discussed informally with me by counsel to the Inquiry, and NHSGGC would have no difficulty with that data being shared, subject to restrictions being in place as to its circulation because of the confidential nature of the data.

THE CHAIR: Right. Well, you anticipated my next point in relation to confidentiality. Now, how about the calculations or the underlying-- essentially, arithmetic of Dr Drumright? Now, as I understand it, her conclusions would be more readily testable – or, at least, understandable – if, as it were, her working, which is probably in a spreadsheet, was made available. Now, hasn't that been made available?

MR GRAY: My Lord, I do not know if it has been made available but I can see no reason why it should not be and, my Lord, if my Lord accedes to the application, then the Inquiry experts and their reports will be obviously required to communicate and liaise appropriately

with counsel to the Inquiry and to provide all their workings. Whether that has already been done, my Lord, I'm afraid I don't know.

THE CHAIR: No. Anything else?

MR GRAY: Those are the submissions which I would make, my Lord.

THE CHAIR: Right. Can I raise with you at this stage, Mr Gray, something which may be relevant to this item on the agenda, but I think is highlighted at paragraph 5? Now, notwithstanding the element of opinion within the report that you propose should be received and the epidemiological element of it, this evidence, like all the evidence in the Inquiry, will have to be fitted within a factual context. You accept that?

MR GRAY: Yes, my Lord.

THE CHAIR: Right. Now, that is merely one aspect, a more general aspect, and that is that, in attempting to fulfill the terms of reference, I will have to make certain determinations and I will do that on the basis of evidence heard, evaluation of that evidence, and that, in turn, involves an assessment of witnesses, and it was with that in mind-- and, to be perfectly frank, I require the assistance of legal representatives to do that. I've heard a great deal of evidence. I want to give it fair consideration, I want

to make sure that everyone's perspective on that evidence is considered by me and if there are weaknesses or strengths in that evidence, I want to be pointed to them.

This is perfectly familiar to anyone who appears in court. Judges can't do it on their own, and the reason that I have the assistance of counsel to the Inquiry, and the reason that I have legal representatives such as yourself, is that it's only with that sort of assistance that the true issues can be identified and, in particular, what is really at issue and what is not at issue.

Now, with that in view, lest there be any doubt about it, I set out, admittedly, a request, but I would suggest a fairly clearly enunciated request in paragraphs 2.1, 2.2 and 2.3 of Direction 9 requesting what I was looking for in closing statements from core participants. As I say, it's really a call for help in the context where I have been assured, and I have accepted, that it is the wish of core participants to assist the Inquiry.

Now, it would appear to me, Mr Gray, that you have declined to provide the analysis of the evidence which you would commend to me. I have in mind, in particular, I think it's paragraph 21 of your closing statement and, at present, I, quite frankly, do not feel that I have the direction, the analysis, that I need

properly to consider your perspective on the evidence that has been heard on the witnesses and the reasoning for your position, and if I don't have your perspective, I don't have the whole perspective.

Now, as I say, I draw your attention to paragraph 21, by way of example. In being invited to hear other relevant evidence, and it's accepted that this is other relevant evidence, it would seem to me to be at least relevant if I am-- and not just me but the other core participants, have the opportunity to get the benefit of your-- I keep coming back to the word "analysis." In other words, why you say particular evidence is important; why you say particular evidence should be rejected; why you say witnesses should be regarded as reliable; why you say witnesses shouldn't be regarded as reliable. As yet, I don't have that assistance and it occurs to me that I would be very much assisted in having that assistance prior to hearing the evidence you propose that I hear, and I can't speak for other legal representatives but I rather think that other legal representatives would also be assisted by having the benefit of the way you look at the evidence that has been heard.

I think I'm right in saying that, for reasons I can understand in relation to

the evidence in Glasgow I and Glasgow II, you took the position that what you had heard at that stage was of the nature of perception, so I understand that, but the result is that, although I have the 25 pages of your closing statement, some of it very firmly stated, I don't have the benefit of your underlying thinking. Now, if you were to have the opportunity, and if other core participants feel that that has consequences for them, I'll hear from it. If you had the opportunity and, admittedly, a bit of time-- You make the point that counsel to the Inquiry's closing statement is very lengthy, and that is true. If you had the opportunity, would you take that opportunity in providing me with a closing statement which was directed at the request that I made in paragraphs 2.1, 2.2 and 2.3 of Direction 9?

MR GRAY: Yes. Absolutely, my Lord.

THE CHAIR: Now, I appreciate that this might take some time. I wondered provisionally about the end of June.

MR GRAY: Yes, I would have thought that timescale would certainly be achievable, my Lord.

THE CHAIR: That would be obviously distributed to other core participants, and it could be absorbed by everyone prior to hearing the evidence you propose that I admit. Well, I'm very grateful to you, Mr Gray, because I need

that help.

MR GRAY: Yes, my Lord, I completely understand why my Lord makes the request and I'm very happy to ensure that that is fulfilled.

THE CHAIR: I'm grateful to you.

MR GRAY: My Lord, unless there are any other matters at this stage, my Lord?

THE CHAIR: No, I think that was the only matter I wanted to take forward with you.

MR GRAY: Thank you, my Lord.

THE CHAIR: Ms Crawford?

Submissions by Ms Crawford

MS CRAWFORD: Good morning, my Lord. Thank you.

THE CHAIR: Good morning.

MS CRAWFORD: My Lord, addressing, if I may, agenda item 3, which I think is principally what we're considering just now, the ministers have lodged their----

THE CHAIR: Ms Crawford, again, it's me, it's not you----

MS CRAWFORD: I'll bring it a bit closer to me as well.

THE CHAIR: I think I maybe mentioned on a number of occasions, my hearing is not what it was.

MS CRAWFORD: Thank you, my Lord. I hope that's a little bit better,

maybe not. My Lord will have, of course, the ministers' response to the application and my Lord will have noted that the ministers adopt a neutral position relative to that. They do, however, highlight certain paragraphs in the opinion of the Court of Session to which my learned friend, Mr Connal, has already made reference, in particular paragraphs 33 to 34 and 36. That, of course, is bookended by the reference which the ministers make to section 17(3) of the Act and suggest that my Lord should direct himself under reference to section 17(3) and also highlight the need to avoid unnecessary cost to public funds.

As ever, my Lord's decision will be a balancing exercise, bearing in mind all the relevant factors. Without adopting a position either for or against and maintaining the neutrality of the ministers' position relative to the application, recognising it is, of course, a matter for you, my Lord, the ministers do make a suggestion in the event that the report is received by the Inquiry, and that relates to the practicalities of how the Inquiry might best receive the evidence of the authors of the report and, indeed, other witnesses who may be required to be recalled and, in particular, the ministers have in mind the authors of the case note review, and the suggestion-- and I've canvassed it, albeit briefly, with counsel

to the Inquiry, the suggestion is that it may be thought appropriate to hear that evidence by use of the colloquial phrase “hot-tubbing,” but for those listening in who are not familiar with that phrase, by that is meant a managed type of evidential hearing chaired, I would imagine, by my Lord, having set out an agenda in advance with specific questions which the Chair would like the relevant expert witnesses to consider.

Another example where such procedures have been followed – with which, I confess, I’m more familiar – is in the context of planning inquiries and what are described as hearing sessions, where the reporter sets out in advance an agenda and the witnesses who come to discuss matters know in advance of what matters the reporter would like addressed with various sub-questions, and effectively-- whether the choreography of the room is a roundtable, but, effectively, what is imagined is that there’s a roundtable discussion amongst those who are in a position to properly inform the decision-maker, and it may be-- and I only say “may be,” it’s a matter entirely for my Lord as to how best to obtain the evidence if the report is admitted. It may be that that way of proceeding would ensure an effective and efficient way of teasing out just what the differences are between the various experts. Often,

these things can be quite nuanced and often, as well, experience suggests that matters perhaps are not as black and white as they might appear initially on paper, and a managed discussion can often work out exactly-- and picking up my Lord’s point a moment or two ago, pick out what is truly an issue between respective parties without a sort of to-ing and fro-ing done on the paper between the respective experts.

It’s only a suggestion, my Lord, and it’s a matter entirely for my Lord as to how, if the report is admitted, my Lord would consider that the evidence which is designed, if admitted, to assist the Inquiry, how best that my Lord can get the benefit of that evidence and, indeed, other witnesses who it seems to ministers will require to be recalled. I did mention the case note review authors because so far as their methodology is concerned as set out in the case note review, that is, of course, criticised by the GGC, or in the GGC report, and I would imagine that it may be helpful for my Lord to hear the extent to which there are differences in methodology and, as a matter of fairness to the case note review authors, to respond to those criticisms.

THE CHAIR: You say it’s a matter for me and, in coming to any decision or procedure, that is so, but I was going to ask you, and you’ve answered this

question, your own experience of managed discussion. Depending on the issues-- Let me be frank, I have, I think, no formal experience of that in a judicial context and, indeed, I think the Scottish Bench-- I mean, you use the example of a planning inquiry, but I think the Scottish Bench has fairly limited experience. There are some instances of which I'm aware.

It's quite a demanding exercise, but I think the point I would raise with you today is that it occurs to me that, if one was to consider going down this route – and certainly any procedure which means that fewer days are spent by hearing oral evidence and, maybe more to the point, in hearing evidence which turns out not really to be very productive – is something I would wish to explore, but I think, if it was to be explored, probably one would require some sort of preliminary conference among legal representatives in order to share their experience----

MS CRAWFORD: Indeed.

THE CHAIR: -- and, I mean, before you go to the experts, it occurs to me that one might get the benefit of some sort of discussion among legal representatives, which may or may not involve me, but certainly you mentioned this proposal in your written submissions and it will be given consideration.

MS CRAWFORD: Yes, thank you. Just picking up that last point, one can also draw the analogy with Commercial Court procedure where there has, as my Lord has alluded to, been use of hot-tubbing managed discussions – albeit perhaps limited use of it – and, of course, my Lord will be aware of the case management powers which are available to the court, and it may be that one could learn from that type of procedure as well, but certainly if----

THE CHAIR: As you say, it's part of a theme which I was exploring with Mr Gray. I mean----

MS CRAWFORD: The suggestion is----

THE CHAIR: -- I suspect when it comes to underlying factors, less controversy than there may appear to be.

MS CRAWFORD: Well, that is the ministers' suspicion as well, my Lord, and as I say, the suggestion is made to try and make most effective use of this Inquiry's time and not have days of perhaps what might be unnecessary evidence and focus on what is truly in dispute between parties. I should, of course, acknowledge that it will require what is, again, colloquially referred to as a lot of front-loading on the part of participants and, indeed, you, sir.

THE CHAIR: That's the philosophy of the Commercial Court as I understand

it.

MS CRAWFORD: Indeed, indeed.

Thank you, my Lord.

THE CHAIR: Thank you, Ms Crawford. Ms Doherty?

Submissions by Ms Doherty

MS DOHERTY: My Lord, I appear on behalf of NHS NSS and, in relation to NHSGGC's application, I can confirm that NSS remains neutral on the issue of whether or not this report should be received into evidence. It's entirely a matter for your Lordship's discretion. If the application is successful, my Lord, NSS considers that it would assist the Inquiry to receive a commentary from NSS on the report and NSS is happy to provide such a commentary. It's suggested that the commentary would be on the epidemiological content of the report and it would be similar in nature to the responses that NSS has provided to Mr Mookerjee's report, and it would be prepared by Shona Cairns, who is a consultant healthcare scientist at NSS. She would be the lead author of the report, although there would be some input from others within NSS to assist---

THE CHAIR: Sorry, I missed that detail. Ms Cairns would propose to---

MS DOHERTY: She would be the lead author of the report, my Lord,

although it may be that there would be some others in the team that would assist. NSS tends to work in a collaborative way.

THE CHAIR: What is proposed, at least in the present, is a response document which would be in the form of a report on the report?

MS DOHERTY: That's right, my Lord. Again, as I said, it's similar to what they've done before, really, when they've looked at expert reports and made comments and raised questions, so it would be that sort of commentary which is what is proposed. To be clear, my Lord, the commentary would not address microbiology or whole genome sequencing and it wouldn't attempt to redo the analysis in the report. It would simply be commenting on it and raising any questions about it.

Now, to enable this to be carried out more, NSS would need access to the data, both raw and final data used by the report's authors when preparing it and, in addition, I'm told that NSS would need support from an external statistician who would provide specialist input in respect of the methodology used in the report. I understand that there are several statisticians who do collaborate regularly with NSS and there was reference earlier this morning to the calculations, the arithmetic, in the report, my Lord, and Mr

Gray indicated that there should be no reason why the workings of that should not be made available, and I anticipate that those workings would also be something that would be needed by NSS to assist in the work undertaken by the statistician to prepare the commentary.

Now, in relation to the time scales, my Lord, NSS has noted the suggested timetable in the application made by GGC. Of course, NSS hasn't yet seen the data but, assuming the data is, broadly, as it expects, NSS should be able to provide the Inquiry with its commentary within eight weeks of receiving that data. Now, the eight-week figure, my Lord, was considered because that is the figure suggested in GGC's timetable. If that figure is too long and a shorter figure is suggested, then NSS would certainly look at that seriously, but that is why the figure of eight weeks has gone in there. In the event that Shona Cairns of NSS is provided with the data to enable her to provide the commentary, then, of course, she should be listed as an additional witness for Glasgow IV, Part 2 in case her evidence is required.

So, my Lord, in the written statement, other matters were addressed but if I'm just dealing with what is in the response to Item 3 of the agenda, my Lord, I don't think I need to go on to speak to these matters just now.

THE CHAIR: In your written application, though, there is reference to Laura Imrie and Thomas Rodger, and I take it that's a matter that you and counsel to the Inquiry have----

MS CRAWFORD: Yes, my Lord. It's in relation to the Glasgow III closing statement. Some matters were raised in the closing statement, and I had some discussions with counsel to the Inquiry about that and about how we should have some evidence to support what was said in these closing statements, and therefore it's proposed that the evidence would be by Laura Imrie and Shona Cairns, who is obviously the person I'm speaking about in relation to the Greater Glasgow report, and Thomas Rodger who's already on the counsel to the Inquiry's provisional list to speak to other matters.

THE CHAIR: Thank you very much.

MS CRAWFORD: Thanks, my Lord.

THE CHAIR: Ms Watts.

Submissions by Ms Watts

MS WATTS: My Lord, I appear on the instructions of the Medical and Dental Defense Union of Scotland representing Dr Inkster, Dr Peters, and Dr Redding. My clients, my Lord, are opposed to receipt of the GGC report at this stage,

although they of course recognise and respect that ultimately it is entirely a matter for my Lord's discretion. I have prepared a written note which deals with my client's position on this issue, amongst other things, and I adopt that as part of my submissions today.

I would add a few short further observations, my Lord. As we have set out in the note that we prepared, my client's position is very much provisional at this stage. We have not had access to any of the data or the documentation or the workings which the authors of the GGC report have relied on in the production of their conclusions, and as such, we are unable to meaningfully consider the report or its conclusions or the analysis that underpins it. We consider that the timetable which is envisaged by NHSGGC is likely to be challenging to meet----

THE CHAIR: When you say that-- my apologies for interrupting you. I am assuming you are concentrating on chapter 7?

MS WATTS: That is correct, my Lord, yes.

THE CHAIR: Yes.

MS WATTS: So, my position, my Lord, is that we consider that the timetable is likely to be difficult to meet but that is a provisional position because, of course, until we have sight of the data,

it is impossible for us to take a clear view as to what work will be required in order to respond to it or engage with it. I would emphasise, my Lord, that my clients have absolutely no desire to delay or protract matters. If at all possible, their position is quite the opposite, in fact. I have nothing else to add, my Lord, beyond what is already in my written note, unless there is anything else I can assess my Lord with.

THE CHAIR: After I call Mr Mackintosh, legal representatives will have an opportunity to come back on anything that arises from that, but I take it you are content to leave your submission at this point at this stage?

MS WATTS: Yes, thank you, my Lord.

THE CHAIR: Right. Thank you, Ms Watts. Ms Connelly. Yes.

Submissions by Ms Connelly

MS CONNELLY: My Lord, I appear on behalf of the Cuddihy and the Kai families, and in respect of the report proposed by GGC NHS, the families maintain a neutral position, my Lord, in respect of the application to have their expert report received.

THE CHAIR: When you say "maintain," I think that indicates a degree of movement.

MS CONNELLY: Yes, my Lord,

you are quite correct.

THE CHAIR: You were----

MS CONNELLY: We are adopting rather than maintaining, my Lord.

THE CHAIR: -- persuasively a little bit further away from that. So, your position is now neutral?

MS CONNELLY: Indeed, my Lord.

THE CHAIR: Thank you.

MS CONNELLY: However, my Lord, as is set out in our written application, in the event that the report is allowed, we do request that copies of letters of instruction and all documents that were furnished to the SED experts in respect of their instruction to prepare the report be made available to the Inquiry and core participants.

My Lord, one of the reasons for requesting SED is the fact that the letters of instruction that we have had sight of indicate that this report was prepared in respect of not only this Public Inquiry but also civil and potential criminal proceedings. Therefore, the communication between those instructing and those preparing the reports may be relevant in terms of the findings that are included within the report, my Lord, as will the underlying dataset.

Your Lordship will be aware, from previous submissions made on behalf of those that I represent, there has been a continuous issue throughout, prior to the

Inquiry itself and the Case Note Review of, for example, the instances of *Mycobacterium chelonae* not being included in data sets that were provided to bodies such as the Case Note Review when they were carrying out their work. We are keen to ensure, my Lord, that there aren't any such omissions in the dataset that has underpinned the conclusions reached in this proposed report.

THE CHAIR: Yes, that refers to, as it were, a less than full dataset----

MS CONNELLY: Indeed, my Lord.

THE CHAIR: But you also say – and Mr Mackintosh may deal with this – that you would suggest that at least counsel to the Inquiry-- in fact, you said counsel to the Inquiry and legal representatives have access to all communications between GGC and the witnesses. Did I understand that correctly?

MS CONNELLY: My Lord, I believe that that would be the ideal position. The letters of instruction have already been made available to core participants. Were there further instructions issued, then these should also be shared, my Lord, in addition to the initial letter of instruction.

THE CHAIR: Right. Well, I will ask Mr Mackintosh to address that.

MS CONNELLY: Thank you, my

Lord. My Lord, in our written submission, we do deal with another matter of additional evidence, but you may wish to wait to deal with that at a later point.

THE CHAIR: If it is convenient to you to deal with it now, I am sure Mr Mackintosh will be able to respond. Yes, the other point you wish to raise?

MS CONNELLY: Yes, my Lord. Within our written submission, it is largely devoted to the question of additional evidence around the issue of governance, my Lord. As we note, whilst there has been evidence of multiple individual instances of failure, there has not yet been an exploration of how failures in NHS GGC corporate governance may have materially contributed to an increased risk of infection for vulnerable patients. The governance failure represents a critical enabler that likely heightened the risk of harm.

My Lord, it has been indicated to me that that request will not be exceeded to and, in my respectful submission, if the Inquiry is to fulfill its remit in addressing terms of reference, particularly seven but also eight and nine, then this lacuna in evidence does require to be gapped at this point, filled at this point, my Lord.

In the written submissions, my Lord, I make reference to the findings of the Vale of Leven Inquiry, where it was said

that it was essential that there was communication between the Board to the ward. We have seen multiple instances from estates, from management and elsewhere where alerts were made to issues of safety and compliance with standard governing documentation, such as SHTM, and that no follow-up action was made.

My Lord, whilst there are all of these individual instances of failure, what your Lordship has not been furnished with is evidence on what should have occurred and what actions should have been taken. Whilst it might be obvious that the DMA Canyon 2015 report should have not been put in a drawer and forgotten about, things become rather more complex when we look at the evidence that has been before the Inquiry of microbiologists alerting those in more senior positions to issues with, for example, air quality, and no action is taken.

My Lord, whilst it is envisaged that a number of witnesses from external bodies, such as NSS, will be giving evidence, whether they are the correct individuals to provide the evidence that we identify as being a lacuna remains questionable. Unfortunately, I was only given notice approximately ten to ten this morning that the request was not being proceeded with. So, I have had limited

time to prepare----

THE CHAIR: You only had notice at quarter to ten on----?

MS CONNELLY: This morning, that the request for the additional expert was not going to be honoured.

THE CHAIR: How would you define the scope of the expertise which, as I understand it, you see as a lacuna in counsel's proposals?

MS CONNELLY: Yes, my Lord. Well, I set out in the paper in quite substantial detail----

THE CHAIR: Very well.

MS CONNELLY: -- the particular headings that are relevant to governance issues as they arise, and I also indicate in a written submission that we have identified an individual – a suitable expert – with whom we have no connection and we have made no approach to, my Lord, but who has experience of governance, and independents who would be able to comment, we believe, on such things, but that would clearly be a matter for the Inquiry----

MR CONNAL: My Lord, since I have the microphone, as it were, in the absence of Mr Mackintosh, will get it later----

THE CHAIR: I take it Ms Connolly didn't----

MR CONNAL: No, I was only going to ask at this stage if it might be possible

to get an outline for Ms Connolly while she's holding that microphone of the skillset and experience of the type of expert she proposes, just so that we can have that in mind as we move forward.

MS CONNELLY: This is an individual, my Lord, who has experience of governance at that level and has been recommended to us by a person who's very senior in governance in health in England and Wales. Beyond that, I don't want to give more information that may identify the person.

THE CHAIR: Well, among the outcomes of this procedural hearing might be to defer certain questions for further discussion between legal representatives. I don't say that in a way to close you down on this, Ms Connolly, but I rather feel that it may be – and I appreciate you've set out detail here – that further discussion between you and counsel to the Inquiry may be productive.

MS CONNELLY: My Lord, I fully agree, and perhaps I can close by saying that it wasn't my intention to bring this to this forum today. Its appropriateness is perhaps questionable, but I was encouraged to do so in the back of initial discussions with counsel to the Inquiry.

THE CHAIR: I certainly encourage you to proceed. Anything else, Ms Connolly?

MS CONNELLY: No, nothing else.

THE CHAIR: Right.

MS CONNELLY: Thank you, my Lord.

THE CHAIR: Thank you. Mr Love.

Submissions by Mr Love

MR LOVE: Thank you and good morning, my Lord. On behalf of those that I am instructed to represent, I am instructed to adopt a neutral position in relation to the application presented by Mr Gray this morning. Receipt of the report is entirely a matter for your Lordship's discretion, so too the issue of timetabling and the manner in which evidence is taken by this Inquiry. All that I would offer to do at this stage is to offer my assistance to your Lordship and your Lordship's counsel in that regard as best I can but, beyond that, I have got nothing further to say at this unless I can assist your Lordship further.

THE CHAIR: Nothing occurs to me at this point, but----

MR LOVE: There is a separate issue of----

THE CHAIR: I'm sure Mr Mackintosh will have heard what you have to say.

MR LOVE: There is a separate issue in relation to the tack that we will require to take in the event that your Lordship receives the report today, but it

seems that issues of funding and applications in that regard are a very separate matter and not for consideration today.

THE CHAIR: That's how I would understand it.

MR LOVE: Yes.

THE CHAIR: Thank you, Mr Love.

MR LOVE: Thank you, my Lord.

THE CHAIR: Mr Mackintosh.

Submissions by Mr Mackintosh

MR MACKINTOSH: Thank you, my Lord. Firstly, I'm grateful to Mr Connal for setting out the principles that relate to the receipt of what I'm proposing we refer to from now on in shorthand as the HAD report. What I propose my Lord to do is attempt to address some practical implications should you make the decision to receive the report. I am not proposing to go over the matters covered by Mr Connal.

As Mr Connal explained, we did issue a witness list, and I will take the opportunities to pick up a few matters of detail around that witness at the end of what I am about to say but it may assist core participants to understand that between myself and Mr Connal, we have arranged that he will take a lead in the next hearing block, which is colloquially referred to as Glasgow IV, Part 1, which

will take place in May, enabling me to focus on the HAD report and the governance block that will be held in the autumn. I would encourage core participants who have direct questions around the next block involving contractors and the Glasgow project team to liaise directly with Mr Connal.

However, looking at the HAD report, I think it is probably of assistance, in light of the sense of what Lady Wise said about what the report may say, to identify six elements that, in the light of the Glasgow III and Glasgow II evidence, may have significance and require some work. The first is that the HAD report – and just for later reference at page 12 in its introduction and in chapters 3 and 4 – appears to some extent to be a critique of the methodology of the Case Notes Review overview report and the extent to which it can assist the Inquiry.

We agree with Scottish ministers that it's essential to hear the response of the three members of the (inaudible) expert panel to the HAD report. I'm pleased to report that contact has been made with all three of them. They're willing to assist the Inquiry and, whilst I don't wish to commit at this stage to how their evidence will be captured, it does need to be done in a manner that's efficient and effective and takes proper recognition of the amount of time and

effort they put into the case notes review in 2020 and 2021.

I would, however, ask all core participants who are aware of a public inquiry conducting such seminars elsewhere in the United Kingdom to let me know because I think this is an innovative idea that the Scottish ministers have proposed, and I wouldn't want to reject it out of lack of knowledge of previous examples elsewhere.

The second proposition in the HAD report appears to be that if a water system has widespread contamination, one would see increased rates of an infection in both adult hematology oncology patients and pediatric hematology oncology patients. Since the Inquiry has proceeded on the basis that there was no noticeable increase in rates of infection in adult hematology patients at the hospital compared to elsewhere, this proposition needs to be considered.

The third issue relates to chapter 7. It contains analysis of infection rates amongst both adult hematology oncology patients, and pediatric hematology oncology patients at the Queen Elizabeth and elsewhere in Glasgow. Not all elements of the calculation are present in the report. Whilst NHS Greater Glasgow has supplied all the data they have supplied to the authors of the report, we do not yet have the calculation. As I will

touch on lately, we need to recover that from the authors, and have plans to do so.

The fourth issue is that the report reaches conclusions on the rate of environmentally relevant bloodstream infections in the Schiehallion Unit at the Royal Hospital for Children that appear to suggest that the rate peaked at around 17 infections per 1,000 bed days in 2018, when HPS have, in their October 2019 report, calculated a rate for what they describe as environmental bloodstream infections peaking at five to seven infections per 1,000 bed days in 2018. This apparent inconsistency needs to be understood, and we will attempt to do that.

Fifthly, the report appears to reach the conclusion that the rate of environmental relevant bloodstream infections in the Schiehallion to Yorkhill was, to some extent, higher than at the Royal Hospital for Children. This does not appear to have been put by our predecessors to the many clinical witnesses who gave evidence in Glasgow II, and we did not, of course, put it to any great extent to clinicians who gave evidence in Glasgow III.

We need to understand this, and we'll at the very least send written questionnaires to a range of those witnesses as listed in the witness list who

have direct experience of Yorkhill. I should say that that may well include calling, as oral witness evidence, some of the more senior clinicians from the Schiehallion Unit, but we haven't yet made contact with any of them and therefore I don't want to commit to taking time with these no doubt busy clinicians at this stage.

Chapter 8 of the report deals with something not previously considered by the Inquiry. The Inquiry did not, as part of its planning, attempt to recover records of test results for Aspergillus, and we haven't previously conducted an epidemiological study of this important infection, limiting our investigations to that that can be identified from PAG, IMT, and the reports made to HPS (inaudible). We will now attempt to do that. There is much of interest in chapter 8 that I have already consulted with Dr Mumford and Mr Mookerjee, and they have questions that I propose to put to the authors of the HAD report.

I'm grateful for the proposals from NHS Greater Glasgow about process, and I do agree that the Direction 5 process should be used to ensure that all core participants can ask questions of the authors of the report, but propose to start this process is rather sooner than was suggested.

We already have the data, as I

mentioned, but we have made initial communication just to sort of check the emails work with the authors and if, my Lord, you do receive the report, then an initial questionnaire which has been drafted would be sent to Professor Hawkey, Dr Agrawal, and Dr Drumwright. One of the questions within it relates to the calculations, and another question within it relates to the nature of the instructions that were received by the witnesses. So those issues that have been raised by core participants today are already included in our first questionnaire, should you wish us to send it.

We're quite keen to have perspectives of those, or others, on the HAD report, and we will-- proposing to obtain reports from Dr Mumford and Mr Mookerjee of the Inquiry's experts on some of the issues covered within it. There are, in effect, three. There seems to be value in Dr Mumford reporting on the whole report from the perspective of a microbiologist with IPC experience, and Mr Mookerjee considering chapter 7, reviewing its methodology inclusions, and in contrast with the proposed steps to be taken by NSS, checking the calculations as well.

I think we're aware that it's difficult sometimes with these calculations to ensure that the right denominators are

used in calculations, and are keen to ensure that we understand the taken here. Mr Mumford and Ms Mookerjee would be asked to also prepare a report on chapter 8, and to see if there is anything that they have to say about that.

I would emphasise, however, that the authors of the HAD report also need to have the opportunity to respond to any questions, clarifications, or criticisms made by Dr Mumford and/or Mr Mookerjee. The Direction 5 process that we had in mind for the summer would enable the core participants to ask questions of all five in the same Direction 5 process because if we run five separate Direction 5 processes, we're all going to get very confused very very quickly.

I would encourage core participants, when responding to Direction 5, to remember that the process is designed to enable counsel to the Inquiry to formulate questions to be sent on to witnesses. Whilst I do entirely appreciate the temptation to make submissions in those questionnaires, it is the questions that we pass on to the experts.

We're grateful to the proposal from NHS NSS that their data scientists should provide a commentary on the report if received. Now, what we propose to do, if the report is to be received, is to share all the data we currently hold from the HAD report and its authors with NSS as soon

as possible, solely for the purpose of assisting the Inquiry. Then, once we receive any calculations on, indeed, the answers to the first questionnaire, we will also share that with NSS to assist them in producing their commentary.

I propose to keep open the date we want the completed commentary because I am more concerned to ensure that, as it were, questions that are answered already in the questionnaire process aren't asked by NSS because what worries me is NSS will think, "Here's a problem. Here's a question." They ask their question but if we've have already asked it in an earlier questionnaire, I am quite keen to ensure that doesn't happen, and so we'll try and do that.

THE CHAIR: So, when you say you'll try and do that, you'll give notice of the questions that you have directed towards the authors of the HAD report?

MR MACKINTOSH: I propose to share the questionnaire with NSS quite soon so they know, in a sense, that we've already thought of some of the questions. There may be some value in sharing it with everybody, actually, just to ensure that everyone knows where we're looking.

THE CHAIR: There would seem to be no reason to share it with anyone who wishes to have it shared.

MR MACKINTOSH: Exactly,

because some of the questions relate to calculations, letters of instruction. Some of them simply ask what the authors know about various things, do they know about events that happened in the hospital, and I'm assuming from their report they'll come back and say, "No, we don't", but I'm keen to find out the limits of their knowledge. So, we would share the questionnaire with NSS and share the response with them, as well, simply to ensure that they don't – if they don't take this as a criticism – ask questions we've already obtained the answer from, in their commentary.

I note the submission from Dr Inkster, Dr Peters and Dr Redding that they cannot yet fully understand the report, and to some extent I accept that there is merit in what they say. However, we do have the data, and we will ask some questions for the calculations, and what I'm proposing to do is to share the material with Dr Inkster, Dr Peters and Dr Redding under the restriction order, so that they can properly understand it.

I'm not at this stage able to make any assurances about what we would then do once they understand it. They need to come back to us with a proposal. But, given that they're all three people of some experience, and given that this report has arrived somewhat late and after their own statements were produced

in May of last year, it does not seem unreasonable to give them access to the dataset so they can instruct their counsel and decide how to respond.

That then moves on to the question of the hearing itself in the autumn. It remains scheduled to be eight days, which, if the report is received, all would be required. Within the witness list that was added last week, we indicated that it's proposed to obtain a technical review of the current management and planned preventive and reactive maintenance systems and activities for both the water and ventilation system of the hospital and the critical ventilation systems annual validation reports, as proposed by NHS NSS in paragraph 7 of their closing statement.

I do understand that there has been some disquiet from some core participants about the conclusion reached by myself about that issue, and if they want to have the issue clarified by reference of a review of the current management process, then it seems prudent, and we'd likely take that from Mr Poplett.

I also indicate that it is intended to produce a short report from an expert on whistleblowing and management culture in the NHS in the United Kingdom, albeit from south of the border, with a review to placing in context evidence we have

heard, and no doubt will hear, in respect of Term of Reference 4, and to inform recommendations. That expert has yet to be formally instructed and, therefore, I'm not going to identify them this stage.

Scottish Government have raised in their submissions – I think it's paragraph 17 of their closing submissions from Glasgow III – the question of whether the Counsel to the Inquiry team have carried out a sufficient assessment, either by expert evidence or simply by analysis on our own part, of whether the risks arising from insufficient or too few air changes per hour on general wards have been satisfactorily mitigated.

It's a good question and, for clarity, we propose to raise the matter again with Dr Mumford, given her perspective on health service management and risk assessment in her own hospital, and to revisit that question.

We received a request from Greater Glasgow and Clyde to an issue that had been raised by Dr Chaput after the hearing. She raised an issue about the comparator data used for Mr Mookerjee's work at those four English and Welsh hospitals. Since we're asking Dr Mumford and Mr Mookerjee to produce further reports, it seems relatively easy to put her point to them, and we will do that, but no decision has yet been made on whether to call Dr Chaput as a witness.

That may not be necessary if we simply get the response.

THE CHAIR: I would understand that – although Mr Gray will no doubt clarify with you if I'm wrong about this – Dr Chaput has looked at data relating to the particular sorts of infection experienced in the comparator hospitals used by Mr Mookerjee and come to a conclusion. As I understand it, she would be a presenter of information as opposed to anything else.

MR MACKINTOSH: She's presented information and written a short report which expresses an opinion.

THE CHAIR: Right.

MR MACKINTOSH: It's fair to say that she carried out this examination after they gave evidence so, at a strict interpretation, it's late, but since we're asking them anyway to consider other matters, it doesn't seem impractical to do so, and so we'll do that.

Both NSS and MDUS have recommended we hear more from Ms Imrie, and we've proposed to add her to the witness list for Glasgow IV, Part 3, along with Ms Kearns, who would, of course, be providing the report on the HAD report. Actually, when Ms Kearns ends up giving evidence I think is something we'll need to keep in mind.

Finally, I'd like to respond to the two matters. One is the matter which I did

ask Ms Connelly to raise in this hearing – which, I suppose, is out of place, but I think it requires to be ventilated, and I hope it's been helpful. I do understand the submission she makes that there should be an expert witness on governance. I think the difficulty that we have in that area is, we don't yet understand that it's necessary to have an expert witness, and it's simply for this reason.

To take a hypothetical example, if it became clear that something happened in the hospital that somebody knew about within the management structure, and yet it was not reported to the part of the management structure that could actually deal with it, I would submit that my Lord would be entitled to conclude that that is unfortunate and, to the extent there was evidence for that – for the conclusion – might have had adverse consequences.

I'm not sure it's necessary to have an expert witness. However, we'll keep it under consideration, and I will revisit the sections of the Vale of Leven Report to which Ms Connelly directs me, and no doubt she and I can speak about this again.

I should just observe that the Scottish Government counsel has raised with me an issue around possible recommendations. Clearly we're coming, with hope, towards the end of the

hearings in this Inquiry, and there may be some value, my Lord, in any CP that feels we need to lead any particular evidence in order to support a recommendation, to communicate with solicitor to the Inquiry in written form.

I use, as an example-- One core participant recommended the creation of a regulator. If my Lord was going to recommend the creation of a regulator, no doubt you would need to know what other regulators existed and what powers they had and why they were inadequate. Therefore, if anyone is suggesting any form of recommendation beyond those covered by the factual matrix of the Edinburgh report, I would encourage them to write to the solicitor to the Inquiry and set out what additional evidence we would need to hear.

It may be it can be heard, as it were, in written form, but we shouldn't get to the end of the Inquiry to find there's a submission from some core participant that you should recommend a particular course of action, but inadvertently we've not led evidence that would enable that to be considered.

Finally, I would simply observe that it's clear that receipt of the report will have considerable consequences in terms of time and cost. It will add approximately seven months to the completion of the Inquiry. It will place

considerable cost – extra cost – to public funds to achieve that, and it will undoubtedly have a considerable impact, both on patients and families, but also, of course, on witnesses who have in the past assisted the Inquiry and no doubt may do so later in delayed hearings, but ultimately, of course, the matter is for my Lord.

THE CHAIR: One matter of small detail that I'll simply raise with you. You drew attention to NSS's proposal that, in order to meet, I think, probably, Term of Reference 7, but also to come a more secure conclusion in relation to the present state of the building, there would be need for a technical report----

MR MACKINTOSH: Yes.

THE CHAIR: -- and Scottish Government's point that mitigation of non-compliance with guidance in relation to ventilation had not been tested or examined. Now, these seem to me to be both sound points and, certainly, matters upon which I would feel I needed evidence. Now, the point I raise with you, Mr Mackintosh, is whether there's been-- You propose Mr Poplett in relation to the technical review and you propose Dr Mumford in relation to mitigation of such risk, if there be risk, in relation to non-compliance. Now, has there been any discussion between you and other core participants about the appropriateness of

these witnesses?

MR MACKINTOSH: Well, I have discussed the appropriateness of Mr Poplett with NSS and, I hope they don't mind me saying, have not received a pushback. Our position on Mr Poplett is that he's an experienced manager of hospital water and ventilation systems, and therefore he's an appropriate witness to answer the question, in a sense, is the system – either water or ventilation – now being managed appropriately in such a way as to mitigate risks that previously existed or that still exist. But, as I think NHS Greater Glasgow, have pointed out, he's not an NHS manager or clinician in the sense that Dr Mumford is, and the wider point that the Health Board make around the possibility of mitigating risk by a placement, by use of prophylactic antibiotics, and various other things they suggest, is outwith his skillset.

Now, the Inquiry has always proceeded on the basis that Dr Mumford has those skills as an experienced infection control professional who has then progressed into being a medical director through being a deputy medical director, and so it would be my intention of asking her to comment. I suspect she's probably said more evidence than we addressed in our submissions, because, whilst I do take on board criticisms that our submissions closing

statement is rather long, it was one of those circumstances where we had a relatively short amount of time to write it.

So, when I see the Scottish Government observation about this issue around risk mitigation, some of it may be a fault of our analysis. We could probably analyse it with a bit more detail, but we will either analyse it better or we will obtain additional material from Dr Mumford. That's certainly how I would propose to address it.

THE CHAIR: Thank you. Is that all you intended to say?

MR MACKINTOSH: It was. I was proposing that we might take a short break in case any counsel who you've already heard of (sic) wish to come back on any of the issues I've raised, and that will enable us to work out who wants to do that.

THE CHAIR: Right. Clearly, we have time available to us, and I would hope that there's coffee available for those who wish it. Can I suggest that we sit again at quarter past twelve, and Mr Mackintosh will be available for anyone who wishes to get the benefit of discussion.

MR MACKINTOSH: Thank you, my Lord.

(Short break)

THE CHAIR: A point which was included on the agenda, which I would just like to draw core participants' legal representatives' attention to, is the terms of paragraph 7 of Direction 10. In the hearings that we've yet to carry out, could I encourage legal representatives, if at any stage during these hearings they feel that they're not being conducted as the legal representative would consider appropriate, I would very much encourage legal representatives to draw this to my attention at the time in order that it can be addressed.

Something I will return to at the end of this hearing is I have been very appreciative of the level of cooperation and assistance demonstrated by this procedural hearing, and it is at least consistent with a cooperative approach that, as I say, if legal representatives detect anything about the conduct of the hearing by me, by counsel to the Inquiry, then it would be very helpful if that was drawn to my attention at a time when the matter can be directed, addressed and something be done about it.

Now, Mr Mackintosh, is there anything else that you would wish to draw to my attention at this stage?

MR MACKINTOSH: Nothing more than I spoke to my colleagues in the break and I'm not aware of any counsel for other CPs who wants to come back in

respect of anything I've raised. There are various matters that are yet to be resolved, but we're continuing to have dialogue with legal representatives and core participants about matters that remain outstanding, and I don't want to add anything further to what I've said. In fact, I'm proposing to hand over to Mr Connal, who does, at the end, have something to say about the next hearing.

THE CHAIR: Has Mr Mackintosh accurately judged the temper of the room? I take it the answer to that is yes. Now, Mr Connal, I understand you are going to give some indications of where we are in relation to the next oral hearing, which we're, I think, referring to as Glasgow IV, Part 1.

MR CONNAL: Well, thank you, my Lord. The agenda item was originally included lest it be the case that by the time we came to this point of this day, or possibly this point tomorrow, had matters taken longer, there were specific issues perhaps arising with specific CPs which counsel to the Inquiry felt could be aired, largely over the question of progress.

I'm pleased to say in this environment that that, while inevitably nothing happens as quickly as one would, in the ideal world, like it to happen, very good progress has been made, particularly more recently, towards gathering the materials that are required

for Glasgow IV, Part 1 evidence. The only thing I add to that in terms of generality is that core participants may expect the Inquiry team to encourage them to increase the pace yet further in an effort to make sure that the exercise proceeds as planned and on the dates planned and in the manner that is currently anticipated, and hopefully that will be the case.

The heading of the agenda item was “Asks by counsel to the Inquiry,” and there are only two general points I make, which are not directed specifically at any individual core participant, but I’ll just make them while I have the floor, as it were. One is that, from time to time, core participants or witnesses for core participants have tended to use phrases like, “We understand that,” or, “I understand that,” and that may be very helpful in pointing us in the right direction. Sometimes, however, that is not accompanied by any indication of why the individual or participant understands the thing in question, and if it could be accompanied by an indication of the document or event or whatever it might be that leads to that understanding, it would cut out another step in the questioning process – no need for supplementary questions if it’s answered the first time.

The associated point is not

dissimilar. As an inevitability, given the level of knowledge of the participation of individuals in events at the Glasgow hospital, from time to time, individuals who were involved in the construction process may find they are asked questions about whether they did X or knew about Y, and their answer is, in effect, “Nothing to do with me. It wasn’t my responsibility.” That, of course, is a perfectly proper answer to the question, assuming that to be the correct position, but on occasions there is at least suspicion that those witnesses may know who did know about it or who did do whatever the thing was that is being asked about – not in every case, maybe not at all – I would encourage witnesses who are still in the process of having their witness preparation completed to offer voluntarily indications as to why, if it wasn’t them, it was, they understand, someone else and, if so, why, because that would, again, cut out the necessity of Inquiry team members going back and saying, “You say you didn’t do it, but surely you know who did do it or who should have done it.”

So these are purely practical questions which are not in any way intended to indicate a lack of cooperation on behalf of core participants or, indeed, their witnesses. They’re simply raised because I have the opportunity of doing

so to the whole audience at once. But, apart from that, matters are progressing almost as well as hoped.

THE CHAIR: Thank you, Mr Connal. Now, what I propose to do is take time to consider what has been said at today's hearing with a view to providing a decision I would very much hope no later than tomorrow. Now, we have scheduled two days for this hearing. Largely through the cooperation of legal representatives and as an indication of the utility of legal representatives discussing matters of detail with counsel to the Inquiry, what might have been a two-day hearing – although that might have been generous – will be over in the morning.

Now, I see no need to reconvene tomorrow simply to formally issue a decision and do not propose to do so unless anyone would wish to seek to persuade me to the contrary. I don't see any such persuasion, therefore, the procedural hearing will close today, although the process of communicating with counsel, as between counsel to the Inquiry and legal representatives, should continue and I'm confident that it will continue.

Among the matters which were on the agenda for today was publication of the closing statements which were submitted to the Inquiry, first of all, by

counsel to the Inquiry, and then, in response, by legal representatives of core participants. In relation – and these will be published on the website probably no later than tomorrow – those reading these closing statements should bear in mind what I think Mr Connal said at an earlier point. These closing statements are simply submissions by counsel and by legal representatives as to what I should make of the evidence. They are not an expression of my view on the matter. My view on the matter has yet to be determined, having regard to what is said by everyone and having regard to evidence that I've yet to hear.

Therefore, in considering anything that is said about the hospital's safety, whereas counsel to the Inquiry have drawn attention to certain aspects of the evidence, other core participants and, among those, NHS Greater Glasgow have drawn attention to the consideration that matters have got to be looked at not necessarily by reference to matters of small detail, but the totality, the whole and all the factors bearing on the question of safety, including all steps taken in order to forward infection control and to properly look after patients. Now, all that will have to be taken into account and, therefore, no one reading the closing statements should lose sight of the fact that – and this is true of them all,

including the closing statement by counsel to the Inquiry – it's no more than a submission. It is not a conclusion. I'm sure that will be readily understood, but I think Mr Connal was correct to emphasise that.

Well, thank you again. As I indicated earlier in my remarks, from where I'm sitting, this appears to have been a cooperative hearing. As I mentioned earlier, the job of the chairman of an inquiry can only be effectively carried out with the assistance of all those involved and, in particular, the core participants. If I don't have that assistance, then the outcome will be the poorer, so I very much value contribution from everyone, and what I'm seeing today is a cooperative approach to that, so thank you. As things stand, I think the proposal is that Part 1 of Glasgow III will commence on 13 May.

MR CONNAL: Yes, my Lord.

THE CHAIR: Very well, thank you.

(Session ends)