

Direction 5 – in respect of the Hearing Commencing 19 August 2024



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 a hearing will be held in respect of the aspect of the inquiry that relates to the Queen Elizabeth University Hospital/Royal Hospital for Children commencing on Monday 19 August 2024, that this hearing may be referred to as Glasgow III and that in respect of that hearing:

1. The scope of the evidence to be led at Glasgow III is set out in Appendix A to this Direction.
2. In respect of Glasgow III the additional process by which Core Participants (CPs) may ask questions of members of the Inquiry’s group of experts about their reports and make comment on these reports is set out in Appendix B to this Direction.
3. Any CP that wishes to appear at Glasgow III should make an application to the Chair under the Protocol on Leave to Appear at Inquiry Hearings by Friday 19 January 2024.
4. A set of further of Directions in respect of the operation of the Glasgow III hearing will be issued well in advance of the hearing dates.

Lord Brodie – Chair of the Scottish Hospitals Inquiry
13 December 2023

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APPENDIX A

1. Purpose

1.1 The purpose of this paper is to provide an explanation of the topics to be covered at the Glasgow III hearing due to commence on 19 August 2024 and to provide other information intended to assist CPs in preparing for the hearing.

2. The purpose of the Glasgow III hearing

2.1 The purpose of the Glasgow III hearing is to lead sufficient evidence, taken with evidence led in the hearing in the autumn of 2021 (“Glasgow I”), the hearing in the summer of 2023 (“Glasgow II”), all relevant Provisional Position Papers and the evidence led in respect of ventilation principles and practice at hearings of the inquiry in respect of Royal Hospital for Children and Young People/ Department of Clinical Neurosciences that would provide a basis to answer four Key Questions:

The four Key Questions are:

1. From the point at which there were patients within the QEUH/RHC was the water system (including drainage) in an unsafe condition, in the sense that it presented an additional risk of avoidable infection to patients?
2. From the point at which there were patients within the QEUH/RHC was the ventilation in an unsafe condition, in the sense that it presented an additional risk of avoidable infection to patients?
3. Are the water and ventilation systems no longer in an unsafe condition in the sense that they now present no additional avoidable risk of infection?
4. Is there a link, and if so in what way and to what extent, between patient infections and identified unsafe features of the water and ventilation systems?

2.2 It should be noted that Key Question 3 has changed from the form of the third key question previously identified by Counsel to the Inquiry so that now all four Key Questions focus on whether a particular feature of the water or ventilation systems of the hospital is or was unsafe, in the sense that it presented an additional risk of avoidable infection to patients.

2.3 The Chair of the Inquiry intends to deliver an Interim Report, in terms of section 24 (3) of the Inquiries Act 2005, after the conclusion of Glasgow III by the making of closing statements on behalf of CPs, on such matters within the Terms of Reference of the Inquiry and relating to the QEUH/RHC as, in the opinion of the of the Chair, have been sufficiently addressed at Glasgow I, II, and III.

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3. The concept of a Potentially Deficient Feature

3.1 Answering the Key Questions necessarily involves two important stages. Firstly, it is necessary to understand what features of the water and ventilation systems require to be considered by the Inquiry and secondly to determine the extent to which any such feature is or was in an unsafe condition, in the sense that that feature presented an additional risk of avoidable infection to patients.

3.2 The Inquiry is aware that within the contract that appears to have regulated the relationship between NHSGHC and other parties, to plan, design, construct and commission the hospital ‘Defect’ is a defined term. The definition of a ‘Defect’ in that contract is different from the concept that addressed in the Key Questions.

3.3 To ensure clarity at the first stage of this process the Inquiry will need to decide whether any particular feature of the water and ventilation systems of the hospital is a ‘*Potentially Deficient Feature*’ in the sense that evidence exists that (a) it did or does not achieve the outcome or was capable of the function for which it was intended, or (b) it did or does not conform to relevant statutory regulation and other applicable recommendations, guidance, and good practice. It is only those Potentially Deficient Features that the Inquiry will require to consider at the second stage.

4. Provisional Position Papers (“PPPs”).

4.1 In preparation for the Glasgow III hearing the Inquiry Team will produce two Provisional Position Papers (“PPP”) in early 2024. One PPP will identify Potentially Deficient Features of the water system (including drainage) and the second PPP will identify Potentially Deficient Features of the ventilation system.

4.2 It should be emphasised that identification of a ‘*Potentially Deficient Feature*’ and consideration of the question of its effect on patient safety are separate and distinct steps, and that inclusion of a feature in either PPP does not mean that the Inquiry has decided that the feature is unsafe. That is a question for determination by the Inquiry after the conclusion of the Glasgow III hearing.

However, in order to focus the Glasgow III hearing on features that require to be considered in order to answer the Key Questions, CPs will be invited to respond to each of the PPPs in turn and to direct themselves to answer four questions:

1. Whether the description of the system contained within the PPP is accepted as being correct and if there are points in respect of which the CPs challenge the description of the system, specifically what the points of disagreement are and what evidence exists to support the position taken by the CP;
2. Whether the description of any Potentially Deficient Feature is accurate notwithstanding that the CP may not accept that the feature described is potentially deficient or deficient in any sense;

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3. Where the PPP describes the date or dates upon which a Potentially Deficient Feature became known to a particular person or organisation whether the CP accepts that date of knowledge or offers an alternative date notwithstanding that the CP may not accept that the feature described is potentially deficient or deficient in any sense; and
4. Whether there are any other features of the system which should be considered by the Inquiry to be Potentially Deficient Features and what evidence exists to support that conclusion.

4.3 As will be made clear in each PPP, the list of Potentially Deficient Features will be provisional in nature and should not be seen as comprising factual findings.

4.4 The question of whether any feature of the water system (including drainage) or the ventilation system of the hospital is in fact deficient in the sense that the feature (a) did or does not conform to relevant statutory regulation and other applicable recommendations, guidance, and good practice; or (b) did or does not achieve the outcome or was capable of the function for which it was intended, is a question that will fall to be determined after the end of the Glasgow III hearing and will be addressed in the Interim Report.

5. Expert Evidence

5.1 The Inquiry has appointed the following experts:

- **Dr Sara Mumford** MBS MSc FRCPATH is a consultant microbiologist and is currently Director of Infection Prevention and Control at Maidstone and Tunbridge Wells NHS Trust.
- **Sid Mookerjee** BSc MSc MPH FRSPH is a specialist epidemiologist and is currently the strategic lead of the Imperial Trust hospital Epidemiology unit, focusing on Antimicrobial Resistance (AMR), Antimicrobial stewardship, Surgical Site Infection, and Healthcare Associated Infections.
- **Linda Dempster** BSc RN PG Dip is an Infection Prevention and Control Nurse Consultant who currently holds the position of Quality Lead of UKHSA.
- **Dr James Walker** BSc PhD is a public health water microbiologist who after a 30 year career with the Health Protection Agency now runs his own independent consultancy
- **Andrew Poplett** IEng MIHEEM ACIBSE is an Authorising Engineer with over 17 years' experience in the NHS who now runs an independent healthcare consultancy.
- **Allan Bennett** OBE BSc MSC is a consultant microbiologist who is currently Head of Biosafety, Air and Water Microbiology at UKHSA

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5.2 The Inquiry has instructed the experts to produce six reports. These are:

1. An epidemiological report considering the quantitative statistical question of whether there is an association or causal link between the environment of the hospital and patient infections or the risk of patient infections. (Dr Mumford, Ms Dempster and Dr Mookerjee)
2. An Infection Link report considering on a qualitative basis whether there is a causal link between the environment of the hospital and patient infections or the risk of patient infections. (Dr Mumford, Ms Dempster and Dr Mookerjee)
3. In order to assist the inquiry to address Term of Reference (TOR) 1 and 7 a report from a microbiological perspective about whether there are any potentially deficient features of the water system (including drainage) that are in an unsafe condition, in the sense that they present or presented an additional risk of avoidable infection to patients. (Dr Walker)
4. In order to assist the inquiry to address TOR 1 and 7 a report from a microbiological perspective about whether there are any potentially deficient features of the ventilation system that are in an unsafe condition, in the sense that they present or presented an additional risk of avoidable infection to patients. (Mr Bennett)
5. In order to assist the inquiry to address TOR 1 and 7 an engineering report that assesses the practical consequences of the creation of potentially deficient features of the water system (including drainage), whether they conform to relevant statutory regulation and other applicable recommendations, guidance, and good practice, and if they do not what steps might be required to ensure that they do. This report will also consider engineering issues related to TOR6 (Mr Poplett)
6. In order to assist the inquiry to answer TOR 1 and 7 an engineering report that assesses the practical consequences of the creation of potentially deficient features of the ventilation system, whether they conform to relevant statutory regulation and other applicable recommendations, guidance, and good practice and if they do not what steps might be required to ensure that they do. This report will also consider engineering issues related to TOR6 (Mr Poplett)

5.3 The Inquiry Team has noted that a range of competing hypotheses in respect of the Key Questions has emerged . The Inquiry Team has sought to ensure that the expert group has been made aware of these hypotheses in advance of the production of their reports.

5.4 These six reports have now been instructed and it is intended to provide them to CPs by the end of February 2024 or soon afterwards and thereafter to publish them on the Inquiry website. A separate document setting out the instructions given to the authors of each report and identifying where the documents referred to by the

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authors can be found in the document bundles will be produced along with each report.

5.5 As is provided by Rule 9 of the Inquiries (Scotland) Rules 2007 those CPs who appear at Glasgow III will have the opportunity in the days before any of the expert group gives oral evidence to propose any lines of questioning that they may wish Counsel to the Inquiry to follow. Detailed procedures of how that is to be done will be issued before the start of Glasgow III as they were before the start of Glasgow II. However, it is considered beneficial that those proposed lines of questioning be developed and intimated to the Inquiry soon after each report has been provided to CPs in order that the authors of the reports can reflect on the questions raised and have the opportunity to provide a considered supplementary statement or report to address the questions in advance of Glasgow III. The procedure to be adopted to enable this process is set out in Appendix B to this Direction.

6. Documents

6.1 Prior to the Glasgow II hearing the Inquiry Team produced eight bundles of documents. These are:

1. Bundle 1 – Incident Management Team Meeting Minutes (IMT minutes)
2. Bundle 2 – Problem Assessment Group Meeting Minutes (PAG Minutes)
3. Bundle 3 – NHS National Services Scotland/ Situation, Background, Assessment, Recommendation (SBAR) Documentation
4. Bundle 4 – NHS Greater Glasgow and Clyde Situation, Background, Assessment, Recommendation (SBAR) Documentation
5. Bundle 5 – Communications Documents
6. Bundle 6 – Miscellaneous documents
7. Bundle 7 - Written Reports prepared by Health Protection Scotland (HPS), Health Facilities Scotland (HFS) and Antimicrobial Resistance and Healthcare Associated Infection (ARHAI)
8. Bundle 8 – supplementary documents for the Oral hearing commencing on 12 June 2023

6.2 These eight bundles will continue to be used in Glasgow III. Whilst the eight bundles produced for Glasgow I remain available to CPs and the Inquiry, it is likely that the principal Glasgow I bundle that will be used at Glasgow III is: Glasgow I Bundle 2 - Material Illustrating Layout of Queen Elizabeth University Hospital and Royal Hospital for Children, Glasgow.

6.3 If a document appears in any of these bundles it will not be added to any new bundle created by the Inquiry Team.

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6.4 As part of the preparation for Glasgow III the Inquiry Team is producing additional bundles. To assist CPs in preparing for the hearing these bundles will be issued to CPs as and when they are completed and in some cases many months before the start of the hearing. The bundles currently in creation include:

- 9. Bundle 9 - Cryptococcus Incident Management Team papers
- 10. Bundle 10 – Water Safety Board papers
- 11. Bundle 11 – Water Technical Group papers
- 12. Bundle 12 – GGC Estates papers post January 2015

6.5 Further bundles will be created for the contractual process, planning, design, construction, commissioning and additional management and for committee papers from within NHS Greater Glasgow & Clyde and the hospital itself. The production to CPs of reports of members of the expert group will be supported by at least one bundle containing documents referred to by the group members in their report and not contained in a pre-existing bundle.

6.6 If at any time any CP considers that additional documents require to be available at the hearings diet, they should contact the Inquiry Team as soon as possible.

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APPENDIX B:

**PROTOCOL ON RAISING QUESTIONS AND ISSUES WITH MEMBERS OF THE
EXPERT GROUP ABOUT THEIR REPORTS FOR THE GLASGOW III HEARING**

1. Introduction

1.1 The Inquiry has appointed experts, and those experts will produce reports for Glasgow III. These reports will be provided to CPs in the first few months of 2024. Given that CPs are permitted in terms of Rule 9 of the Inquiries (Scotland) Rules 2007 to propose any lines of questioning of witnesses that they may wish the Inquiry to follow at Glasgow III the purpose of this protocol is to enable as many as possible of those proposed lines of questioning or questions to be identified soon after the expert reports are made available to CPs and well before the commencement of Glasgow III.

2. Questions and comments from CPs

2.1 Within five weeks of the date upon which the Inquiry Team provide an expert report to the CPs any CP who wishes to propose questions for the author of that report about their report or to make comment on that report must send a note to the Secretary to the Inquiry setting out in concise numbered paragraphs with clear reference to the relevant parts of the report:

1. the specific questions that should be asked of the report's author and any comment that the CP wishes to make on the substance of the report;
2. whether these questions and/or comment will raise new matters or issues not covered in the report; or
3. where no new matters or issues are likely to be raised, reasons why the issue should be raised with the expert witness at that time.

It is intended that the experts will produce supplementary reports addressing the questions and issues raised which would be sent to CPs during June 2024.

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Further information

If you have any questions about any of the above, or any other matter related to core participant status, please email the Solicitor to the Inquiry at legal@hospitalsinquiry.scot.

Version control

This version of the Direction 5 – in respect of the Hearing Commencing 19 August 2024 is dated 13 December 2023 and is issued under the authority of the Chair of the Scottish Hospitals Inquiry. It is the first version of this Direction.