

<p>1 Thursday, 14 May 2026 2 (10.00 am) 3 Procedural hearing 4 Housekeeping 5 LORD WEIR: Good morning everyone. It would be customary at 6 this point to welcome to the hearing all those who had 7 attended the hearing suite in Edinburgh as well as those 8 watching and listening to the proceedings remotely. 9 For reasons that are broadly now known, it is not 10 possible for me to do so, but all who are joining by way 11 of the live link to the procedural hearing are 12 nonetheless welcome, as are those who are attending in 13 a representative capacity. 14 I considered it desirable to fix a date for this 15 hearing as a means by which the Inquiry team, through 16 its senior counsel, could explain its intentions in 17 light of the postponement of the section 1 introductory 18 hearings scheduled to take place in April and May of 19 this year. 20 Uncertainties over the availability of the hearing 21 suite remain a principal issue of concern and that is 22 also a matter which I expect to be addressed during the 23 course of today. 24 Nevertheless, I considered that it was also 25 important that core participants and others should be</p> <p style="text-align: center;">Page 1</p>	<p>1 material providers to the Inquiry as represented by 2 Laura Thomson KC and finally, the patients and patient 3 representative core participants represented by 4 Levy &amp; McRae and spoken to by Joanna Cherry KC. 5 At my invitation, the Chair of the Independent 6 Clinical Review, Professor Wigmore, has again caused 7 a submission to be tendered on behalf of that process 8 and I am grateful to Mr Callender for joining the 9 hearing to speak to that submission at the appropriate 10 time. 11 In terms of today's practical arrangements, it would 12 be my intention to have regular breaks as foreshadowed 13 in the agenda. The need for more frequent breaks than 14 normal at this particular hearing arises from 15 a recognition that the remote hearing arrangements 16 necessarily require to make provision for the taking of 17 instructions as the day goes on. 18 Other aspects of the housekeeping arrangements will 19 be touched on by Mr Dawson, to whom I will now give the 20 floor and invite him to address the Inquiry. 21 Mr Dawson, when you're ready. 22 Submissions by MR DAWSON 23 MR DAWSON: Good morning, sir. I am Jamie Dawson KC and 24 I appear as senior counsel to the Inquiry along with my 25 learned junior, Mr Ross Crawford Advocate, at this</p> <p style="text-align: center;">Page 3</p>
<p>1 provided with an update on where we have reached in our 2 investigations, other practical matters as set out in 3 the agenda, which was circulated in advance and also our 4 plans and proposals for hearings this year, on the 5 optimistic assumption that we will have an appropriate 6 hearing facility in place. 7 While I would not wish to give in to false optimism 8 I am sure that the Scottish Government sponsor team will 9 be doing all that it can to achieve a resolution to the 10 present situation timeously. 11 The hearing has also provided an opportunity for 12 legal representatives to raise issues of interest or 13 concern and it is apparent that they have availed 14 themselves of that opportunity to do so. 15 In the interests of openness, the submissions of 16 those who have submitted them have been shared amongst 17 the recognised legal representatives of core 18 participants in advance of today. 19 Pursuant to the agenda, you may expect to hear 20 submissions, first of all from Mr Dawson KC and 21 thereafter from counsel for firstly, the 22 Cabinet Secretary for Health and Social Care as sponsor 23 of the Inquiry represented by Mr Alistair Duncan KC. 24 Secondly, NHS Tayside represented by Una Doherty KC, 25 then the Scottish Ministers as core participants in all</p> <p style="text-align: center;">Page 2</p>	<p>1 procedural hearing of the Inquiry. 2 This is the third of the Inquiry's public hearings; 3 a preliminary hearing having taken place on 10 September 4 and an opening statements hearing on 26 and 27 November 5 last year. Unlike at those previous two hearings, 6 the Inquiry team and you, Chair, are on this occasion 7 not joined in the Inquiry's hearing space for this 8 hearing at Waverley Gate in central Edinburgh by 9 representatives of the core participants and others in 10 person. 11 This hearing is taking place virtually. We are 12 joined by representatives of our core participants and 13 others as well as core participants and other interested 14 individuals, many of whom would, in normal 15 circumstances, have joined us here in Edinburgh in 16 person for a hearing of this nature. 17 This is a highly regrettable state of affairs, not 18 of the Inquiry's making and which this hearing has 19 primarily been called to seek to resolve. The ability 20 of core participants, their legal representatives and 21 other interested members of the public to attend our 22 hearings in person has always been and remains 23 an important part of our commitment to allowing 24 meaningful participation by them in our work. 25 The reason for this unusual and undesired</p> <p style="text-align: center;">Page 4</p>

<p>1 arrangement is that there remain safety issues with the                  2 building, to which I will return, meaning that                  3 the Inquiry is currently unable to have members of the                  4 public in the hearing suite. The safety advice which                  5 the Inquiry has received and which remains current                  6 enables the Inquiry team to attend the hearing suite to                  7 deliver these hearings. This means that the Inquiry                  8 team can still benefit from the technical set-up and                  9 layout of the suite, which is an important part of being                  10 able to present and broadcast Inquiry hearings.</p> <p>11 However, no other individuals, beyond those I will                  12 mention in a moment, will be permitted to be present                  13 within the hearing suite today. Indeed, the number of                  14 Inquiry team members who are in attendance has been kept                  15 to a minimum. Those in the hearing suite comprise you,                  16 sir, the Chair of the Inquiry, me, as senior counsel, my                  17 junior Mr Crawford, the solicitor and deputy solicitor                  18 to the Inquiry, the secretary and deputy secretary to                  19 the Inquiry, the Inquiry's media manager, as well as                  20 certain technical contractors who are involved in                  21 broadcasting and recording the proceedings. This is the                  22 minimum number of people who are needed to deliver the                  23 hearing and to support those who are participating in it                  24 remotely.</p> <p>25 Any other Inquiry staff members or contractors will</p> <p style="text-align: center;">Page 5</p>	<p>1 disappointment and frustration to the Inquiry team, and                  2 I know to you, sir, that you have felt compelled to hold                  3 this further procedural hearing at this time in light of                  4 the forced postponement of the section 1 hearings which                  5 had been planned to take place in April and May and, in                  6 fact, were due to have concluded last week.</p> <p>7 I will return to provide a detailed breakdown of the                  8 reasons for that postponement and for the current                  9 position which the Inquiry finds itself in due course.</p> <p>10 We are joined, sir, albeit remotely, by                  11 representatives of some of our core participants, namely                  12 the 161 patient and patient representative core                  13 participants represented by Levy &amp; McRae; NHS Tayside;                  14 the Scottish Ministers; the University of Dundee; the                  15 Royal College of Surgeons of Edinburgh;                  16 Healthcare Improvement Scotland; and                  17 Public Services Delivery Scotland.</p> <p>18 This last name will be a novel one to some. Its                  19 predecessor body, which was previously represented as                  20 a core participant in this Inquiry, was                  21 NHS Education for Scotland. From 1 April 2026 that body                  22 became part of Public Services Delivery Scotland, or                  23 PSD Scotland, as part of an internal reorganisation of                  24 the services provided by the NHS in Scotland.</p> <p>25 You, sir, will imminently designate PSD Scotland as</p> <p style="text-align: center;">Page 7</p>
<p>1 only be permitted to attend the suite during the course                  2 of the day if necessary and numbers will be kept as low                  3 as possible.</p> <p>4 Sir, at the opening statement hearing of the Inquiry                  5 in November the Inquiry issued guidance to core                  6 participants which invited them to focus, their opening                  7 statements being delivered at that time, on substantive                  8 matters given the largely procedural focus of                  9 the Inquiry's previous preliminary hearing. As I set                  10 out at the hearing in November, this had been done in                  11 light of the need, at that point in our planning, to                  12 start to make progress with the Inquiry's substantive                  13 investigations which our terms of reference demand that                  14 we do.</p> <p>15 A detailed timetable for evidential hearings was set                  16 out in November, including a block of three weeks which                  17 had been reserved as part of our venue sharing agreement                  18 with the Scottish COVID-19 Inquiry from 20 April of this                  19 year, at which time our section 1 hearings were due to                  20 take place. The opening statements hearing had been                  21 designed to enable a transition from the procedural to                  22 the substantive, to allow core participants to                  23 participate in the preparations and plans for our real                  24 investigative work.</p> <p>25 It is therefore a matter of considerable</p> <p style="text-align: center;">Page 6</p>	<p>1 a core participant as a successor body to the previous                  2 body, NHS Education for Scotland. This is a formality                  3 which will be seen to in short order.</p> <p>4 As has been the practice of the Inquiry at previous                  5 hearings and in light of the close working relationship                  6 between the two processes, the Independent Clinical                  7 Review is also represented at this hearing.</p> <p>8 Professor Wigmore and his team have been invited to make                  9 written representations in advance of the hearing and                  10 have done so and will make an oral submission through                  11 their recognised legal representative. The purpose of                  12 these invitations is so that the hearing can be used in                  13 part as a means of ventilating issues relating to the                  14 process of the ICR, the evidence emanating from which                  15 the Inquiry requires to consider in terms of its term of                  16 reference 16.</p> <p>17 The need for participation by recognised legal                  18 representatives of core participants who wish to                  19 participate in this procedural hearing is a very                  20 important consideration to the Inquiry. The Inquiry                  21 team has put in place systems to enable oral submissions                  22 to be made by recognised legal representatives of core                  23 participants who wish to do so on matters listed in the                  24 agenda for the hearing. This will be achieved via                  25 a separate live Zoom stream having been made available</p> <p style="text-align: center;">Page 8</p>

<p>1 to lawyers who wish to make these submissions and those 2 who wish to support them.</p> <p>3 The normal YouTube link is available and is being 4 used currently by core participants, the media and other 5 interested organisations, as well as members of the 6 public to follow the proceedings. The video will be 7 published on the Inquiry's website after the hearing.</p> <p>8 I will, in a moment, set out the time-slots 9 allocated for oral contributions by those who wish to 10 make them. Reasonable time, we anticipate, has been 11 made available for instructions to be taken from core 12 participant clients and those who intend to make an oral 13 submission, in particular, in response to matters raised 14 by others. Recognised legal representatives were 15 instructed in advance of this hearing to put in place 16 systems for communication with their clients in advance 17 of, during and after the hearing, so as to allow them to 18 participate as they normally would at an in-person 19 hearing.</p> <p>20 In case recognised legal representatives wish to get 21 in touch with the Inquiry staff, including counsel and 22 other members of the legal team in attendance, including 23 the solicitor to the Inquiry, emails will be monitored 24 during the day to seek to replicate the conversations 25 which would normally take place in the hearing room.</p> <p style="text-align: center;">Page 9</p>	<p>1 Can I say a few words, sir, about the involvement of 2 the Scottish Government at this procedural hearing: the 3 main reason why you, sir, have fixed this procedural 4 hearing is the pressing, recognised need for there to be 5 a public explanation for the postponement of the 6 Inquiry's section 1 hearings which were due to take 7 place in April and May and a clear plan to be put in 8 place for progress to be made in light of that event. 9 I will return to the details of this in due course.</p> <p>10 It will be apparent from the public pronouncements 11 made by you, sir, on this matter before now, that the 12 inability of the Inquiry to offer hearings at which 13 those who wish -- could attend was the reason why the 14 planned section 1 hearings required to be postponed. 15 Responsibility for the issues relating to its lack of 16 availability for the planned hearings rests with the 17 Scottish Ministers, who are the tenants of the property 18 in which the Inquiry holds its hearings.</p> <p>19 The Scottish Government has different and distinct 20 roles to play in the operation of the Inquiry. The 21 Scottish Ministers and hence, the Scottish Government, 22 are core participants in the Inquiry. They participate 23 in that capacity in various activities. They have 24 instructed a legal team comprising solicitors from 25 Harper Macleod and counsel who represent the ministers</p> <p style="text-align: center;">Page 11</p>
<p>1 I can be reached by our counsel on the usual channels. 2 The Inquiry solicitor can be contacted at the Inquiry 3 solicitor email address or her own work email address. 4 Contact information for the Inquiry's secretariat has 5 been made available to deal with practical questions 6 arising during or after the hearing. Technical and 7 emotional support information has been circulated 8 separately. The press have been informed by -- that 9 the Inquiry's media manager can be contacted in 10 connection with the hearing during the day, as well.</p> <p>11 Emotional support is available for those who feel 12 they need it, to access it from The Spark, the charity 13 whose services the Inquiry has engaged for the provision 14 of such support. Details of how this service can be 15 accessed have been circulated to the recognised legal 16 representatives of core participants and it has also 17 been published on the Inquiry's website.</p> <p>18 The Inquiry team is keen to try to do what it can to 19 deliver a hearing which is as near as normal -- near to 20 a normal procedural hearing at which core participants, 21 legal representatives and other interested parties would 22 be able to attend in person. Legal representatives have 23 been asked to explain the Inquiry's plans in advance of 24 and during the hearings to their clients, in order to 25 assist in achieving that aim.</p> <p style="text-align: center;">Page 10</p>	<p>1 as core participants but also as material providers to 2 the Inquiry, in which capacity they do things like 3 produce documents or written statements in response to 4 requests or notices from the Inquiry to do so.</p> <p>5 That legal team has been responsible, for example, 6 for representing the ministers in providing its response 7 to the section 1 rule 8 request issued by the Inquiry to 8 the ministers for a written statement and documents, 9 preparing and delivering the Scottish Ministers' opening 10 statement to the Inquiry, as well as helping with the 11 provision of responses to other matters on which 12 the Inquiry have sought to seek the views and input of 13 its core participants from time to time.</p> <p>14 The legal team which has been involved in these 15 activities to date continues to represent the 16 Scottish Ministers in those capacities only, including 17 at this hearing.</p> <p>18 Separately, the Scottish Government has a distinct 19 role to play in the work of the Inquiry in terms of the 20 statute which underpins the Inquiry's work and defines 21 its powers and responsibilities, as well as the 22 practical arrangements which the Inquiry enters into 23 with Scottish Government in order to assist with its 24 work and progress. The sponsoring minister of 25 the Inquiry who set it up under section 5 of the 2005</p> <p style="text-align: center;">Page 12</p>

<p>1 Act is the Cabinet Secretary for Health and Social Care.  2 The Inquiry is an independent entity which operates  3 under the leadership of you, the Chair. However, the  4 sponsoring minister must meet any expenses incurred in  5 the holding of the Inquiry and has agreed to meet other  6 expenses associated with it.  7 In order to manage the relationship between  8 the Inquiry and the Cabinet Secretary, acting in its  9 capacity as the sponsoring minister of the Inquiry, the  10 Cabinet Secretary has appointed a sponsor team comprised  11 of civil servants who represent him in that capacity.  12 Normally, that relationship would be managed by the  13 Chair and the Inquiry team and those civil servants  14 without the practical details of the work done between  15 them needing to be ventilated in public.  16 Part of the relationship between the Inquiry and the  17 Cabinet Secretary involved arrangements being made for  18 the hearing suite to be used for the Inquiry's public  19 hearings. Given the importance of the issues relating  20 to the hearing suite being explained, explored and  21 hopefully resolved in public, you, sir, have invited the  22 Cabinet Secretary and his sponsor team to be separately  23 represented for this hearing.  24 You consider that it would be in the public interest  25 and in the interest of the fulfilment of the Inquiry's</p> <p style="text-align: center;">Page 13</p>	<p>1 to core participants, their recognised legal  2 representatives and others whom the Chair permitted to  3 see it, such as the ICR team and their representatives.  4 The sponsor team have been informed by the Chair --  5 by you, sir, the Chair, that they and the  6 Cabinet Secretary in his sponsoring capacity have the  7 right to be represented at this hearing. In order to  8 provide the Cabinet Secretary and his sponsor team with  9 the opportunity, properly, to prepare for and contribute  10 to the hearing and for a meaningful contribution to be  11 made, the sponsor team and their legal representatives  12 have been provided with extracts from the counsel to the  13 Inquiry note circulated to others in advance of the  14 hearing, information about timetabling for the hearing  15 and an opportunity to make a written submission in  16 advance on matters on the agenda, which they have done.  17 The full CTI note and associated information was  18 made available to the representatives of the  19 Scottish Government as core participants in the normal  20 way. I am very glad to say that the Scottish Government  21 in their sponsorship capacity have instructed  22 representation. Further, they have provided  23 an explanation as to their role in the Inquiry hearing's  24 venue being unable for our planned section 1 hearings  25 in April and May. There remain, however, issues with</p> <p style="text-align: center;">Page 15</p>
<p>1 terms of reference in the manner that you have directed  2 that they should be to seek to have these matters be  3 discussed and resolved at this public hearing, as  4 opposed to using other powers available to you under the  5 Act to seek to resolve them.  6 Informal efforts to do so have not, so far, proven  7 successful in this regard; a matter to which I will  8 return.  9 You, sir, have taken these unusual steps in  10 particular in light of reasonable representations which  11 have been made by patients, some of them core  12 participants, for a clear, public explanation as to what  13 the problems were with the hearing suite and how and  14 when they will be resolved. The Inquiry is unaware of  15 any such explanation having been provided by the  16 Scottish Government publicly before this point.  17 In addition, there are various other issues which  18 the Inquiry seeks an explanation from the  19 Scottish Government in that capacity about, which are  20 also to be addressed at this hearing.  21 The Cabinet Secretary and the sponsor team would not  22 normally be entitled to information about a hearing of  23 this nature in advance of it, such as the information  24 contained in the counsel to the Inquiry note circulated  25 in advance. This would normally only be made available</p> <p style="text-align: center;">Page 14</p>	<p>1 that explanation, on this and other matters, to which  2 I will return.  3 In addition to the important matter of the current  4 planning for the Inquiry's now postponed evidential  5 hearings, I intend to take the opportunity to address  6 you, sir, on developments and progress in the Inquiry's  7 work since the opening statements hearing in November.  8 As is our usual practice, core participants and  9 others were given information about these developments  10 in the note by counsel to the Inquiry which was  11 circulated last week. They were asked to provide  12 a written submission on its contents by 10 o'clock on  13 Tuesday. As ever, the Inquiry team is grateful to all  14 those who took the trouble to do. As the normal  15 practice in these hearings, I will try to address  16 aspects of the written submissions on the procedural  17 issues raised in my note as I go along, for the sake of  18 clarity and the best use of time, though some of those  19 who made written submissions will address you, sir, on  20 points of interest to their clients later today.  21 In advance of the hearing, as you said, sir,  22 the Inquiry intimated a formal agenda and you have set  23 out those who will address the hearing today. I will  24 speak just now until hopefully around 11.45. There will  25 then be a break for half an hour. At around 12.15</p> <p style="text-align: center;">Page 16</p>

<p>1 Mr Duncan will speak on behalf of the Scottish Ministers                  2 as sponsor to the Inquiry, after which there will be                  3 an hour-long lunch break. At about 1.45 pm submissions                  4 will be heard by my learned friend Ms Doherty on behalf                  5 of NHS Tayside. There will then a 15-minute break until                  6 around 2.30. Submissions at that time will be heard on                  7 behalf of the Scottish Ministers as core participants in                  8 the Inquiry by my learned friend Laura Thomson KC and                  9 submissions will be made on behalf of the Independent                  10 Clinical Review by Mr Callender of                  11 Morton Fraser MacRoberts, which should conclude around                  12 3 pm.                  13 There will be a further break of around 15 minutes                  14 at that time, after which, at around 3.15, submissions                  15 on behalf of the patient representatives, represented by                  16 Levy &amp; McRae, will be made by my learned friend                  17 Ms Cherry KC.                  18 There will then be a 15-minute break, after which,                  19 if necessary, I will make a closing submission. It is                  20 intended, sir, that the hearing will be concluded by                  21 around 4.30, which I hope is of some assistance to those                  22 attending.                  23 As to our other core participants, the                  24 Royal College of Surgeons of Edinburgh have intimated                  25 that they do not wish to submit a written submission at</p> <p style="text-align: center;">Page 17</p>	<p>1 the Inquiry note, the written responses of parties who                  2 provided them and their submissions and any other                  3 materials provided by core participants which                  4 the Inquiry sees fit to produce, after the hearing.                  5 Sir, I intend to address you, in due course, on the                  6 following topics which have been included as separate                  7 items in the counsel to the Inquiry note and which have                  8 been intimated on the agenda for today's hearing.                  9 I intend, in the first instance, to address the                  10 hearing's venue issue and the postponement of the                  11 section 1 hearings. Secondly, sir, to speak about                  12 the Inquiry's trauma-informed policy. Thirdly, planning                  13 for and, and progress towards, the Inquiry's evidential                  14 hearings. Fourth, the Independent Clinical Review.                  15 Fifthly, an Inquiry staffing update. Sixthly,                  16 the Inquiry's warning letter protocol. Seventhly, the                  17 NHS Tayside legal support provision for current or                  18 former employees, before concluding my submissions.                  19 Sir, as has been explained at previous Inquiry                  20 hearings, in order to protect information which is                  21 confidential or may be or become the subject of                  22 anonymity or restriction order applications, those who                  23 participate have been asked to avoid naming or providing                  24 information which may fall into that category.                  25 Information of that nature can be separately</p> <p style="text-align: center;">Page 19</p>
<p>1 this time or make an oral submission at this hearing.                  2 Whilst not formally appearing at the hearing, they are                  3 represented by a solicitor instructed on their behalf                  4 from Brodies.                  5 Similarly, Healthcare Improvement Scotland and                  6 Public Services Delivery Scotland have not made written                  7 submissions and do not intend to have a submission made                  8 on their behalf at this hearing. Again, I understand                  9 they have a legal representative watching proceedings on                  10 their behalf, at the NHS Central Legal Office, as well                  11 as my learned friend, Mr Dundas Advocate, who is                  12 instructed on their behalf.                  13 The legal representatives of the                  14 University of Dundee have submitted a short written                  15 submission. They have intimated they do not wish to                  16 make an oral submission: much like the others I have                  17 just mentioned, they do not, therefore, formally appear                  18 at this hearing, though I understand that counsel                  19 instructed on their behalf, Ms Toner KC is watching the                  20 hearing as their representative, along with her agents.                  21 I am, as I say, sir, grateful as ever to my learned                  22 friends and others involved with their instruction for                  23 their efforts made to provide their responses in writing                  24 for the -- and for the oral submissions to come. It is                  25 the intention for the Inquiry to publish the counsel to</p> <p style="text-align: center;">Page 18</p>	<p>1 communicated to the Inquiry if necessary.                  2 As was the case in our preliminary hearing                  3 in September and the opening statements hearing                  4 in November, the video feed on YouTube will be                  5 transmitted with a delay of a few minutes. This                  6 mechanism is part of the systems we have in place to try                  7 to prevent any confidential information being                  8 transmitted to the wider public which should not be.                  9 I would ask those who are making oral contributions, as                  10 they have in their written contributions, to continue to                  11 be vigilant about that in their oral submissions and to                  12 avoid naming individual on whose behalf they cannot                  13 speak, in accordance with those principles and aims.                  14 In the event that something is said by me or by any                  15 other contributor which seems, to us, to contain                  16 information which ought not to have been referred to,                  17 I will instruct those who are managing the YouTube                  18 transmission to cut the feed. They will stop the                  19 transmission and we will, most likely, have a short                  20 break to work out how we need to proceed. My apologies                  21 in advance for any interruption which we need to make of                  22 the submissions of others for this purpose. This will                  23 be necessary to do so. Any such information which is                  24 inadvertently referred to, must not be referred to or                  25 otherwise shared outwith this room and is subject to</p> <p style="text-align: center;">Page 20</p>

<p>1 the Inquiry's first order covering those in attendance 2 and those watching online.</p> <p>3 Sir, before I move on to deal with the matters which 4 I have listed in the formal agenda, I would like to make 5 some general observations about some of the submissions 6 made by participants in advance of this hearing. I have 7 had the opportunity, sir, to consider those written 8 submissions and before proceeding to the matters I have 9 set out, I have a number of general observations which 10 I think I can usefully make at this point.</p> <p>11 This hearing is one at which we have called -- in 12 which we have called upon others to explain a number of 13 matters for the benefit of general understanding of 14 their positions, including amongst the wider public, 15 about matters which are within their control.</p> <p>16 For example, we have sought explanations from the 17 Levy &amp; McRae group about issues we have encountered with 18 the work they have been doing on behalf of their clients 19 for which they are publicly funded. We have sought 20 explanations from NHS Tayside to provide clarity about 21 the legal support which they intend to offer to current 22 and former employees in their engagement with 23 the Inquiry.</p> <p>24 We have sought an explanation from the 25 Scottish Ministers as core participants about their</p> <p style="text-align: center;">Page 21</p>	<p>1 conducting a public Inquiry in this country is not 2 an easy one. Like The Charge of the Light Brigade, one 3 feels beset, at almost all times, by threats, pressures 4 and obstacles from others. There are assumptions made 5 about what the Inquiry is, though it is for you, sir, to 6 use the power vested in you by the underlying statute, 7 to determine that. There are hurdles placed in the way 8 of good progress, despite the commitment you have made 9 to do so and -- to make that progress and the clear 10 pleas of patients who have waited many years for that 11 progress to be made and to be seen to be made.</p> <p>12 Organisations too have shown a willingness for 13 the Inquiry to progress and to contribute to real 14 progress being made. There are, it would appear, even 15 issues about how representation is proposed to be 16 provided to those required to engage with our work for 17 assistance in the fulfilment of our remit.</p> <p>18 Sir, I would like to say something at this stage 19 about the matters which have been raised by the 20 Levy &amp; McRae group on behalf of their core participant 21 clients.</p> <p>22 Many of the submissions which have been received by 23 participants in our hearings today and previously have 24 been helpful and constructive. The Inquiry is grateful 25 for that, but expects that to be the case. I am</p> <p style="text-align: center;">Page 23</p>
<p>1 provision of confidentiality undertakings to 2 the Inquiry. In addition, we have sought an explanation 3 from the Scottish Ministers as the Inquiry's sponsor for 4 the ongoing issues with being able to hold public 5 hearings at our hearings venue in Edinburgh. These are 6 undoubtedly important matters.</p> <p>7 We have sought those explanations in writing so that 8 these issues can be ventilated at this hearing and 9 hopefully resolutions reached or at least paths towards 10 resolutions laid out so that the Inquiry can function as 11 best it can. Those responses will ultimately be 12 published, as I have said, for the wider public to 13 consider.</p> <p>14 Part of my role at this hearing is to set out what 15 I understand the key parts of those responses are and to 16 set out the Inquiry's position on them, as well as to 17 provide explanations and plans which emanate from 18 the Inquiry itself. In some instances, this process 19 will result, and has resulted, in a resolution of 20 outstanding matters or at least clarity about how they 21 will work or be resolved. In others, the responses give 22 rise to ongoing issues for the Inquiry to be able to 23 function to the best of its ability.</p> <p>24 Sir, it will become apparent, I think, during the 25 course of this submission, that the process of</p> <p style="text-align: center;">Page 22</p>	<p>1 compelled, in responding to the written submission which 2 has been received by the Levy &amp; McRae group, 3 representatives of the core participant patient group, 4 to raise certain aspects of its content which are 5 consistent with issues which have arisen with 6 the Inquiry team's work with them. I do not take any 7 pleasure in doing so but feel that certain matters must 8 be addressed today in order to make you aware of 9 difficulties which have been experienced and the 10 potential effect which this appears to be having on the 11 active participation of the patient group, whose 12 interests you and your team have made considerable 13 efforts to put at the centre of this inquiry.</p> <p>14 I do so at this time, sir, in particular as 15 the Inquiry is now turning to its section 2 workflow and 16 to the complex and lengthy process of recovering 17 evidence from patients beyond that which has already 18 been produced to the Independent Clinical Review. 19 The Inquiry is starting the drafting of a rule 8 request 20 for written statements for patients. This is a crucial 21 phase of our work, on which members of the team are 22 working as we speak. I have considerable doubts that 23 this process will work as we aspire that it should, if 24 some time is not taken at this juncture for the 25 representation of the patient core participants to be</p> <p style="text-align: center;">Page 24</p>

<p>1 addressed and improved going forward.</p> <p>2 Sir, what I have to say should be taken in</p> <p>3 a constructive spirit in order to make things work</p> <p>4 better. That is its intention.</p> <p>5 The written submission provided by the lawyers of</p> <p>6 the patient group start with an inaccuracy and</p> <p>7 a complaint. The inaccuracy relates to the name and</p> <p>8 remit of the Inquiry, which is described as the public</p> <p>9 Inquiry to examine the professional practice of</p> <p>10 Mr Eljamel. As you know, sir, this Inquiry is in fact</p> <p>11 called The Eljamel Inquiry. It is misleading and</p> <p>12 inaccurate to describe it as it has been, given the fact</p> <p>13 that the Inquiry has a predominantly systemic remit as</p> <p>14 opposed to being an Inquiry into the professional</p> <p>15 practice of Mr Eljamel.</p> <p>16 The complaint concerns the time which Levy &amp; McRae</p> <p>17 and their counsel have had to respond in writing to the</p> <p>18 contents of the note. It has become a feature of the</p> <p>19 hearings which have been held by the Inquiry to date</p> <p>20 that a considerable amount of time, which could have</p> <p>21 been spent speaking about substantive issues of import</p> <p>22 or important procedural aspects of our process, such as</p> <p>23 our trauma-informed approach or the support available to</p> <p>24 those who participate, discussing matters of concern to</p> <p>25 the firm of Levy &amp; McRae.</p> <p style="text-align: center;">Page 25</p>	<p>1 representation of the patient group is not an easy task.</p> <p>2 As I have said before, numerous members of the Inquiry</p> <p>3 team have experience of representing similar and even</p> <p>4 much larger such groups at public inquiries. As</p> <p>5 a result of that experience, and contrary to the</p> <p>6 assertion upon which much of the written response we</p> <p>7 have received from Levy &amp; McRae is based, the Inquiry</p> <p>8 has taken a considerable amount of time to try, in the</p> <p>9 period since last summer, to seek to structure the work</p> <p>10 required of Levy &amp; McRae to respect these difficulties</p> <p>11 and to try to stagger them in a way which appeared</p> <p>12 tolerable and achievable.</p> <p>13 Specific steps were taken to minimise the burden</p> <p>14 normally imposed by the rules to permit this group,</p> <p>15 whose existence had been made known to us in advance, to</p> <p>16 become core participants as swiftly and effortlessly as</p> <p>17 possible. Efforts were made to allow the Inquiry to</p> <p>18 forego checks on the finances of the members of the</p> <p>19 group normally required by the statutory regime. Only</p> <p>20 basic details of applicants were required, to permit</p> <p>21 a decision on core participant status to be made.</p> <p>22 Other patient applicants had their applications</p> <p>23 refused. One solicitor group asked you, sir -- one</p> <p>24 unsuccessful solicitor group asked you, sir, to consider</p> <p>25 them being allowed to represent the whole patient</p> <p style="text-align: center;">Page 27</p>
<p>1 A consistent theme of their submissions focusing on</p> <p>2 procedural matters and the difficulty which the firm has</p> <p>3 in responding to requests made of them by the Inquiry.</p> <p>4 This is not, I should say, a theme which is focused on</p> <p>5 by others, nor, when it is, it is projected in a way</p> <p>6 which appears to focus so much on the interests of the</p> <p>7 representatives as opposed to the clients.</p> <p>8 All other representatives received the same notice</p> <p>9 and responded without complaint. Others have sought to</p> <p>10 engage with the Inquiry proactively on matters of</p> <p>11 interest and concern to their clients in recent weeks</p> <p>12 and months, often productively. For the avoidance of</p> <p>13 doubt, though the note, in its opening paragraph,</p> <p>14 suggests that the starting gun was fired on 7 May of</p> <p>15 this year for this hearing, in fact, intimation of the</p> <p>16 date of the hearing was provided to Levy &amp; McRae on</p> <p>17 17 April.</p> <p>18 There was nothing to prevent the representatives of</p> <p>19 that group seeking to explain what was going on to their</p> <p>20 clients, what was going to happen, to gather</p> <p>21 instructions and prepare for the hearing at that time.</p> <p>22 Such an approach would, in my view, have been</p> <p>23 trauma-informed, clear and cooperative principles to</p> <p>24 which we all aspire.</p> <p>25 I do accept, sir, as is said in the note, that the</p> <p style="text-align: center;">Page 26</p>	<p>1 interest, including those currently represented by</p> <p>2 Levy &amp; McRae. This, and the subsequent funding award,</p> <p>3 were authorised with a minimum of effort to restrict the</p> <p>4 need for Levy &amp; McRae to have to spend time, necessarily</p> <p>5 unpaid, making more detailed applications. This was all</p> <p>6 done in recognition of the importance of this large</p> <p>7 group to our project and on the basis of assurances from</p> <p>8 the firm of Levy &amp; McRae that they would provide the</p> <p>9 necessary representation to allow their clients' voices</p> <p>10 to be heard as you, sir, have repeatedly insisted should</p> <p>11 happen.</p> <p>12 The request for input and representation in</p> <p>13 connection with the preliminary hearing was followed by</p> <p>14 input into the ICR expert instruction, the list of</p> <p>15 issues and then the opening statements hearing and input</p> <p>16 into our letters of instruction. A timetable for the</p> <p>17 production of the first 50 applicant statements in the</p> <p>18 ICR was set out at the opening statements hearing. That</p> <p>19 was not demurred from by any of the participants'</p> <p>20 representatives including the patient group. It was</p> <p>21 designed to have the applicant statements completed by</p> <p>22 mid-January and the reports completed by mid March.</p> <p>23 That timetable had been devised by the Inquiry and</p> <p>24 agreed to by the ICR in the knowledge that by that time,</p> <p>25 in mid March, in accordance with the original plan,</p> <p style="text-align: center;">Page 28</p>

<p>1 attention would be required to turn to the anticipated 2 section 11 disclosure and hearings.</p> <p>3 This period has been punctuated with assistance 4 which has been lent by the Inquiry team to try to 5 understand the difficulties which the firm and counsel 6 faced and offer help where necessary, including trying 7 to explain how the statutory system for feeing required 8 to work. These efforts were all made to set out a clear 9 and reasonable programme for the proper and full 10 engagement of the patient group and the work of their 11 representatives over that period.</p> <p>12 It had been represented at the start of the Inquiry 13 that Levy &amp; McRae had a long history with the client 14 group and were in a position to hit the ground running 15 in their representation of the group when the Inquiry 16 commenced. With the multiple opportunities offered to 17 them to get to know their clients' positions and 18 aspirations over the period since, as I have set out, we 19 consider it entirely reasonable, what has been -- we 20 consider it to be entirely reasonable what has been 21 asked of them over that period and since.</p> <p>22 It should be borne in mind that a swift, though 23 reasonably thorough, resolution of the Inquiry's terms 24 of reference is something that the patients have always 25 told the Inquiry they wish to achieve. We agree.</p> <p style="text-align: center;">Page 29</p>	<p>1 available to this team a funding award which allows 2 a full-time team to provide legal representation to the 3 patient group. It is not the case, as appears to be 4 claimed in the submission, that this team is asked only 5 to perform specific tasks. Though they are indeed 6 called upon to do so, the support and representation of 7 the patient group is a demanding task. Reasonable and 8 proportionate work to achieve that aim may well involve 9 many hours of effort. If that can be justified, as the 10 rules and the ministerial determination require, then 11 that is funded up to the maximum levels, which the 12 solicitor to the Inquiry is permitted to grant.</p> <p>13 The Inquiry cannot know how many hours are required 14 for that purpose. That is for the professional judgment 15 of the lawyers who are in receipt of the funding award. 16 If those hours are not required for that purpose, then 17 they do not need to be used. If they are and the work 18 is reasonably and proportionately undertaken it is 19 covered by the funding award.</p> <p>20 In more routine matters, the expectation that there 21 will have been advance instruction and acquaintance with 22 the Inquiry's intentions, is equally the base upon which 23 we consider it reasonable for requests to be made as 24 they have been. The Inquiry's plans and timetable have 25 been set out at an early stage. At both the preliminary</p> <p style="text-align: center;">Page 31</p>
<p>1 Moving at pace is what they want, so we understand. 2 That is what we have sought to achieve. Thus, their 3 representations should reasonably be expected to work at 4 pace too, as others are required to do, in particular in 5 light of the opportunities afforded to them to be able 6 to learn about their clients and represent them to the 7 best of their ability.</p> <p>8 It is clear that in order for any core participant 9 body of the nature of the patient body to be able to 10 participate and contribute as they deserve to be able to 11 do, they need their representatives to be pulling along 12 with the Inquiry and seeking to work together. That is 13 certainly our aspiration.</p> <p>14 It is not accepted by the Inquiry that the work 15 which is requested of Levy &amp; McRae imposes undue burdens 16 or that the requests made of them are unreasonable. 17 Some matters which arise during the course of an Inquiry 18 are, by their nature, urgent. An example was the 19 request made by you, sir, in March seeking the views of 20 core participants on your available options of holding 21 restricted hearings virtually or postponing the 22 section 1 hearings all together.</p> <p>23 It would appear, from the note, a matter of dispute 24 that the Levy &amp; McRae team is funded full-time. As 25 I have pointed out before, the Inquiry has made</p> <p style="text-align: center;">Page 30</p>	<p>1 hearing in September and the opening statements hearing 2 in November, the Inquiry intimated its position. The 3 provisional list of issues published in June 2025 4 provided a proper framework in which to include all the 5 issues and matters that the Inquiry is likely to enquire 6 into and was a sufficient indication for persons and 7 organisations who have relevant information and evidence 8 as well as core participants to be able to commence 9 their preparations for the work of the Inquiry and their 10 involvement in it.</p> <p>11 The Inquiry has clearly stated that it expected that 12 work -- that work -- it clearly expected work to have 13 been underway over that period in order that core 14 participant groups could properly articulate their 15 positions, both evidentially and procedurally, when 16 called upon to do.</p> <p>17 Where funding has been deemed appropriate, generous 18 funding awards have been made available for that work to 19 be undertaken. The Inquiry relies upon its participants 20 to participate meaningfully. When it calls upon them to 21 do so, it expects that work will have been done to allow 22 legal representatives to respond to the Inquiry's calls 23 within the Inquiry's set timetables.</p> <p>24 Understanding the positions and priorities, and 25 connections with the matters listed in the Inquiry's</p> <p style="text-align: center;">Page 32</p>

<p>1 list of issues ought to have been achieved by now.                  2 Other participants have clearly endeavoured to set up                  3 teams and mechanisms to take their clients'                  4 instructions, even in short timescales on occasion.                  5 This is both necessary and appreciated. It is expected                  6 of the patient group also.                  7 A major theme of my submission today, sir, is the                  8 reasonable expectation that those with whom the Inquiry                  9 comes into contact, and upon whom it relies, to adhere                  10 to the principles of the Inquiry as the Inquiry also                  11 seeks to do. Part of the Inquiry's formative statement                  12 that it -- states that it seeks to engage with                  13 individuals and organisations with whom it will come                  14 into contact with courtesy and respect.                  15 It has not always been our experience of dealing                  16 with Levy &amp; McRae that that courtesy is reciprocated.                  17 I hope that that situation can be improved. This                  18 contrasts, if I may say so, with the approach of others                  19 who do respect this approach and seek to emulate it                  20 themselves.                  21 In addition, sir, we had a response which we                  22 received from our trauma-informed consultation, which,                  23 though anonymous, must have come from Levy &amp; McRae                  24 clients, given their content. This indicated a level of                  25 confusion which suggests poor communication and</p> <p style="text-align: center;">Page 33</p>	<p>1 by this point, to have taken the time to have acquainted                  2 themselves with the issues which the Inquiry will                  3 address, as I have said and was explained at an early                  4 juncture in our work. They are expected to have planned                  5 how they will comply with the Inquiry's stated                  6 timetables, thus we expect them to be available to turn                  7 to reasonable requests of the Inquiry to enable those                  8 timescales to be met.                  9 The legal representatives at Levy &amp; McRae are, I am                  10 sure, familiar with the procedures of the Commercial                  11 Court. It is expected in that forum that at the outset                  12 of an action, parties will have exhausted all other                  13 possible methods of resolving their disputes and the                  14 lawyers to be fully familiar with the issues. Short                  15 timescales are set and expected to be adhered to in the                  16 interests of justice. The same might be said of                  17 the Inquiry's approach at this point.                  18 One thing which this involves in large groups or in                  19 organisations where a number of people need to be                  20 consulted before a position could be advanced is                  21 devising suitable mechanisms to take instructions                  22 adequately to be able to represent the group and                  23 legitimately act on the instructions of its individual                  24 members. This is a very familiar issue in inquiries of                  25 this nature where large groups are represented, as</p> <p style="text-align: center;">Page 35</p>
<p>1 apparently little, if any, explanation of what is going                  2 on in the Inquiry coming from those representatives.                  3 The process of undertaking this important task in                  4 an efficient way, we would feel, forms part of the role                  5 of the patients' legal advisers. A trusted legal                  6 adviser would always be best placed to do this, given                  7 his or her responsibility to understand and act in their                  8 clients' best interests.                  9 As a result of these concerns, the Inquiry will now                  10 be required itself to endeavour to take more of                  11 an active role in this regard. However, this will never                  12 be able to replicate what a solicitor of a patient could                  13 achieve.                  14 I very much hope, sir, that the opportunity to say                  15 take stock of where we've got to at this point in                  16 the Inquiry will enable a degree of reflection within                  17 Levy &amp; McRae. The Inquiry team remains available to                  18 assist in any way that it can.                  19 In that spirit, it would, I think, be useful for us                  20 to seek to define what we and you expect of those who                  21 engage with the Inquiry and in particular their legal                  22 representatives, in particular where they are funded by                  23 the Inquiry.                  24 Those who represent individuals or organisations                  25 participating in the work of the Inquiry are expected,</p> <p style="text-align: center;">Page 34</p>	<p>1 happens often.                  2 The issues faced by Levy &amp; McRae and my learned                  3 friends is not a novel one, albeit it is a complicated                  4 one. Time needs to be taken to initiate systems and                  5 mechanisms to be able to take adequate instructions,                  6 sometimes at short notice, and to be able to represent                  7 the interests of those on whose instructions one acts.                  8 We expect courteous and timeous correspondence,                  9 including acknowledgement of correspondence from                  10 the Inquiry. We do not expect other professional                  11 commitments to form a part of any discussion about legal                  12 representatives' availability to provide service to                  13 their clients, as has been the case at times in the                  14 past. The needs and rights of participants in this                  15 Inquiry demand otherwise. If they cannot commit time                  16 against this background, they cannot do what they are                  17 expected to do by you and the Inquiry team.                  18 If, at every turn, the Inquiry requires not only --                  19 the Inquiry requires to wait until they have managed to                  20 clear off the work they have for other clients, our                  21 timetable will never be met.                  22 I should say, sir, again, that it has not been our                  23 experience of other legal representatives that they                  24 expect the same approach. It is common, in inquiries of                  25 this nature, to be there to be a full-time team of</p> <p style="text-align: center;">Page 36</p>

<p>1 representatives for such a patient team that,                  2 Levy &amp; McRae suggest that this is not the case here is                  3 inaccurate, as I have had. They confuse full-time                  4 funding to carry out actions with the ambit of the rules                  5 with funding for whatever it is they feel they may wish                  6 to do.                  7 We are restricted, sir, as you know by the terms of                  8 the rules and the ministerial determination. In other                  9 inquiries of this nature, large groups are able to                  10 expend reasonable time and be remunerated for it in                  11 representing their clients on a full-time basis.                  12 On the matter providing advice on the production of                  13 evidence in the form of written statements, which is                  14 an important part of the witness representation role in                  15 this Inquiry, the extent to which lawyers are able to                  16 advise a client on the content of their statement,                  17 whilst the product of this that process still being in                  18 the witness's own words, should be familiar territory to                  19 experienced solicitors such as those within the patient                  20 group's legal team.                  21 This will involve steps such as making sure that the                  22 best evidence is given in clear terms which will be                  23 understood by its audience, making sure it complies with                  24 the structure required by the request, making sure all                  25 questions are answered clearly and as fully as the</p> <p style="text-align: center;">Page 37</p>	<p>1 represent the important patient core participants in                  2 this process. It should be noted that it will also                  3 apply to other solicitors' firms who are providing legal                  4 advice, to witnesses in the ICR process and                  5 the Inquiry -- within the Inquiry, as there are other                  6 firms who represent witnesses in that capacity beyond                  7 the L &amp; M group.                  8 You will, of course, sir, seek such submissions as                  9 are useful to you. However, I see little value in this                  10 hearing descending, as happened at the preliminary                  11 hearing and as the written submission from the patient                  12 group suggests, into a series of claims that that group                  13 and their advisers are rendered unable to do their work                  14 by the burdens exposed on them by the Inquiry. The                  15 timescales and the requirements which have been set out                  16 are deemed to be both reasonable and necessary against                  17 the background that I have explained.                  18 I would much rather focus on the needs of the                  19 patient core participants and what the Inquiry do to                  20 assist their participation in this process.                  21 It has, I should say, sir, been subject of much                  22 public concern in recent years in this country that                  23 other Scottish Government sponsored inquiries exist for                  24 the benefit of lawyers. That certainly seems to be the                  25 assumption and the subject of much of the questioning</p> <p style="text-align: center;">Page 39</p>
<p>1 witness is able, within the limits of recollection or                  2 available materials. It should be noted that it is                  3 suggested that requests to reference medical records is                  4 a matter which has caused issues with the finalisation                  5 of statements.                  6 In particular, seeking to tease out the full                  7 evidence and a witness -- an applicant or a witness can                  8 reasonably be expected to give, in light of their -- in                  9 the matters of particular interest to the Inquiry and/or                  10 the ICR, in light of their terms of reference, their                  11 stated aims, their issues, the matters upon which the                  12 ICR experts will have to opine, is very much the task                  13 with which a legal adviser is engaged.                  14 This is, in my submission, a very familiar task in                  15 inquiries of this nature and indeed, in broader legal                  16 work undertaken by dozens of legal firms across the                  17 country. The Inquiry remains happy to assist as best it                  18 can to explain and support the production of this                  19 evidence, as it does by reviewing drafts of all ICR                  20 applicant statements and draft neurosurgical reviews as                  21 well as all witness statements and reports provided to                  22 the Inquiry.                  23 I genuinely hope, sir, that this submission is of                  24 some assistance to those who represent all in this                  25 Inquiry in its valuable work, in particular those who</p> <p style="text-align: center;">Page 38</p>	<p>1 directed at witnesses at the recent Scottish Parliament                  2 Finance and Public Administration Committee                  3 investigation into the cost-effectiveness of Scottish                  4 public inquiries.                  5 May I reiterate, sir, for those who take an interest                  6 in our work, that this Inquiry is about the better                  7 running of the NHS in Scotland. It is about patients,                  8 patient safety and patient care. It is about how things                  9 have gone wrong and why. It is about how that can be                  10 avoided in the future. It is not about lawyers. It                  11 endeavours to be about substance and not process.                  12 I will return to various other matters which have been                  13 raised by the patient group in their submission, as I go                  14 along.                  15 To move then, sir, to the matters covered in the                  16 formal agenda. First of all, the hearings venue and the                  17 postponement of the section 1 hearings in April and May.                  18 Sir, some necessary context relating to the role of                  19 the Scottish Government in the Inquiry's work I think is                  20 necessary. The Inquiry team considered it important                  21 that there be clarity for all around the various roles                  22 in which the Scottish Government participates in its                  23 work. The role of the Cabinet Secretary as sponsor,                  24 minister and as funder to the Inquiry has already been                  25 set out. In conducting the Inquiry you, sir, are under</p> <p style="text-align: center;">Page 40</p>

<p>1 an obligation to act with fairness and with regard to  2 the need to avoid any unnecessary cost, whether to  3 public funds or to witnesses or others.  4 In doing so, you have considered it prudent to make  5 use of existing Scottish Government systems to assist  6 the Inquiry in its work. That is why, for example, you  7 accepted the offer of the use of the shared hearing  8 suite in which we now stand for the Inquiry's hearings.  9 As the property was already being used by another  10 Scottish public inquiry, it would come at no extra cost  11 to the public purse, it was well located, digitally and  12 physically accessible to the Inquiry's participants in  13 normal times and technologically set up for the complex  14 project which a public inquiry essentially is.  15 It also comprises -- it contains separate rooms for  16 use by witnesses, the media, for emotional support and  17 for a consultation with clients by lawyers, if  18 necessary. It had a proven track record of use in  19 another Public Inquiry. It could be accessed  20 immediately and was an eminently suitable venue from  21 which the Inquiry's public hearings could be delivered.  22 The Inquiry's complex requirements were met in this,  23 despite the clear disadvantage of requiring to share  24 with another Public Inquiry and the potential  25 disadvantage of timetabling which such an arrangement</p> <p style="text-align: center;">Page 41</p>	<p>1 systems to a certain mutually acceptable extent.  2 It is important to note that the drafting proposed  3 by the Inquiry sought to regulate the extent of which,  4 and the way in which, the Inquiry would access and use  5 government systems in its work, but also to underpin  6 that agreement with a clear mutual understanding of the  7 statutory footing upon which the Inquiry was set, in  8 particular its independence from government and the need  9 for its work to be undertaken confidentially, in light  10 of its particular subject matter and very reasonable  11 concerns which have been expressed to the Inquiry in its  12 public consultation by those who had experience of poor  13 systems having operated in that regard in their dealings  14 with the NHS.  15 It was the Inquiry's understanding that the  16 Scottish Government had agreed to the terms of the  17 revised management agreement which sought to achieve  18 these important aims, yet the agreement remains unsigned  19 on behalf of the Scottish Ministers. In their written  20 submission at page 5, the sponsor team indicates as  21 follows:  22 "Our understanding is that the single outstanding  23 element of the management agreement to be agreed is the  24 section on confidentiality, which we cover below. At  25 the meeting on 16 April 2026, the sponsor team agreed</p> <p style="text-align: center;">Page 43</p>
<p>1 would entail.  2 In order to regulate the relationship between  3 the Inquiry and the Scottish Government in its  4 sponsoring capacity, the Inquiry heavily revised a draft  5 management agreement with which it had been provided.  6 The purpose of the revised document was to make clear  7 how the Inquiry would access and use the services of  8 government in areas such as recruitment, IT support,  9 document management and the procurement of external  10 contracts for services, given that it appeared to you,  11 sir, that the use of existing government systems and  12 services would be the most efficient way of accessing  13 that support as opposed to the Inquiry reinventing the  14 wheel itself.  15 In addition, the agreement sought to recognise the  16 very reasonable need, on the part of the  17 Scottish Government, to be informed of expenditure  18 incurred by the Inquiry, given the government's  19 statutory obligation under the devolution settlement to  20 account for its spend under its allocated budget.  21 Though the Act accords wide powers to the Chair to  22 regulate the Inquiry's own work and procedures. It also  23 sought to recognise the fact that the use of certain  24 government systems would bring with it the need, on the  25 part of the Inquiry, to respect existing government</p> <p style="text-align: center;">Page 42</p>	<p>1 with Lord Weir to effectively adopt all of the other  2 elements of the management agreement, pending resolution  3 of the outstanding matter of confidentiality and,  4 ultimately, the official sign-off of the agreement." (As  5 read)  6 Though this confirmation is welcome, the provisions  7 of the management agreement are not being adhered to by  8 the Scottish Government sponsor team. For example, the  9 agreement requires the Scottish Government to bring  10 Freedom of Information requests concerning the Inquiry  11 to its attention, to enable it to express a view and if  12 necessary offer assistance or a response. The patient  13 group submission, at page 2, reveals that a client of  14 theirs has submitted such an FOI request which has not  15 been brought to the attention of the Inquiry by the  16 Scottish Government.  17 The sponsor team are respectfully requested to read  18 the terms of the management agreement again before  19 blindly assent to go adhere to its terms. In any event,  20 given the importance to the Inquiry of the Chair's  21 requirements for confidentiality undertakings to be  22 agreed, the Inquiry reserves the right to adapt its  23 entire approach to engagement with government systems if  24 this matter cannot be accommodated. The important  25 agreement is unsigned and has remained so for around</p> <p style="text-align: center;">Page 44</p>

<p>1 seven months because of the Scottish Government's lack 2 of acceptance of this point, a matter to which I'll 3 return. 4 In passing, it is not clear to us what point is made 5 by the patient group about the FOI. If there is 6 a matter to resolve, we will be happy to do so, but the 7 point will need to be made clear in perhaps in 8 Ms Cherry's oral submissions. 9 It is noted that on page 1 of the submission 10 received on behalf of the Scottish Ministers as sponsor 11 of the Inquiry it is said that the Inquiry was 12 established under section 5(1) of the 2005 Act by the 13 Scottish Ministers in order to act in accordance with 14 its terms of reference. In that context, it is unusual 15 for matters of sponsorship to be addressed in formal 16 proceedings and whilst Scottish Ministers are content to 17 make these submissions at this point, they reserve their 18 position for the future. 19 It should be noted that the ministers, in that 20 capacity, were invited to be represented to our previous 21 hearings as well. In my submission, sir, it is really 22 neither here nor there whether it is unusual for such 23 a request to be made in other inquiries. You have the 24 power, under section 17 of the 2005 Act, to govern the 25 procedure of the Inquiry as you see fit, including</p> <p style="text-align: center;">Page 45</p>	<p>1 is as follows: an issue relating to the safety of the 2 hearing suite was originally brought to the Inquiry's 3 attention after the opening statements hearings, at 4 which the plans for the section 1 hearings were 5 clarified and communicated publicly. 6 These plans included the Chair's commitment to the 7 hearings being held in public at the hearing suite in 8 Waverley Gate, with core participants and others being 9 able to apply to attend in person, as has been the case 10 at the Inquiry's previous hearings. This was, and had 11 been for some time, the reasonable anticipation not only 12 of the core participants but also those who might be 13 called as witnesses, legal representatives, the media 14 and the wider public. 15 The issue which arose related to the apparent lack 16 of evidence available to satisfy Edinburgh City Council 17 that the building had been certified as compliant with 18 applicable fire safety regulations, in particular 19 relating to the way in which some of the walls had been 20 constructed. 21 The information provided to Inquiry about these 22 matters was often very limited and often accompanied by 23 reassurances from the sponsor team that the issue was 24 likely to be able to resolve simply by the provision of 25 the landlord of evidence relating to the way in which</p> <p style="text-align: center;">Page 47</p>
<p>1 calling hearings and asking for contributions from 2 whomsoever you think requires to address you to make 3 reasonable progress in our work. 4 The idea that the Inquiry should be bound by what is 5 usual, meaning what occurs in other Scottish Government 6 sponsored public inquiries is, in fact, a concept which 7 we have been very keen to avoid. In light of that 8 statutory context, your responsibilities in terms of, 9 your unique terms of reference, the principles, aims and 10 processes upon which you have based this Inquiry. To 11 expect that we are bound by what is usual is to 12 undermine the independence of this process. 13 To move, sir, to commentary on the postponement of 14 the planned section 1 hearings. The Inquiry, as those 15 in attendance will know, intended to hold its section 1 16 hearings in a three-week slot which have been reserved 17 at the hearing suite from 20 April of this year. 18 Section 2 hearings had been planned to place in 19 a four-week slot from the week of 7 September of this 20 year. 21 The events leading up to the postponement of 22 the Inquiry's hearings which were due to take place at 23 that time can be seen in correspondence which has been 24 published by the Inquiry on its website and need not be 25 rehearsed today. The broad sequence of events, however,</p> <p style="text-align: center;">Page 46</p>	<p>1 the hearing suite and neighbouring office, now occupied 2 by the Inquiry also, had been configured. 3 It was usually -- that information was usually 4 provided orally and not in written form. It was always 5 provided by the sponsor team, who are not the 6 individuals within the Scottish Government with the best 7 or closest acquaintance with the issues or attempts 8 being made to resolve them. 9 Numerous reasonable requests for further information 10 were made by the secretary to the Inquiry and have gone 11 unanswered. It was not until February of this year that 12 it became apparent to the Chair that the issues with the 13 hearing suite posed a real threat to the section 1 14 hearings being able to be held as planned. 15 In light of these issues, the Chair communicated 16 that he was aware of the difficulties with the hearing 17 suite on 6 March of this year and invited core 18 participants' comment on the proposal to hold virtual 19 hearings in the scheduled slot, with the hearings being 20 limited in scope in light of the limited access which 21 could be accommodated. 22 On 11 March of this year, the Chair issued a public 23 statement announcing that, due to issues with the way 24 the Inquiry could use the building, the Inquiry required 25 to hold its section 1 hearings virtually and that a more</p> <p style="text-align: center;">Page 48</p>

<p>1 limited set of hearings would be held to balance the  2 need to make progress, with the limitations that virtual  3 hearings would inevitably entail.</p> <p>4 The importance of attendance by core participants  5 was specially recognised in the decision to defer part  6 of the hearings until a later date. It was made clear  7 that the situation was and remains outwith the Inquiry's  8 control.</p> <p>9 On 12 March, three members of the Scottish  10 Parliament wrote to the Chair expressing upset on behalf  11 of some of their constituents and seeking an explanation  12 for the announcement the Chair had made the day before.  13 It should be noted that in this letter, the MSPs had  14 assumed that the Chair had taken a positive decision to  15 exclude patients from the hearings. This was a matter  16 over which the Chair, in fact, had no control.</p> <p>17 On 18 March, the Chair replied to the MSPs setting  18 out the truth behind the position. In particular, he  19 made clear there was a safety issue with the hearings  20 suite and that he had been advised, through the sponsor  21 team by representatives of the Scottish Ministers in  22 their capacity as tenants of the property, that he  23 should not bring members of the public into the hearing  24 suite due to that safety issue.</p> <p>25 He undertook to reassess the situation in light of</p> <p style="text-align: center;">Page 49</p>	<p>1 the Inquiry to be held.</p> <p>2 He also intimated that he intended to instruct  3 the Inquiry team to conduct further investigations into  4 alternative venues, which we would require -- which  5 would require to enter into separate arrangements to  6 occupy and which would inevitably take some time to  7 achieve.</p> <p>8 Sir, you have consistently stressed the need for  9 there to be a balance in the work of the Inquiry between  10 speed and reasonable thoroughness. A considerable  11 amount of planning, work and time had gone into the  12 preparations for the planned section 1 hearings since  13 the opening statements hearing in November and indeed,  14 well before that. The plans had been advertised to core  15 participants who are reasonably entitled to rely on the  16 hearings proceeding as has been advertised. You were  17 not willing to postpone those planned and advertised  18 hearings unless it was, in your view, absolutely  19 necessary to do.</p> <p>20 The following important observations should be  21 understood by those in attendance and those listening  22 about your decision-making process in this regard: the  23 responsibility for dealing with this matter rests with  24 the Scottish Government in its capacity as tenant of the  25 property. The Scottish Government has been involved in</p> <p style="text-align: center;">Page 51</p>
<p>1 the representations they had made on behalf of their  2 constituents.</p> <p>3 On the same date the Chair wrote to core  4 participants to explain that the only alternative to  5 virtual hearings would be to postpone the planned  6 section 1 hearings until a later date and seeking their  7 views on these alternatives. He did so in light of  8 the Inquiry's ongoing commitment to listening to core  9 participants, cooperation with them and providing  10 clarity about his decision-making and the reasons for  11 it. In particular, in light of the apparent concerns  12 with which the situation had caused to patients.</p> <p>13 Having reconsidered the matter in light of  14 representations and information he received, on 23 March  15 the Chair issued a determination postponing the  16 section 1 hearings. In that determination, the Chair  17 recognised the need for the Inquiry to set out, as soon  18 as possible, what steps should be taken in light of  19 postponement of the hearings. The intention to hold  20 a procedural hearing, which would likely also require to  21 be virtual was announced. In addition, the Chair made  22 clear that he intended to seek a clear explanation from  23 the Scottish Government as to when a hearings venue, be  24 it the current hearings suite or a suitable alternative,  25 could be made available for the evidential hearings of</p> <p style="text-align: center;">Page 50</p>	<p>1 discussions about the issue in that capacity. This is  2 a commercial discussion in which the Chair of  3 the Inquiry has no direct role. His ability to explain  4 what the position was and is remains limited by that  5 state of affairs and by the inadequate information which  6 has been shared with him about the nature of the  7 problem, whose responsibility it was, who could solve  8 it, what effort were being made to solve it, what impact  9 the lack progress would have on the hearings.</p> <p>10 As such, you have not been in a position to provide  11 any explanation as to what has been happening, other  12 than what you had been advised about, namely that there  13 was a safety issue with the building.</p> <p>14 Contrary to certain assumptions which appear to have  15 been made in public discourse on the matter, you did not  16 make any determination that members of the public,  17 including core participants, should positively be  18 excluded from the hearings. You were advised, and you  19 continue to be advised via the sponsor team, that the  20 hearings room is not currently certified as safe for  21 members of the public to attend. Suggestions that you  22 would ever have chosen to exclude core participants from  23 attendance at the Inquiry's public hearings are  24 factually unfounded.</p> <p>25 Safety of the Inquiry's core participants was, and</p> <p style="text-align: center;">Page 52</p>

<p>1 always will be, a core consideration in the Inquiry's                  2 approach, in particular its trauma-informed strategy.                  3 It was never part of the Inquiry's planning that any                  4 advantage would be afforded to any group. Members of                  5 the public, including patient core participants would                  6 not be able to attend. However, it was permitted to                  7 have the witnesses themselves attend the hearing suite                  8 for the time needed to give their evidence. As part of                  9 their legal right to do so, they would have been                  10 permitted to have their lawyers attend the hearings with                  11 them, which would also have been permissible based on                  12 the safety advice received. These lawyers would have                  13 been attending not as core participant representatives                  14 but as the representatives of the witnesses. Their                  15 attendance would only have been what was strictly                  16 necessary to perform that function.                  17 As with this procedural hearing, you, sir, would                  18 always have insisted on mechanisms being put in place to                  19 enable proper participation in any remote hearings by                  20 the Inquiry's core participants. Suggestions ventilated                  21 publicly outwith the Inquiry about the possibility of                  22 arranging an alternative venue were not feasible. In                  23 the timescales available, despite considerable efforts                  24 by the Inquiry team to seek an alternative venue, no                  25 suitably assessed and equipped venue could have been</p> <p style="text-align: center;">Page 53</p>	<p>1 Patients who have waited for a long period to get to the                  2 first evidential hearings of the Inquiry were entirely                  3 justified in their anger and frustration that they may                  4 not have been able to attend to -- at no stage did it                  5 enter anyone's minds, other than apparently the legal                  6 representatives of the patient group, that they could be                  7 blamed for any of the sequence of events which occurred.                  8 If that was a consideration which prevented                  9 a submission being made on behalf of the group on                  10 20 March, it ought not to have been. A diversity of                  11 views, as is suggested were held was, I think,                  12 inevitable. It was clear that that was the position                  13 from the published comments by some of the group                  14 members. That, in my submission, would not have been                  15 a barrier to those views being expressed to you, sir, to                  16 assist you in your decision-making.                  17 It remains, and is important to say, that it remains                  18 an extremely important part of the Inquiry's approach                  19 that parties with an interest in our work should be able                  20 to attend and participate fully in the Inquiry's work                  21 and our hearings, in particular core participants, in                  22 accordance with our published procedures. That is why                  23 the section 1 hearings were postponed by you, sir, after                  24 alternative means of holding the hearings were                  25 investigated. It is why the procedural hearing today</p> <p style="text-align: center;">Page 55</p>
<p>1 obtained. The location, securing, fitting out and use                  2 of the space for a public Inquiry is a complex,                  3 time-consuming process. The premises needs to be able                  4 to accommodate the Inquiry team, its participants,                  5 witnesses, lawyers, members of the public, the press,                  6 numerous contractors who is needed to be able to provide                  7 their services to the Inquiry for the hearings to                  8 function properly.                  9 Assumptions that premises used by other                  10 Scottish Government sponsored public inquiries could                  11 always have been made available to this Inquiry are                  12 inadequate. In fact, as I will come on to discuss, no                  13 alternatives were proposed by the Scottish Government at                  14 all.                  15 Core participants were consulted about their                  16 preferred option for the hearings. The views of those                  17 who responded were taken into account by the Chair in                  18 reaching his ultimately decision.                  19 It is suggested in the patient group submission at                  20 paragraph 4(d) that a consideration which weighed                  21 heavily with the patient group's lack of submission was                  22 that there was a need to avoid the delay being laid at                  23 the patients' door. I am unsure why this was the case.                  24 For the sake of clarity, there was never any basis upon                  25 which that could have been suggested; none at all.</p> <p style="text-align: center;">Page 54</p>	<p>1 has been convened and it is why the process involved in                  2 this hearing has been set up to try to maximise                  3 information being shared and participation being                  4 facilitated.                  5 As far as the current position is concerned, at                  6 page 2 of their written submission, the                  7 Scottish Ministers as sponsor have set out an overview                  8 of the series of events that led from the initial                  9 identification of the safety issue to the current                  10 progress toward an effective resolution.                  11 From the Inquiry's perspective, it is surprising                  12 that the Scottish Ministers did not take on any                  13 opportunity to set out any such explanation in public at                  14 an earlier stage, given the understandable public                  15 concern about the issues which had arisen and the                  16 reasonable public clamour for an explanation from the                  17 Scottish Government about what had happened and what was                  18 going on. For clarity, as appears to be acknowledged in                  19 the Scottish Ministers' note, this safety issue was and                  20 is a matter for the Scottish Government to clarify, as                  21 it was the Scottish Government and its property team who                  22 were dealing with the matter, given that the                  23 Scottish Ministers are the tenants of the property with                  24 a legitimate interest to seek to have the issues                  25 resolved.</p> <p style="text-align: center;">Page 56</p>

<p>1 The result of the failure to issue such a public                  2 pronouncement before now, I fear, has been a vacuum in                  3 which members of the public, including traumatised                  4 patients, have been left uninformed, anxious and                  5 suspicious. This is confirmed by a prominent campaigner                  6 and core participant in the Inquiry who is quoted in                  7 The Courier this morning as saying:                  8 "There has been a lack of transparency which has                  9 only fuelled confusion, concern and inevitably                  10 speculation amongst patients and families." (As read)                  11 For clarity, this lack of public explanation is not                  12 a matter of the Inquiry's making, nor within                  13 the Inquiry's -- nor was it within the Inquiry's                  14 control, to offer such an explanation. The Inquiry has,                  15 in large part, remained as confused, uninformed and                  16 dissatisfied with this situation as the public, in                  17 particular patients clearly have as well.                  18 It is a clear message from the Inquiry's                  19 trauma-informed consultation and its previous engagement                  20 with patients in connection with its terms of reference,                  21 that patients remain mistrustful of public institutions.                  22 That mistrust stems, it would appear in part at least,                  23 from a series of experiences involving them being kept                  24 in the dark or excluded from important decisions                  25 involving them at a clinical level, at a corporate level</p> <p style="text-align: center;">Page 57</p>	<p>1 learned from the series of events which will inform                  2 future planning and arrangements.                  3 As has been set out already, you, sir, had sought                  4 a written explanation of the position with the hearing                  5 suite and other matters in a letter you wrote to the                  6 sponsor team on 6 February. You had not received                  7 a response by the time the decision around the hearing                  8 was required to be made. In that letter you had sought                  9 a meeting with the sponsor team which had not been                  10 forthcoming. Indeed, you received no written reply to                  11 that letter until 1 April.                  12 Thereafter, after the enforced postponement of the                  13 section 1 hearings, you renewed your request for                  14 a meeting on the matters which had been raised in that                  15 correspondence including relating to the need to                  16 rearrange the Inquiry's hearings as soon as possible.                  17 Communication between the sponsor team and the Inquiry                  18 in connection with that meeting led to the revelation                  19 that the building had recently been sold, which appeared                  20 to the Inquiry team to present a potential further                  21 hurdle in the resolution of the hearing suite issue.                  22 A meeting was eventually secured and attended by                  23 you, sir, and members of your team with the sponsor team                  24 on 16 April. Various issues were discussed at the                  25 meeting relating to the support provided by the sponsor</p> <p style="text-align: center;">Page 59</p>
<p>1 and at a government level. As a result, this Inquiry                  2 has taken and continues to take a principled approach to                  3 its communication with them and with the public.                  4 You, sir, have made clarity and cooperation two of                  5 our key principles. As I have said, in situations such                  6 as this, when the Inquiry has, in good faith, relied                  7 upon the Scottish Government to assist with securing and                  8 maintaining a suitable and available property for its                  9 hearings, the Inquiry wishes to adhere to its principles                  10 in discharging its responsibilities. However, the                  11 failure by the Scottish Government to provide a clear                  12 public explanation of the position has, no doubt,                  13 further undermined the faith of these patients in                  14 agencies of the state. It has certainly undermined the                  15 considerable efforts of this Inquiry to a seek to build                  16 trust in it, a process which is independent of the                  17 state.                  18 It is welcome that the Scottish Ministers now                  19 publicly recognise in connection with the issues which                  20 have arisen with the hearing suite, at page 2 of their                  21 submission, that the Scottish Government through                  22 the Inquiry sponsor team remains committed to working                  23 towards an effective and timely resolution to the issues                  24 that have been identified. The impact to the important                  25 work of the Inquiry is recognised and lessons will be</p> <p style="text-align: center;">Page 58</p>	<p>1 team to the Inquiry, some of which I will return to,                  2 including the pressing issue of the availability of the                  3 hearing suite or the possibility of securing                  4 an alternative venue for our evidential hearings.                  5 At the meeting, no resolution was communicated and                  6 the sponsor team committed to a final response on the                  7 matters under discussion by later in the month which has                  8 not materialised.                  9 You made clear, sir, that if a resolution was not                  10 found to the impasse before this procedural hearing,                  11 then an update would be given to core participants in                  12 the form of a counsel to the Inquiry note, which was                  13 provided, that a legal representative should be                  14 instructed on behalf of the sponsor team to explain the                  15 situation publicly.                  16 The Inquiry team has continued to chase the                  17 Scottish Government for a meaningful response and                  18 resolution of these issues. The sponsor team informed                  19 the Inquiry team that a positive update on progress                  20 towards resolution of the hearing suite issues would be                  21 made available on 5 May. In fact, the sponsor team                  22 intimated it had not received the expected update in                  23 writing from its property team within                  24 Scottish Government on that date as has been expected.                  25 It was explained by the sponsor team that it had been</p> <p style="text-align: center;">Page 60</p>

<p>1 expected that the Scottish Government property team's 2 update to them would be a positive one in that the 3 parties involved in the building dispute were now in 4 agreement what works needed to be done to address the 5 safety issues.</p> <p>6 It had been the Inquiry's understanding that there 7 remained a possibility the issue could be addressed to 8 the council's satisfaction without delay and 9 interruption, which the construction works -- any 10 construction works would necessarily entail.</p> <p>11 While this appeared to represent a small step 12 forward, it does not -- did not and does not come 13 anywhere near assurance which the Inquiry and its 14 participants need that the hearing suite will be made 15 available for the hearing slot which we intend to hold 16 for the section 1 hearings in September. It provides no 17 detail about the works which have been agreed, who will 18 undertake them, who will fund them, how long they will 19 take, what interruption, if any, there will be to 20 the Inquiry and ultimately, that they will resolve the 21 safety issue.</p> <p>22 In short, this is an unacceptable position which 23 the Inquiry -- for the Inquiry to find itself in at this 24 stage. Again, no alternatives have been proposed for 25 the Inquiry's consideration.</p> <p style="text-align: center;">Page 61</p>	<p>1 investigation. We further recognise -- and their 2 recognition that the decision taken by you to postpone 3 the hearings was not taken lightly.</p> <p>4 However, there are a number of matters arising from 5 the submission which merit further consideration and 6 explanation, in our view. It is asserted that the 7 Scottish Government only became aware of 8 City of Edinburgh Council's concerns about the safety of 9 the property following a survey of completed 10 refurbishment works in the office space occupied by the 11 Inquiry on 16 December of last year. The timing of 12 these events merits some further comment and 13 explanation. The Inquiry occupies an office space which 14 is next door to the hearing suite and as we understand 15 it, part of a property under the same ownership. 16 A considerable amount of time was spent by the 17 Scottish Government, from late 2024 until the Inquiry's 18 entry into the office in mid December 2025, overseeing 19 a lease over this office property being entered into by 20 them and various checks and works being undertaken on 21 the office premises.</p> <p>22 These matters were tended to by the 23 Scottish Ministers and the Scottish Government property 24 department acting on their behalf and not by the Inquiry 25 team. Little information was made available to</p> <p style="text-align: center;">Page 63</p>
<p>1 The Inquiry's plans for the hearing slots available 2 in September and December 2026, to which I will return, 3 are now fixed. The Inquiry wishes to use the hearing 4 suite has had been agreed or a suitable alternative in 5 order to be able to deliver these hearings in sections 1 6 and 2 of its evidential plan. The Inquiry team is 7 working hard to achieve meaningful and productive 8 hearings at those times in the way that the hearings had 9 originally been intended to be delivered, with the 10 opportunity for those who wish to do so to attend.</p> <p>11 The Inquiry's core participants reasonably expect to 12 know what can be provided for those hearings to happen 13 at that time and in that way. No clear picture has 14 emerged from discussions with the sponsor team as to 15 what it intends to do to enable that modest demand to be 16 met. Representatives of the Cabinet Secretary in its 17 capacity as sponsor are called upon to provide 18 clarification on the position immediately.</p> <p>19 The Inquiry is grateful that the Scottish Ministers 20 have now set out, as I have said, a more detailed 21 explanation of the position with the hearing suite than 22 has ever been set out before and for their 23 acknowledgement that there has been a significant 24 interruption to the planned proceedings of the Inquiry 25 and to those affected by the matters under</p> <p style="text-align: center;">Page 62</p>	<p>1 the Inquiry about this process, which was not overseen 2 by them. The Inquiry would have anticipated, 3 reasonably, in my submission, that checks would have 4 been done that the hearing suite was safe or that it 5 would -- at that time, or that it would have been 6 checked at the time when the original lease for the 7 hearing suite entered into by the -- on behalf of the 8 Scottish COVID Inquiry was commenced.</p> <p>9 In essence, the Inquiry reasonably expected that it 10 was being provided by the Scottish Government with 11 a building split into two parts which was safe and would 12 be available for its specified and publicised uses. 13 That this matter only arose in December 2025 begs the 14 question, in my submission, as to whether it was not 15 checked sooner and if not, why not.</p> <p>16 Further, the timing of the apparent revelation of 17 there being a safety issue needs to be placed in the 18 context of the Inquiry's planning and in light of what 19 was communicated to the Inquiry about it. At that time, 20 the Inquiry was in the midst of its preparations for its 21 section 1 hearings, a complex process which, as was set 22 out at the opening statements hearing, involved 23 a challenging timetable to be able to achieve the 24 hearings taking place in April, as has been widely 25 publicised and anticipated.</p> <p style="text-align: center;">Page 64</p>

<p>1 The Chair and Inquiry team were keen, as I am sure 2 core participants were also, to maintain the momentum 3 which had been achieved in the work of the Inquiry by 4 the hearings that it held in the latter half of 2025. 5 It is important to note that the information which 6 was received by the Inquiry in this regard was limited 7 and often confusing. It was transmitted, as the 8 Scottish Government's submission accepts, orally. The 9 secretary of the Inquiry was charged with relaying it 10 back, through the Inquiry team's senior team meeting 11 structure, to the Chair and other senior members of 12 the Inquiry team. No clear message about the nature of 13 the safety issue or how it had arisen was communicated. 14 No clear impression was given by what was meant by the 15 exclusion of members of the public, with the suggestion 16 consistently being reported that this may not apply to 17 individuals who were previously acquainted with using 18 the premises, a proposition which seemed to the Inquiry 19 team to be unlikely to be accurate. 20 We are pleased to learn from the 21 Scottish Government's submission that the safety of our 22 staff and members of the public is paramount. This is 23 inconsistent in the Inquiry's experience with the lack 24 of clarity with which the threat to the public and the 25 consequent advice about their ability to access the</p> <p style="text-align: center;">Page 65</p>	<p>1 way of progress. 2 It is asserted by the Scottish Government that 3 between 18 and 23 December 2025 that Scottish Government 4 were provided with more information of the issue from 5 The Eljamel Inquiry fit-out contractor who provided 6 an update on both inquiries impacted. This was shared 7 with them on 23 December, highlighting that building 8 control did not recommend the public be allowed to use 9 the space but continued -- to continue to use by 10 employees familiar to the office was acceptable. 11 For clarity, The Eljamel Inquiry fit-out contractor 12 is a contractor who works on the premises used by 13 The Eljamel Inquiry office unit. It is not someone who 14 has been engaged to undertake work on this space by 15 the Inquiry, but it is someone who has been engaged by 16 the government, who reports to government and is not 17 someone with whom the Inquiry -- to whom the Inquiry has 18 access or whose work the Inquiry controls. The 19 suggestion that Building Control did not recommend 20 public use is exemplary of the confusion with which this 21 issue has been characterised. It was unclear whether 22 this recommendation was to the effect that this meant 23 that the public could not be allowed to use the space. 24 It was a result of the apparent -- lack of apparent 25 resolution and increased concern on the part of the</p> <p style="text-align: center;">Page 67</p>
<p>1 premises was expressed. 2 In all of this, the Inquiry's ability to resolve the 3 matter remained entirely dependent on the 4 Scottish Government team to resolve it. Throughout this 5 period, it was consistently emphasised that it was 6 considered lightly that the matter would be likely to be 7 able to be resolved to the satisfaction of the council 8 by the production of building documentation which was 9 anticipated from the landlord. 10 Again, this aspiration on the part of the 11 Scottish Government team seemed misplaced to the Inquiry 12 team, in particular as time went on, given the fact that 13 if there were such a simple solution, surely it would 14 have been achieved quickly. It remains unclear to this 15 day how a building warrant would demonstrate the 16 required safety as opposed to a completion certificate 17 relating to the relevant building works. 18 In this -- it is in this context that the assertion 19 made by the Scottish Government must be understood that 20 the Scottish Government officials have been in frequent, 21 regular contact with the Inquiry team, in particular the 22 secretary to the Inquiry, to provide information as to 23 the issues and progress. Throughout this period, the 24 oral contact which has taken place has provided little 25 clear information and certainly little, if anything, by</p> <p style="text-align: center;">Page 66</p>	<p>1 Inquiry team that the Chair wrote to the sponsor team on 2 6 February this year. In the letter, he raised with the 3 sponsor team what he described as "Substantial and 4 increasing threats to our increased use and occupation 5 of the office space of the premises and hearings venue". 6 He refers to the need for this matter and others to be 7 addressed urgently and stated that he would welcome 8 a meeting to discuss these matters and receive assurance 9 by the sponsor team that they can be. 10 The Chair specifically referred to his emerging 11 understanding that this may restrict the Inquiry's use 12 of the hearing venue and the possibility, then also 13 emerging, that an alternative venue would have to be 14 found for the April hearings. It is notable that there 15 is no suggestion of any progress being made by the 16 Scottish Government on the building issue as per their 17 timeline in the period between 12 January and 24 March 18 by which time the Chair had required to take the 19 decision to postpone the hearings in the interests of, 20 and by way of advance notice to, all concerned in 21 the Inquiry's work and to avoid the unnecessary cost, 22 effort and anxiety which aborted preparations from that 23 point on would have entailed. 24 As I have already said, the Chair did not receive 25 a reply to his letter of 6 February until 1 April, which</p> <p style="text-align: center;">Page 68</p>

<p>1 was too late, given the need for clear and informed                  2 decisions to be taken by him about the fate of the                  3 planned hearings much earlier than that. Thus, no                  4 written update in response to the Chair's letter was                  5 received and no alternatives were proposed.</p> <p>6 The response indicated -- the response on 1 April                  7 indicated that both the head of the sponsor team and the                  8 Cabinet Secretary were frustrated about the matter and                  9 the letter asked -- and the Cabinet Secretary has asked                  10 his team to seek to address this quickly and                  11 effectively. It was also stated that following                  12 completion of the fit-out for The Eljamel Inquiry team                  13 space, contractors conducted a survey in February 2026                  14 which they then reported on that their view was that the                  15 wall -- the walls on LG2 did not meet the technical                  16 standards for non-domestic buildings.</p> <p>17 It appears that it was thus in February that                  18 a survey revealed there to be a problem with the walls                  19 with safety implications. The February survey is not                  20 mentioned in the timeline submitted by the                  21 Scottish Government for this hearing. The letter of                  22 1 April narrates that the council had been looking for                  23 the landlord either to provide evidence of building                  24 warrant approvals, which the landlord had not -- it was                  25 also intimated that the property had now been sold to</p> <p style="text-align: center;">Page 69</p>	<p>1 and capability as Waverley Gate. The suitability                  2 accommodation as a matter for the Inquiry but                  3 an alternative was identified by Scottish Government                  4 officials and suggested to the Inquiry team. This                  5 accommodation is an alternative hearing suite in                  6 Edinburgh occupied by the Scottish Child Abuse Inquiry,                  7 which is considered to be fully equipped and is                  8 currently available as alternative accommodation.</p> <p>9 In addition, Scottish Government officials are also                  10 looking into the acquisition of the former                  11 Hospitals Inquiry space at Mint House which was vacated                  12 in April 2026. Whilst we consider that alternative                  13 accommodation does exist, we respect that it was                  14 a decision for and taken by the Chair to postpone the                  15 section 1 hearings until later in the year and that we                  16 should continue to drive toward the effective resolution                  17 of issues relating to the Waverley Gate facility.</p> <p>18 It is unclear precisely what is being suggested here                  19 and no timeline in this regard is provided. As far as                  20 the Hospitals Inquiry space is concerned, this was                  21 raised with the Inquiry only to rule it out as                  22 a possibility of the April hearings, given that it was                  23 not, and is not, leased by the Scottish Government any                  24 more, though we understand that efforts may be in                  25 contemplation, perhaps even actioned, to seek to</p> <p style="text-align: center;">Page 71</p>
<p>1 a new landlord on 23 March -- or to apply for                  2 a retrospective warrant.</p> <p>3 No proposed course or timetable towards solution was                  4 proposed, no alternative was put forward. The head of                  5 the sponsor team undertook to keep the secretary of                  6 the Inquiry updated on progression towards building                  7 solution.</p> <p>8 In the meantime, a considerable amount of time on                  9 the part of the Inquiry had been taken up trying to gain                  10 better information about the safety issue and its                  11 implications and seeking to explore the complex issue of                  12 the restriction of the hearings in a way which would                  13 satisfy the need to make progress with the increasingly                  14 apparent reality that the issue preventing public                  15 attendance would not be resolved in time. This, of                  16 course, has proven correct as the issue is not resolved                  17 now, nor does it appear that there is any real basis                  18 upon which to think it will be soon.</p> <p>19 The patient group and others have rightly raised the                  20 issue of what was known about alternative venues. The                  21 Scottish Government's response in this regard is equally                  22 perplexing. It says that a key mitigation that was                  23 considered as part of the resolution strategy was to                  24 consider alternative facilities, facilities that                  25 achieve, as a minimum, the same standard of the service</p> <p style="text-align: center;">Page 70</p>	<p>1 re-procure a lease in favour of the Scottish Government                  2 over that property. No suggestion has ever been made                  3 that these efforts may result in this space becoming                  4 available for us, for September, or indeed at any time.                  5 No proposal as to its suitability for us has been made.</p> <p>6 I have sought clear written information on                  7 the Inquiry's position about the assertions contained in                  8 the submission. If it is being suggested that the                  9 Scottish Child Abuse Inquiry venue was suggested as                  10 an alternative venue for our planned section 1 hearings,                  11 that is simply not accurate. In fact, the consistent                  12 impression provided by the Scottish Government sponsor                  13 team what was alternatives would not be necessary given                  14 that they anticipated, without any apparent clear basis,                  15 that the safety matter would be resolved relatively                  16 simply by the production by the landlord of the safety                  17 certificate, building warrant or completion certificate                  18 covering the matter.</p> <p>19 I am told that the Scottish Child Abuse Inquiry                  20 space may have been mentioned in passing in February.                  21 There is no written correspondence from the sponsor team                  22 referring to it at that time, or at all. No mention of                  23 its availability was made, no offer to the Inquiry was                  24 paid for the venue to be assessed for its suitability                  25 for our hearings, as they had been planned.</p> <p style="text-align: center;">Page 72</p>

<p>1 Thus, to suggest that it was proposed to the Inquiry                  2 that the Scottish Child Abuse venue was an alternative                  3 venue or that it had been rejected by the Chair to                  4 the Inquiry is simply inaccurate. In fact, this                  5 alternative venue was mentioned by the sponsor team in                  6 passing in February, as I have said, though no proposal                  7 ever came.</p> <p>8 It was recently suggested again by the head of the                  9 sponsor team, long since the hearings were cancelled.                  10 The position in that regard is that a proposal about the                  11 possible availability and use of that venue is                  12 outstanding as per correspondence between the head of                  13 the sponsor team and the secretary of the Inquiry on                  14 23 April, in which she says:</p> <p>15 "PCD, the SG property division, will share the WG                  16 [Waverley Gate] plan ASAP and in that, I would expect                  17 the plan B to look at the CAI [Child Abuse Inquiry]                  18 hearing space in the same building as a possible use                  19 venue. As we are not at that stage yet, it's not been                  20 put forward on a proposal for the Inquiry to consider.                  21 When we have more detail on the WG resolution we can                  22 flesh out other options." (As read)</p> <p>23 On 28 April, the Inquiry's secretary replied:                  24 "Thank you for advising that there will a plan from                  25 PCD and that this will include a plan B option or</p> <p style="text-align: center;">Page 73</p>	<p>1 professional advisers had reported back to them that                  2 they had reached an agreed position on the works                  3 required to satisfy Building Control for a retrospect he                  4 have warrant to be issued, a contractor had been                  5 instructed to assess the delivery of the works required                  6 and would report back to the landlord week commencing                  7 4 May.</p> <p>8 There is no indication, nor has the Inquiry had any,                  9 about the nature of the proposed works, the timeline                  10 which this is expected to take and the possible impact                  11 on the planned September hearings or the Inquiry's                  12 intensive preparations for them. The submission                  13 indicates that a meeting had been agreed to take place                  14 between the Scottish Government officials and the                  15 landlord on 13 May, ie yesterday, to progress this                  16 matter to resolution and that an update to the Inquiry                  17 team would follow that meeting. As far as I am aware,                  18 no such update has been received at the beginning of                  19 this hearing.</p> <p>20 The hearing was appointed by you, sir, in order to                  21 seek to achieve clarity about the way forward. We                  22 appear, in real terms, to be no further forward. The                  23 submission made by the Scottish Government as sponsor to                  24 the Inquiry makes one thing clear: that you were right                  25 to seek to rely on the apparent expertise of the</p> <p style="text-align: center;">Page 75</p>
<p>1 options. If there was an ETA on that plan being                  2 communicated to us I could give the Chair, that would be                  3 very helpful. We were made aware of the re-procurement                  4 of the former Scottish Hospitals space as a potential                  5 plan B option, procurement and Grooming Gangs Inquiry                  6 agreement dependent, and are keen to explore all                  7 potential options available to us." (As read)</p> <p>8 The next day, a response to the secretary to                  9 the Inquiry was received. The reply will be provided as                  10 soon as possible, which we still await.</p> <p>11 If it is the position the Scottish Government thinks                  12 that this possibility has been rejected, it is hard to                  13 understand why a plan B is being pursued. The answer is                  14 that an offer has not been made; it has certainly not                  15 been rejected. These messages make clear that no such                  16 proposal has been put to the Inquiry for its                  17 consideration and that remains the position. We have                  18 not had sight of any plan B. Any update in that regard                  19 from my learned friend Mr Duncan would be very                  20 gratefully received.</p> <p>21 The latest position as regard Waverley Gate appears                  22 to be contained in the entry to the                  23 Scottish Government's submission for 1 May as follows:                  24 1 May 2026, Scottish Government officials call landlord                  25 for a progress update. The landlord confirmed that</p> <p style="text-align: center;">Page 74</p>	<p>1 Scottish Government, given the complexities involved in                  2 procuring and providing a building which is fit for the                  3 public to use in the way in which we wish to use it.</p> <p>4 However, in doing so, you were, in my submission,                  5 entitled to assume that that expertise would involve                  6 diligent examination of the suitability of the building                  7 for that purpose from the outset which would have                  8 avoided these problems arising in the midst of our                  9 hearings' plans. You are equally entitled to expect                  10 a reasonable solution to be proffered, to allow                  11 a reasonable revised timetable to be completed. That                  12 does not appear to be available at present.</p> <p>13 That is all I have to say on the building issue,                  14 sir. Within the submissions -- the counsel to the                  15 Inquiry note and within the submissions which have been                  16 made by the Scottish Government, there are                  17 considerations of a number of wider matters, including                  18 the management agreement matter, to which I have already                  19 referred. The other matters which arise and on which,                  20 in the counsel to the Inquiry note there is a detailed                  21 history, relate to difficulties the Inquiry has                  22 experienced in the recruitment of staff and an impasse                  23 that appears to have been reached by the Inquiry as far                  24 as confidentiality undertakings are concerned.</p> <p>25 As far as the recruitment of staff is concerned,</p> <p style="text-align: center;">Page 76</p>

<p>1 sir, there are various matters raised within the 2 Scottish Government as sponsor response. In essence, 3 the only remaining issue which is not addressed relates 4 to the cumbersome nature of the Scottish Government 5 recruitment and the time which the Inquiry has to take 6 to employ new staff.</p> <p>7 In their submission, the Scottish Government and 8 sponsor to the Inquiry state that at the meeting of 9 16 April, the sponsor team inquired about any 10 outstanding vacancies in the Inquiry, the secretary 11 confirmed that there were no outstanding vacancies at 12 this time. It is the sponsor team's understanding this 13 position remains accurate as of today.</p> <p>14 Sir, this is inaccurate. It is, in fact, hard to 15 imagine how this impression could have been created. 16 The minute of the meeting sent to the sponsor team makes 17 clear that this position is wholly misguided. The 18 minute narrates that the secretary to the Inquiry made 19 a reference to urgent vacancies and to the urgent need 20 for the speed of recruitment and onboarding of staff to 21 be improved. The submission makes no mention at all of 22 the repeated request by the Inquiry to seek to expedite 23 the onboarding of staff which has caused inordinate 24 delays in the aftermath of what are already cumbersome 25 Scottish Government recruitment processes.</p> <p style="text-align: center;">Page 77</p>	<p>1 confidentiality, that these undertakings have not been 2 signed. Core participants will all be aware that they 3 have required to sign such undertakings and you, sir, 4 have made it clear to the Scottish Government on 5 a number of occasions that Scottish Government employees 6 and indeed those also involved in the 7 Scottish Government response exercise will require to 8 sign confidentiality undertakings as others have.</p> <p>9 I would invite my learned friends Mr Duncan and 10 Ms Thomson to make clear what their understanding of the 11 position is. This, as far as the Inquiry is concerned, 12 as a matter which has been lingering for too long and 13 requires to be resolved immediately.</p> <p>14 Sir, I would like to say something, now, about 15 the Inquiry's trauma-informed policy. Given that 16 the Inquiry was in a transitional phase at the time of 17 its preliminary hearing as regards how it communicated 18 with those with an interest in its work, the Inquiry 19 invited contributions from core participants at or in 20 connection with the preliminary hearing as to their 21 views as to how they would wish the Inquiry to 22 communicate with them about the multiple matters on 23 which they may come into contact with our work.</p> <p>24 This was, and is, part of the Inquiry's ongoing 25 commitment to listening to those with an interest in our</p> <p style="text-align: center;">Page 79</p>
<p>1 It is important to note that the secretary of 2 the Inquiry now oversees these and so they run much 3 better but that they are still dependent, as far as 4 timing is concerned, on the lengthy period required for 5 onboarding of the staff. At that meeting she made clear 6 that there are vacancies in significant positions and 7 therefore, this is a matter which I would call upon the 8 Scottish Government sponsor team to address as soon as 9 possible.</p> <p>10 The secretary has set out in previous correspondence 11 a reasonable anticipation that onboarding of staff will 12 be able to be taken within a matter of days, whereas in 13 previous experience, it has taken unfortunately many 14 weeks.</p> <p>15 Sir, the other issue which is raised as far as the 16 Scottish Government, concerns confidentiality 17 undertakings. There is a lengthy history to this matter 18 which has been going on for some time and as I've 19 already pointed out, this remains, apparently, the sole 20 outstanding issue in the management agreement between 21 you, sir, and the government.</p> <p>22 It is a matter of some regret, sir, that there 23 appears, in the submission which has been made, to be no 24 advance in this regard and it is concerning, given the 25 importance that you have placed on the issue of</p> <p style="text-align: center;">Page 78</p>	<p>1 work as to how they wish it to operate. By that time, 2 the Inquiry had had little response in this regard. 3 They remained committed to trying to get communication 4 right. In order to seek to improve the ways that 5 the Inquiry engages with those with an interest in its 6 work including its core participants, the Inquiry 7 launched a public consultation on its trauma-informed 8 policy. It intends to implement that policy in its work 9 and that process has already commenced.</p> <p>10 The consultation paper which contained an outline of 11 the approach that the Inquiry intended to take, it -- 12 the consultation ran from 21 November 2025 to 13 12 January 2026. 65 responses were received, mostly 14 through the anonymous online questionnaire, enabling 15 people to participate without barriers linked to 16 identification or re-exposure to trauma. The Inquiry is 17 very grateful to all those who took the time to 18 contribute to this important work, the outcomes of which 19 have been worked on by the Inquiry team in recent 20 months.</p> <p>21 The Inquiry's trauma-informed policy will form 22 an important part in its engagement strategy, given the 23 number of key stakeholders in our work who have 24 experienced trauma as a result of their experiences. It 25 is important to emphasise that the trauma-informed</p> <p style="text-align: center;">Page 80</p>

<p>1 policy is not considered, within the Inquiry, as                  2 an adjunct to or separate from the rest of the Inquiry's                  3 work. Though directly overseen by experienced members                  4 of the Inquiry's secretariat staff, I maintain a keen                  5 interest in the trauma-informed consultation, the                  6 development of our policy and the implementation of it                  7 into our day-to-day work, including our investigative                  8 work on the legal side.</p> <p>9 You are regularly updated on these matters given                  10 their importance to our work. The Inquiry team does                  11 intend to issue a trauma-informed statement, including                  12 all aspects of the trauma-informed process, though, as                  13 I will point out, much of what has emanated from the                  14 trauma-informed consultation process has already been                  15 published or acted upon.</p> <p>16 The consultation paper made clear that the Inquiry's                  17 approach is, and has been, built around the                  18 trauma-informed principles of safety, trustworthiness,                  19 choice, collaboration and empowerment. The Inquiry will                  20 seek to crate a bespoke and living approach for                  21 a trauma-informed Public Inquiry based on the principles                  22 to which the Inquiry has already committed itself and                  23 the reasonable requirements of those who have suffered                  24 trauma who are engaged in our work. This will certainly                  25 include former patients of Mr Eljamel and may include</p> <p style="text-align: center;">Page 81</p>	<p>1 group. Defining our goals too rigidly would be                  2 self-defeating. However, as being trauma-informed also                  3 requires the Inquiry clearly to set its goals and adhere                  4 to them as far as it reasonably can by the exercise of                  5 all due diligence, the setting of goals and the clear                  6 publication and explanation of them also requires to                  7 play a part.</p> <p>8 Thus, the trauma-informed consultation report has                  9 now been published and is the next step in this ongoing                  10 process. In accordance with our principle of listening,                  11 the report sets out what we were told by the people who                  12 engage with us. It sets out to show that we have                  13 listened to, respected and understood what we have been                  14 told. It also sets out the initial steps we intend to                  15 take to seek to address what we were told.</p> <p>16 One example is our intention imminently to launch                  17 a video explaining the process of the Independent                  18 Clinical Review and its importance to the work of                  19 the Inquiry. This important project resulted from                  20 people telling us that they had struggled to understand                  21 the ICR and its role and that information needed to be                  22 shared in formats like video, which many people who                  23 responded find more accessible to them than other                  24 formats.</p> <p>25 Our response is, and will be, based on four key</p> <p style="text-align: center;">Page 83</p>
<p>1 others who will be invited to help shape the way the                  2 policy will operate in practice.</p> <p>3 It is important to note that though the Inquiry                  4 intends to engage courteously and constructively with                  5 all of those with whom it comes into contact, that the                  6 trauma-informed policy seeks to achieve a specific                  7 purpose for specific people. To approach this policy as                  8 if it applied to everyone would, in my submission, be to                  9 undermine its very purpose. The Inquiry understands and                  10 accepts that those who have experienced trauma in the                  11 past continue to be affected by it in the present and                  12 will be in the future.</p> <p>13 The scars of trauma affect the traumatised                  14 individual's ability to experience the world around                  15 them. That includes their ability to experience,                  16 participate in and learn from the process of                  17 the Inquiry. Therefore, the Inquiry needs to learn                  18 about how trauma has affected those individuals and how                  19 it affects their ability to interact with our work in                  20 order to do all we reasonably can to make participation                  21 in our work as beneficial, fulfilling and productive as                  22 it can be.</p> <p>23 The trauma-informed policy will, by its nature,                  24 require to be adaptable to circumstances on particular                  25 issues which are faced by those who fall into this</p> <p style="text-align: center;">Page 82</p>	<p>1 lessons which have emerged from the consultation,                  2 namely: complexity and unfamiliar processes can                  3 overwhelm participants who have had traumatic                  4 experiences, roles and responsibilities require clear                  5 explanation; trauma-informed principles are                  6 interconnected, safety relies on trust; trust relies on                  7 collaboration and choice; and all depend on independence                  8 and clarity. Participants strongly value being heard.                  9 Former patients want the Inquiry to understand their                  10 experiences without requiring repeated retelling of                  11 traumatic events.</p> <p>12 As I have said, sir, the report sets out a number of                  13 initiatives which the Inquiry team have already                  14 instigated in connection with those principles and those                  15 policies.</p> <p>16 Connected to the trauma-informed policy, sir,                  17 the Inquiry has now completed its tender process for                  18 emotional support from trained counsellors to be made                  19 available to those who are participating in the work of                  20 the Inquiry. The tender, as I have said before, at                  21 other hearings, stipulated that those who wish to bid                  22 for the work must be independent of NHS Tayside given                  23 the importance of the independence of that service to                  24 those who may wish to use it and to them having trust                  25 and confidence in the support which will be provided by</p> <p style="text-align: center;">Page 84</p>

<p>1 it. The tender was won by and will be offered by                  2 The Spark, a Scottish-based charity which provides                  3 counselling and mental health support for individuals,                  4 couples, families, children and young people which it                  5 provided such services for 60 years.                  6 This was the same agency which provided emotional                  7 support in connection with our preliminary and opening                  8 statements hearing and is doing so in connection with                  9 this hearing today. It is hoped that this will provide                  10 some consistency to those who have availed themselves of                  11 the service in the past, that the same trusted                  12 charitable service will be offered going forward.                  13 The details of this service will involve both                  14 emotional support in connection with hearings but also                  15 wider support if required to assist with participation                  16 in the Inquiry. The technical details as to how this                  17 support can be accessed, both now and in the future, has                  18 been published on the Inquiry's website.                  19 As a result of the public consultation and the                  20 trauma-informed approach, we have also launched on the                  21 website, a dedicated support hub page which sets out the                  22 various forms of support which may be available to those                  23 who have suffered trauma and indeed others including                  24 emotional support, legal support and support direct from                  25 the Inquiry team. It also provides links about the</p> <p style="text-align: center;">Page 85</p>	<p>1 the Inquiry's support mechanisms are not static.                  2 The Inquiry is happy and willing to consider support                  3 services being altered or expanded upon in response to                  4 reasonable requests from those who are involved in                  5 the Inquiry's work which will be reasonably and                  6 sympathetically listened to.                  7 Sir, if I may now turn to progress and planning for                  8 the hearings in the latter part of this year. As you                  9 have had, sir --                  10 LORD WEIR: Perhaps if I could come in at that point,                  11 Mr Dawson. I am conscious that the weight of material                  12 that you have had to cover means that we have reached                  13 11.45, as good as. There will be further material that                  14 I'm sure you would wish to bring to my attention and                  15 indeed the attention of those who are watching. Would                  16 you consider it appropriate to continue at this point?                  17 We can take -- I think the message must be we need to be                  18 flexible with the agenda so that everybody has                  19 a chance --                  20 MR DAWSON: Indeed, sir. I think it is correct to say that,                  21 given that what we are seeking to cover here involves                  22 the requirement for a detailed explanation on important                  23 matters like the hearing suite, but also to make clear                  24 what our progress has been over really the last                  25 six months, there is a lot to cover. I think it would,</p> <p style="text-align: center;">Page 87</p>
<p>1 support available via the Independent Clinical Review                  2 and from other agencies whom those in need of support                  3 may wish to contact if they prefer.                  4 The emotional support which is available from                  5 The Spark in particular has been developed in response                  6 to representations that support beyond Inquiry hearings                  7 would be required. This emotional support is now                  8 offered in two forms which we call "emotional support"                  9 and "participant support".                  10 Emotional support is available to those who need it                  11 during hearings and hearings periods, including virtual                  12 hearings, though in-person at in-person hearings.                  13 Trained counsellors can be accessed online or in person                  14 to deal with the immediate emotional reactions to                  15 involvement in the Inquiry's hearings.                  16 Participant support is available for a wider range                  17 of situations, including witness support, but also                  18 support for other types of participants at other times.                  19 It will involve a number of support sessions being made                  20 available at times when they may be needed. It can be                  21 accessed via the details on the website or via Inquiry                  22 phone lines. The Inquiry's witness liaison manager will                  23 be in charge of directing people to the most appropriate                  24 support mechanism for them.                  25 Sir, it is important to understand that</p> <p style="text-align: center;">Page 86</p>	<p>1 certainly, as far as my presentation is concerned, be                  2 appropriate to take a break at this point, although of                  3 course, I have more to add.                  4 LORD WEIR: I think if we perhaps take 15 minutes now, it                  5 would allow people to gather their thoughts and we can                  6 resume again at just the top of the hour. So we will                  7 aim to start again at 12 o'clock, thank you.                  8 (11.48 am)                  9 (A short break)                  10                  11 (12.00 pm)                  12 LORD WEIR: Good afternoon, everyone. I think what we will                  13 do is I will start by inviting you, Mr Dawson, to                  14 continue and conclude your submissions and then, if it's                  15 convenient to him, I will simply invite Mr Duncan to                  16 address the hearing directly afterwards and that will                  17 take us up until lunchtime.                  18 If we're a little past the time allotted for lunch,                  19 I will still fully intend to have a full hour for that                  20 lunch break. So whenever we stop for that purpose, we                  21 will take the full hour, but in the meantime, can I ask                  22 you to continue where you left off with your                  23 submissions, thank you.                  24 MR DAWSON: Thank you, sir. I was about to explain the                  25 progress and planning for forthcoming hearings this year</p> <p style="text-align: center;">Page 88</p>

<p>1 and I had placed that section in the important context,  2 as you have, sir, that what I have to say sets out what  3 the Inquiry's work and planning entails, but remains, as  4 I have already pointed out, dependent upon securing  5 a suitable venue in which hearings can take place and  6 which, of course, participants and other members of the  7 public who wish to attend can be there in person.  8 So, sir, as far as section 1 preparations are  9 concerned, as core participants are already aware,  10 section 1 of the Inquiry's investigations is primarily  11 concerned with setting the scene for the rest of the  12 evidence to be heard by the Inquiry. It will be  13 an introductory section at which it is intended that  14 evidence be heard relating to a number of areas which  15 have been set out at previous hearings and in  16 a provisional scope for the section 1 hearings which has  17 been circulated to core participants and published.  18 It should be emphasised that as section 1 of the  19 evidence is intended to provide important factual  20 context to the sections which follow, it will not be  21 necessary for all issues to be ventilated with witnesses  22 who are called to give evidence in section 1. It is  23 intended that a fuller explanation of the detailed  24 issues of controversy which arise from the analysis of  25 the full range of evidence available to the Inquiry will</p> <p style="text-align: center;">Page 89</p>	<p>1 relevant to the section 1 scope which arose from the  2 consultation with core participants on the Inquiry's  3 list of issues.  4 The recipients of these section 1 rule 8 requests  5 and the current state of -- the preparation of their  6 responses are as follows: as far as NHS Tayside is  7 concerned, the requested statement has been worked on by  8 several contributors on behalf of the board and is  9 lengthy. Some final minor matters are being completed  10 at the request of the Inquiry and it is anticipated that  11 the statement will be ready for signature in early  12 course. The requested documents have been produced.  13 The statement is being analysed by the Inquiry team in  14 preparation for the section 1 hearings and the produced  15 documents are being processed for disclosure to core  16 participants.  17 The board also received a draft request for full  18 production of documents beyond the section 1 ambit  19 relating to the Inquiry's full list of issues. The  20 terms of that will be discussed in due course with  21 representatives of NHS Tayside to allow progress to be  22 made with production of that next set of documents for  23 analysis and disclosure in connection with future  24 hearing sections.  25 Such requests are also routinely accompanied by</p> <p style="text-align: center;">Page 91</p>
<p>1 be able to be undertaken at later sections of  2 the Inquiry, the context and content of which have  3 already been set out at previous hearings.  4 The Inquiry will be willing to consider having  5 witnesses return to provide oral evidence again at  6 an appropriate later stage in its hearings in line with  7 this appropriate.  8 Given that the Inquiry team had previously been  9 preparing for section 1 hearings to be held in April  10 and May, significant progress in the gathering of  11 section 1 evidence has been achieved, though this work  12 continues in light of delays caused by the need for key  13 members of the Inquiry team to become involved in  14 advising on and dealing with issues connected to the  15 public hearings which had been planned and their  16 subsequent postponement, and the opportunity now  17 afforded, as a result of the postponement, to return to  18 some of the materials, to expand on them and to improve  19 their content in light of the inevitable enforced delay  20 which we are now experiencing.  21 Rule 8 requests for corporate written statements and  22 production of documents relevant to the scope of  23 section 1 of the Inquiry's evidential plan were issued  24 by the time of the opening statement hearing  25 in November. These include reference to matters</p> <p style="text-align: center;">Page 90</p>	<p>1 a statement requesting an explanation of the document  2 held, the searches undertaken, the reasons for any  3 documents once held not being held, including  4 destruction or loss where applicable and the location of  5 any requested documents beyond the reach of the  6 recipient.  7 In the submission made on behalf of the patient core  8 participants at paragraph 6, there is a request made for  9 clarification that the issue relating to the destruction  10 of theatre log-books will still be examined in public  11 hearings and for an explanation as to the position on  12 that.  13 The position, for the sake of clarity, is that that  14 matter will still be examined in the section 1 hearings,  15 albeit our intention is for those to take place  16 in September rather than at the diet that was due to  17 take place in April and May.  18 As far as the Scottish Minister is concerned, the  19 requested statement has now been completed and signed  20 and section 1 documents have been produced. The  21 statement is currently being analysed by the Inquiry  22 team in preparation for the section 1 hearings and the  23 produced documents are being processed for disclosure to  24 core participants.  25 The Scottish Government also received a full request</p> <p style="text-align: center;">Page 92</p>

<p>1 for production of documents beyond the section 1 ambit                  2 relating to the Inquiry's list of issues. It was                  3 indicated, however, that those need not be produced now                  4 as time would need to be taken for them to be assembled.                  5 It has been indicated to me recently that work on the                  6 production of those, currently, as I understand it                  7 around 16,000 in number, is being undertaken for                  8 consideration and disclosure in due course.                  9 The University of Dundee has elected to produce two                  10 statements from separate individuals in response to the                  11 Inquiry's request. Drafts of these statements have been                  12 produced and were reviewed by the Inquiry team. These                  13 have now been completed. At previous hearings the                  14 patient group expressed concerns about the lack                  15 engagement by the university in its capacity as a core                  16 participant. It should be noted that this approach to                  17 its involvement in that capacity has developed. The                  18 university has now instructed lawyers and counsel who                  19 are watching the proceedings today and it will be in                  20 a position, as I understand it, to play a more active                  21 role in the Inquiry's work as a result.                  22 In any event, the Inquiry has expected full                  23 cooperation from the university in its capacity as                  24 a material provider, resulting in the progress with                  25 these two statements and the production of section 1</p> <p style="text-align: center;">Page 93</p>	<p>1 preparation for the section 1 hearings. Produced                  2 documents are being processed for disclosure. The                  3 section 1 rule 8 request also sought full production                  4 beyond the section 1 ambit and documents produced will                  5 be analysed for comprehensiveness and disclosure in due                  6 course.                  7 The Royal College of Surgeons of England has                  8 produced a statement that has been signed and section 1                  9 documents. The statement is currently being analysed by                  10 the Inquiry team, documents are being processed. The                  11 section 1 rule 8 request sought full production, as with                  12 certain previous core participants, the produced                  13 documents are being analysed and will be disclosed in                  14 due course.                  15 The Royal College of Surgeons of Edinburgh have also                  16 produced a statement and documents which are being                  17 analysed in the same way. NHS Lothian have also                  18 produced a completed statement which is currently being                  19 analysed. Both the Royal College of Surgeons of                  20 Edinburgh and NHS Lothian received a request for full                  21 documents relating to the Inquiry's ambit which have                  22 been produced and will be processed in due course.                  23 The General Medical Council have produced a first                  24 draft of their statement as well as documents which were                  25 reviewed by the Inquiry team. It's anticipated that it</p> <p style="text-align: center;">Page 95</p>
<p>1 documents which are currently being processed by                  2 the Inquiry. As with the Scottish Ministers, the                  3 university also received a request for full production                  4 of documents beyond the section 1 ambit relating to                  5 the Inquiry's full list of issues. It has recently been                  6 indicated that work on the production of those,                  7 currently around 3,000 in number, is being undertaken                  8 for consideration and disclosure in due course.                  9 Healthcare Improvement Scotland have produced their                  10 requested statement. It has been signed as well as                  11 documents relating to section 1 having been produced.                  12 The statement is currently being analysed by the Inquiry                  13 team and the produced documents are being processed for                  14 disclosure to core participants. The section 1 rule 8                  15 request sought full production of documents beyond the                  16 section 1 ambit relating to the Inquiry's full list of                  17 issues. The produced documents will be analysed for                  18 comprehensiveness and a decision will be taken as to                  19 whether any further documents need to be produced for                  20 later sections, in due course.                  21 The request originally given to                  22 NHS Education for Scotland has resulted in a statement                  23 being completed, it has been signed and the requested                  24 section 1 documents have been produced. This statement                  25 is also currently being analysed by the Inquiry team in</p> <p style="text-align: center;">Page 94</p>	<p>1 will be completed and signed in short order, based on                  2 a discussions with those involved with the statement.                  3 The produced documents are being processed for                  4 disclosure.                  5 The British Medical Association have produced                  6 a section 1 statement and associated documents which are                  7 currently being analysed. They, too, were asked to                  8 produce a full set of documents which will be analysed                  9 in due course.                  10 The same applies to the Health and Safety Executive,                  11 who have produced a large number of documents relating                  12 to section 1 and beyond, but have also signed their                  13 completed statement.                  14 Circle Healthcare have produced a draft of their                  15 statement and documents which have been reviewed by                  16 the Inquiry team. It's anticipated that their statement                  17 will be completed and signed in short order based on                  18 discussions with those assisting with its production and                  19 the produced documents are being processed for                  20 disclosure.                  21 Police Scotland also produced a draft of their                  22 statement and documents which are reviewed by                  23 the Inquiry team. It will be returned to those involved                  24 in the production of the statement in early course. The                  25 documents produced so far are being processed for</p> <p style="text-align: center;">Page 96</p>

<p>1 disclosure.</p> <p>2 Similarly, as far as the BBC is concerned, a first</p> <p>3 draft of the statement and documents are reviewed by</p> <p>4 the Inquiry team and it's anticipated that it will be</p> <p>5 completed and signed in short order based on recent</p> <p>6 discussions.</p> <p>7 Liz Smith MSP produced a first draft and indeed</p> <p>8 signed a statement which was reviewed by the Inquiry</p> <p>9 team. Documents which were produced included references</p> <p>10 to numerous patients with whom Liz Smith has spoken over</p> <p>11 the years and multiple references to personal data.</p> <p>12 Those mentioned will require to be contacted as</p> <p>13 interested parties, if reference to them remain, to</p> <p>14 allow them to apply for anonymity and/or restriction</p> <p>15 relating to that material.</p> <p>16 Given these complexities, the draft has been</p> <p>17 returned to counsel for further review in order to</p> <p>18 ascertain how much of the material is strictly necessary</p> <p>19 and needs to be process in that way. Further comments</p> <p>20 will be returned the witness if necessary in early</p> <p>21 course to allow the necessary processing to take place</p> <p>22 thereafter.</p> <p>23 Michael Marra MSP has not completed his statement</p> <p>24 but it's understood that will be completed imminently.</p> <p>25 Willie Rennie MSP has also been asked to produce</p> <p style="text-align: center;">Page 97</p>	<p>1 are imposed by the statutory regime which underpin</p> <p>2 the Inquiry's work and are not optional, including the</p> <p>3 way in which documents need to be analysed for potential</p> <p>4 restriction of aspects of their contents.</p> <p>5 Other matters -- other processes we go through are</p> <p>6 the making of the Inquiry, such as our auditing and</p> <p>7 cataloguing systems, which are all designed to maximise</p> <p>8 efficiency and consistency and avoid delay in future.</p> <p>9 In particular, in the later stages of the Inquiry's</p> <p>10 work.</p> <p>11 Though the protocols and the Inquiry's general</p> <p>12 restriction order set out processes which handle these</p> <p>13 necessary processes as efficiently as possible, it is</p> <p>14 hoped those involved in our work will understand that it</p> <p>15 would be -- that it is important for the Inquiry to take</p> <p>16 time to analyse these documents and to carry out that</p> <p>17 work properly.</p> <p>18 Material providers and witnesses and their</p> <p>19 recognised legal representatives will be expected to</p> <p>20 comply with the reasonable request to assist with that</p> <p>21 complex process and indeed, there are a number of</p> <p>22 lessons which we have learned, to which I will return to</p> <p>23 imminently, in order to try to make that process work as</p> <p>24 effectively as possible going forward.</p> <p>25 Sir, as we set out previously, the Inquiry has</p> <p style="text-align: center;">Page 99</p>
<p>1 a statement which it is understood has recently been</p> <p>2 signed.</p> <p>3 In addition to the position as at the last hearing,</p> <p>4 sir, further rule 8 requests for statements and</p> <p>5 documents was sent to other recipients in connection</p> <p>6 with the section 1 workflow. A rule 8 request for</p> <p>7 a statement was sent to the Patient Safety Commissioners</p> <p>8 for Scotland. A first draft of this statement with</p> <p>9 a first round of documents are with the Inquiry counsel</p> <p>10 team for review in accordance with our normal processes.</p> <p>11 It will then be returned to the Patient Safety</p> <p>12 Commissioner for review, with comments on the draft of,</p> <p>13 after which it will be finalised for signature and</p> <p>14 disclosed to core participants.</p> <p>15 Also, sir, given that it became apparent that</p> <p>16 certain relevant records may be held within the</p> <p>17 National Records of Scotland, a further rule 8 request</p> <p>18 to that body was created and a first draft of witness</p> <p>19 statement and documents are expected to be received in</p> <p>20 early course.</p> <p>21 Sir, I think it important at this stage to point out</p> <p>22 that the process which the Inquiry follows for the</p> <p>23 completion of witness statements and the production of</p> <p>24 documents is an arduous process which involves many</p> <p>25 components. Many of the requirements of these processes</p> <p style="text-align: center;">Page 98</p>	<p>1 issued instructions to experts in particular fields in</p> <p>2 order to provide expert evidence to the Inquiry.</p> <p>3 Letters of instruction for what turned out to be expert</p> <p>4 groups were finalised in late 2025. Sir, you have</p> <p>5 decided to instruct groups of such experts in order that</p> <p>6 the information and opinions expressed by them can</p> <p>7 benefit from a wide range of experience.</p> <p>8 These groups, however, have been kept deliberately</p> <p>9 small in order to avoid the possibility of the work</p> <p>10 becoming less efficient and the evidence they produce</p> <p>11 less useful to you in reaching your conclusions.</p> <p>12 The Inquiry team has spent a considerable amount of time</p> <p>13 since the opening statement hearing in November seeking</p> <p>14 to locate and instruct experts to perform this important</p> <p>15 function as part of the section 1 workflow.</p> <p>16 The Inquiry's view is that these experts have the</p> <p>17 appropriate expertise and experience for their</p> <p>18 particular instruction. They're independent and</p> <p>19 objective and subject to an overriding duty to assist</p> <p>20 the Inquiry on matters within their expertise. As was</p> <p>21 previously planned, the groups will provide written</p> <p>22 reports and opinions and will give evidence at an oral</p> <p>23 hearing, their work will benefit from the helpful</p> <p>24 contribution to say their instructions suggested by core</p> <p>25 participants in early 2026 and from contributions they</p> <p style="text-align: center;">Page 100</p>

<p>1 will be able to make to oral hearings, at which the 2 expert will be examined on their evidence by counsel to 3 the Inquiry. 4 The work of the experts has been in areas -- an area 5 in which the Inquiry has chosen to take time to review 6 in light of the postponement of the section 1 hearings, 7 as well as the breadth of the areas which the expert 8 groups have been asked to address. Progress, at the 9 time of writing, is as follows: 10 A draft report has been received on various matters 11 from a neurosurgical expert group. The group comprises 12 Professor Peter Whitfield, an honorary professor and 13 consultant neurosurgeon who has agreed to act as the 14 group's lead, Mr Robert Redfern, a retired consultant 15 neurosurgeon and Mr Crispin Wigfield, a consultant 16 neurosurgical and spinal surgeon. 17 A lengthy report is available to the Inquiry and is 18 currently being reviewed, as our normal processes 19 dictate. That will be sent back to the experts for 20 completion and the materials are being processed for 21 disclosure. 22 Similarly, an equally complex instruction was sent 23 to the medical ethics group, which comprises 24 Professor Richard Huxtable, a professor of medical 25 ethics and law at the University of Bristol, who has</p> <p style="text-align: center;">Page 101</p>	<p>1 This is a little further behind. The NHS Tayside 2 submission, quite reasonably, asks for to us reveal the 3 identity of the experts on that group and we will 4 certainly do so as soon as we are able. 5 As far as the lessons which have been learned, sir, 6 are concerned, I would like to take some time to set 7 these out in order that our future progress works as 8 efficiently as possible. 9 The Inquiry has produced a large volume of protocols 10 explaining in detail its processes and why they are the 11 way they are. Rule 8 requests also set out a good deal 12 of technical and other information which the recipients 13 of them will require to bear in mind and adhere to in 14 the production of their responses. Material providers, 15 witnesses and their recognised legal representatives 16 will be expected to have read and understood these 17 documents and to check, before submitting materials to 18 the Inquiry, that they have been complied with. This 19 will avoid considerable delay and time taken in 20 revision. 21 If there are issues with the requests which have 22 been issued, or the Inquiry's processes, the Inquiry has 23 staff available to assist, either in the document 24 management team or the wider legal team or indeed the 25 secretariat, all of whose contact details are available</p> <p style="text-align: center;">Page 103</p>
<p>1 agreed to be the group lead, Dr Catriona McMillan, 2 a reader in medical law and ethics at the 3 University of Edinburgh and deputy director of the 4 Mason Institute for Medicine, Life Sciences and the Law 5 and Professor Angus Mcnair, professor of colorectal 6 surgery at the University of Bristol and honorary 7 consultant colorectal surgeon within the North Bristol 8 NHS Trust. 9 Again, a lengthy draft of their report and many 10 associated documents have been produced by this group. 11 Again, that is in the process of being reviewed by 12 the Inquiry team in order that the report can be 13 finalised. 14 Sir, as far as the final group is concerned, that is 15 our healthcare administration group. I'm not, at this 16 stage, at liberty to reveal the identity of those who 17 have been instructed, although two leading academics and 18 possibly a third member of the group have been 19 identified by the Inquiry team. They have been issued 20 with a letter of instruction and have been asked to 21 undertake preparatory work. 22 Those who follow the timetabling of the Inquiry as 23 at the last hearings, will recall that it was not 24 intended that that expert group's work -- evidence, 25 would be led at the hearing in April and May anyway.</p> <p style="text-align: center;">Page 102</p>	<p>1 to respondents. It is better to speak up early in the 2 process of responding if an issue is anticipated so that 3 things can be set on the correct course. Where that has 4 happened, later issues have been avoided. Where it has 5 not, unnecessary delay has been experienced. 6 It should be borne in mind by all those who apply, 7 for that matter also within the ICR, that the Inquiry's 8 systems provide for the Inquiry being involved in one 9 substantive review of draft statements. Timescales 10 which are allocated provide for that to happen at 11 a point when it can be of most value to the provision of 12 the best evidence to the Inquiry. The Inquiry therefore 13 expects first drafts of statements to be a proper draft 14 for review by the legal team. Comments are added for 15 points of clarification and focus and the Inquiry will 16 not tolerate drafts being produced of such a quality 17 that the purpose of the substantive review is negated. 18 Referencing, using the Inquiry's reference number is 19 important for clarity and consistency. Respondent are 20 asked to adhere to the Inquiry's numbering systems or to 21 seek help from the Inquiry to do so. The technical 22 systems provided to the Inquiry by the 23 Scottish Government are more cumbersome than the Inquiry 24 would ideally would have liked. Respondents and their 25 legal representatives should acquaint themselves within</p> <p style="text-align: center;">Page 104</p>

<p>1 advance of receiving rule 8 requests or section 21                  2 notices and ask for technical help from the Inquiry to                  3 minimise any resultant delay.                  4 Those producing sensitive information within                  5 documents should take care to comply with their data                  6 protection obligations to avoid data breaches and the                  7 time necessary for the Inquiry to discover them and                  8 avoid repeating them.                  9 As per its protocols and the relevant law of the                  10 matter, the Inquiry expects documents to be provided                  11 without redactions. The Inquiry will invite the                  12 material provider to propose redactions at the material                  13 provider review stage. The Inquiry must be able to                  14 decide on what redactions to its materials it sees fit                  15 to impose in order to be able to comply with its                  16 obligations under the 2005 Act.                  17 If this rule is not observed, the fact of it will be                  18 disclosed to core participants and will be explored as                  19 necessary in the Inquiry's hearings. It will be clear                  20 when redactions have been imposed other than by                  21 the Inquiry. If large material providers would like to                  22 ask the Chair to make a blanket restriction order,                  23 they're encouraged to do so as early as possible within                  24 the process to avoid this having to be dealt with at the                  25 material provider review stage, if possible.</p> <p style="text-align: center;">Page 105</p>	<p>1 expected to identify documents they may be asked to                  2 produce and which relate to the Inquiry's list of issues                  3 in advance. They will, in all requests, be asked to                  4 explain in sworn statements the methods used to find                  5 them. They will be expected to complete inventories to                  6 inform the Inquiry of how that was done and to identify                  7 which documents relate to which part of the Inquiry's                  8 request and work. This is done as the provider is best                  9 placed to explain how they found when they have produced                  10 and why it is being produced.                  11 These lessons and expectations which have been spelt                  12 out are ones which have been and continue to be fed into                  13 the Inquiry's planning for its future hearings.                  14 Sir, as far as future hearings date is concerned, as                  15 ever, the public hearings of the Inquiry will continue                  16 to be live-streamed and transcripts of evidential                  17 hearings will be published on the website.                  18 As far as the planning of future hearings is                  19 concerned, the position remains subject to the requests                  20 made of the Scottish Government and set out already in                  21 my submission about the availability of the hearing                  22 suite here in Edinburgh for the time-slots which we have                  23 reserved as part of our sharing arrangements with the                  24 COVID-19 Inquiry or considered proposals about suitable                  25 alternatives being made to you.</p> <p style="text-align: center;">Page 107</p>
<p>1 Timescales so far have been variably adhered to.                  2 They will be expected to be in future. Though, at                  3 times, they may seem tight, they are all assessed for                  4 reasonableness in advance and are necessary for the                  5 completion of the various stages of review and                  6 processing which the Inquiry requires to go through, to                  7 achieve suitable disclosure and publication of its                  8 documents.                  9 In future the Inquiry will endeavour to provide                  10 material providers' witnesses and their recognised legal                  11 representatives with better advanced notice of when they                  12 are likely to receive requests and the likely                  13 timescales, in order to allow recipients to organise                  14 themselves to respond within allocated timescales.                  15 Respondents will be expected to arrange themselves                  16 administratively in advance of receiving a request or                  17 notice to be able to do so. Equally, the solicitor to                  18 the Inquiry is keen to meet with recognised legal                  19 representatives of major material providers to discuss                  20 their experiences and to improve ways of doing things                  21 going forward. This has not always proven possible, due                  22 to the pressure of business and recruitment issues in                  23 the past and needs to be worked on by the Inquiry. It                  24 will be.                  25 Material providers should be aware that they will be</p> <p style="text-align: center;">Page 106</p>	<p>1 The windows available for the Inquiry for its                  2 hearings this year are four weeks from 7 September and                  3 three weeks from 30 November. Significant preparation                  4 is required to make these hearings work. Detailed                  5 hearings preparation timetables have been created by me.                  6 They require target dates for hearings to work towards.                  7 Therefore, the Inquiry is working toward delivering                  8 hearings for evidential hearings in section 1 in                  9 the September window and section 2 in the December                  10 window.                  11 The Inquiry's investigations have given rise to                  12 a good deal of material being recovered for the purposes                  13 of its section 1 hearings. Though introductory in                  14 nature, the establishments and materials received from                  15 material providers constitute a complex body of evidence                  16 for analysis and consideration at the section 1                  17 hearings. Though the Inquiry would have preferred not                  18 to have been put in this position and to have proceeded                  19 with the section 1 hearings as planned, the Inquiry team                  20 has taken opportunity to take advantage of the extra                  21 time afforded to them. The team is taking more time to                  22 go over the statements and materials to try to improve                  23 their quality and comprehensiveness. That is an ongoing                  24 process.                  25 The section 1 timetable has been reviewed in light</p> <p style="text-align: center;">Page 108</p>

<p>1 of the evidence which has been received. This has given                  2 rise to the opportunity to reassess the number of days                  3 which could usefully be used for the section 1 hearings                  4 which are now planned take place in the four-week slot                  5 booked from 7 September, subject to the hearings venue                  6 issue being resolved.</p> <p>7 For the sake of clarity and in response to the                  8 patient group submission, as I have said, the issue of                  9 theatre log-books will still be covered then. To answer                  10 a point made by NHS Tayside, the sectional scopes which                  11 have been released are necessarily broad descriptions of                  12 the topics to be covered, as has always been the case.                  13 Particular matters to be covered at the hearings will                  14 arise from the questions posed in the rule 8s, the                  15 responses which have been received and contributions                  16 within those broad scopes made by core participants.</p> <p>17 The matters to be covered with each witness will be                  18 broadly set out in the evidence proposals on which core                  19 participants will be invited to comment. A list of                  20 documents which may be put to the witness will also be                  21 included in the evidence proposal.</p> <p>22 As section 1 is an introductory section, nothing                  23 covered in it cannot be returned to in more detail at                  24 a later stage.</p> <p>25 Sir, that, then, is our plan. It is, of course, as</p> <p style="text-align: center;">Page 109</p>	<p>1 of the legal team. In section 2, the Inquiry will hear                  2 evidence from a selection of patients and if necessary,                  3 their representatives, relating to key clinical themes                  4 but also substantive matters and the patients'                  5 experience of them, which are derived from the Inquiry's                  6 terms of reference.</p> <p>7 In section 2 of the hearings, the Inquiry will also                  8 hear evidence from the ICR about its findings of                  9 sub-standard clinical care which have been revealed in                  10 that process. It had been the Chair's intention to seek                  11 to preserve the September diet for section 2 evidence,                  12 but given that no representation where is made that that                  13 should happen by any core participant and that the plan                  14 which has been set out now seems to suit more the                  15 timetabling, we have decided to hold the hearings which                  16 will involve some patients giving evidence in December.</p> <p>17 In light of the need to press on with the Inquiry's                  18 own investigations of matters falling within its                  19 section 2 remit, including the drafting of rule 8                  20 requests for patients and the production of section 2                  21 statements in accordance with the internal plans,                  22 the Inquiry has sought representations from the                  23 Levy &amp; McRae group as to witnesses who they suggest                  24 should receive such requests and why, to supplement                  25 the Inquiry's own investigations in that regard.</p> <p style="text-align: center;">Page 111</p>
<p>1 I have said on numerous occasions, regrettable that the                  2 section 1 hearings required to be cancelled, although,                  3 as I've tried to set out, the team has tried to derive                  4 some benefit and advantage from the way in which -- from                  5 the fact that they have extra time to work on the                  6 materials.</p> <p>7 Therefore, as has been intimated in the counsel to                  8 the Inquiry note, we have allocated a target date of                  9 22 June 2026 as the date by which it is hoped that the                  10 bulk of the section 1 materials will be disclosed to                  11 core participants. Because of the extra efforts being                  12 made to improve the materials and to process them and                  13 the complexity of that matter, we cannot commit to                  14 an earlier target date than that. Core participants are                  15 reminded that disclosure of the materials are subject to                  16 strict obligations of confidentiality and the provisions                  17 of the first order.</p> <p>18 Neither the fact of their disclosure nor their                  19 content can be revealed beyond those who have signed                  20 confidentiality undertakings. Legal representatives                  21 will be expected to remind their clients of these                  22 important restrictions and the consequences of                  23 non-compliance.</p> <p>24 Sir, as far as section 2 is concerned, the section 2                  25 hearings are also being prepared for by a separate part</p> <p style="text-align: center;">Page 110</p>	<p>1 Those submissions have now been received, though                  2 they have come with a caveat that certain potential                  3 witnesses have not been able to be considered. They are                  4 of limited quality, focused on clinical matters as                  5 opposed to systemic matters and provide little details                  6 of the clients' positions, beyond what we already know                  7 about them, though we had anticipated that those would                  8 have been available and indeed, we had anticipated that                  9 such suggestions might have been available from that                  10 group before the November hearings.</p> <p>11 It appears clear, sir, that the Levy &amp; McRae group                  12 considered the time made available to them to produce                  13 that submission to be insufficient. In the spirit of                  14 cooperation with those patient representatives, I would                  15 be minded, sir, to seek to allow a further period for                  16 this to be complied with. I might suggest that                  17 a further period of two weeks could be accommodated                  18 within the Inquiry's complex section 2 timetable.                  19 I would ask my learned friend Ms Cherry to indicate                  20 whether that would be of use to her instructing agents                  21 in conducting that important work.</p> <p>22 Sir, we will hear submissions later from the                  23 Independent Clinical Review and a detailed update on the                  24 position in that regard has been provided in the counsel                  25 to the Inquiry note. There have been a number of</p> <p style="text-align: center;">Page 112</p>

<p>1 important developments in the work of that process which  2 is now up and running, although the main message which  3 is included in the note is that matters have not  4 proceeded along the timeline which was set out at the  5 time of the November hearings.</p> <p>6 There appear to be various reasons for that and the  7 counsel to the Inquiry note sets out that we have  8 experienced some difficulty with the apparent support  9 which has been offered to clients of Levy &amp; McRae in the  10 production of their applicant statements.</p> <p>11 I understand, sir, from the representations that  12 have been made on behalf of that group, that they appear  13 to have learned from their experiences and streamlined  14 their procedures, which is an extremely encouraging  15 matter to hear.</p> <p>16 However, the note sets out, for the purposes of our  17 planning, a detailed timetable which in my submission  18 will require to be adhered to. The patient group has  19 raised dissatisfaction with that proposal and I suspect  20 Ms Cherry will have something to say about it.</p> <p>21 My position is that this timetable has been agreed  22 with the Independent Clinical Review and is a timetable  23 which will be necessary for the hearings in December to  24 be able to be delivered and for the agreed amount of  25 material to have been processed by the ICR in time for</p> <p style="text-align: center;">Page 113</p>	<p>1 The Inquiry is lucky to have both a secretary who is  2 prepared to devote so much time to it, but also the  3 result of that is an experienced and dedicated team who  4 are, other than those in the room, currently working  5 away on the work of the Inquiry, as I'm sure you would  6 expect.</p> <p>7 Sir, I have also set out, in the counsel to the  8 Inquiry note, some details about a warning letter  9 protocol which I have -- which has been published. The  10 process of warning letters is a complex one and  11 the Inquiry has attempted to adopt a flexible approach  12 to it.</p> <p>13 In particular, the Inquiry is aware that in a number  14 of other Inquiry's warning letters, which require in  15 terms of the statutory regime to be issued to those who  16 are going to be, or may be, criticised by evidence  17 gathered by the Inquiry, can cause significant delay to  18 the production of a report. As a result, a flexible  19 approach to that has been adopted and one which will  20 seek to issue warning letters, or associated similar  21 requests, to people who may be criticised as we go along  22 rather than at the end.</p> <p>23 I draw attention to that as it is a complex process  24 and one which certainly legal representatives should  25 take time to look at.</p> <p style="text-align: center;">Page 115</p>
<p>1 those hearings to take place.</p> <p>2 As I have already said, it's been a consistent  3 message of the patient group, and indeed wider  4 patient -- former patients of Mr Eljamel that they seek  5 to be heard in this Inquiry, which they will be, and  6 they seek the resolution of the matters which are within  7 our remit requires to take place as soon as possible.</p> <p>8 In order to do that, sophisticated timetables have  9 been created and it is hoped that the experience which  10 has been gained in the first batch of 50 cases will be  11 able to be beneficial in the production of applicant  12 statements in the next batch which comprises 70-odd  13 cases.</p> <p>14 In my submission, it is necessary that that happens  15 and that sufficient resources be allocated to it in  16 order for these important deadlines to be met.</p> <p>17 Sir, the Inquiry -- the counsel to the Inquiry note  18 includes details of important staffing updates within  19 the Inquiry for the information of core participants,  20 the wider public and indeed, recognised legal  21 representatives. All of these recruitments have  22 benefited from the considerable amounts of time taken by  23 the secretary to the Inquiry to take control of the  24 Scottish Government's otherwise unsatisfactory  25 recruitment processes.</p> <p style="text-align: center;">Page 114</p>	<p>1 I should also say, sir, that the attention of core  2 participants is drawn, in particular, to the strict  3 rules of confidentiality which are imposed by the  4 underlying statutory rules on the recipients of warning  5 letters, which apply in addition to other  6 confidentiality provisions incorporated into our  7 procedures. Recipients of warning letters and their  8 representatives are expected to understand and comply  9 strictly with these provisions and that is a matter also  10 which people should take time to consider.</p> <p>11 Sir, I wish to spend a little time, if you will  12 allow me, to address one important issue which has  13 featured in our hearings before and which features  14 again. That is the legal support which has been offered  15 to be provided to current or former employees by  16 NHS Tayside. At the preliminary hearing in September,  17 an issue was ventilated relating to this support being  18 offered by NHS Tayside to its current and former  19 employees.</p> <p>20 The board had set out its position in that regard in  21 a written submission to the Inquiry and as far as  22 the Inquiry was concerned, the position remained  23 unclear. Various other notes have been produced  24 relating to this matter. I should say, sir, that in  25 trying to work out when they were all produced, what</p> <p style="text-align: center;">Page 116</p>

<p>1 they all say and when they were released, it seems that                  2 perhaps they were not all released and certainly not all                  3 released in time to other core participants.                  4 Therefore, in the counsel to the Inquiry note,                  5 I invited NHS Tayside to address a number of outstanding                  6 matters and to set out their, what appears to be now,                  7 final position about what legal support they are                  8 offering. That is a helpful summary for those who wish                  9 to understand the matter and that will include not only                  10 the Inquiry's core participants, but also current and                  11 former employees who wish to avail themselves that far                  12 service.                  13 Sir, the current position and the issues which                  14 appear to arise appear to me to be as follows: the board                  15 has clarified that it does not wish to make                  16 an application to you for an endorsement of their plans.                  17 Thus, sir, there is nothing for you to determine today,                  18 as I understand it.                  19 However, it is clear elsewhere that the board does                  20 seek the Inquiry's acceptance of their plan and indeed,                  21 to the extent that they wish to express a view, the                  22 acceptance of other core participants. It is clear that                  23 it will be necessary in any event for the board to seek                  24 the Inquiry's assistance in certain matters, as certain                  25 practical steps will be necessary to facilitate the</p> <p style="text-align: center;">Page 117</p>	<p>1 some relevant considerations which may help advance                  2 matters. It's clear from the submission that                  3 NHS Tayside's legal team for this Inquiry are instructed                  4 by and represent NHS Tayside only. In this Inquiry,                  5 NHS Tayside's legal representatives do not represent                  6 former or current employees.                  7 I do not accept that this is the result of a legal                  8 impediment to them doing so. The fact that the                  9 Central Legal Office was created to provide legal                  10 services to health boards does not invite, my view,                  11 prevent them in cases where individual witnesses who are                  12 current or former employees of the board and where no                  13 conflict of interest exists, from accepting instructions                  14 to represent the interests of those current or former                  15 employees.                  16 The distinction which the board draws between                  17 individuals providing evidence as individuals and not                  18 being representatives of the board is, in my view,                  19 an artificial one, where the matters they're being asked                  20 about are actions they took as a means of the board                  21 interacting with the rest of the world. In that sense                  22 they did represent the board.                  23 That said, as the view of the Inquiry on the matter                  24 is not being sought, the fact that it is -- the fact is                  25 that the recognised legal representatives of the board</p> <p style="text-align: center;">Page 119</p>
<p>1 legal support service being offered and also certain                  2 dispensations will be necessary within the Inquiry's                  3 procedures to allow it to operate.                  4 The reasons why these dispensations will be                  5 necessary remains that the concept of legal support is,                  6 and remains, one of the board's own making. It does                  7 not, in my submission, fit well with the statutory                  8 framework within which Inquiries fit, given that that                  9 statutory framework assumes that such support will form                  10 a part of legal representation.                  11 It follows therefore that the imposed and adopted                  12 procedure within this Inquiry will require to be altered                  13 to cater for this proposal, as it is a novel concept and                  14 process which still appears to be evolving in the last                  15 couple days.                  16 Sir, I think that it will be necessary for you, in                  17 due course, to write to the board with your final                  18 position, now that I understand that the board's                  19 position is finally settled. Though you have received                  20 advice on this issue internally, you have not yet                  21 expressed a view on it, which will, to some extent, be                  22 necessary in order that the processes and dispensations                  23 required can be put in place, if you are minded to do                  24 that.                  25 However, for present purposes, I think I can set out</p> <p style="text-align: center;">Page 118</p>	<p>1 are instructed only in that limited capacity. That is                  2 simply the position. Legal support to current and                  3 former employees is all that is being offered that.                  4 That may come as a surprise or disappointment on current                  5 or former employees, but that is a matter between the                  6 board and them. It's not, in my submission, a matter                  7 for the Inquiry.                  8 As I understand it, NHS Tayside and its legal team                  9 will provide assistance in the preparation of corporate                  10 witness statements. Indeed, they have done that, as                  11 I understand it, to date.                  12 The board has clarified that in order to maintain                  13 an appropriate degree of independence in the legal                  14 support being suggested, a separate senior solicitor                  15 will be instructed at the Central Legal Office to                  16 provide this service to current or former employees. It                  17 is understood that the board's legal representatives                  18 will not play a part in that work at all.                  19 The board should make clear that any materials about                  20 this service sent to current or former employees, some                  21 of which my learned friend Ms Doherty has kindly shared                  22 with me on a counsel-to-counsel basis, make this                  23 explicit and that the senior solicitor will be able to                  24 support any witnesses who are called to give evidence at                  25 the Inquiry.</p> <p style="text-align: center;">Page 120</p>

<p>1 I have raised a number of professional issues about  2 the senior solicitor role which is contemplated. To be  3 clear, these are matters for the senior solicitor.  4 The Inquiry is not responsible for these and assumes,  5 for present purposes, that there is no professional  6 impediment to the board's legal support plan.  7 An administrative assistant, in effect, as  8 I understand it, will signpost the employees to the  9 senior solicitor as necessary and will not be privy to  10 any information about the case. The dispensation to be  11 able to share information applies, as I understand it,  12 to the senior solicitor alone that. Individuals will be  13 required to be identified to the Inquiry in early course  14 so that discussions can appropriately take place with  15 him or her in that independent capacity. That person  16 will, as I understand it, be operationally independent  17 of the board, though the ambit of the work they can  18 undertake will be defined by the board who will pay for  19 this service.  20 As this independence is an inherent part of that  21 solicitor's role, I understand it is now accepted by the  22 board that no conflict check will be necessary. It is  23 the Inquiry's position that any solicitor providing such  24 a service would require to define, with care, not only  25 what services are being provided but which services</p> <p style="text-align: center;">Page 121</p>	<p>1 be applied.  2 Service of documents on the board or any  3 representative -- the board has made clear that rule 8s  4 and the like will require to be served on the  5 individuals. Although this will be administratively  6 cumbersome, I think it's a necessary corollary of the  7 position being advanced.  8 There will need to be some further discussion about  9 the particular matters which will require to be adhered  10 to by way of confidentiality, but that may well be  11 a matter which can be discussed with the senior  12 solicitor in due course.  13 There may also require to be a further conversation  14 with the board about how their practical or emotional  15 support will be provided, in particular the practical  16 support, in order to make sure that documents provided  17 to the board by the Inquiry are only used for the  18 purpose for which they have been communicated.  19 Sir, there are various other discussions as regards  20 the potential for other representation within the  21 board's submission, which helpfully point out at least  22 what the board understand the position to be. It is  23 correct to say, as the board does in its documents, that  24 it is not necessary for every witness to be represented.  25 There is, however, still a lacuna in the planning, as</p> <p style="text-align: center;">Page 123</p>
<p>1 which would normally be provided by a solicitor will not  2 be, as a matter of professional obligation.  3 Though ultimately, as I have said, that will be  4 a matter for the senior solicitor, the board will  5 ultimately limit that service and should therefore be  6 clear to what services will be provided and what, in the  7 ordinary course of solicitors' work, will not.  8 It has been clarified that the support will not  9 constitute legal advice or representation. I have  10 deduced, I think correctly, from the submission that it  11 will not cover handling warning letters, as the note  12 refers to the need for separate representation in the  13 event of criticism being raised.  14 The Inquiry sought clarity from the board on what  15 services will be provided as part of the support  16 service. They have clarified that they will still help  17 the Inquiry with the identification and location of  18 possible witnesses which is appreciated. As far as the  19 identification of what interests the board represents  20 and what it does not, care in this regard will be  21 necessary. For example, in the area of proposed  22 redactions, the Inquiry will require to be satisfied  23 where redactions to materials are sought, that the board  24 has a legitimate interest where it does not represent  25 its current or former employees in seeking for them to</p> <p style="text-align: center;">Page 122</p>	<p>1 far as I understand it, on the basis that there appears  2 to have been an assumption that where legal  3 representation was necessary it would be provided by  4 medical defence organisations.  5 Though that may be available to certain doctors, no  6 such support or representation would be likely to be  7 available to other individuals such as nurses,  8 executives or other administrative staff of the board.  9 In this regard, I note that there appears to have been  10 a development in the latest submission that the board  11 has suggested that funding may be made available by the  12 board for such separate representation to be accessed.  13 The board is asked to expand on the circumstances in  14 which it would be prepared to provide that funding.  15 Sir, I hope that that summary is accurate, and no  16 doubt my learned friend Ms Doherty will point out if  17 I have any aspects of it correct. I am obliged to her  18 in particular for the care she's taken in trying to set  19 out this complex system and, to be frank, the obvious  20 effort that has been made to try to deal with points  21 raised both by the Inquiry and, at certain times, by the  22 patient group to seek to address those matters.  23 Sir, in conclusion it's hoped that the explanations  24 which I have provided in this submission will be of  25 assistance to those who participate or are otherwise</p> <p style="text-align: center;">Page 124</p>

<p>1 interested in the work of the Inquiry. It is a reality  2 that a Public Inquiry, being a public exercise confined  3 by the provisions of the statute and the rules in terms  4 of which it is created, requires to rely on other  5 parties to conduct its work. The assistance which it  6 seeks is assistance in the fulfilment of its aims, be  7 they procedural or substantive in nature.  8 You, sir, have set an ambitious plan for our work.  9 You have done so because you and your team consider that  10 our remit, the Inquiry's background, the legitimate  11 needs of its patient participants and indeed other  12 interested parties require that such a plan be adopted.  13 It is the basis, sir, of your aspiration that  14 the Inquiry must be conducted as expeditiously as the  15 demands of reasonable thoroughness allow. Answers must  16 be sought and answers must be found quickly.  17 Sir, you have recognised that, in order for these  18 apparently contradictory forces to be reconciled, others  19 need to be involved and for others to be involved and to  20 contribute to your work.  21 In order to regulate the involvement of and reliance  22 on others, you have set out from the very outset of this  23 Inquiry the principles upon which the Inquiry must be  24 conducted by all. These principles, in my submission,  25 have continued to be adhered to by the Inquiry to the</p> <p style="text-align: center;">Page 125</p>	<p>1 In all things the Inquiry has continued to assert  2 its independence. It has continued to push the Scottish  3 Government to sign up to its proposed management  4 agreement, which seeks to make sure that the  5 independence of the Inquiry process is fully at the  6 forefront of our dealings with them.  7 These principles exist to try to identify ways in  8 which things could be done which increase the chance of  9 the Inquiry achieving its aims. They exist to seek  10 a resolution our task which is in the public interest,  11 which is to the mutual benefit of all who play or take  12 a part or interest in our work.  13 The Scottish Ministers who set up this Inquiry in  14 particular, I am sure, are keen that this Inquiry  15 adheres to and upholds these principles. Many of the  16 principles which we espouse are ones which they claim to  17 aspire to themselves across their publicly available  18 materials. It is in the spirit of seeking to uphold  19 these principles that this hearing has been called and  20 it has been conducted by the Inquiry team.  21 It will be expected that these principles will  22 continue to be adhered to by others. If they wish  23 the Inquiry to succeed, they will need to do so.  24 Sir, it might be said that it is at times of  25 adversity that commitment to principles is tested. The</p> <p style="text-align: center;">Page 127</p>
<p>1 best of its ability. The Inquiry has continued its  2 commitment to being trauma-informed, in particular in  3 its consultation exercise, and the consequences I have  4 set out.  5 The team has gone about seeking and analysing the  6 section 1 materials, demonstrating both thoroughness and  7 open-mindedness. The Inquiry has continued to cooperate  8 with others. It's sought the input of core participants  9 on the letters of instruction to experts. It continues  10 to seek to cooperate with and adhere to the  11 Scottish Government's systems upon which it is reliant,  12 underpinned by a management agreement, to which  13 the Inquiry has adhered and to which we hope the  14 government will also adhere. It has continued to work  15 alongside its parallel process in the ICR to the mutual  16 benefit of both.  17 The Inquiry has listened to traumatised patients in  18 its trauma-informed consultation and in response to  19 concerns brought to its attention about the possibility  20 of holding remote evidential hearings. It has  21 endeavoured to be clear as to its understanding of the  22 situation and what it plans to do about it, by holding  23 this hearing and keeping those who need to know informed  24 of our plans despite setbacks. The Inquiry has  25 endeavoured to be both honest and clear.</p> <p style="text-align: center;">Page 126</p>	<p>1 recent months of the Inquiry's work have involved  2 adversity. That adversity has, in large part, been the  3 result of external forces and agencies upon which  4 the Inquiry relies and requires to rely and whose  5 adherence to the Inquiry principles we expect and  6 require.  7 Two such principles, after all, are cooperation and  8 clarity, both of which we have committed to provide and  9 we expect to receive to a reasonable standard from all  10 other parties involved in our work going forward. In  11 that spirit, I look forward to hearing the contributions  12 of my colleagues and to achieving real progress towards  13 the holding of our rearranged evidential hearings  14 targets, which this hearing was designed to seek to  15 enable.  16 Thank you, sir.  17 LORD WEIR: Thank you very much, Mr Dawson, for those  18 submissions.  19 I had said, before you resumed your place at the  20 lectern, that I anticipated that we would move directly  21 to Mr Duncan's submissions.  22 Mr Duncan will be able to hear me and hopefully see  23 me too. I think that no longer looks practical. We're  24 on top of lunch so I think what we will do, everyone, is  25 we will take a one-hour break now and aim to sit again</p> <p style="text-align: center;">Page 128</p>

<p>1 at 1.55, where Mr Duncan will address you on behalf of  2 those whom he represents.  3 Thank you.  4 (12.53 pm)  5 (The luncheon adjournment)  6 (1.55 pm)  7 LORD WEIR: Good afternoon, everybody. The next set of  8 submissions I will now invite to be delivered will be  9 those on behalf of the Cabinet Secretary for Health and  10 Social Care as sponsor of the Inquiry and I will hand  11 over, now, to Mr Alistair Duncan KC.  12 Mr Duncan, thank you.  13 Submissions by MR DUNCAN  14 MR DUNCAN: Thank you, sir. As your Lordship has just  15 indicated, I do indeed appear today on behalf of the  16 Scottish Ministers to address matters of sponsorship of  17 the Inquiry. The nature of the ministers' sponsorship  18 role, it's touched on in paragraph 2 of the written  19 submission that was provided by them to the Inquiry on  20 Tuesday of this week. The practical work of sponsorship  21 is done by a sponsorship team and it was that team who  22 drafted the submission.  23 The team provides sponsorship support to  24 the Inquiry, for example, assistance in securing  25 suitable accommodation. They also have budgetary</p> <p style="text-align: center;">Page 129</p>	<p>1 First of all, the up-to-date position in relation to  2 Waverley Gate. Secondly, the availability of  3 alternative premises, and thirdly, the way in which the  4 sponsorship team has communicated with the Inquiry and  5 indeed to you, sir, in relation to these matters.  6 I turn, then, to the up-to-date position, but before  7 doing that, let me say at the outset, as is said in the  8 note, it is absolutely acknowledged that the situation  9 that has arisen here is deeply regrettable and the  10 knock-on effects of that, in particular the cancellation  11 of these important hearings, is also acknowledged.  12 It is acknowledged, sir, that the provision of safe  13 premises is indeed ultimately the responsibility of the  14 ministers. It is acknowledged also, as Mr Dawson has  15 said already today, that what has arisen is not of the  16 Inquiry's making and it is acknowledged, sir, that the  17 decision to postpone hearings was certainly not taken  18 lightly and was taken responsibly.  19 So, as to the update on the current position, as you  20 will have seen, sir, from the written submission, there  21 was indeed proposed to be a meeting yesterday, with the  22 landlord in relation to the current position, and it was  23 in relation to that in particular that I asked for  24 a consultation. I was provided with a written update of  25 where things stand following that meeting, which did</p> <p style="text-align: center;">Page 131</p>
<p>1 responsibility in respect of the Inquiry and perhaps  2 I should just shorten this, sir. I detect no difference  3 in my learned friend Mr Dawson's description of their  4 role than that indicated in the note from the  5 sponsorship team.  6 An extract of counsel to the Inquiry's note was  7 provided to the sponsorship team last week. This  8 comprises sections 1 and 2 of the note as well as part  9 of section 9. The sponsorship team, as I have  10 indicated, provided a written response on Tuesday and  11 I have been asked to appear and update that and respond  12 to any particular or additional concerns and queries you  13 or counsel might have and I'm grateful to my learned  14 friend for indeed having highlighted particular issues  15 that he would like to hear and you would like to hear,  16 sir, more on.  17 I consulted yesterday afternoon with those  18 instructing me for that precise purpose and what  19 I really propose to do, then, is to deal with three  20 matters. First of all, premises. Secondly, the  21 question of confidentiality and the linked question of  22 the management agreement and, thirdly, briefly, on the  23 question of staffing.  24 So turning, then, to premises and I want to really,  25 again, break that into three matters.</p> <p style="text-align: center;">Page 130</p>	<p>1 indeed go ahead and I'm now going to turn to that.  2 I'll say at the outset, sir, that it falls short of  3 the assurance that counsel seeks in paragraph 31. In  4 particular, I am not able to say at this point that  5 an assurance can be given that the hearing would be able  6 to proceed in September in Waverley Gate as premises.  7 If I turn to the update that I was provided with  8 this morning, that might perhaps give some further  9 explanation around that and also identify the next steps  10 that might be taken to try and get towards that  11 assurance as quickly as possible.  12 What I propose to do is really just to draw your  13 attention, sir, to the key aspects of the report that  14 I received in relation to yesterday's meeting. It was  15 said that there was a productive discussion with the  16 landlord to resolve the fire safety/warrant issue. The  17 landlord representatives confirmed that a shaft wall  18 along the corridor wall, which bounds both Inquiry  19 spaces and the landlord-managed corridor used as fire  20 escape route is required to meet the fire safety  21 requirements and received the required warrant  22 completion certificate.  23 Now, I just pause there. I think that picks up on  24 a point that my learned friend made earlier about the  25 focus really being on completion certificate and again,</p> <p style="text-align: center;">Page 132</p>

<p>1 also just identifies that is the issue that arises here                  2 is an issue to do with fire safety regulations and                  3 compliance with those.                  4 I read on:                  5 "The landlord advised that there is no requirement                  6 for this work to be carried out on the wall which                  7 separates the two Inquiry spaces. The                  8 Scottish Government team were advised that                  9 City of Edinburgh Council confirmed to the landlord that                  10 a shaft wall along the full corridor would be acceptable                  11 to them to sign off the building warrant completion                  12 certificate for the area." (As read)                  13 So, to some extent, a positive development, sir.                  14 I read on:                  15 "The landlord advised it is their plan to appoint                  16 external contractors today to develop the detailed                  17 design and specification required for approval of works                  18 and ultimately, the warrant. There has been high-level                  19 discussion only so far. As the recent new owner of the                  20 building, they do not have a standing team of advisers                  21 and contractors in place yet, but are proceeding to put                  22 a team in place at once. An indicative timeline will be                  23 developed as part of this work." (As read)                  24 And a number of steps are then set out as being the                  25 steps that would be on that timeline. First of all,</p> <p style="text-align: center;">Page 133</p>	<p>1 do the works with people on-site? The specification for                  2 works will need to be agreed, the costs of the works                  3 will need to be agreed and a full project timetable to                  4 be confirmed and, along with that, and I imagine this                  5 would be in parallel, engagement with the                  6 City of Edinburgh Council to ensure the proposed design                  7 and specification would indeed meet the need for the                  8 warrant.                  9 So beyond that description, sir, just one or two                  10 further comments that I received in my update. The                  11 landlord representatives are due to meet with the                  12 contractors who will be drawing up the design and the                  13 specification this week and will report back to                  14 ministers after that, including in relation to the                  15 indicative timescales.                  16 The finalised timeframe will not be available until                  17 a works contractor is appointed, so I'll come back to                  18 that in a moment. At the meeting, the ministers                  19 stressed the critical importance of this work being                  20 completed at pace and to the correct specification for                  21 the inquiries and the families that have been impacted                  22 and that hearings have had to be cancelled and that                  23 there are further hearings planned for later this year.                  24 The landlord representatives recognised the                  25 sensitivity and time pressure of this work and have</p> <p style="text-align: center;">Page 135</p>
<p>1 being design and specification for the shaft wall and                  2 also an indication of timescales as regards the                  3 completion of those works.                  4 LORD WEIR: Sorry, Mr Duncan, I wonder if I can just come in                  5 on one particular point. Not everybody will necessarily                  6 be up to speed with modern building descriptions, but                  7 for the benefit of those watching the proceedings, can                  8 you give me a brief rehearsal of what is meant by                  9 a "shaft wall" and what, in practical terms, that should                  10 look like to those who might be interested to know.                  11 MR DUNCAN: My understanding, and perhaps I should emphasise                  12 that word, sir, is that essentially what would arise is                  13 first of all, I think the creation of studs, so                  14 something to hold the wall in place and I think it's --                  15 I think the wall would be made of concrete and there                  16 would be a sort of space in between it to allow                  17 ventilation. That really is about as much as I know,                  18 sir. If I'm able to improve on that before the end of                  19 the day, I will certainly let your Lordship know.                  20 LORD WEIR: All right, thank you.                  21 MR DUNCAN: I was just walking through very briefly, sir,                  22 the steps that are to be taken. So there will be advice                  23 provided to the ministers on the approach to be taken to                  24 the works. An important issue, for example: will decant                  25 of the area be required, or is it actually possible to</p> <p style="text-align: center;">Page 134</p>	<p>1 confirmed that they are anxious to secure this solution                  2 promptly.                  3 Now, I said there was one point I was going to come                  4 back to, sir, and that is about the appointment of                  5 contractors. There seems to be a two-stage process to                  6 this. First of all, there's a contractor being                  7 appointed in relation to the design and specification                  8 for the works. That's in the process of happening, as                  9 I understand it, and that in addition to that, there                  10 will be an appointment of a contractor to carry out the                  11 works.                  12 Now, it may be it's the same contractor, I don't                  13 know. That's perhaps a point that could usefully be                  14 clarified.                  15 I mentioned another matter, sir, in the timeline and                  16 that is the working in parallel with City of Edinburgh                  17 Council. What I have been told, and this was apparently                  18 said yesterday, that the minister also contact                  19 City of Edinburgh Council to discuss further, following                  20 the meeting with the landlord and to engage with them                  21 and to make sure that they are on target or, rather,                  22 that this proposal is on target for something that will                  23 indeed meet with approval.                  24 Sir, I said at the outset of this that I absolutely                  25 recognise, as do those who instruct me, that this falls</p> <p style="text-align: center;">Page 136</p>

<p>1 short of the assurance that is sought through counsel's 2 note and I suspect for consideration, then, is reporting 3 to you, sir, and to the Inquiry as regards the next 4 steps on all of this and it may be that that's 5 a discussion -- that might be something that Mr Dawson 6 wants to come back on today, I accept, but it could be 7 that those instructing me could simply provide a written 8 indication confirming what I have just said but also 9 setting out exactly how the reporting on this is to 10 proceed going forward, in order that as expeditious 11 a solution can be achieved as possible. 12 Sir, unless there's anything further on the 13 up-to-date position, I want to go on and deal with the 14 question of alternative premises and then also to deal 15 with what has been said in relation to the communication 16 with yourself and with the Inquiry. 17 LORD WEIR: Yes, please do. 18 MR DUNCAN: Thank you, sir. 19 In relation to alternative premises, I think 20 Mr Dawson's description of the way in which the note 21 from the sponsor team has been drafted is fair. I think 22 it is ambiguous and can I just be clear that it is not 23 being suggested that your Lordship or the secretary have 24 been offered a ready-to-use premises which they can 25 simply walk into.</p> <p style="text-align: center;">Page 137</p>	<p>1 we adopt in the Inquiry about being open with everyone 2 about matters of this kind and many others, then I think 3 you could take it that if there is information that 4 will, in due course, be shared, that's something that 5 would be shared by me more broadly so that everybody has 6 a clear steer on what is happening. 7 MR DUNCAN: I would need to take instructions that 8 obviously, sir, but I imagine that that understanding 9 would already have been recognised by those instructing 10 me. Really what I'm proposing is the amplification and 11 the supplementing of what I have already said today in 12 public. So I think what your Lordship is proposing 13 would be consistent with that. 14 I turn, then, to the question, then, of 15 communication with the Inquiry and with the Chair and 16 perhaps just in doing that, maybe just in relation to 17 the topic that I have just been dealing with, I think 18 there's been an aspect of perhaps communication not 19 going terribly well in relation to the alternative 20 premises idea, or at least perhaps people being at 21 cross-purposes to some extent. 22 But I move, then, to the topic of communication with 23 the Inquiry and with the Chair and could I just say at 24 the outset, sir, that the overall tenor of what my 25 learned friend has said about the concerns and</p> <p style="text-align: center;">Page 139</p>
<p>1 I think this is probably an issue that would benefit 2 from being addressed after this hearing in writing. In 3 other words, I have suggested to those instructing me 4 that they simply write to your Lordship and to 5 your Lordship's secretary and to set out exactly what 6 the next steps are to be in relation to what we might 7 call plan B. 8 And my broad understanding of things, sir, is that 9 ultimately, self-evidently it is a matter for 10 your Lordship as to what suitable accommodation is and 11 is not, but there are obviously the parallel issues of 12 exactly what the practical steps are as regards securing 13 any of these alternatives. And by "These alternatives", 14 I'm speaking principally about the suite currently 15 occupied by the Scottish Child Abuse Inquiry. 16 So essentially, sir, I simply propose that after 17 this hearing, the sponsor team provide in writing, along 18 with the update that I have already referred to, a clear 19 proposal of what would be required in relation to 20 consideration of any alternative premises. 21 LORD WEIR: Mr Duncan, I think that would certainly be 22 helpful, if that is a proposal that is yet to be 23 generated in sufficient detail to make sense to those 24 who are interested in knowing what that plan might look 25 like, but obviously consistent with the principles that</p> <p style="text-align: center;">Page 138</p>	<p>1 criticisms and deficiencies in the reporting to you, 2 sir, and to the Inquiry, that description would be 3 accepted and it would not be taken issue with and so, in 4 anything I'm about to say, it should not be thought that 5 there is an intention to try and say otherwise. 6 I don't propose to say very much about the timeline 7 other than in relation to two matters. My learned 8 friend has asked the question about whether there should 9 have been an understanding of this issue on the part of 10 ministers and on the part of Scottish Government prior 11 to December of last year. That's not something I'm in 12 a position to deal with today, sir, and if it is 13 a matter that the Inquiry would want to know more about, 14 I think some further investigation would need to be done 15 on that. 16 My learned friend has also, under reference to the 17 timeline, set out -- on page 3 of the note provided by 18 the sponsor team, he has, in particular, looked at the 19 period between 12 January and 23 March and I might just 20 say a wee bit more about that, but it really is only to 21 add some detail. I repeat what I said at the outset of 22 this discussion. 23 In particular, as my learned friend has said, 24 your Lordship, of course, wrote to the sponsor team on 25 6 February raising a number of issues, including the one</p> <p style="text-align: center;">Page 140</p>

1 we are currently discussing.  
 2 I think in response to that, the sponsor team  
 3 appears to have proposed a meeting with the Inquiry team  
 4 and I might also mention, sir, that there was a change  
 5 in personnel within the sponsorship team around this  
 6 team, with the current -- the current team being in  
 7 post, or the whole team being in post from the end  
 8 of February.  
 9 As they saw it, there was also an absence of clarity  
 10 about the precise nature of the issue that they were  
 11 dealing with, but, again, that doesn't in any way  
 12 contradict what I said earlier. It's accepted that the  
 13 communication responsibility sat with them. There  
 14 appear to have been calls and/or meetings with  
 15 your Lordship's secretary in early March and there was  
 16 eventually one, I think, on 24 March, which led to the  
 17 decision to have the meeting on 16 April.  
 18 There's the other confounding issue at that point,  
 19 of the change of ownership coming to light and a new  
 20 landlord, who's not cited on any of this, being in post.  
 21 It is to be emphasised, I think, that in the -- when  
 22 your Lordship did eventually get a written reply to his  
 23 letter on 1 April 2026, that was accompanied with  
 24 an apology for the delay in responding and that was  
 25 an apology that I am to repeat today. Counsel has

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1 expressed frustration with the level of communication  
 2 from the sponsorship team and as I've indicated, those  
 3 instructing me take no issue with that and indeed  
 4 I think, I understand that to have been acknowledged at  
 5 the meeting on 16 April.  
 6 So I repeat, as I have said a moment ago, that their  
 7 apology is repeated and the frustration is acknowledged  
 8 and regretted.  
 9 There may be a variety of reasons behind the scenes  
 10 for this but, as I have said, the sponsorship team  
 11 accepts that it has responsibility, ultimately, for  
 12 these matters and the communication was not effective.  
 13 There is an undertaking to do better and indeed, my  
 14 understanding is that following the meeting on 16 April,  
 15 one of the steps that was taken was a reporting protocol  
 16 to go between the sponsor team and the Inquiry team and  
 17 I think that is now underway, but I think beyond that,  
 18 sir, I think all I can really say on their behalf is to  
 19 give an undertaking that they are resolved to do  
 20 everything they can to try and reach a solution to the  
 21 current problem as soon as possible and to communicate  
 22 with your Lordship and his team effectively in relation  
 23 to that.  
 24 Sir, that really is all I have to say in relation to  
 25 the question of the premises. Unless there's anything

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1 additionally that you would like to hear from me just  
 2 now on, sir?  
 3 LORD WEIR: I think, not at this stage, Mr Duncan. It may  
 4 be that Mr Dawson wishes to come back, but there's  
 5 nothing more from me at the moment. I am happy for you  
 6 to proceed.  
 7 MR DUNCAN: Thank you very much.  
 8 I move, then, to the second topic, the question of  
 9 confidentiality and the linked issue of the management  
 10 agreement. I intend to take this fairly briefly, for  
 11 reasons which will become clear in a moment.  
 12 As my learned friend Mr Dawson has already  
 13 indicated, in the written submission from the sponsor  
 14 team, it is said that, subject to outstanding issues to  
 15 do with confidentiality, the management agreement is  
 16 agreed by the sponsorship team. I am somewhat unclear  
 17 as to any suggestion that the agreement hasn't been read  
 18 or properly considered, but perhaps, for more practical  
 19 purposes, what my learned friend said about that has  
 20 been heard and it is understood that it requires to be  
 21 read and indeed understood and my learned friend has  
 22 helpfully raised at least one issue in relation to that,  
 23 the issue of FOI and that will be considered further,  
 24 I'm sure.  
 25 On the issue of confidentiality and the outstanding

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1 discussions on that, that is a matter in relation to  
 2 which I've pressed for some further explanation and I am  
 3 told that there is to be a written explanation of the  
 4 perceived complexities and concerns and also the  
 5 proposed solution in relation to that.  
 6 I have pushed for an indication of what the  
 7 timescale is for that explanation, as indeed have the  
 8 sponsor team and what I'm told is that the matter is  
 9 being considered as a matter of urgency and I think --  
 10 certainly, sir, I think you can rest assured that the  
 11 sponsor team and the solicitors involved in instructing  
 12 me today certainly understand the urgency in getting  
 13 answers and bringing a conclusion to matters such as  
 14 this.  
 15 The final topic, sir, then is the question of  
 16 staffing. I, personally, am at something of  
 17 a disadvantage here in that I haven't seen the totality  
 18 of my learned friend's note. I've obviously heard what  
 19 he has said today.  
 20 I think it is possible that there are different  
 21 understandings, at least in relation to the question of  
 22 vacancies on each side. My understanding is that that  
 23 was a matter that was going to be addressed within the  
 24 reporting tracker that I referred to a moment ago. So  
 25 those instructing me, at least as matters currently

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1 stand, sir, are not clear what more the Inquiry team, or  
 2 you, sir, would want from them on this topic. So  
 3 I don't really have more I can usefully say on that  
 4 topic at this point.  
 5 Sir, that is all I have to say and other than  
 6 repeating again the deeply regrettable situation that  
 7 the Inquiry has found itself in and the impact on those  
 8 involved in the Inquiry, I think I would just simply  
 9 conclude my submission at this point.  
 10 LORD WEIR: Very well. Thank you very much, Mr Duncan, for  
 11 confirming these matters; it's appreciated that you took  
 12 the time to do so. Thank you.  
 13 MR DUNCAN: Thank you, sir.  
 14 LORD WEIR: I think that, given the time, it would be  
 15 expedient just to move straight on, now, to the next  
 16 programmed set of submissions without a break and we  
 17 will have a break after what follows. That means that  
 18 I'm now going to invite Ms Doherty KC to address the  
 19 hearing, in connection with her submissions on behalf of  
 20 NHS Tayside.  
 21 Ms Doherty.  
 22 Submissions by MS DOHERTY  
 23 MS DOHERTY: Thank you.  
 24 Sir, I appear on behalf of NHS Tayside, along with  
 25 Cat MacQueen and instructed by Tracy Turnbull of the

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1 Central Legal Office. NHS Tayside is grateful to  
 2 the Inquiry for the opportunity to respond in writing  
 3 and orally to counsel to the Inquiry's note for this  
 4 procedural hearing.  
 5 I propose to read out the submission on behalf of  
 6 NHS Tayside, which was provided to the Inquiry on  
 7 Tuesday morning, and to make some additional comments  
 8 relevant to the matters contained in it. I will then  
 9 briefly comment on the submission by the Independent  
 10 Clinical Review, the ICR, which was shared on Tuesday  
 11 afternoon.  
 12 Five matters raised in counsel to the Inquiry's note  
 13 are addressed in the submission in five separate  
 14 chapters: NHS Tayside's position regarding  
 15 representation and support to current and former  
 16 employees; trauma-informed policy; lessons learned;  
 17 preparations for section 1 hearings; and the instruction  
 18 of the expert witnesses.  
 19 Turning to chapter 1, NHS Tayside's position  
 20 regarding representation and support to current and  
 21 former employees.  
 22 NHS Tayside's legal representation in this Inquiry  
 23 and the support available to current and former  
 24 employees are matters which NHS Tayside brought to the  
 25 attention of the Inquiry from an early stage in

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1 proceedings. It has sought to set out its position in  
 2 submissions to the Inquiry, published on the Inquiry  
 3 website dated 4 September 2025, 13 November 2025 and  
 4 21 November 2025 and in its submission to the Inquiry  
 5 dated 3 December 2025, which counsel to the Inquiry  
 6 circulated to core participants last week, five months  
 7 after receipt.  
 8 That submission was published on the Inquiry website  
 9 on 18 December 2025, but so far as NHS Tayside is aware,  
 10 with no notification given to core participants at that  
 11 time. There has also been more recent correspondence on  
 12 this matter between me, as counsel for NHS Tayside, and  
 13 counsel to the Inquiry in March and April of this year.  
 14 Sir, I would point out that in counsel to the  
 15 Inquiry's note at paragraph 104 he states that  
 16 the Inquiry is keen that this matter of support to  
 17 current and former employees should be resolved as soon  
 18 as possible, as is NHS Tayside. It is respectfully  
 19 suggested, sir, that whilst the Inquiry may now be keen  
 20 to resolve this matter as soon as possible, until  
 21 recently there was a lack of any substantive response or  
 22 discussion on the matter, following receipt by  
 23 the Inquiry of NHS Tayside's submission dated  
 24 3 December 2025, which was made to clarify the two  
 25 matters raised by counsel to the Inquiry at the opening

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1 statements hearing.  
 2 Receipt of that NHS Tayside submission was formally  
 3 acknowledged by the Inquiry team on 5 December 2025 who  
 4 stated that it would be considered. NHS Tayside's  
 5 solicitors sent a follow-up email to the Inquiry team on  
 6 22 January 2026, asking whether there was any outcome  
 7 from the Inquiry's consideration. That was met with  
 8 an email response on 23 January 2026 that the matter was  
 9 still under consideration.  
 10 Another email on 12 March 2026 from NHS Tayside's  
 11 solicitor asking for any outcome from the Inquiry's  
 12 consideration did not receive a response.  
 13 On 27 March, I asked counsel to the Inquiry for  
 14 a response to the submission dated 3 December 2025.  
 15 That led to correspondence between me and counsel to the  
 16 Inquiry, with responses to his further queries being  
 17 provided on 31 March and 2 April.  
 18 On 16 April, I asked counsel to the Inquiry for  
 19 an update and offered a meeting between counsel and  
 20 solicitors if there were further queries. On 23 April,  
 21 so three weeks ago, I provided further information to  
 22 counsel to the Inquiry and I specifically asked that  
 23 counsel to the Inquiry come back to me in advance of the  
 24 procedural hearing if there were further questions about  
 25 what was being proposed by NHS Tayside. I repeated the

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<p>1 offer of a meeting, if that would assist to progress 2 matters. 3 Rather than coming back to me, or to NHS Tayside's 4 solicitor, counsel to the Inquiry has raised 5 a substantial number of queries in his note for these to 6 be addressed at today's procedural hearing. Counsel to 7 the Inquiry has, on a number of occasions, referred to 8 this Inquiry having a collaborative approach and 9 the Inquiry's own statement on protocols and principles 10 lists cooperation as one of the key principles for the 11 conduct of the Inquiry's work. 12 In my submission, it would have been more productive 13 to have raised these queries and had them answered in 14 advance of this procedural hearing. It appears, from 15 the timeline, that months elapsed when little or no 16 consideration was given to this issue by the Inquiry 17 team. 18 Whilst in late March and April, counsel to the 19 Inquiry did re-engage with this issue, it is 20 disappointing the Inquiry has chosen not to work with us 21 prior to this hearing to receive the answers still 22 sought and of course, this Inquiry is an inquisitorial 23 rather than an adversarial process. 24 NHS Tayside has been keen to ensure from the outset 25 that any current or former employees who are required to</p> <p style="text-align: center;">Page 149</p>	<p>1 As has been made clear in previous submissions, the 2 solicitors within the separately legal office, the CLO, 3 are instructed by health boards in NHS Scotland to 4 provide those public bodies with legal representation 5 and advice. The solicitors within the CLO are not 6 instructed to and do not represent individual employees, 7 whether current or former. 8 NHS Scotland health boards do not offer to provide 9 legal advice or legal representation to their current or 10 former employees through their instructed solicitors. 11 In this Inquiry, NHS Tayside's legal team, both those 12 within the CLO and counsel, are its recognised legal 13 representatives in terms of rule 5 of the 14 Inquiries (Scotland) Rules 2007. 15 That legal team is not the recognised legal 16 representative of any individual in this Inquiry. That 17 legal team will provide support in the preparation of 18 corporate witness statements, support by that legal team 19 to witnesses who are representatives of the public body 20 NHS Tayside, in the preparation of corporate witness 21 statements is consistent with the legal team's role as 22 recognised legal representatives of NHS Tayside. 23 Legal support and, again, this means support by 24 a solicitor in the preparation of witness evidence, is 25 always available to NHS Tayside's current and former</p> <p style="text-align: center;">Page 151</p>
<p>1 provide evidence to this Inquiry are supported in doing 2 so. It reiterates to its current and former employees 3 that support is available to them. 4 In previous submissions, it has explained the 5 pastoral and practical, administrative support available 6 and how that can be accessed by current or former 7 employees. It has also set out its proposed legal 8 support and that term is used to describe support by 9 a solicitor in the preparation of a witness's evidence. 10 In this submission, NHS Tayside seeks to set out, 11 again, its position and to clarify certain matters 12 raised by counsel to the Inquiry's note. 13 First, by advising the Inquiry of its proposed 14 position on the issue of legal support to current and 15 former employees, NHS Tayside is not seeking to make 16 an application to the Chair for an endorsement of its 17 plans. Rather, it was felt appropriate to raise this 18 matter with the Inquiry at an early stage in accordance 19 with the Inquiry's collaborative approach, which 20 NHS Tayside fully adopts. 21 NHS Tayside has sought to be open and transparent 22 about its approach. The detail of the delivery of its 23 proposed support has evolved in consideration of, and 24 response to, certain of counsel to the Inquiry's 25 queries.</p> <p style="text-align: center;">Page 150</p>	<p>1 employees who are witnesses in proceedings such as 2 public inquiries. This support, however, does not 3 involve legal advice to, or legal representation of, the 4 individual witness. This is the approach adopted by 5 health boards across NHS Scotland. 6 The approach proposed by NHS Tayside in terms of the 7 support it can offer to its current and former employees 8 in this Inquiry is not novel, although, for the reasons 9 given below, the appointment of a solicitor separate 10 from a health board's legal team in an Inquiry to 11 provide such support is usually not required. That is 12 the only difference in the support being offered. The 13 actual content of the support being offered will be 14 similar to that usually provided to witnesses by legal 15 teams acting for NHS Scotland health boards in 16 an Inquiry. 17 It must be borne in mind that not all witnesses 18 require to be individually represented in an Inquiry. 19 This is clear from the Inquiry's own protocol on 20 approach to evidence and written statements and protocol 21 on public hearings. Often, in inquiries, there will be 22 no reason for an individual employee of a health board 23 to require to obtain their own legal advice or 24 representation, particularly where they will not be 25 subjected to personal criticism by the Inquiry.</p> <p style="text-align: center;">Page 152</p>

<p>1 In such circumstances, an individual current or 2 former employee, who is a witness in an Inquiry may 3 simply benefit from pastoral and practical or 4 administrative support, including from a solicitor 5 instructed by the health board, in the preparation and 6 giving of their evidence, with no legal advice or 7 representation being required. 8 Such support is clearly distinct from legal advice 9 or representation and therefore can be offered by health 10 boards and provided by the CLO. This has always been 11 the position. 12 The reason for raising with the Inquiry the matter 13 of legal support, and by that I mean support by 14 a solicitor, for individual witnesses at an early stage 15 was because it was recognised that there may be 16 a concern, by former patients of Mr Eljamel, that 17 NHS Tayside and its legal team in this Inquiry would be 18 too closely involved in the preparation of evidence of 19 witnesses who are giving evidence to the Inquiry, not as 20 representatives of NHS Tayside, so senior leaders 21 currently in post speaking on behalf of the board, but 22 as individuals in their own right. 23 NHS Tayside has therefore been conscious to ensure 24 that the nature of the support that it would usually 25 provide to those individuals in connection with the</p> <p style="text-align: center;">Page 153</p>	<p>1 solicitor at the CLO, separate to its legal team in this 2 Inquiry, for the particular task of assisting witnesses 3 in the preparation of their evidence. This solicitor 4 would not be a recognised legal representative of 5 NHS Tayside in this Inquiry. NHS Tayside would instruct 6 and fund this support but otherwise, would have no 7 involvement in the support given by the solicitor. The 8 solicitor would not disclose any information or 9 document, included with or within the request or notice, 10 or the response, too, to NHS Tayside or its recognised 11 representatives. An information barrier would be in 12 place within the CLO. 13 The role of the project management officer, who 14 would be the witness's first point of contact, would 15 simply be one of gatekeeping. The project management 16 officer would not need to be provided with any 17 information or document included with or within the 18 request or notice, as their role is simply to signpost 19 the witness to the solicitor at the CLO. 20 The solicitor would support the individual witnesses 21 by explaining the general process of giving evidence to 22 the Inquiry and by reviewing the witness's statement to 23 check that it answers the questions being asked and is 24 properly formatted. The purpose of this role is to 25 support the witness through the Inquiry process and to</p> <p style="text-align: center;">Page 155</p>
<p>1 preparation of their evidence remains arm's length. 2 Adopting a collaborative approach, it has been keen to 3 ensure that its proposed provision of support to 4 witnesses is acceptable to the Inquiry and the core 5 participants, particularly the former patients of 6 Mr Eljamel. 7 Given the wish to ensure that the support given to 8 witnesses is demonstrably at arm's length, an approach 9 slightly different to that usually taken has been 10 proposed in this Inquiry. It is suggested that 11 a solicitor of the CLO who is not part of NHS Tayside's 12 legal team in this Inquiry should provide that pastoral 13 and practical or administrative support to individual 14 current or former employees who wish that assistance in 15 the preparation of their evidence to the Inquiry. 16 This would ensure that NHS Tayside and its legal 17 team in this Inquiry remain at arm's length from the 18 evidence of those individual current and former 19 employees who are giving evidence to the Inquiry in 20 their own right rather than as representatives of 21 NHS Tayside. 22 It is hoped that this proposed approach is 23 satisfactory and will alleviate any concerns that former 24 patients may otherwise have. 25 NHS Tayside would therefore instruct a senior</p> <p style="text-align: center;">Page 154</p>	<p>1 assist them in providing their best evidence to 2 the Inquiry, to the benefit of all involved. 3 This is similar to the role performed by solicitors 4 appointed by health boards in other Inquiries who 5 support but do not represent individual witnesses. If 6 it appears that there may be personal criticism, which 7 ought to be evident at an early stage, the solicitor 8 would signpost the individual to seek their own 9 independent representation. 10 To enable an individual recipient of a rule 8 11 request or a section 21 notice to receive support 12 through such a solicitor in connection with the 13 preparation of their evidence, it is suggested that 14 under paragraph 17(g) of the first order of the Chair of 15 the Inquiry, the Chair, you, sir, could provide written 16 agreement that the individual recipients can share the 17 request for evidence with the named CLO solicitor tasked 18 with offering that support. Arrangements could be made 19 for that solicitor to sign the Inquiry's confidentiality 20 undertaking. 21 In accordance with paragraph 27 of the Inquiry's 22 protocol on approach to evidence and witness statements, 23 an evidence request directed to an individual witness 24 providing evidence in their own right, rather than on 25 behalf of NHS Tayside, ought to be sent directly to that</p> <p style="text-align: center;">Page 156</p>

<p>1 individual. NHS Tayside will seek to assist the Inquiry  2 in identifying the location of potential witnesses who  3 are current or former employees of the board, if so  4 required.  5 As the proposed approach is now for a solicitor  6 separate from NHS Tayside's legal team to provide the  7 support to individual witnesses in connection with the  8 preparation of their evidence, a conflict check would no  9 longer be necessary.  10 In those cases where current or former employees  11 would benefit from independent legal advice and  12 representation, NHS Tayside understands that this is  13 likely to be offered by medical defence unions, medical  14 defence organisations, and these ought to include cases  15 where former employees are not currently members of such  16 an organisation but, nevertheless, held such membership  17 at the relevant time.  18 While this is NHS Tayside's understanding of the  19 position, the Inquiry will require to confirm the  20 position with the relevant organisations.  21 NHS Tayside would not wish any current or former  22 employees who have good reason to seek independent legal  23 representation, but who do not have current or former  24 membership of a medical defence or similar organisation,  25 to be precluded from obtaining that representation where</p> <p style="text-align: center;">Page 157</p>	<p>1 when they are likely to receive requests and the likely  2 timescale and that it is intended for discussions to  3 take place between the solicitor to the Inquiry and  4 recognised legal representatives, to improve ways of  5 doing things going forward.  6 NHS Tayside welcomes this, given difficulties to  7 date and, for example, the timescale for the draft  8 response to the first rule 8 request issued to  9 NHS Tayside was not realistic, given that its response  10 required input from eight senior executives. Even now,  11 there continues to be a lack of discussion about what is  12 realistic.  13 On Monday afternoon, so that's Monday, 11 May, the  14 Inquiry team returned NHS Tayside's lengthy draft  15 response with suggested changes to be made to be  16 completed by close of business tomorrow, Friday, 15 May.  17 That this demand be issued without discussion, with such  18 a short timescale, in a week when NHS Tayside and its  19 legal team are involved in preparing a written response  20 to CTT's note and considering the written response of  21 other core participants and attending the procedural  22 hearing today, is disappointing.  23 NHS Tayside hopes to work collaboratively with  24 the Inquiry, for realistic deadlines to be set in  25 relation to their future requests for evidence so that</p> <p style="text-align: center;">Page 159</p>
<p>1 required. In such circumstances, NHS Tayside would be  2 willing to consider potential funding arrangements for  3 legal representation for such individuals on  4 a case-by-case basis, mindful that such funding would be  5 from public funds.  6 Turning, now, to chapter 2 of my submissions, sir,  7 and the trauma-informed policy.  8 NHS Tayside welcomes that the Inquiry will implement  9 a trauma-informed policy. There is, however,  10 an indication, at paragraph 44 of counsel to the  11 Inquiry's note, that this policy will not apply to  12 everyone. It is respectfully submitted that any such  13 policy of the Inquiry ought to apply equally to all  14 involved. The policy itself will, no doubt, set out the  15 approach to be taken, dependent on an individual's  16 circumstances.  17 It is important to bear in mind that participation  18 in an Inquiry can be traumatising for a range of  19 individuals and for a variety of reasons which may not  20 always be immediately apparent.  21 Turning, now, to chapter 3 and lessons learned.  22 NHS Tayside notes, from paragraph 71(h) of counsel  23 to the Inquiry's note that in future the Inquiry will  24 endeavour to provide witnesses and their recognised  25 legal representatives with better advanced notice as to</p> <p style="text-align: center;">Page 158</p>	<p>1 these can be achieved.  2 It is also noted that the time allowed for responses  3 to say counsel to the Inquiry's note for this procedural  4 hearing was short, effectively two working days. This  5 was very demanding as a timescale, given the need for  6 input from NHS Tayside and its legal team.  7 Going forward, it is hoped that more reasonable  8 timescales are set. And separately, NHS Tayside also  9 hopes that the communication with the Inquiry's  10 solicitor team will be improved. In March and April of  11 this year, NHS Tayside's solicitor requested meetings  12 with the Inquiry's solicitor without any success.  13 Turning, now, to chapter 4 and the preparation for  14 the section 1s hearings.  15 It is noted that one additional week has been  16 assigned for the hearings which are planned to take  17 place in September this year. At paragraph 56 of  18 counsel to the Inquiry's note, he sets out matters on  19 which evidence will be heard in the section 1 hearings  20 and refers to the provisional outline of scope for  21 section 1 hearings previously published and  22 dated October 2025 and we are grateful for the  23 clarification given today by counsel to the Inquiry on  24 the matters to be covered in the section 1 hearings.  25 It is noted, from paragraph 76 and 77 of counsel to</p> <p style="text-align: center;">Page 160</p>

<p>1 the Inquiry's note, that the Inquiry intends to disclose                  2 section 1 materials to core participants on a rolling                  3 basis and further in advance of the section 1 hearings                  4 than might have been possible had the hearings proceeded                  5 in April this year, with a target, now, of 22 June this                  6 year as the date by which it is hoped the bulk of the                  7 section 1 statements and materials will be disclosed to                  8 core participants.</p> <p>9 NHS Tayside welcomes this approach. In order for                  10 NHS Tayside to efficiently and effectively prepare for                  11 the section 1 hearings, given the anticipated large                  12 volume of documents, the Inquiry is respectfully invited                  13 to commence disclosure as early as possible and on                  14 a rolling basis. As the Inquiry were initially                  15 preparing for section 1 hearings to commence in April,                  16 it is hoped that the Inquiry team will be well-placed                  17 imminently to disclose to core participants a number of                  18 the statements and materials.</p> <p>19 Paragraph 78 of counsel to the Inquiry's note                  20 indicates that, in the week commencing 6 July 2026, core                  21 participants will receive a draft witness list and                  22 timetable indicating the witnesses whom the Inquiry                  23 intends to call to give evidence at the section 1                  24 hearings. It is respectfully requested that a draft                  25 list of witnesses is intimated to core participants at</p> <p style="text-align: center;">Page 161</p>	<p>1 The Inquiry's own expert evidence protocol states,                  2 at paragraph 18, that the identity of expert witnesses                  3 whom the Inquiry intends to instruct will be intimated                  4 to core participants before the experts are instructed.                  5 This does not appear to have been complied with by                  6 the Inquiry, given that core participants have not                  7 received any intimation of any expert witnesses to be                  8 instructed in advance of their instruction.</p> <p>9 In the future, the Inquiry is respectfully invited                  10 to intimate the identity of all expert witnesses to core                  11 participants in advance of them being instructed, in                  12 accordance with its own protocol.</p> <p>13 Sir, having concluded the submission in response to                  14 counsel to the Inquiry's note, I would now like to make                  15 a couple of points in relation to the Independent                  16 Clinical Review submissions.</p> <p>17 First, at page 2, it is stated that the Independent                  18 Clinical Review has procured confidential and                  19 independent psychological support for former patients                  20 via the Association of Clinical Psychologists UK. In                  21 fact, as has been stated in previous submissions, and at                  22 the oral statements hearing, the contract is between                  23 NHS Tayside and the Association of Clinical                  24 Psychologists UK for these independent, psychological                  25 support services. And it is NHS Tayside which is</p> <p style="text-align: center;">Page 163</p>
<p>1 an earlier date.</p> <p>2 It is important that any individuals whom                  3 the Inquiry intends to call to give evidence has notice                  4 of this as soon as possible so that they can make                  5 arrangements to ensure their availability to attend. It                  6 is anticipated that any witness from NHS Tayside called                  7 to give evidence at the section 1 hearings on behalf of                  8 the board will likely hold a senior leadership position                  9 and will, therefore, have significant diary commitments.</p> <p>10 As it is understood that the Inquiry's preparations                  11 for the section 1 hearings due to commence in April were                  12 well underway and presumably included a draft witness                  13 list and timetable, it is hoped that the Inquiry will be                  14 in a position to provide a draft witness list and                  15 timetable in very early course.</p> <p>16 Chapter 5 of my submission relates to the                  17 instruction of expert witnesses.</p> <p>18 NHS Tayside welcomes the Inquiry's intimation now of                  19 the identity of the neurosurgical experts and the                  20 medical ethics experts who have been instructed to                  21 provide reports. It is, however, noted that intimation                  22 has not yet been provided as to the identity of the two                  23 experts already instructed to prepare reports in respect                  24 of healthcare administration and the Inquiry is                  25 respectfully invited to provide that information now.</p> <p style="text-align: center;">Page 162</p>	<p>1 funding these services.</p> <p>2 This is mentioned again as NHS Tayside is very aware                  3 of the distrust that some feel towards it. The support                  4 offered is, however, wholly independent of NHS Tayside.</p> <p>5 And, second, at page 3, it is stated that the                  6 Independent Clinical Review has set up a panel of                  7 29 neurosurgical experts. Does the Independent Clinical                  8 Review intend to publish the names of these experts on                  9 its website? It would be useful to know the identity of                  10 these experts now, as these expert reports will be                  11 relied upon by the Inquiry, as per the memorandum of                  12 understanding entered into between the Inquiry and the                  13 Independent Clinical Review.</p> <p>14 Thank you, sir. That concludes my submission.                  15 Unless there's anything else I can help you with.</p> <p>16 LORD WEIR: No, thank you very much, Ms Doherty. That's                  17 very helpful.</p> <p>18 Well, we now reach a point in the agenda where                  19 I intend to call a 15-minute break. By my reckoning,                  20 it's just before 10 to 3, so we will resume the hearing                  21 again at 5 past 3, where you will hear initially, from                  22 Laura Thomson, representing the Scottish Ministers as                  23 core participants. So, thank you. 5 past 3.                  24 (2.48 pm)                  25 (A short break)</p> <p style="text-align: center;">Page 164</p>

<p>1 (3.05 pm)                  2 LORD WEIR: Right, good afternoon again, everybody. I am                  3 now going to invite Ms Laura Thomson to deliver her                  4 submissions on behalf of the Scottish Ministers as core                  5 participants in the Inquiry.                  6 Ms Thomson.                  7 Submissions by MS THOMSON                  8 MS THOMSON: Thank you, sir. The Scottish Ministers welcome                  9 the opportunity to make this submission, which provides                  10 a response to matters arising from the note issued by                  11 senior counsel to the Inquiry on 7 May.                  12 For the avoidance of doubt, as was the case at the                  13 last procedural hearing, these submissions are provided                  14 for the Scottish Ministers in their role as core                  15 participant and material providers to the Inquiry. The                  16 authors of these submissions have no role in respect of                  17 the Scottish Ministers' sponsorship of the Inquiry.                  18 Turning, then, to the ministers' response particular                  19 points raised by counsel to the Inquiry in his note and                  20 dealing, firstly, with preparatory work to support                  21 disclosure of information to the Inquiry.                  22 Since the commencement of the Inquiry, the                  23 Scottish Ministers have carried out significant                  24 preparatory work, with a view to assisting the Inquiry                  25 in making efficient progress in engathering evidence</p> <p style="text-align: center;">Page 165</p>	<p>1 In addition, a search and retrieval exercise was                  2 commissioned within the network of health and social                  3 care directors and their deputy directors.                  4 These various searches identified circa                  5 400,000 individual documents of potential relevance to                  6 the Inquiry. These documents were screened for                  7 relevance and many duplicate documents were sifted out.                  8 This refinement exercise reduced the number of relevant                  9 documents to around 19,000.                  10 The Scottish Ministers instructed their legal                  11 representatives to review these documents for relevancy                  12 and duplication, as well as checking for any potential                  13 issues of privilege or confidentiality, such as data law                  14 compliance.                  15 This initial exercise is now largely complete,                  16 reducing the number of relevant documents, further, to                  17 around 17,000. This process has involved significant                  18 work from an extended team of 26 solicitors in order to                  19 make progress at pace. The core legal team are now                  20 undertaking a further detailed review of documents                  21 flagged as part of the initial screening, in order to                  22 more fully consider any issues of privilege or                  23 confidentiality that might require to be flagged to the                  24 Inquiry team as part of anticipated document disclosure                  25 exercises.</p> <p style="text-align: center;">Page 167</p>
<p>1 relevant to its terms of reference and list of issues.                  2 I would like to set out the preparatory work that                  3 has been undertaken in anticipation of compliance with                  4 the Inquiry's subsequently published protocols and to                  5 address many of the issues identified by senior                  6 counsel's note at paragraphs 56 to 61.                  7 The process of identifying relevant documents                  8 formally began on 11 April 2025 following the                  9 establishment of the Inquiry on April 3, when the terms                  10 of reference were announced. The Scottish Ministers                  11 were keen to commence that process prior to any formal                  12 request from the Inquiry in order to ensure that they                  13 were well prepared to respond to requests for documents                  14 from the Inquiry when such requests were received.                  15 Search terms were developed to capture all                  16 documentation of potential relevance to the Inquiry's                  17 terms of reference and list of issues. These search                  18 terms were used to interrogate the Scottish Government's                  19 various corporate electronic systems, including eRDM,                  20 the main records repository, and its predecessor,                  21 G-drive, Objective Connect, the Microsoft Outlook                  22 folders of past and present members of staff, OneDrive                  23 and C-drive folders and WhatsApp records.                  24 Legacy paper files held by the Scottish Government                  25 and the National Records of Scotland were also searched.</p> <p style="text-align: center;">Page 166</p>	<p>1 The legal team, in conjunction with the                  2 Scottish Government's Inquiry response team, are also                  3 developing a system of indexing and organisation, such                  4 as to ensure that documentation can be disclosed in                  5 an organised and user-friendly format. Whilst that                  6 involves additional work for the Scottish Ministers and                  7 takes additional time, it is anticipated that this will                  8 save resource for the Inquiry.                  9 The Scottish Ministers are keen to ensure that                  10 the Inquiry does not receive large volumes of                  11 disorganised papers as part of any disclosure exercise.                  12 A total of 172 documents were identified as directly                  13 relevant to the Inquiry's section 1 hearings and were                  14 submitted on 9 March 2026 in response to the Inquiry's                  15 rule 8 request.                  16 The Scottish Ministers would welcome discussions                  17 with the Inquiry team as to the most appropriate means                  18 and timing for disclosure of the remaining documents to                  19 the Inquiry.                  20 For the avoidance of doubt, the Scottish Ministers'                  21 approach to documentation review has been, and will                  22 continue to be, iterative. Upon receipt of the list of                  23 issues from the Inquiry, the Scottish Ministers carried                  24 out fresh searches to ensure that there were no                  25 additional documents that would fall within the scope of</p> <p style="text-align: center;">Page 168</p>

<p>1 these issues which had not been returned during the 2 initial searches. Given the breadth of the original 3 searches, nothing new has arisen. 4 Should the list of issues be further updated or 5 amended, further searches will be conducted to ensure 6 that the process of identifying all documents of 7 relevance to the Inquiry remains as robust as possible. 8 Rule 8 process. As I find at paragraph 59 of 9 counsel to the Inquiry's note, on 10 November 2025, 10 the Inquiry served a rule 8 notice upon the 11 Scottish Ministers requesting the preparation of 12 a witness statement addressing a variety of matters. 13 A witness statement signed by Caroline Lamb, the 14 Director-General for Health and Social Care within the 15 Scottish Government was submitted to the Inquiry on 16 9 March 2026. 17 The statement amounts to more than 23,000 words and 18 is 74 pages long. It provides an explanation of 19 inter alia the corporate governance structure of the 20 Scottish Government, the various responsibilities held 21 by the Scottish Ministers in respect of the management 22 and regulation of healthcare in Scotland, the 23 relationship that the Scottish Ministers have, and have 24 had, over the relevant period with other relevant 25 parties, their involvement in respect of the issues</p> <p style="text-align: center;">Page 169</p>	<p>1 Scottish Ministers and the Inquiry and facilitate full 2 document disclosure to the Inquiry. 3 Hearing venue issues and resourcing of the Inquiry. 4 The issues identified from paragraphs 19 to 39 of senior 5 counsel's note have been responded to separately by the 6 sponsor team. 7 Trauma-informed policy. The Scottish Ministers 8 welcome the Inquiry's explanation as to the 9 trauma-informed approach it will take to its hearings 10 and commends all the steps taken by the Inquiry to 11 ensure the patient group are able to fully contribute to 12 the work of the Inquiry. 13 Future hearing dates. The Scottish Ministers 14 understand, from paragraph 74 of counsel to the 15 Inquiry's note, that section 1 hearings are now due to 16 take place in September. The Scottish Ministers are 17 grateful for the further clarification provided in this 18 respect. They welcome the indication given at 19 paragraph 76 of the note, that disclosure relevant to 20 these hearings will be on a rolling basis and take place 21 further in advance of the hearings than originally 22 anticipated. 23 They also welcome the commitment set out in 24 paragraph 71(h) of counsel's note that, going forward, 25 the Inquiry will endeavour to provide better advance</p> <p style="text-align: center;">Page 171</p>
<p>1 arising from Mr Eljamel's clinical practice over the 2 relevant period, the Scottish Ministers' role in respect 3 of previous reviews and investigations regarding 4 Mr Eljamel's practice, and the process leading up to the 5 establishment of this Inquiry. 6 The documents appended to and produced with 7 Ms Lamb's witness statement, being the 172 documents 8 I referenced earlier in this submission do not form the 9 full body of documents held by the Scottish Ministers 10 that may be of relevance to the Inquiry. The 11 Scottish Ministers are grateful for the confirmation 12 they received from the Inquiry during the rule 8 process 13 that disclosures should, at that time, be restricted to 14 provision only of the documents directly relevant to 15 Ms Lamb's statement and the Inquiry's section 1 16 hearings. 17 In particular, the Scottish Ministers welcomed 18 the Inquiry's recognition, during the rule 8 process, as 19 has also been highlighted at page 37 of counsel to the 20 Inquiry's note, of the importance of compliance with 21 data protection obligations. 22 The Scottish Ministers are keen to explore further 23 with the Inquiry the potential for future use of 24 section 21 notices and blanket restriction orders as 25 tools to address both the obligations of the</p> <p style="text-align: center;">Page 170</p>	<p>1 notice of the likely timings of requests for disclosure 2 documents by material providers. 3 Indicative timings will enable the 4 Scottish Ministers and their legal team to ensure that 5 sufficient resource is available to respond to such 6 requests being received within the timescales set by 7 the Inquiry. 8 Detailed forward-planning is essential to ensure 9 that all core participants can participate fully in the 10 work of the Inquiry and contribute to the best of their 11 ability. The Scottish Ministers also welcome the 12 recognition from counsel to the Inquiry, again, at 13 paragraph 71(h) of his note, that reasonable periods of 14 notice in respect of timetabling would also be of 15 benefit to all engaging with the Inquiry. 16 The Inquiry will note from the Scottish Ministers' 17 opening statement that many of the witnesses who are 18 likely to provide relevant evidence to the Inquiry are 19 no longer in post. Some have retired or have moved on 20 to other employment. Those who remain in post are 21 subject to a large number of other professional 22 commitments. 23 In both instances, a reasonable period of notice 24 would be of assistance in ensuring that the witness is 25 able to put aside sufficient time to assist the Inquiry</p> <p style="text-align: center;">Page 172</p>

<p>1 to the best of their ability.</p> <p>2 Such notice will, of course, also be mutually</p> <p>3 beneficial to the witness and the Inquiry and ensuring</p> <p>4 that the one substantive witness statement review</p> <p>5 process outlined in counsel to the Inquiry's note may be</p> <p>6 effective.</p> <p>7 The Scottish Ministers are keen to engage with</p> <p>8 the Inquiry on a regular basis in relation to</p> <p>9 forward-planning and to discuss realistic timescales for</p> <p>10 any preparatory work that will be required. The</p> <p>11 Scottish Ministers' legal team are keen to take up the</p> <p>12 offer of a meeting with the Inquiry's solicitor to</p> <p>13 discuss such matters, again, as set out at</p> <p>14 paragraph 71(h) of counsel's note. I look forward to</p> <p>15 such a meeting being scheduled in early course.</p> <p>16 In that context, they note the proposed timetable</p> <p>17 for witness scheduling as set out in paragraph 78. The</p> <p>18 two-week period proposed falls at the beginning of the</p> <p>19 school summer holidays. It is anticipated that this</p> <p>20 will cause administrative difficulties in obtaining the</p> <p>21 necessary information and instructions. Earlier</p> <p>22 intimation would be welcome, if achievable.</p> <p>23 Confidentiality undertakings. In relation to the</p> <p>24 call made at paragraph 37 of counsel to the Inquiry's</p> <p>25 note, the Scottish Ministers would note the following:</p> <p style="text-align: center;">Page 173</p>	<p>1 contact with documents shared by the Inquiry as it moves</p> <p>2 to that phase of its work were uploaded to the Inquiry</p> <p>3 Objective Connect space over the course of 6 and 7 May,</p> <p>4 with updates provided thereon to the Inquiry's</p> <p>5 solicitor.</p> <p>6 The Inquiry was, as at 2 pm on 7 May, in possession</p> <p>7 of 79 confidentiality undertakings. A further two</p> <p>8 confidentiality undertakings for Scottish Government</p> <p>9 staff were submitted to the Inquiry on 8 May. The</p> <p>10 Scottish Ministers regret the delay in the provision to</p> <p>11 the Inquiry of some signed confidentiality undertakings.</p> <p>12 As the Inquiry's solicitor was also advised on 7 May,</p> <p>13 further undertakings will be submitted once a new</p> <p>14 government has been formed and the need for any</p> <p>15 additional undertakings will be kept under review as the</p> <p>16 work of the Inquiry progresses, both in relation to</p> <p>17 personnel changes and any additions resulting from</p> <p>18 particular information provided by the Inquiry, or</p> <p>19 requested by the Inquiry.</p> <p>20 The exercise outlined, however, did not extend</p> <p>21 include those staff who provide shared services to</p> <p>22 the Inquiry such as IT services. That will be addressed</p> <p>23 through the sponsor team's submission.</p> <p>24 In conclusion, sir, the Scottish Ministers look</p> <p>25 forward to attending today's hearing and contributing to</p> <p style="text-align: center;">Page 175</p>
<p>1 on 4 March 2026 the Inquiry's solicitor wrote to</p> <p>2 Harper Macleod with a style confidentiality undertaking</p> <p>3 for core participants and a confidentiality undertaking</p> <p>4 for designated legal representatives, requesting that</p> <p>5 they be signed by those who will have access to</p> <p>6 confidential material in either a core participant</p> <p>7 capacity, a material provider capacity or in both</p> <p>8 capacities.</p> <p>9 On 18 March access was provided to Harper Macleod by</p> <p>10 the Inquiry to an Objective Connect space, where the</p> <p>11 confidentiality undertakings for the relevant solicitors</p> <p>12 from Harper Macleod, who act on behalf of the ministers,</p> <p>13 and by senior and junior counsel, were uploaded that</p> <p>14 day.</p> <p>15 Signed confidentiality undertakings for the</p> <p>16 Scottish Ministers Inquiry response team were provided</p> <p>17 to the Inquiry on 21 April. The Scottish Ministers'</p> <p>18 Inquiry response team also cooperated an exercise of</p> <p>19 identifying and requesting that confidentiality</p> <p>20 undertakings be signed by those who will, in future,</p> <p>21 likely have access to confidential material related to</p> <p>22 the Inquiry.</p> <p>23 A further 56 confidentiality undertakings for</p> <p>24 a wider cohort of individuals within the</p> <p>25 Scottish Government who may, in future, come into</p> <p style="text-align: center;">Page 174</p>	<p>1 the procedural matters under discussion today. They</p> <p>2 wish to take this opportunity to restate their</p> <p>3 commitment to supporting the important work of</p> <p>4 the Inquiry in every way that they can.</p> <p>5 Unless I can assist you further, sir, that concludes</p> <p>6 the submission on behalf of the Scottish Ministers as</p> <p>7 core participants to this Inquiry.</p> <p>8 LORD WEIR: Very well. Thank you very much, Ms Thomson.</p> <p>9 Can I now invite Mr Callender of</p> <p>10 Morton Fraser MacRoberts to deliver his submissions. He</p> <p>11 appears this afternoon on behalf of the Independent</p> <p>12 Clinical Review.</p> <p>13 Mr Callender, thank you.</p> <p>14 Submissions by MR CALLENDER</p> <p>15 MR CALLENDER: Thank you, my Lord. I'm here on behalf of</p> <p>16 the Chair of the Independent Clinical Review,</p> <p>17 Professor Stephen Wigmore. The Chair welcomes this</p> <p>18 opportunity to update parties on the work of the ICR.</p> <p>19 This is detailed in the written submissions which will</p> <p>20 be published following the hearing.</p> <p>21 I will address the Inquiry on the substantial</p> <p>22 progress made by the ICR since the previous hearing, the</p> <p>23 approach the ICR is taking to delivering its role and</p> <p>24 working together with the other parties, the timetable</p> <p>25 for the production of clinical reviews and some of the</p> <p style="text-align: center;">Page 176</p>

<p>1 issues identified in the written submissions prepared on 2 behalf of the patient group represented by Levy &amp; McRae 3 and also in the oral submissions made today on behalf of 4 NHS Tayside.</p> <p>5 As a preliminary point, I wish to remind 6 participants what the role of the ICR is. The ICR is 7 an independent process that is independent of 8 the Inquiry. They are committed to cooperating with one 9 another, as set out in the memorandum of understanding.</p> <p>10 The terms of reference set out the purpose of the 11 ICR. The purpose of the ICR as to offer and coordinate 12 expert clinical reviews of the cases of former patients 13 of Mr Eljamel who wish reviews to be undertaken. The 14 ICR will share these clinical reviews with the Inquiry, 15 where consent has been provided.</p> <p>16 The ICR has made good progress with the clinical 17 reviews. 29 experienced neurosurgical experts sit on 18 a panel set up by the ICR. They will undertake the 19 reviews of former patients of Mr Eljamel. These experts 20 have no conflict of interest with Mr Eljamel, 21 NHS Tayside or the Scottish Government.</p> <p>22 525 former patients, or family members of patients, 23 have now registered with the ICR. 489 consent forms 24 have been received from those who registered. 25 77 applicant statements have been received from former</p> <p style="text-align: center;">Page 177</p>	<p>1 highlights that it has asked former members or their 2 legal representatives to complete the applicant 3 statement within four weeks. This is to ensure that the 4 ICR proceeds efficiently and that the workload of the 5 panel of experts is managed effectively.</p> <p>6 The ICR is working to the timetable. The ICR is 7 able to achieve the goals of the timetable, but this can 8 only be done with the cooperation of other parties.</p> <p>9 The ICR appreciates that some former patients may 10 require longer and it reiterates its commitment to 11 patient-centred and trauma-informed approach. However, 12 the ICR urges legal representatives of former patients 13 to ensure that the deadlines are complied with to ensure 14 the smooth running of the review process.</p> <p>15 As part of its desire to work cooperatively with 16 other parties, the ICR notes and appreciates the issues 17 raised by the patient group represented by Levy &amp; McRae. 18 The Chair of the ICR met with Levy &amp; McRae yesterday to 19 discuss these and work in a cooperative approach for 20 finding solutions experienced by the former patients 21 represented by it.</p> <p>22 The ICR has also considered the submissions made on 23 behalf of the patient group insofar as they relate to 24 the ICR. Some of the issues raised are matters for 25 the Inquiry to respond to.</p> <p style="text-align: center;">Page 179</p>
<p>1 patients. A substantial amount of work has been 2 undertaken to get to this stage. The ICR wishes to 3 extend its thanks to former patients and family members 4 who have participated in this process. The ICR is 5 committed to ensuring that the process is 6 patient-centred and trauma-informed.</p> <p>7 Supports are in place for former patients or their 8 representatives, including legal support; the 9 Scottish Government will fund legal support for ICR 10 participants, including for the preparation of their 11 applicant statement. The patient advance and support 12 service is available to assist applicants who do not 13 have legal representation. Confidential and independent 14 psychological support is also available, from the 15 Association of Clinical Psychologists UK.</p> <p>16 Progress has been made in the ICR and these support 17 systems appear to be working well. The ICR is committed 18 to delivering its role. The ICR is working 19 cooperatively with other parties while maintaining its 20 independence.</p> <p>21 A timetable for the production of clinical reviews 22 has been agreed between the Inquiry and the ICR. This 23 is set out in detail in the note prepared by counsel to 24 the Inquiry at paragraph 92.</p> <p>25 For the purposes of today's hearing, the ICR</p> <p style="text-align: center;">Page 178</p>	<p>1 The note sets out that additional information has 2 been requested from applicant statements. It also 3 describes a delay with the issuing of revisions and 4 comments and statements after the first draft is 5 received.</p> <p>6 The requests for additional information come from 7 the Inquiry. The Inquiry also annotates the statements 8 with revisions and comments. The ICR is not involved in 9 these matters and cannot address specific concerns about 10 them.</p> <p>11 The submission made by the patient group notes 12 a delay in the returning of applicant statements for 13 signature. The process for signing a statement is that 14 a signed statement from the applicants will be provided 15 to the ICR, which will then pass it to the Inquiry to 16 apply the Inquiry reference number.</p> <p>17 The ICR understands the Inquiry experienced 18 a technical issue with adding reference numbers to 19 signed statements. The ICR was also asked by 20 the Inquiry to pause the exchange of applicant 21 statements between 14 April and 7 May due to a change of 22 personnel at the Inquiry. Positively, the ICR 23 understands that both the technical and personnel issues 24 are now resolved.</p> <p>25 The submission from the patient group refers to</p> <p style="text-align: center;">Page 180</p>

<p>1 an incident where one applicant had to sign and return                  2 a statement on several occasions. This was connected to                  3 the now-resolved technical issue.                  4 The submission for the patient group also refers to                  5 medical records held by the ICR not being provided to                  6 applicants. The ICR has explained to Levy &amp; McRae on                  7 several occasions, including yesterday's meeting, that                  8 applicants are not required to have access to their                  9 medical records to make an applicant statement.                  10 The ICR has received data subject requests from                  11 Levy &amp; McRae for medical records which it is                  12 endeavouring to comply with. However, disclosure is not                  13 straightforward, owing to the ICR's data protection                  14 requirements. It might be helpful for the participants                  15 to understand how medical records are obtained for the                  16 ICR.                  17 The Public Inquiry obtains the records. These                  18 records are shared with the ICR. The ICR shares these                  19 records with the expert when instructing the review and                  20 the only time when the ICR obtains records directly is                  21 on the occasion where a former patient has consented to                  22 take part in the ICR but not the Public Inquiry. This                  23 is a very rare occurrence.                  24 There is a risk of data breach occurring from                  25 erroneous entries in the medical records. The Inquiry</p> <p style="text-align: center;">Page 181</p>	<p>1 resulted in these individuals being communicated with                  2 directly instead of through Levy &amp; McRae.                  3 In the case of six applicants, mandates were                  4 received prior to being invited to complete their                  5 statement. Levy &amp; McRae have been included in                  6 correspondence with these individuals. There was one                  7 exception where an invitation was sent to the applicant                  8 only on 1 April. The ICR noted that Levy &amp; McRae had                  9 not been included in the email and this was forwarded on                  10 6 April.                  11 Otherwise, the ICR's administrative team is in                  12 regular contact with Levy &amp; McRae regarding overdue                  13 statements. Some of these are now more than four months                  14 overdue.                  15 Now turning to the submissions made by NHS Tayside,                  16 it was asked whether the identities of the ICR's experts                  17 would be published. I'm not able to confirm this point                  18 at today's hearing, but instruction will be taken on                  19 this point.                  20 In summary, my Lord, the ICR has made significant                  21 progress since the last hearing and the instruction of                  22 clinical reviews has commenced. The ICR also                  23 understands the important role which it plays in                  24 insisting the Public Inquiry to fulfil its terms of                  25 reference. The ICR will continue to assist the Inquiry</p> <p style="text-align: center;">Page 183</p>
<p>1 has processes in place to prevent these breaches. The                  2 ICR does not doubt that the Inquiry's processes are                  3 robust but they cannot rely on these alone.                  4 The ICR disclosing records to the applicants                  5 requires a further screening, to ensure there is no data                  6 breach.                  7 While the ICR is looking to comply with these data                  8 requests, it only has limited resource to allow it to do                  9 so. It has been suggested to Levy &amp; McRae that these                  10 requests could be directed towards other parties.                  11 The submission for the patient group also refers to                  12 communications between the ICR and Levy &amp; McRae. It is                  13 said that it is relatively common for the ICR not to                  14 contact Levy &amp; McRae at all. The ICR's position is that                  15 this is inaccurate. Of the applicants invited to submit                  16 a statement, the ICR are aware of 51 being supported by                  17 Levy &amp; McRae.                  18 The ICR can only communicate with Levy &amp; McRae if it                  19 receives a mandate from the applicant authorising this.                  20 The ICR has, so far, received 23 mandates. In the case                  21 of 17 applicants, these individuals had already been                  22 invited to complete an applicant statement before the                  23 ICR received a mandate from Levy &amp; McRae. The ICR does                  24 not have prior knowledge of whether an applicant is also                  25 a client of Levy &amp; McRae. The lack of a prior mandate</p> <p style="text-align: center;">Page 182</p>	<p>1 in any way it can and does look forward to working                  2 alongside the Inquiry in the future.                  3 Thank you.                  4 LORD WEIR: Mr Callender, thank you very much for your                  5 submissions.                  6 The final submissions that will be addressed this                  7 afternoon will be those delivered by Joanna Cherry KC on                  8 behalf of the patient and patient representative core                  9 participants. I am conscious of time moving on, but I'm                  10 also aware that we ought to take a break just in case                  11 further instructions are required to be taken. I'm                  12 therefore going to suggest that we take ten minutes at                  13 this time and I will aim to start again just after 20                  14 to 4 and we will hear from Ms Cherry at that point.                  15 Thank you.                  16 (3.32 pm)                  17 (A short break)                  18 (3.40 pm)                  19 LORD WEIR: Good afternoon again, everybody. I am now in                  20 a position to invite Ms Joanna Cherry KC to deliver her                  21 submissions on behalf of the patient and patient                  22 representative core participants.                  23 Good afternoon, Ms Cherry. Your submissions,                  24 please.                  25 Submissions by MS CHERRY</p> <p style="text-align: center;">Page 184</p>

<p>1 MS CHERRY: Good afternoon, sir and thank you.                  2 I appear with my learned junior Euan Scott and we                  3 are instructed on behalf of Levy &amp; McRae on behalf of                  4 the patient group.                  5 We welcome the opportunity to expand upon our                  6 written response to counsel to the Inquiry's note,                  7 particularly having had the opportunity to consider the                  8 responses from the other core participants, the                  9 Independent Clinical Review and the Scottish Government                  10 sponsor team.                  11 The oral submission I'm going to make this afternoon                  12 will follow the structure of the written submission we                  13 have lodged, with some supplementary comments. There                  14 are four broad issues I want to address. First of all,                  15 timescales and deadlines. Secondly, the circumstances                  16 surrounding the delay of the section 1 hearings set down                  17 for April, May. Thirdly, the Independent Clinical                  18 Review and, fourthly, the constraints under which the                  19 patient group and their legal team are working.                  20 Before I do so, sir, there is a preliminary matter                  21 which I must address and I regret that it is necessary                  22 for me to start with a statement of the gravest concern                  23 about the unwarranted attack that has been made by                  24 counsel to the Inquiry on those instructing me today.                  25 I want to make it clear that in expressing concern</p> <p style="text-align: center;">Page 185</p>	<p>1 patient group and there is a common theme running                  2 through them and I quote, they state that, "They thought                  3 that the purpose of this Inquiry was to investigate                  4 Mr Eljamel, not to slate the patient group legal team".                  5 Just two examples, sir, will suffice of how unfair                  6 the criticism of the legal team is. The first is this:                  7 my learned friend, counsel to the Inquiry, started his                  8 submission by criticising the heading note on our                  9 written submission, which refers to this being                  10 an Inquiry relating to the professional practice of                  11 Mr Eljamel.                  12 If this is incorrect, then the Inquiry itself will                  13 require to change its own internet homepage which uses                  14 exactly the same language when describing the scope of                  15 the Inquiry.                  16 Another example: my learned friend, counsel to the                  17 Inquiry, sought to criticise the quality of the                  18 submissions the patient group legal team have lodged                  19 regarding which of the patient group might make suitable                  20 section 2 witnesses. I can vouch, my Lord, for the fact                  21 that a lot, many hours, of work went into producing this                  22 document and if my learned friend wants us to revisit                  23 this work, then he will need to identify precisely what                  24 is inadequate about it because, in framing our                  25 submission, we used the categories and guidance provided</p> <p style="text-align: center;">Page 187</p>
<p>1 about this, I have the support of many members of the                  2 patient group who have contacted Levy &amp; McRae since this                  3 morning, to express concern and, in some cases,                  4 distress, about what has been said about their legal                  5 team and they want me to indicate to you, Chair, that                  6 they wish to express their continuing confidence in                  7 Levy &amp; McRae.                  8 We, as a legal team in our entirety, consider the                  9 criticisms which have been made to be both harsh and                  10 unfair and whilst I am sure -- confident that it was not                  11 the intention of counsel to the Inquiry to try and                  12 undermine the relationship of trust and confidence                  13 between the legal team and the patient group, because,                  14 of course, to do so would be reprehensible, it is                  15 disappointing that he felt it was nonetheless                  16 appropriate to proceed in the manner that he has.                  17 This is not the first time that the patient group                  18 legal team have been subjected to criticism which we                  19 consider unjustified. Counsel to the Inquiry's note                  20 contained criticism upon which we have pushed back in                  21 our response. That was our right and the fact that                  22 further criticism has been heaped upon Levy &amp; McRae as                  23 a result of doing so is inappropriate.                  24 Sir, as I have already indicated, Levy &amp; McRae have                  25 received many messages of support from members of the</p> <p style="text-align: center;">Page 186</p>	<p>1 by the Inquiry team.                  2 In fact, I think it's fair to say we gave more                  3 detail than they seemed to require.                  4 Finally, on this preliminary matter, sir, counsel to                  5 the Inquiry felt it appropriate this morning to accuse                  6 Levy &amp; McRae of having been discourteous in their                  7 dealings with the Inquiry.                  8 Can I just say that such a statement is taken                  9 extremely seriously. It is not a characterisation                  10 recognised by those instructing me and I can advise that                  11 correspondence will be sent shortly by a senior partner                  12 requesting specification and details of such                  13 interactions so that they can be investigated.                  14 I leave that matter to one side, sir, but I do not                  15 wish to underestimate its importance.                  16 I turn to the first substantive point I wish to                  17 address in my oral submission and that's the timescales                  18 and deadlines imposed by the Inquiry team.                  19 They have been challenging and in particular, the                  20 timescale afforded for our response to counsel to the                  21 Inquiry's note about this procedural hearing was very                  22 challenging, as it gave us only two working days to take                  23 instructions from the 161 individuals who we represent.                  24 Tight deadlines like this have been a recurring issue                  25 and they risk compromising our ability to properly and</p> <p style="text-align: center;">Page 188</p>

<p>1 fairly represent our clients, many of whom are                  2 vulnerable and suffer from brain injuries.                  3 Even those without such difficulties have expressed                  4 concern about assimilating the contents of such                  5 a lengthy note and giving instructions in such a short                  6 period of time.                  7 One of the patient group, who holds a very senior                  8 professional position, told us that they, and I quote,                  9 "Had no understanding of the content of the note                  10 whatsoever" and that they were quite sure they would not                  11 be the only one.                  12 In my submission, this exemplifies why the patient                  13 group need adequate time to consider lengthy documents                  14 in language and about procedures with which they are not                  15 familiar before giving instructions.                  16 Some of those whom we represent are not even email                  17 users and require to be sent documents by post.                  18 In my respectful submission, it makes no sense for                  19 counsel to the Inquiry to compare the exercise of taking                  20 instructions from such a group, with taking instructions                  21 from a corporate client in the Commercial Court. Such                  22 a comparison is not trauma-informed.                  23 Furthermore, in my experience, in the Commercial                  24 Court, it would be very unusual to be given only two                  25 working days to take instructions on such a detailed</p> <p style="text-align: center;">Page 189</p>	<p>1 hearings which were set down for April, May, and the                  2 fire safety issues with the hearing suite.                  3 I would like to break down this aspect of my                  4 submission into three parts: (a) relates to the reasons                  5 for the delay, (b) relates to the engagement of the                  6 patient group's legal team regarding these circumstances                  7 and (c) relates to the question of when evidence is to                  8 be taken from NHS Tayside about the disruption of                  9 log-books last autumn, notwithstanding the "do not                  10 destroy" order.                  11 So if I may turn to point A, the reasons for the                  12 delay. We are grateful to counsel to the Inquiry for                  13 the information in his note and we note that the                  14 Scottish Government have been aware of a fire safety                  15 issue with the hearing suite since at                  16 least December 2025. We are therefore very disappointed                  17 that it is taking so long to address matters adequately.                  18 The degree of distress and the loss of trust in                  19 the Inquiry process that has been occasioned among                  20 members of the patient group by these circumstances and                  21 the delay of the April, May hearings should not be                  22 underestimated. The patient group are very concerned                  23 that following their long campaign for a Public Inquiry,                  24 assurances given to them by the Scottish Government, to                  25 the effect that the Public Inquiry would be</p> <p style="text-align: center;">Page 191</p>
<p>1 note. In future, sir, those instructing me would like                  2 to be afforded sufficient time to distil lengthy notes                  3 like this into a summary of key points in concise                  4 language before taking instructions from the 160 members                  5 of the patient group and we very much hope that                  6 the Inquiry team will take this into account when                  7 issuing future deadlines.                  8 Now, we note, sir, that the issue of timetabling and                  9 deadlines has been raised by other core participants, in                  10 particular, the Scottish Ministers and NHS Tayside and                  11 I note that my learned friend Ms Doherty underlined that                  12 NHS Tayside felt that two working days was a very short                  13 period of time in which to take instructions counsel to                  14 the Inquiry's note. Of course, they are a corporate                  15 client, unlike the clients I represent.                  16 In this connection, we would like to associate                  17 ourselves with the requests for earlier disclosure of                  18 material relevant to the September hearings, earlier                  19 notification of the witness list and timetable and                  20 a recognition that deadlines which clash with the                  21 beginning of the Scottish school summer holidays in July                  22 may need to be reviewed.                  23 I now move to the second matter which, of course, is                  24 the reason we are here today and that's the                  25 circumstances surrounding the delay of the section 1</p> <p style="text-align: center;">Page 190</p>	<p>1 patient-centred and trauma-informed, are not being                  2 honoured.                  3 As we have heard, one member of the group has                  4 learned from a Freedom of Information request that fire                  5 safety issues currently preventing the use of the                  6 hearing suite may have been in existence since the venue                  7 was originally selected. We have passed the information                  8 she recovered, which we ourselves only received on                  9 Monday, to the Inquiry for investigation.                  10 We were also concerned to know exactly what                  11 consideration had been given by the Scottish Government                  12 to other potentially suitable venues, including hearing                  13 suites which have been fitted out for other recent                  14 public inquiries which are now finished, such as the                  15 Hospitals Inquiry in Edinburgh.                  16 Our understanding, having read counsel to the                  17 Inquiry's note, was that no other suitable venues were                  18 available. We were therefore very surprised to read                  19 that the Scottish Government sponsor team's submission                  20 appeared to suggest that two alternative venues already                  21 fitted out as hearing suites for other public inquiries                  22 were offered by the Scottish Government, but rejected by                  23 the Inquiry team. Clearly, this contradicted what was                  24 said by counsel to the Inquiry, to the effect that no                  25 suitable alternatives were proposed by the</p> <p style="text-align: center;">Page 192</p>

<p>1 Scottish Government.</p> <p>2 I have heard what's said today and all I can really</p> <p>3 say in response is that the patient group would like to</p> <p>4 be clear whether alternative venues have been proposed</p> <p>5 and considered. If so, which ones and why they have</p> <p>6 been rejected. I think we have a little more clarity</p> <p>7 about that today, but I'm not sure that the patient</p> <p>8 group would consider it sufficient and I stress that</p> <p>9 this sort of clarity is vital to restoring trust in the</p> <p>10 process.</p> <p>11 Now, I noted that my learned friend Mr Duncan who</p> <p>12 appeared for the sponsor team said that the</p> <p>13 Scottish Ministers cannot give assurance that the</p> <p>14 hearing will be able to proceed in September and I must</p> <p>15 stress that it is a matter of the gravest concern to the</p> <p>16 patient group that there might be any further delay</p> <p>17 because of the non-availability of a suitable hearing</p> <p>18 suite for the September hearings.</p> <p>19 It seems, from reading the sponsor team's</p> <p>20 submissions, that the issue that has been arisen could</p> <p>21 be rectified by some internal construction works and</p> <p>22 a retrospective building warrant or a completion</p> <p>23 certificate. I have heard what more has been said about</p> <p>24 that today, but given the proximity of the September</p> <p>25 hearings, I wish to seek reassurance that this can be</p> <p style="text-align: center;">Page 193</p>	<p>1 held remotely. We understood that the only individuals</p> <p>2 that would be permitted to attend said hearings would be</p> <p>3 the Inquiry team, witnesses and the witnesses' legal</p> <p>4 representatives. We immediately realised that given the</p> <p>5 proposed list of witnesses for the hearings, this</p> <p>6 arrangement would most likely permit witnesses from</p> <p>7 NHS Tayside and their legal representatives to be</p> <p>8 physically present when giving evidence about the</p> <p>9 destruction of theatre log-books, while the patient</p> <p>10 group and their legal representatives would not be</p> <p>11 physically present.</p> <p>12 The dismay this caused to members of the patient</p> <p>13 group should not be underestimated. As I said, many</p> <p>14 have campaigned for this Public Inquiry for years. Many</p> <p>15 have also lost trust in NHS Tayside as a result of their</p> <p>16 experiences at their hands. That loss of trust has been</p> <p>17 further exacerbated by the revelation that vital records</p> <p>18 had been destroyed last year despite the existence of a</p> <p>19 "do not destroy" order. The patient group understood</p> <p>20 that evidence was to be taken from NHS Tayside witnesses</p> <p>21 about the circumstances in which such books had been</p> <p>22 destroyed and understandably, many wish to be physically</p> <p>23 present to hear that evidence.</p> <p>24 Their concern was further exacerbated by the fact</p> <p>25 that the information that some core participants were</p> <p style="text-align: center;">Page 195</p>
<p>1 done in time to let those hearings proceed.</p> <p>2 Sir, it needs to be understood that at least some of</p> <p>3 the patient group had rearranged their professional and</p> <p>4 personal lives to attend in April, May and will likely</p> <p>5 do the same for September. It causes huge inconvenience</p> <p>6 as well as distress if hearings are cancelled at short</p> <p>7 notice.</p> <p>8 Moving on to section 2(b) of my submission, this</p> <p>9 relates to the engagement of the patient group's legal</p> <p>10 team regarding the circumstances surrounding the delay.</p> <p>11 Counsel to the Inquiry has provided a number of</p> <p>12 observations about the Chair's decision-making process</p> <p>13 in delaying the commencement of the section 1 hearings,</p> <p>14 at paragraph 26 of his note, and whilst we would not</p> <p>15 seek to presume what factors are relevant to the Chair's</p> <p>16 decision-making process in this regard, we consider it</p> <p>17 necessary to address the implication, at paragraph 2(g)</p> <p>18 of the note, that there was no engagement from</p> <p>19 Levy &amp; McRae on behalf of the patient group on the</p> <p>20 preferred approach to the hearings.</p> <p>21 We completely refute this and here is why: on</p> <p>22 6 March 2026 we received correspondence from you, sir,</p> <p>23 advising that an issue relating to building safety</p> <p>24 matters had arisen. As a result, the hearings that were</p> <p>25 to take place over the scheduled period would need to be</p> <p style="text-align: center;">Page 194</p>	<p>1 going to be able to be present but not the patient</p> <p>2 group, that information was not in the public domain.</p> <p>3 That meant that they were prevented by the</p> <p>4 confidentiality requirements of the Inquiry from</p> <p>5 discussing the full nature of their concerns with their</p> <p>6 Parliamentary representatives or otherwise publicly</p> <p>7 ventilating the full nature of that concern.</p> <p>8 By correspondence dated 13 March, the patient</p> <p>9 group's legal team raised concerns over that</p> <p>10 discrepancy, by which I mean the discrepancy between the</p> <p>11 information provided to the public and what had been</p> <p>12 communicated to core participants. Given the limited</p> <p>13 amount of information provided about the issue, the</p> <p>14 patient group's legal team requested a short procedural</p> <p>15 hearing at the earliest possible opportunity so that the</p> <p>16 issue might be addressed openly and transparently.</p> <p>17 By correspondence dated 18 March 2026, you, sir,</p> <p>18 wrote to the patient group's legal team refusing the</p> <p>19 request for a short procedural hearing due to a lack of</p> <p>20 clarity over its intended purpose. You, sir, further</p> <p>21 requested whether there would be support within the</p> <p>22 patient group for, firstly, limited section 1 hearings</p> <p>23 with remote participation, including the matters</p> <p>24 referred to in the letter of 6 March. Secondly, some</p> <p>25 further limited version of those hearings or thirdly,</p> <p style="text-align: center;">Page 196</p>

<p>1 postponement of the section 1 hearings all together  2 until the building issue had been resolved one way or  3 another.  4 A response to these queries was requested within  5 24 hours. The patient group's legal team responded on  6 20 March within that deadline, stating that it was not  7 possible, within the timescales imposed, to discuss and  8 thereafter take instructions on the proposals put  9 forward from the group, which includes 161 individuals  10 with diverse views.  11 Further, it was highlighted that there was currently  12 insufficient information available to permit any such  13 instructions to be fully informed. A request was made  14 for further information, particularly as to the stage of  15 the Inquiry's preparedness and what was meant by  16 a "Further limited version" of the hearings.  17 A consideration, which weighed heavily with the  18 patient group's legal team was the need to avoid the  19 patient group finding themselves in a position where any  20 delay might be laid at their door or said to have been  21 at their request. We consider this to have been  22 a reasonable apprehension, particularly as it was our  23 impression that the Inquiry team were not fully ready  24 for the section 1 hearings as we had not received  25 a formal witness list, timetable or indeed, any</p> <p style="text-align: center;">Page 197</p>	<p>1 clarification that counsel to the Inquiry gave us this  2 morning, that this will be happening at the section 1  3 hearings in September, provided they proceed.  4 And that brings me to my third point, which relates  5 to the Independent Clinical Review. I would like to  6 preface what I have to say about the Independent  7 Clinical Review by reminding the Inquiry that, from  8 an early stage, Levy &amp; McRae have raised concerns about  9 the Independent Clinical Review timetable and  10 methodology.  11 These were reiterated both at the preliminary  12 hearing and in our opening statement. It should not be  13 forgotten that at the beginning of September last year,  14 on their own initiative, Levy &amp; McRae convened a round  15 table and invited the Inquiry team, the Independent  16 Clinical Review and the Scottish Government to discuss  17 their concerns about the way in which the Independent  18 Clinical Review was to be conducted.  19 That meeting took place and we were grateful to the  20 Independent Clinical Review and the Inquiry for  21 attending. The Scottish Government did not attend and  22 at that meeting in particular, concerns were raised by  23 those instructing me that medical records recovered by  24 the Inquiry and made available to the Independent  25 Clinical Review were not to be made available to the</p> <p style="text-align: center;">Page 199</p>
<p>1 disclosure.  2 The request for a short procedural hearing to  3 address the same was reiterated and, again, refused.  4 Now, I make this full explanation in the hope that  5 it will demonstrate that the patient group's legal team  6 proactively sought to engage with the Inquiry in respect  7 of the proposals regarding the section 1 hearings. To  8 suggest or imply otherwise is inaccurate, unhelpful and  9 unfair to both patient group and their legal team.  10 With all due respect, it is not for counsel to the  11 Inquiry to tell the patients' legal team how to do their  12 job. I should add, however, that the patient group are  13 grateful to you, sir, for arranging this procedural  14 hearing. It allows me to make our position about what  15 occurred crystal clear and I trust it will be carefully  16 noted.  17 It has been most unfortunate that, to date, only  18 partial information has been in the public domain and  19 that the reasons for the patient group's concerns might,  20 therefore, have not been fully understood.  21 Now, I turn very briefly to point 2(c) which relates  22 to the question of when evidence is to be taken from  23 NHS Tayside about the destruction of the log-books  24 notwithstanding the "do not destroy" order. I say  25 I turn to this briefly because I'm grateful to the</p> <p style="text-align: center;">Page 198</p>	<p>1 patient group or their legal team, notwithstanding that  2 they referred to members of the patient group.  3 So I say that by way of background to what I'm now  4 going to say. At paragraph 92(b) of his note, my  5 learned friend, counsel to the Inquiry, alleges that,  6 and I quote:  7 "It has become apparent that the legal support being  8 provided by Levy &amp; McRae appears to have been a source  9 of delay." (As read)  10 We feel that this suggestion is unfair and it is  11 refuted. The reasons why are set out in detail in our  12 written submission. I do not have sufficient time to go  13 through them in detail now but I do adopt the submission  14 and I would like to summarise them as follows:  15 While Levy &amp; McRae acknowledge that they have not  16 met some of the timescales set for completion of the  17 Independent Clinical Review statements, they do not  18 believe that these timescales have been realistic or  19 trauma-informed. And they say this having regard to  20 a number of factors, particularly considering the length  21 of time that has passed since patients were treated by  22 Mr Eljamel, the complex medical information that is  23 requested, the detail that is requested in terms of  24 names and treatment dates, the vulnerability of the  25 witnesses and the issues with data protection, document</p> <p style="text-align: center;">Page 200</p>

<p>1 management, non-availability of medical records and                  2 evolving procedures, which Mr Callender addressed in his                  3 submission.                  4 Neither the Independent Clinical Review themselves                  5 nor the Inquiry have met their own timescales for review                  6 and return of statements and it took a long time to get                  7 the process off the ground. The fact that Levy &amp; McRae                  8 have been singled out as a source of delay in these                  9 circumstances is, in my respectful submission, simply                  10 not fair.                  11 I should say, my Lord, that those instructing me, as                  12 Mr Callender, said have had the benefit of the meeting                  13 with the Independent Clinical Review and I think there                  14 have been some very constructive discussions and I will                  15 come back to those in a moment.                  16 Counsel to the Inquiry has further observed, at                  17 paragraph 92(b) of his note, and I quote:                  18 "Many draft applicant statements for which support                  19 has been provided have not achieved the quality that                  20 both the Inquiry and the ICR would have expected. To                  21 ensure the important contribution from applicants is                  22 achieved, an explanation is also requested." (As read)                  23 Well, here is the explanation: as counsel to the                  24 Inquiry will, no doubt, be aware, the applicant                  25 statements are not preconditions. The guidance provided</p> <p style="text-align: center;">Page 201</p>	<p>1 requested by the applicants from Levy &amp; McRae and the                  2 unwillingness to provide the associated medical record                  3 to the applicants or their legal team, it is concerning                  4 that the Inquiry seeks to criticise the quality of the                  5 applicant statements.                  6 Many of the applicants are disabled and continue to                  7 experience significant pain. They often rely on pain                  8 relieving medication which affects their memories and                  9 their ability to engage with this demanding process. To                  10 criticise the quality of the statements provided in                  11 those circumstances demonstrates a fundamental lack of                  12 understanding of the individuals who are being asked to                  13 complete these statements and it is not trauma-informed.                  14 And in this connection, we note that the Inquiry's                  15 trauma-informed policy is not yet in place and we feel                  16 that the sooner it is in place, the better.                  17 Finally, under this heading, under reference to                  18 paragraph 92(b) of his note, we fear that my learned                  19 friend, counsel to the Inquiry, has proposed                  20 an unrealistic timetable for the completion of the                  21 remaining ICR statements.                  22 This is particularly so when Levy &amp; McRae are, in                  23 the majority of cases, entirely dependent on the                  24 applicant contacting them to advise that they have                  25 received the request. They have requested, on numerous</p> <p style="text-align: center;">Page 203</p>
<p>1 by the Scottish Government in respect of the Independent                  2 Clinical Review notes, as follows, and I quote:                  3 "The applicant statement is the document that                  4 provides the opportunity for former patients or their                  5 authorised representative to describe in their own words                  6 their experiences and concerns in response to specific                  7 questions relevant to the remit of the ICR." (As read)                  8 And I emphasise the fact that it's supposed to be in                  9 their own words.                  10 The amount of support from Levy &amp; McRae to produce                  11 these statements varies significantly across the                  12 patients, with some preparing statements themselves and                  13 asking for input and advice on specific issues, compared                  14 with others requiring support to transcribe the                  15 responses to each individual question.                  16 Levy &amp; McRae provide their clients with                  17 a collaborative approach to the completion of the                  18 applicant statement, which offers choice to their                  19 clients as to how they wish to provide their evidence,                  20 in keeping with a trauma-informed approach. At all                  21 times in light of the stated purpose of these                  22 statements, Levy &amp; McRae seek to record their clients'                  23 own words. That is the nature of the statement and it                  24 should be expressed in those terms.                  25 In light of the differing levels of support</p> <p style="text-align: center;">Page 202</p>	<p>1 occasions, that the ICR advise them when such statements                  2 have been issued. On several occasions the ICR have                  3 been provided with a mandate on behalf of the individual                  4 concerned, authorising them to liaise directly with                  5 Levy &amp; McRae and notwithstanding this, it remains                  6 relatively common for the ICR not to contact                  7 Levy &amp; McRae at all.                  8 Now, given the issues experienced with the ICR to                  9 date, some of which are noted in the written submission,                  10 the timescales are, we believe -- the timescales that                  11 are suggested are, we believe, wholly unrealistic and we                  12 would also query whether they are trauma-informed.                  13 Now, as explained by Mr Callender who represents the                  14 ICR, Levy &amp; McRae met with Professor Wigmore yesterday                  15 to discuss aspects of the proposed timetable which they                  16 find most challenging and I understand he has expressed                  17 an appreciation of their concerns. Likewise, we have                  18 taken on board the concerns expressed by Mr Callender                  19 today and will look into them. For example, the issue                  20 of the mandates. The number of mandates mentioned by                  21 Mr Callender does not accord with the information that                  22 I have, but that will be checked carefully. And really,                  23 what we're interested in doing here is having                  24 a collaborative approach with the Independent Clinical                  25 Review and we are very grateful for their collaborative</p> <p style="text-align: center;">Page 204</p>

<p>1 approach and I'm afraid to say, we have to contrast it                  2 with the approach of counsel to the Inquiry today.                  3 That being said, Levy &amp; McRae are very happy to have                  4 further discussions with the Independent Clinical Review                  5 and the Inquiry team, with a view to moving things                  6 forward as regards the Independent Clinical Review.                  7 And that brings me to my fourth and final point and                  8 that relates to the constraints under which the patient                  9 group and their legal team are working.                  10 Now, I have already mentioned, Chair, the need for                  11 the Inquiry to impose deadlines which take into account                  12 the fact that the patient group consists of                  13 161 individuals from whom their legal team must strive                  14 to take instructions and that that group contains people                  15 with significant vulnerabilities and disabilities and                  16 not all of whom have digital access.                  17 So, they really are in a very different position                  18 from the other core participants and in my respectful                  19 submission, this ought to be taken into account. These                  20 are all, no doubt, matters which the Inquiry's                  21 trauma-informed policy will address when it is in place,                  22 but in the meantime, I hope the reasonable concerns                  23 which I have articulated today will be noted and acted                  24 upon.                  25 Finally, in relation to this point, at paragraph 55</p> <p style="text-align: center;">Page 205</p>	<p>1 remunerating the patient group legal team. If, as was                  2 suggested earlier, lawyers are making money out of this                  3 Inquiry, it's certainly not the patient group's legal                  4 team. And I must emphasise that the fact that the legal                  5 team are not engaged on a full-time basis is                  6 an important factor in appreciating the difficulties                  7 encountered, particularly by counsel, in responding to                  8 the Inquiry's tight deadlines.                  9 Notwithstanding all of this, I note that my learned                  10 friend, counsel to the Inquiry, states, at paragraph 55                  11 of his note, that patients have contributed                  12 significantly to the Inquiry's work. We were pleased to                  13 read this and we see this as a tribute to the resilience                  14 of members of the patient group, as well as their legal                  15 team, but the constraints under which both are operating                  16 must be properly recognised.                  17 As my learned friend who appeared for NHS Tayside                  18 has underlined, this Inquiry is not an adversarial                  19 process. Rather, it is founded on principles of                  20 collaboration and cooperation. I regret to say that we                  21 do not feel what has been said about Levy &amp; McRae today                  22 is in the spirit of those principles.                  23 Trust in this Inquiry process and a meaningful                  24 contribution on the part of the patient group will not                  25 be achieved by unjustified attacks on their legal team.</p> <p style="text-align: center;">Page 207</p>
<p>1 of his note, my learned friend, counsel to the Inquiry,                  2 referred to a generous full-time funding award having                  3 been made to the patient group's legal team for work to                  4 be carried out in relation to this Public Inquiry and he                  5 has done so again today.                  6 In the interests of clarity and transparency, we                  7 would wish it to be understood that neither we, as                  8 counsel, nor those instructing us, are being paid                  9 full-time to represent the patient group. Instead, in                  10 accordance with the Inquiry's protocols, we admit                  11 proposed fees for particular pieces of work on a monthly                  12 basis. The proposed fees are then subject to close                  13 scrutiny by the solicitor to the Inquiry who carries out                  14 an assessment and has the right to refuse to honour them                  15 in full.                  16 Fees have been issued for work carried out by the                  17 patient group legal team                  18 in August, September, October, November and December of                  19 last year and January, February and March of this year.                  20 So far, none of these fees have been assessed or paid,                  21 apart from those relating to the month of August 2025,                  22 which covered a period of only two weeks' work.                  23 We note that the Inquiry's costs to date are                  24 2.8 million. It should be understood that only the                  25 tiniest fraction of this sum has been spent to</p> <p style="text-align: center;">Page 206</p>	<p>1 I hope this will not happen again and that an apology to                  2 Levy &amp; McRae and those whom they represent will be                  3 forthcoming.                  4 Thank you, sir.                  5 LORD WEIR: Thank you, Ms Cherry, for your submissions.                  6 Now, Mr Dawson, I'm conscious that it's now after                  7 the appointed time -- well, not quite, but we're not far                  8 short of the time when we would be due to finish and                  9 a lot of what has been said, both before lunch and after                  10 lunch, contained matters that will, no doubt, be capable                  11 of being dealt with in the course of subsequent                  12 correspondence in the usual way and I refer, not least,                  13 to matters relating to timescales and deadlines that                  14 have been touched on this afternoon.                  15 But if there are any particular points that you                  16 briefly want to come back on.                  17 MR DAWSON: Sir, I think there are a few matters on which                  18 I could usefully provide some further submission.                  19 Reply submission by MR DAWSON                  20 MR DAWSON: First of all, in relation to the submission made                  21 by my learned friend Mr Duncan on behalf of the                  22 Scottish Government as sponsors, I'm obliged to                  23 Mr Duncan for the, no doubt, short period of time he had                  24 to take instruction, in particular seeking                  25 a consultation to provide as much clarity as he possibly</p> <p style="text-align: center;">Page 208</p>

<p>1 could today.</p> <p>2 It will not surprise him, perhaps, to learn that the</p> <p>3 sum total of what he has told us is somewhat reminiscent</p> <p>4 of a number of other representations made to the Inquiry</p> <p>5 by the Scottish Government sponsor team before.</p> <p>6 I recognise and appreciate that there is a plan, as</p> <p>7 I understand it, for us to receive in writing a plan for</p> <p>8 the Waverley Gate site, a plan for what's called</p> <p>9 "plan B", the possibility of an alternative venue,</p> <p>10 a written explanation, as I understand it about whether</p> <p>11 the Inquiry could have -- sorry, the Scottish Government</p> <p>12 could have undertaken further vetting of the venue</p> <p>13 before December 2025, a written response in relation to</p> <p>14 confidentiality undertakings.</p> <p>15 As far as that written response is concerned, it</p> <p>16 would, I think, be interesting to hear from the Inquiry</p> <p>17 sponsor team as to how their position, with regard to</p> <p>18 confidentiality undertakings, sits with the approach</p> <p>19 apparently taken on behalf of the Scottish Ministers in</p> <p>20 their response capacity as highlighted by my learned</p> <p>21 friend Ms Thomson in that capacity.</p> <p>22 Sir, I should also say that in the submission made</p> <p>23 with regard to confidentiality undertakings, the focus,</p> <p>24 if I may say so, was on confidentiality undertakings</p> <p>25 being provided by Scottish Government employees who are</p> <p style="text-align: center;">Page 209</p>	<p>1 my learned friend Ms Cherry has pointed out, that the</p> <p>2 enforced postponement of the Inquiry hearings has caused</p> <p>3 a significant amount of anxiety which is expressed in</p> <p>4 detail in her written submission and has been expressed</p> <p>5 again today.</p> <p>6 Any ongoing delay will, no doubt, only exacerbate</p> <p>7 that, in particular as, as I hope has been appreciated</p> <p>8 by them, a significant amount of work has been put into</p> <p>9 rearranging those hearings both for September and the</p> <p>10 section 2 hearings in December.</p> <p>11 It has been your practice, sir, to seek to publicise</p> <p>12 information about this important matter and no doubt, if</p> <p>13 there are failures in response within the next week or</p> <p>14 so, that that will be a matter which you will consider</p> <p>15 publicising, in order to keep all parties on this</p> <p>16 important matter sufficiently appraised.</p> <p>17 There are a few matters which I would like to</p> <p>18 address from Ms Doherty's submission on behalf of</p> <p>19 NHS Tayside. First of all, she raises a point, which</p> <p>20 was echoed by Ms Cherry in her written submission, which</p> <p>21 I think the patient group has adopted with regard to the</p> <p>22 date which is proposed for the sharing of witness list,</p> <p>23 a proposed witness list with core participants for their</p> <p>24 comment for the section 1 hearings, that being 6 July.</p> <p>25 I have two matters to address in that regard. The</p> <p style="text-align: center;">Page 211</p>
<p>1 staff within the Inquiry. That is a matter which is</p> <p>2 largely historic and it would be of assistance if the</p> <p>3 matter -- the written submission which we are to receive</p> <p>4 from the government focused on the provision of</p> <p>5 undertakings by other staff working within the</p> <p>6 government with whom the Inquiry requires to interact.</p> <p>7 Sir, Mr Duncan raised the question as to, whether</p> <p>8 with regard to recruitment, there were then any outgoing</p> <p>9 matters with which the Inquiry could assist -- the</p> <p>10 Scottish Government could assist. There are, in light</p> <p>11 of the fact that, as I clarified earlier, there are</p> <p>12 a number of vacancies within the Inquiry at present</p> <p>13 which is a matter which appears to have been lost in</p> <p>14 translation between the two organisations.</p> <p>15 What we are looking for, given that the main issue</p> <p>16 which we have experienced relates to delays relating to</p> <p>17 onboarding staff, is a commitment, as I said earlier,</p> <p>18 that that will be achieved as a matter of priority for</p> <p>19 the Inquiry in a matter of days as opposed to in</p> <p>20 a matter of weeks which has been our previous</p> <p>21 experience.</p> <p>22 As I have said, sir, the suggestion that matters</p> <p>23 will be addressed urgently is one which I, and no doubt</p> <p>24 the patient group, at least, if not others, will address</p> <p>25 with a degree of scepticism, it is important to note, as</p> <p style="text-align: center;">Page 210</p>	<p>1 first is that that date relates to the sharing with core</p> <p>2 participants in general for their input on the proposed</p> <p>3 list. The individual witnesses themselves would be</p> <p>4 communicated with before that date which, I think, deals</p> <p>5 with the point that Ms Doherty has reasonably raised</p> <p>6 about the need for executives who may be giving evidence</p> <p>7 at those hearings to arrange to be available to do so.</p> <p>8 It is, I think, a point which is fairly made on her</p> <p>9 behalf and on behalf of the patients by Ms Cherry that</p> <p>10 we may, in fact, be able to look at the date of 6 July</p> <p>11 again in order that an earlier intimation of the witness</p> <p>12 lists can be undertaken. As I say, I think that will be</p> <p>13 achievable and we will go away and have a think about</p> <p>14 when that can be done and obviously intimate that to</p> <p>15 core participants.</p> <p>16 Another matter which was raised by her relates to</p> <p>17 the timings and activity related to the legal support</p> <p>18 issue being resolved. It is disappointing, I have to</p> <p>19 say, that Ms Doherty sought to be critical of the</p> <p>20 Inquiry's engagement on this issue. I should say,</p> <p>21 contrary to her recollection, it was not, in fact,</p> <p>22 NHS Tayside that brought the legal support issue to the</p> <p>23 table but it was, in fact, the Inquiry itself in the</p> <p>24 counsel to the Inquiry note before the preliminary</p> <p>25 hearing.</p> <p style="text-align: center;">Page 212</p>

<p>1 The reason that that was done was based on                  2 difficulties which I was aware had been experienced with                  3 this issue in previous inquiries. It is ironic that                  4 Ms Doherty should complain about the need to deal with                  5 this hearing and also the minor amendments which are                  6 being pursued in connection with the NHS Tayside                  7 statement at the same time this week, when she, it would                  8 appear, does not understand the amount of work that                  9 the Inquiry team has had to deal with in recent months,                  10 as has been outlined in the submissions made today.                  11 Although it is fair to say that the legal support                  12 issue does need to be resolved, as is reflected in our                  13 written materials, it is a matter which will only raise                  14 its head in connection with the section 3 hearings,                  15 during which we intend to hear from medical                  16 professionals. It is therefore not as current an issue                  17 as the ones we have been dealing with in recent months                  18 and I'm sure she will understand that there have been                  19 more pressing issues to address.                  20 The suggestion that this is a matter which should                  21 have been raised before today, it is correct to say that                  22 she asked me to raise matters between us rather than                  23 raising them at this procedural hearing. It is a matter                  24 for the Inquiry to decide how this issue should be                  25 raised. It is clear that there is a significant public</p> <p style="text-align: center;">Page 213</p>	<p>1 processes, become apparent who these individuals are.                  2 The Inquiry, as I have said before, are gathering CVs of                  3 these individuals and it will be apparent who they are                  4 when the reports start to filter through the Inquiry                  5 disclosure process.                  6 I have nothing to add on the contributions made by                  7 Ms Thomson, other than what I have already said, or                  8 Mr Callender. There are a few matters which I can                  9 address, I think, helpfully in connection with matters                  10 raised by Ms Cherry on behalf of the patients.                  11 As I have already said, we will take on board her                  12 suggestion, and that of Ms Doherty, that we may be able                  13 to issue the timetable at an earlier date, which I think                  14 deals with the point made by others about clashes with                  15 summer holidays.                  16 She sought greater clarity, which I thought had been                  17 provided already by various parties, including Mr Duncan                  18 and myself, about the position with regard to                  19 alternative venues. The ambiguity within the                  20 Scottish Government sponsor submission I think was                  21 accepted by Mr Duncan. That may not entirely help the                  22 patients, so I will try to be clear on the matter.                  23 As far as alternative venues were concerned, the                  24 Hospitals Inquiry venue has never been available to this                  25 Inquiry for its use at the time of the hearings in April</p> <p style="text-align: center;">Page 215</p>
<p>1 interest in this matter. She, herself, has indicated in                  2 the past that she is keen to hear from the patient group                  3 as to their input and therefore it was thought                  4 appropriate that this matter should be raised at this                  5 hearing.                  6 It is, as I think she accepts, also the case that                  7 there has been an evolution even in the most recent                  8 iteration of her proposals, in particular relating to                  9 the possibility that representation may be paid for.                  10 I have expressed the view, sir, that that matter                  11 hopefully will be able to be resolved and that you                  12 should write to the representatives, NHS Tayside,                  13 expressing any views you have on the matter and any                  14 stipulations which the Inquiry still wishes to insist                  15 upon, to make sure things work smoothly within                  16 the Inquiry's processes.                  17 Ms Doherty also raised the point which was addressed                  18 by my friend Mr Callender briefly, only, I think, to say                  19 that he requires to take instruction on it with regard                  20 to the names of the ICR witnesses. The ICR note                  21 helpfully confirms that there is, now, a relatively                  22 large bank of neurosurgical witnesses who have been                  23 engaged by Professor Wigmore and indeed, a number of                  24 them are working on neurosurgical reports as we speak.                  25 It will in due course, through the Inquiry's</p> <p style="text-align: center;">Page 214</p>	<p>1 or May. It was mentioned in passing in discussions only                  2 to discount it as an option, on the basis that the                  3 Scottish Government currently holds no lease over the                  4 property, that having come to an end around the time of                  5 the end of the Hospitals Inquiry itself.                  6 As I pointed out earlier, as I understand it, there                  7 may, in fact, be efforts for other reasons for the                  8 Scottish Government to try to get a lease over the                  9 property again, but that's not something about which we                  10 have any further information and it's certainly not been                  11 suggested that that would be a venue which would be                  12 available, either for the hearings which have been                  13 postponed or for the hearings which we plan later this                  14 year.                  15 As far as the possibility of an alternative in the                  16 Scottish Child Abuse Inquiry venue, this is bound one                  17 the earlier discussions with Mr Duncan about the plan B.                  18 As I set out earlier, that has never been offered to the                  19 Inquiry as an alternative venue and the recent                  20 correspondence I referred to between the head of the                  21 Scottish Government sponsor team and the secretary to                  22 the Inquiry makes clear that it is currently the                  23 position that a plan B is being worked up as part of                  24 a written submission to be put to the Inquiry.                  25 Therefore, we have not, at any time, been offered</p> <p style="text-align: center;">Page 216</p>

<p>1 the possibility of an alternative venue by the  2 Scottish Government. It appears, helpfully, that work  3 in that regard may be ongoing at the moment and, of  4 course, the Inquiry will consider that for its future  5 hearings as and when it is received. I have already  6 said that you anticipate, no doubt, sir, that that will  7 be received in early course.</p> <p>8 Ms Cherry, I think, also asked for an explanation  9 with regard to the possibility of other alternative  10 venues. In order to try to deal with the position in  11 which the Inquiry had been placed by the government, the  12 Inquiry team itself started to look at other venues.  13 A number were looked at, none were proven to be  14 suitable.</p> <p>15 As I said earlier, sir, the complexities which are  16 apparent from the narrative given by the sponsor team  17 about matters such as safety in walls and the like,  18 reflect, I think, the difficulties which exist in  19 procuring an appropriate venue to hold a Public Inquiry  20 in which a large number of members of the public will  21 attend.</p> <p>22 It has therefore been your position that you have  23 sought to rely on the Scottish Government and its  24 expertise in these matters, within its property  25 department, to do that on the Inquiry's behalf. Despite</p> <p style="text-align: center;">Page 217</p>	<p>1 there being no submission about the preferred approach  2 relates to the letter which has been produced which was  3 sent to you, sir, by Levy &amp; McRae in which they  4 indicated that they had been unable to take instructions  5 on the options which were put to them, no doubt, as  6 a result of the short timescale which we would accept  7 had been imposed upon them.</p> <p>8 The point which I was seeking to make there, sir,  9 was that despite the fact that Levy &amp; McRae had been  10 unable to do that, you did hear the voices of patients  11 in your decision-making on the basis that they had been  12 publicly expressed via the media and social media and,  13 of course, you had also received correspondence from  14 a number of their elected representatives, expressing  15 their position.</p> <p>16 The point I was looking to make, therefore, was that  17 despite the fact that Levy &amp; McRae had been unable to  18 make that submission within the time available to them,  19 the voices of patients were certainly heard in the  20 decision-making process and they continue to be.</p> <p>21 Thank you, sir. I have nothing further.</p> <p>22 LORD WEIR: Thank you very much.</p> <p>23 Can I address myself, once again, to all who are  24 connected to the hearing, as Mr Dawson's remarks now  25 bring to a conclusion this procedural hearing.</p> <p style="text-align: center;">Page 219</p>
<p>1 that, efforts were made internally to try to find other  2 venues. No suitable venue was found, in particular,  3 with regard to the short timescale available to us in  4 advance of the April and May hearings.</p> <p>5 Further efforts have been made with regard to trying  6 to locate something for later this year and  7 unfortunately, those have also hit a dead end.</p> <p>8 So hopefully that clarifies that.</p> <p>9 One further matter, I think, that I can clarify is  10 the submission made by Ms Cherry in connection with  11 paragraph 2(g) of the counsel to the Inquiry note. This  12 is the one which says:</p> <p>13 "Core participants were consulted about the  14 preferred option for the hearings. The views of those  15 who responded were taken into account by the Chair in  16 reaching his ultimate decision. Though no submission  17 about the preferred approach to the hearings was  18 received from Levy &amp; McRae on behalf of its core  19 participant clients, the Inquiry took account of the  20 views of some of them expressed via the media, social  21 media and elected representatives who contacted  22 the Inquiry to express their constituents' views." (As  23 read)</p> <p>24 I can perhaps clarify, as I think is accepted, that  25 what I was referring to in that passage, relating to</p> <p style="text-align: center;">Page 218</p>	<p>1 I am grateful to all who were involved in preparing  2 and delivering the submissions presented before me today  3 and I don't underestimate the amount of work required to  4 make those submissions and to deliver them in the way  5 that was done during the course of the day.</p> <p>6 The requirement to have this gathering primarily  7 arose from the postponement of the introductory hearings  8 and the need to address the understandable expectation  9 of many interested parties that they should not, now, be  10 long-delayed.</p> <p>11 I reiterate publicly that I attach the utmost  12 importance not only to public engagement with  13 the Inquiry but also public attendance at its hearings.</p> <p>14 The offer to hold section 1 hearings with remote  15 public attendance was motivated, I assure you, by the  16 best of intentions, but the swift, immediate and  17 understandable concern with which that offer was greeted  18 simply serves to underline the importance of what must  19 now be a default position going forward, namely that  20 substantive hearings must take place in a location to  21 which the public have safe access.</p> <p>22 I can assure you all that I never wished it to be  23 otherwise.</p> <p>24 I am determined that, if at all possible, the  25 section 1 hearings should take place at the time</p> <p style="text-align: center;">Page 220</p>

<p>1 discussed by Mr Dawson this September. As you will have  2 heard, it is and has been my Inquiry team's intention to  3 use the time afforded by the otherwise unwanted  4 postponement to enhance the content of the section 1  5 hearings and you are aware, now, that we have earmarked  6 additional hearing time to enable that to be done and  7 are generating our plans accordingly.  8 But this hearing has also identified other practical  9 and communication issues associated with the Inquiry's  10 operations, which merit careful consideration and  11 reflection.  12 I appreciate that working within the public inquiry  13 sphere can present significant professional challenges  14 to those involved. This Inquiry is no exception. No  15 doubt, this is significantly driven by the  16 non-adversarial nature of the exercise on which I am  17 embarked and that is a point that has been mentioned  18 a number of times already.  19 But also the vital importance of the subject matter  20 of the Inquiry, the width of its terms of reference and  21 the delicate balance that I must reconcile between the  22 interests of speed and of thoroughness. That balance  23 has often been referenced during the course of  24 submissions today.  25 Mr Dawson alluded in his submissions to certain</p> <p style="text-align: center;">Page 221</p>	<p>1 more substantive business.  2 In the meantime, however, this hearing is now  3 adjourned.  4 (4.38 pm)  5 (the hearing concluded)</p> <p style="text-align: center;">Page 223</p>
<p>1 lessons that might be learned from the process to date  2 and how they might be taken forward. Let me supplement  3 his remarks with the observation that my Inquiry team  4 can only meet their onerous responsibilities with the  5 support and cooperation of all of you, representatives  6 and represented alike.  7 As has been mentioned already but I endorse it, this  8 isn't and should never feel like an adversarial process.  9 Put shortly, our aims are one and the same: to exhaust  10 the terms of reference set by the minister within  11 a reasonable time and at reasonable cost.  12 May I therefore, as ever, encourage recognised legal  13 representatives, as well as those whom they represent,  14 to move forward with my team in a positive and  15 collaborative spirit in fulfilment of those aims.  16 The building issues will be overcome and we are now  17 entering the evidential stage of this Inquiry and you  18 have my commitment and in that same spirit, we will  19 reciprocate.  20 It only remains for me to reiterate my thanks to you  21 all, in whatever capacity you have joined the hearing,  22 for the interest you continue to show in our work.  23 A number of matters that have been raised can  24 conveniently be dealt with in correspondence hereafter  25 and I trust we will meet again soon for the conduct of</p> <p style="text-align: center;">Page 222</p>	<p>1  2  3 I N D E X  4 Procedural hearing .....1  5 Housekeeping .....1  6 Submissions by MR DAWSON .....3  7 Submissions by MR DUNCAN .....129  8 Submissions by MS DOHERTY .....145  9 Submissions by MS THOMSON .....165  10 Submissions by MR CALLENDER .....176  11 Submissions by MS CHERRY .....185  12 Reply submission by MR DAWSON .....208  13  14  15  16  17  18  19  20  21  22  23  24  25</p> <p style="text-align: center;">Page 224</p>

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