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| <p>1 Monday, 21 September 2026</p> <p>2 (1.45 pm)</p> <p>3 (Proceedings delayed)</p> <p>4 (1.56 pm)</p> <p>5 THE CHAIR: Yes, good afternoon, Mr Dawson.</p> <p>6 MR DAWSON: Good afternoon, sir. This afternoon we'll start</p> <p>7 hearing the evidence of two of the members of our</p> <p>8 medical ethics expert group, Richard Huxtable and</p> <p>9 Angus McNair.</p> <p>10 Could I just say, sir, that the fact that this</p> <p>11 evidence has been taken in a slightly different</p> <p>12 timeframe to normal --</p> <p>13 THE CHAIR: Yes.</p> <p>14 MR DAWSON: -- will probably mean that we just take one</p> <p>15 break this afternoon, so I suspect that could be</p> <p>16 a slightly longer break, and I intend to approach things</p> <p>17 on that basis.</p> <p>18 THE CHAIR: Yes. All right, thank you.</p> <p>19 Can we have the witnesses on the screen, please.</p> <p>20 PROFESSOR RICHARD HUXTABLE (called)</p> <p>21 PROFESSOR ANGUS MCNAIR (called)</p> <p>22 THE CHAIR: Gentlemen, good afternoon. I infer from the nod</p> <p>23 of the head that you can see and hear me all right. Is</p> <p>24 that right?</p> <p>25 Professor Huxtable, first of all, can I ask you to</p> <p style="text-align: center;">Page 1</p> | <p>1 Q. And I understand that as part of that letter of</p> <p>2 instruction, you were asked, Professor Huxtable, to be</p> <p>3 the lead of the group. Is that correct?</p> <p>4 <b>A. That's right.</b></p> <p>5 Q. And you accepted that role?</p> <p>6 <b>A. I did.</b></p> <p>7 Q. My understanding is that there were originally three</p> <p>8 members of that group, the third member being</p> <p>9 Dr Katy McMillan. Is that correct?</p> <p>10 <b>A. That's correct.</b></p> <p>11 Q. And we'll come on in due course as to the way in which</p> <p>12 I intend to take your evidence in her absence today.</p> <p>13 Could we have, please, up on the screen document</p> <p>14 number ELJ-0002-00186. Can you see that document? Is</p> <p>15 that coming up with you?</p> <p>16 <b>A. We can.</b></p> <p>17 Q. Great. Is that the first page of your report?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And is the report dated 3 August 2026?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. Could you go to page 172, please. And is this the final</p> <p>22 page of the report, where you have signed your names?</p> <p>23 <b>A. That's right.</b></p> <p>24 PROFESSOR MCNAIR: That's right.</p> <p>25 Q. And under where it says "CAT C", is that where your name</p> <p style="text-align: center;">Page 3</p>                                                                                                         |
| <p>1 take the affirmation. If you repeat these words after</p> <p>2 me.</p> <p>3 PROFESSOR RICHARD HUXTABLE (affirmed)</p> <p>4 THE CHAIR: Thank you very much.</p> <p>5 Professor McNair, if I may do the same with you.</p> <p>6 PROFESSOR ANGUS MCNAIR (affirmed)</p> <p>7 THE CHAIR: Thank you very much indeed, gentlemen.</p> <p>8 Mr Dawson will be the next voice you hear and see on the</p> <p>9 screen.</p> <p>10 MR DAWSON: Thank you, sir.</p> <p>11 Questions by COUNSEL TO THE INQUIRY</p> <p>12 MR DAWSON: Gentlemen, can you see and hear me okay?</p> <p>13 PROFESSOR HUXTABLE: Yes.</p> <p>14 PROFESSOR MCNAIR: Yes.</p> <p>15 Q. Thank you.</p> <p>16 First of all, you are Richard Huxtable; is that</p> <p>17 correct?</p> <p>18 PROFESSOR HUXTABLE: I am.</p> <p>19 Q. And you are Angus McNair; is that correct?</p> <p>20 PROFESSOR MCNAIR: I am.</p> <p>21 Q. I understand that you received a letter of instruction,</p> <p>22 or separate letters of instruction, to form a medical</p> <p>23 ethics group to provide evidence to this Inquiry; is</p> <p>24 that correct?</p> <p>25 PROFESSOR HUXTABLE: That's correct.</p> <p style="text-align: center;">Page 2</p>                                                       | <p>1 is signed, Professor Huxtable?</p> <p>2 PROFESSOR HUXTABLE: Yes.</p> <p>3 Q. And Professor McNair, is that where your name is signed,</p> <p>4 under the "CAT C" in the middle?</p> <p>5 PROFESSOR MCNAIR: Yes.</p> <p>6 Q. And if we could scroll down a little bit, is that where</p> <p>7 Dr McMillan signed her name on the report?</p> <p>8 PROFESSOR HUXTABLE: That's right.</p> <p>9 Q. Great. Do you -- is it your position that the contents</p> <p>10 of this report are true, as far as you're aware?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And if we can just scroll up a little bit, please. It</p> <p>13 says at the top there "STATEMENT OF TRUTH":</p> <p>14 "We confirm that we have made clear which facts and</p> <p>15 matters referred to in this report are within our own</p> <p>16 knowledge and which are not. Those that are within our</p> <p>17 own knowledge we confirm to be true.</p> <p>18 "We understand our duty to provide independent</p> <p>19 evidence and have complied with that duty in the</p> <p>20 provision of this report. The opinions we have</p> <p>21 expressed represent our true and complete professional</p> <p>22 opinions on the matters to which they refer."</p> <p>23 Is that correct as far as this report is concerned,</p> <p>24 Professor Huxtable, first of all?</p> <p>25 PROFESSOR HUXTABLE: That's correct.</p> <p style="text-align: center;">Page 4</p> |

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| <p>1 Q. And Professor McNair, is that correct?</p> <p>2 PROFESSOR MCNAIR: That's correct.</p> <p>3 Q. Thank you very much.</p> <p>4 Could we please go to paragraph 1.2 of the report.</p> <p>5 This is the section of the report, Professor Huxtable,</p> <p>6 where I think you set out some of your background</p> <p>7 qualifications and current responsibilities; is that</p> <p>8 right?</p> <p>9 PROFESSOR HUXTABLE: That's right.</p> <p>10 Q. I understand you hold the degree of LLB (Honours), MA</p> <p>11 and PhD; is that correct?</p> <p>12 <b>A. That's correct.</b></p> <p>13 Q. You are a lawyer by training?</p> <p>14 <b>A. By training, but non-practising.</b></p> <p>15 Q. Thank you. And you hold the position of professor of</p> <p>16 medical ethics and law at the University of Bristol; is</p> <p>17 that correct?</p> <p>18 <b>A. That is correct.</b></p> <p>19 Q. And you are part of the university's Medical School</p> <p>20 staff; is that right?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And you have been since 2000?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. And you have been the director of the university's</p> <p>25 Centre for Ethics in Medicine since 2015?</p> <p style="text-align: center;">Page 5</p>                                                                                          | <p>1 <b>less so public health and the like. So very much the</b></p> <p>2 <b>clinical encounter in a hospital or similar.</b></p> <p>3 Q. Okay, thank you.</p> <p>4 You've served as a member or chair of the boards of</p> <p>5 the UK Clinical Ethics Network, the European Association</p> <p>6 of Centres of Medical Ethics and the Institute of</p> <p>7 Medical Ethics; is that correct?</p> <p>8 <b>A. That is correct.</b></p> <p>9 Q. Broadly speaking, what sorts of activities are those</p> <p>10 organisations involved in?</p> <p>11 <b>A. So the UK Clinical Ethics Network is a network designed</b></p> <p>12 <b>to help coordinate and support clinical ethics services.</b></p> <p>13 <b>So these tend to be hospital-based advisory committees</b></p> <p>14 <b>that advise on clinical issues arising on the ground in</b></p> <p>15 <b>healthcare.</b></p> <p>16 <b>EACME, the European association, is more an academic</b></p> <p>17 <b>group of centres of medical ethics in universities but</b></p> <p>18 <b>also hospitals and other treatment settings, and that is</b></p> <p>19 <b>across Europe, and that comes together for a conference;</b></p> <p>20 <b>quite an academic-leaning endeavour.</b></p> <p>21 <b>The Institute of Medical Ethics is a national</b></p> <p>22 <b>medical ethics charity and it has amongst its activities</b></p> <p>23 <b>very much an educational brief, but also a research</b></p> <p>24 <b>brief. So it runs conferences; it prepares a medical</b></p> <p>25 <b>ethics curriculum for medical students.</b></p> <p style="text-align: center;">Page 7</p> |
| <p>1 <b>A. Also correct.</b></p> <p>2 Q. And you co-lead the teaching on medical ethics in</p> <p>3 Bristol University's MBChB course; is that right?</p> <p>4 <b>A. That's right.</b></p> <p>5 Q. And my understanding is that that is the degree for</p> <p>6 which medical undergraduates are studying; is that</p> <p>7 right?</p> <p>8 <b>A. That's right.</b></p> <p>9 Q. So you're a teacher of doctors as opposed to a teacher</p> <p>10 of lawyers; is that right?</p> <p>11 <b>A. That's right, yes.</b></p> <p>12 Q. You conduct research, I think, as part of your role?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And you have an interest and have published in the field</p> <p>15 of surgical ethics; is that right?</p> <p>16 <b>A. That's right.</b></p> <p>17 Q. You also tell us, I think, that you have an interest and</p> <p>18 have published in the fields of medical innovation and</p> <p>19 clinical ethics; is that right?</p> <p>20 <b>A. That's right.</b></p> <p>21 Q. Could you tell us what you mean by "clinical ethics" in</p> <p>22 that context?</p> <p>23 <b>A. Absolutely. So very much a focus on essentially the</b></p> <p>24 <b>doctor/patient relationship one would encounter in</b></p> <p>25 <b>a clinical setting, so less of a research setting and</b></p> <p style="text-align: center;">Page 6</p> | <p>1 Q. Thank you.</p> <p>2 You also tell us that you have:</p> <p>3 "... served on various local, regional and national</p> <p>4 ethics committees, including those of the British</p> <p>5 Medical Association and the Royal College of General</p> <p>6 Practitioners."</p> <p>7 Could you tell us a little bit about what these</p> <p>8 medical ethics committees do and what your role on them</p> <p>9 was?</p> <p>10 <b>A. Certainly. So both of them, if I take a step back,</b></p> <p>11 <b>they're not providing one-to-one advice to individual</b></p> <p>12 <b>clinicians but they are, for example, providing ethics</b></p> <p>13 <b>input into policy of the professional organisation. So,</b></p> <p>14 <b>for example, the British Medical Association, the BMA,</b></p> <p>15 <b>issues a variety of ethics support documents but its</b></p> <p>16 <b>medical ethics committee might also have input into</b></p> <p>17 <b>other activities in the BMA. The Royal College of</b></p> <p>18 <b>General Practitioners, a very similar sort of role.</b></p> <p>19 Q. When you referred there to individual ethical guidance</p> <p>20 or advice being provided, we've heard some evidence</p> <p>21 about something called a "local ethics committee" that</p> <p>22 might exist within a hospital or within a health board</p> <p>23 or trust. The context in which we've heard that -- and</p> <p>24 I think your report goes into this area to a certain</p> <p>25 extent -- is that such bodies might be expected to</p> <p style="text-align: center;">Page 8</p>                                     |

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| <p>1 provide ethical guidance and rules around clinical</p> <p>2 trials that might take place within a hospital in</p> <p>3 connection with new medical devices or products.</p> <p>4 Is that at least a type of ethics committee with</p> <p>5 which you're familiar?</p> <p>6 <b>A. Certainly familiar, although if I may, I'd add a quick</b></p> <p>7 <b>note that it's a somewhat complicated landscape.</b></p> <p>8 <b>So we definitely have the ethics committees to which</b></p> <p>9 <b>you refer, the research ethics committees, but the</b></p> <p>10 <b>clinical ethics committees that might provide day-to-day</b></p> <p>11 <b>advice on clinical care, they're different. And in the</b></p> <p>12 <b>middle, in relation to what's called "innovation", which</b></p> <p>13 <b>we may or may not come to later, there are new procedure</b></p> <p>14 <b>committees and the like.</b></p> <p>15 <b>So it's a complicated landscape, but I certainly am</b></p> <p>16 <b>familiar with research ethics.</b></p> <p>17 Q. Yes. And I think in your report one of the suggestions</p> <p>18 for further input that you make is in that very area, in</p> <p>19 particular in the distinction that has emerged or is</p> <p>20 emerging, and you consider to be important, between</p> <p>21 traditional research and surgical innovation; is that</p> <p>22 right?</p> <p>23 <b>A. That's right.</b></p> <p>24 Q. Yes, and we may get into some of the details of your</p> <p>25 position on that in due course.</p> <p style="text-align: center;">Page 9</p> | <p>1 Is that correct?</p> <p>2 <b>A. That's correct.</b></p> <p>3 Q. Thank you.</p> <p>4 Professor McNair, if we could just show it on the</p> <p>5 screen at least, you have provided with us similar</p> <p>6 details of your qualifications, background and role in</p> <p>7 paragraph 1.4; is that right?</p> <p>8 PROFESSOR MCNAIR: Correct.</p> <p>9 Q. And you tell us that you hold the degrees of MBChB and</p> <p>10 PhD; is that correct?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. You are a doctor by training; is that right?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. You are -- you have after your name the letters FRCS.</p> <p>15 What does that stand for?</p> <p>16 <b>A. Fellow of the Royal College of Surgeons.</b></p> <p>17 Q. And is that the Royal College of Surgeons in England?</p> <p>18 <b>A. It is.</b></p> <p>19 Q. Thank you.</p> <p>20 You also have the letters SFHEA after your name.</p> <p>21 Could you explain to us what that is?</p> <p>22 <b>A. Senior Fellow of the Higher Education Academy. It's</b></p> <p>23 <b>a qualification in teaching.</b></p> <p>24 Q. Thank you.</p> <p>25 You hold the position, I think, of professor of</p> <p style="text-align: center;">Page 11</p>                                                                                                                                                                                                                                         |
| <p>1 You also say that you have:</p> <p>2 "... provided advice and guidance on various topics</p> <p>3 in medical ethics and law to the Royal College of</p> <p>4 Surgeons, [the] General Medical Council, [the] Jersey</p> <p>5 Government, [the] Resuscitation Council, and [the]</p> <p>6 Nuffield Council on Bioethics, amongst others."</p> <p>7 Is that correct?</p> <p>8 <b>A. That is correct.</b></p> <p>9 Q. And broadly speaking, without getting into the details,</p> <p>10 what sort of advice and guidance were you providing to</p> <p>11 those important bodies?</p> <p>12 <b>A. Yes, it takes a variety of forms. So the Royal College</b></p> <p>13 <b>of Surgeons, it was a policy seminar on a particular</b></p> <p>14 <b>phenomenon, and that was broadcasting life surgery. For</b></p> <p>15 <b>a number of the other groups, it was a mixture of</b></p> <p>16 <b>written advice on a policy document or similar that they</b></p> <p>17 <b>were developing or, on occasion, giving evidence --</b></p> <p>18 <b>usually oral evidence, sometimes written -- if, for</b></p> <p>19 <b>example, a particular group has convened a commission or</b></p> <p>20 <b>a committee to look at a given topic with a medical</b></p> <p>21 <b>ethics dimension to it.</b></p> <p>22 Q. Thank you. And you also tell us that you were:</p> <p>23 "... awarded the Ted Shotton Lifetime Achievement</p> <p>24 Award for Endeavour in Medical Ethics by the Institute</p> <p>25 of Medical Ethics in 2025."</p> <p style="text-align: center;">Page 10</p>        | <p>1 colorectal surgery at the University of Bristol?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And you are also an honorary consultant colorectal</p> <p>4 surgeon within the North Bristol NHS Trust; is that</p> <p>5 right?</p> <p>6 <b>A. It is. That name has just been updated: we are now the</b></p> <p>7 <b>Bristol Foundations Trust, as two trusts in the city</b></p> <p>8 <b>have merged. But it was correct at the time of the</b></p> <p>9 <b>submission.</b></p> <p>10 Q. Thank you very much.</p> <p>11 You tell us in your statement that:</p> <p>12 "[Your] clinical practice focuses on the care of</p> <p>13 patients with complex pelvic malignancy including [the]</p> <p>14 delivery of multi-visceral pelvic exenteration."</p> <p>15 Could you explain to us what that is, please?</p> <p>16 <b>A. Well, sometimes patients have cancer within the pelvis</b></p> <p>17 <b>that grow into different organs, and my practice</b></p> <p>18 <b>includes removing organs with the colon or rectum as</b></p> <p>19 <b>part of a multi-disciplinary team.</b></p> <p>20 Q. Thank you.</p> <p>21 We heard evidence earlier in the Inquiry,</p> <p>22 Professor McNair, from a gentleman named Professor</p> <p>23 Rory McCrimmon of the University of Dundee about the</p> <p>24 role of a clinical academic, which he was, and the role</p> <p>25 of a medic in the employment of a health board who may</p> <p style="text-align: center;">Page 12</p> |

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| <p>1 hold an honorary position as a lecturer, reader or</p> <p>2 professor at a university, particularly in teaching</p> <p>3 hospitals like Ninewells Hospital in Dundee, with which</p> <p>4 we are principally concerned in this Inquiry.</p> <p>5 Is that a distinction between these different types</p> <p>6 of roles with which you're familiar?</p> <p>7 <b>A. It is.</b></p> <p>8 Q. And which type of role do you hold?</p> <p>9 <b>A. I'm a clinical academic surgeon, which means my primary</b></p> <p>10 <b>employer is the University of Bristol, who administer my</b></p> <p>11 <b>pay and issues, whereas my clinical practice is within</b></p> <p>12 <b>an NHS trust, and that is why I hold an honorary</b></p> <p>13 <b>contract with them to perform any clinical duties.</b></p> <p>14 Q. Thank you very much indeed. You won't be aware of this,</p> <p>15 but we're very familiar with these different types of</p> <p>16 roles and the particular functions that they undertake.</p> <p>17 That's very helpful.</p> <p>18 As far as your clinical practice is concerned, is</p> <p>19 that delivered from Bristol Royal Infirmary?</p> <p>20 <b>A. It is not, mostly. It is delivered from Southmead</b></p> <p>21 <b>Hospital in Bristol. And as I mentioned before, we have</b></p> <p>22 <b>two -- had two main trusts within the city that have now</b></p> <p>23 <b>merged. But on a day-to-day basis, my practice is</b></p> <p>24 <b>delivered through Southmead Hospital, Bristol.</b></p> <p>25 Q. Thank you.</p> <p style="text-align: center;">Page 13</p>                              | <p>1 said to me outright what the link is.</p> <p>2 But certainly it's notable that we have a Centre for</p> <p>3 Ethics in Medicine in Bristol and it is one of the</p> <p>4 universities that has led the way in creating an ethics</p> <p>5 centre within a medical school. But as I say, I'd --</p> <p>6 I exercise some caution about the causal link.</p> <p>7 Q. Thank you very much, Professor.</p> <p>8 So back to Professor McNair's CV, if you like. You</p> <p>9 say -- you tell us, I think, that:</p> <p>10 "[Your] clinical and academic work focuses on</p> <p>11 improving outcomes of surgery and developing</p> <p>12 patient-centred approaches to shared decision-making."</p> <p>13 Is that correct?</p> <p>14 PROFESSOR MCNAIR: Yes.</p> <p>15 Q. When you say that your clinical and academic work</p> <p>16 focuses on these areas, are they important not only in</p> <p>17 the university, as it were, but also that they be</p> <p>18 applied to the surgical world in which you also work?</p> <p>19 <b>A. Yes, and I think for many clinical academics our</b></p> <p>20 <b>research, we hope, aligns with impacts on patients in</b></p> <p>21 <b>the health service in a way that gives, you know,</b></p> <p>22 <b>meaningful benefit to patients.</b></p> <p>23 Q. Is that a concept you refer to in the statement as</p> <p>24 "applied medical ethics"?</p> <p>25 <b>A. Yes, in that -- to distinguish it from theoretical</b></p> <p style="text-align: center;">Page 15</p> |
| <p>1 We've heard some evidence already,</p> <p>2 Professor McNair -- and indeed it's referred to in your</p> <p>3 report -- that Bristol Royal Infirmary was the subject</p> <p>4 of a public inquiry some years ago relating to a number</p> <p>5 of deaths in children within the paediatric cardiac</p> <p>6 surgical unit. Is that a sequence of events, an inquiry</p> <p>7 with which you're familiar?</p> <p>8 <b>A. Not to a great extent. It was -- somewhat pre-dates my</b></p> <p>9 <b>medical training. And so it is an area that</b></p> <p>10 <b>Professor Huxtable knows probably a little bit better</b></p> <p>11 <b>than me, and I certainly wasn't in and around at that</b></p> <p>12 <b>time.</b></p> <p>13 Q. I was interested -- and it may be, in fact, that</p> <p>14 Professor Huxtable may be better placed to answer</p> <p>15 this -- but I was interested in the extent to which that</p> <p>16 sequence of events and that inquiry had influenced</p> <p>17 either the hospital or the university or both's approach</p> <p>18 to questions of medical ethics with which we will come</p> <p>19 on to be familiar in our discussion today.</p> <p>20 PROFESSOR HUXTABLE: Well, I'd exercise a degree of caution</p> <p>21 here because it also pre-dates my time. In fact,</p> <p>22 I arrived at the university to undertake a PhD some</p> <p>23 30 years ago, in 1996, around the time that this ethics</p> <p>24 centre I now lead was created. Whether those two events</p> <p>25 are closely linked, I couldn't say, and it's never been</p> <p style="text-align: center;">Page 14</p> | <p>1 <b>medical ethics.</b></p> <p>2 Q. Yes.</p> <p>3 <b>A. So it's how we apply this in clinical matters.</b></p> <p>4 Q. Because it's important, I think, that ethics is not</p> <p>5 viewed as an academic activity, in particular medical</p> <p>6 ethics, but that it be viewed as something which should</p> <p>7 rightly inform the way in which medical practice is</p> <p>8 conducted. Is that correct?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And obviously your perspective allows us -- allows you</p> <p>11 to be able to view it from both sides of the fence, if</p> <p>12 I can put it that way?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Thank you.</p> <p>15 Why are patient-centred approaches to shared</p> <p>16 decision-making in clinical work important?</p> <p>17 <b>A. This is a very good question.</b></p> <p>18 <b>So I'll start, I guess by describing some of the</b></p> <p>19 <b>changes that have happened, I believe, in society's</b></p> <p>20 <b>approach to decision-making maybe over the last 30 or</b></p> <p>21 <b>40-plus years, if not longer, where the approach to</b></p> <p>22 <b>decision-making historically was focused on doctors,</b></p> <p>23 <b>where really doctors were there to provide the benefit</b></p> <p>24 <b>to patients and not harm them, but involvement in</b></p> <p>25 <b>decision-making perhaps historically was limited.</b></p> <p style="text-align: center;">Page 16</p>                                                              |

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| <p>1       <b>And then what we've seen really over the past few</b><br/> 2       <b>decades is a shift in our cultural and social norms</b><br/> 3       <b>really, so that patients are at the heart of the</b><br/> 4       <b>healthcare service and healthcare provision. And that</b><br/> 5       <b>shift has taken a lot of academic thinking, as well as</b><br/> 6       <b>involvement about the application of that into practice,</b><br/> 7       <b>and for me I find that very interesting and a --</b><br/> 8       <b>something that requires ongoing continual improvement.</b><br/> 9       Q. Thank you. We'll come to some of the details of that in<br/> 10       due course. Just on a practical matter, we'll discuss<br/> 11       in a moment the way in which you went about compiling<br/> 12       the report, and of course you had a third member of your<br/> 13       group when you were doing that.<br/> 14       But just on that very subject, Professor McNair, you<br/> 15       are -- based on the explanation that you've just given,<br/> 16       you are an expert in questions of patient-centred<br/> 17       approaches to medicine and consent, are you not?<br/> 18       <b>A. Yes.</b><br/> 19       Q. So --<br/> 20       <b>A. My PhD --</b><br/> 21       Q. Sorry.<br/> 22       <b>A. Sorry.</b><br/> 23       Q. No, you go ahead.<br/> 24       <b>A. My PhD focused on information and -- information</b><br/> 25       <b>provision for informed consent in major cancer surgery.</b></p> <p style="text-align: center;">Page 17</p>                                                         | <p>1       it.<br/> 2       Professor McNair, back to your CV. You tell us in<br/> 3       the statement that you have "a longstanding research<br/> 4       interest in surgical ethics" and that you've published<br/> 5       in that area; is that right?<br/> 6       PROFESSOR MCNAIR: Yes.<br/> 7       Q. In relation to the doctoral fellowship on informed<br/> 8       consent for major surgery that you've mentioned already,<br/> 9       was that completed in 2007?<br/> 10       <b>A. Yes.</b><br/> 11       Q. You also tell us that that was:<br/> 12       "... developed further by a prestigious NIHR<br/> 13       Clinician Scientist Fellowship (2018) on improving<br/> 14       decision-making for innovative surgery."<br/> 15       Could you tell us what that involved, what that was<br/> 16       about?<br/> 17       <b>A. Yes, and I make mention to it slightly further down that</b><br/> 18       <b>paragraph with the project "monitoring patients'</b><br/> 19       <b>experience of surgical decision-making". And what that</b><br/> 20       <b>funding allowed me to do is develop, pilot and apply</b><br/> 21       <b>a digital way of monitoring patients' experience of</b><br/> 22       <b>shared decision-making in real time, with a view to</b><br/> 23       <b>using that intelligence to improve care.</b><br/> 24       Q. Thank you.<br/> 25       You also say that you have "published highly cited</p> <p style="text-align: center;">Page 19</p>                                                                                                                              |
| <p>1       Q. Thank you very much.<br/> 2       You mentioned in your explanation there a word that<br/> 3       I was in due course going to ask you to help define for<br/> 4       us, and that is the word "norms". I wonder if you could<br/> 5       help us with what that means, as it pops up in various<br/> 6       places in your evidence.<br/> 7       <b>A. Yes, although I'd probably refer to my colleague</b><br/> 8       <b>Professor Huxtable for that one, for a more precise</b><br/> 9       <b>definition on a theoretical basis.</b><br/> 10       Q. Yes, that would be fine, thank you.<br/> 11       PROFESSOR HUXTABLE: Yes, certainly.<br/> 12       There are different ways of understanding it. If we<br/> 13       take a more descriptive, almost social scientific<br/> 14       approach, we're saying what is the normal position, for<br/> 15       example, of something. We don't quite mean it here. We<br/> 16       mean something more akin to an ethical or a moral value.<br/> 17       So that might be an individually held moral position on<br/> 18       a given phenomenon, or it might be a culturally held or<br/> 19       even socially held norm.<br/> 20       So it can shift depending on context, but that's<br/> 21       broadly how we understand it: a particular moral or<br/> 22       ethical position on a given question.<br/> 23       Q. Thank you. That's helpful, as we may come across that<br/> 24       word in other contexts, so it's useful to know the<br/> 25       application and the definition that we're applying to</p> <p style="text-align: center;">Page 18</p> | <p>1       research" on some of the topics that I've mentioned and<br/> 2       other topics, and you mention there something, "H-Index<br/> 3       of 31". Could you tell us what that means?<br/> 4       <b>A. This is known as a citation metric and it relates to the</b><br/> 5       <b>number of citations that papers have. And so with</b><br/> 6       <b>an H-index of 31, I have 32 papers that have been cited</b><br/> 7       <b>more than 31 times.</b><br/> 8       Q. Thank you. And you also say that:<br/> 9       "This output has shaped international standards,<br/> 10       influencing regulators, funders, and guideline<br/> 11       developers such as NICE, EMA, and the<br/> 12       Cochrane Collaboration."<br/> 13       I wanted to just bring that out in particular<br/> 14       because, as we will find out in due course, there are<br/> 15       important ways in which academic literature and research<br/> 16       can influence the setting of ethical rules, guidelines,<br/> 17       norms. I wonder if you could just explain to us, in the<br/> 18       context of how your work has done that, how that process<br/> 19       happens. How does academic research influence<br/> 20       effectively what ethical rules ought to be applied in<br/> 21       real life?<br/> 22       <b>A. Yes, happily.</b><br/> 23       <b>My influence on those organisations did not relate</b><br/> 24       <b>directly to the ethical work that I do. As you alluded</b><br/> 25       <b>to earlier, my work covers things like outcome</b></p> <p style="text-align: center;">Page 20</p> |

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| <p>1 measurement, and in particular that sentence, and most</p> <p>2 of the influence I've had over those organisations,</p> <p>3 related to standardisation of outcome measurement to</p> <p>4 measure in trials in particular. So the statement as</p> <p>5 read there is accurate, but if the question is around</p> <p>6 how does medical ethics literature influence practice,</p> <p>7 then it is varied.</p> <p>8 So if I take a live example right now, we have</p> <p>9 developed some guidance on the sort of information</p> <p>10 standards that are appropriate for informed consent and</p> <p>11 shared decision-making for innovative surgery, and</p> <p>12 currently that publication is with colleagues in NICE to</p> <p>13 try and identify how that academic knowledge can</p> <p>14 influence the way that NICE issues its guidelines, both</p> <p>15 in terms of guideline developers, so how NICE itself</p> <p>16 creates those guidelines, as well as the application of</p> <p>17 those guidelines in practice.</p> <p>18 Q. And just for the sake of completeness, NICE is the</p> <p>19 National Institute for Clinical Excellence; is that</p> <p>20 right?</p> <p>21 A. Health and Care Excellence, I believe, now, but I'd have</p> <p>22 to check that.</p> <p>23 Q. Right. So that's a body that sets certain guidelines to</p> <p>24 try to promote standards in medical care; is that right?</p> <p>25 THE CHAIR: We appear to have frozen.</p> <p style="text-align: center;">Page 21</p> | <p>1 the statement that you:</p> <p>2 "... lead[] the final year of the Bristol Medical</p> <p>3 School MBChB programme that oversees [the] professional</p> <p>4 training of [around] 300 future doctors annually."</p> <p>5 So is it correct that you play an important role in</p> <p>6 the teaching of doctors, alongside Professor Huxtable,</p> <p>7 amongst others?</p> <p>8 A. Correct.</p> <p>9 Q. Thank you.</p> <p>10 I would also like -- if we could scroll back up,</p> <p>11 please, to paragraph 1.3. I'll ask you, I think</p> <p>12 Professor Huxtable initially, just to confirm your</p> <p>13 understanding of Dr McMillan's qualifications.</p> <p>14 She holds the degree, I think, of LLB (Hons), LLM,</p> <p>15 PhD; is that right?</p> <p>16 PROFESSOR HUXTABLE: Correct.</p> <p>17 Q. She is a lawyer by training; is that correct?</p> <p>18 A. That's right.</p> <p>19 Q. And she is a reader in medical law and ethics at the</p> <p>20 University of Edinburgh?</p> <p>21 A. Yes.</p> <p>22 Q. She is also the Deputy Director of the Mason Institute</p> <p>23 for Medicine, Life Sciences, and the Law; is that</p> <p>24 correct?</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 23</p>                                                                                                                                                                                                                                                                                                                  |
| <p>1 MR DAWSON: Yes.</p> <p>2 PROFESSOR HUXTABLE: Here we are.</p> <p>3 MR DAWSON: You're back.</p> <p>4 Take a short break, sir, to try and --</p> <p>5 THE CHAIR: Well, I wonder if either of the --</p> <p>6 PROFESSOR HUXTABLE: We can hear you now.</p> <p>7 THE CHAIR: Yes, you've frozen on the screen. I think we'll</p> <p>8 just hang on and see if it can be rectified at the back.</p> <p>9 (Pause)</p> <p>10 Right, that looks more encouraging.</p> <p>11 MR DAWSON: Can you see and hear me okay?</p> <p>12 PROFESSOR HUXTABLE: We can.</p> <p>13 MR DAWSON: Good. You've reappeared. You froze there and</p> <p>14 then we had a black screen, but you're now back with us,</p> <p>15 I think. Thank you.</p> <p>16 You were -- I was asking you whether the NICE body</p> <p>17 to which you've referred, Professor McNair, is a body</p> <p>18 which is involved in setting guidelines to try to</p> <p>19 promote the quality of healthcare provision. Is that</p> <p>20 right?</p> <p>21 PROFESSOR MCNAIR: It is one of its functions. And indeed</p> <p>22 NICE, just about five years ago, issued guidelines for</p> <p>23 shared decision-making, for example.</p> <p>24 Q. Thank you.</p> <p>25 And as far as teaching is concerned, you tell us in</p> <p style="text-align: center;">Page 22</p>                                                                                                                                                                                                      | <p>1 Q. And as I understand it, is it correct that she has</p> <p>2 a research focus on "health, medical law and bioethics,</p> <p>3 with expertise in the ethics and regulation of medical</p> <p>4 devices, digital health technologies, health research,</p> <p>5 and human reproduction"?</p> <p>6 A. That's right.</p> <p>7 Q. There's mention there of a word again which comes up</p> <p>8 later on in the evidence: that's "bioethics". I wonder</p> <p>9 if you could tell us what that means?</p> <p>10 A. Yes, again -- and I fear this word will feature a few</p> <p>11 times in my evidence -- there's a degree of complexity</p> <p>12 here. But the way I tend to understand it, and indeed</p> <p>13 explain it to colleagues and students, is bioethics is</p> <p>14 the broadest possible understanding of the field. So</p> <p>15 it's the ethics, the right and wrong, of the biosciences</p> <p>16 at large. So it might include medicine and healthcare,</p> <p>17 but it could extend all the way to the climate and the</p> <p>18 environment.</p> <p>19 Underneath that, you then get narrower focuses on</p> <p>20 healthcare ethics, so that's the healthcare endeavour at</p> <p>21 large, and medical ethics is more narrowly focused on</p> <p>22 doctors and patients.</p> <p>23 Q. I see. So if I'm getting this correct, bioethics would</p> <p>24 be a large category encompassing a wide variety of</p> <p>25 different ethical activities and fields; a subset of</p> <p style="text-align: center;">Page 24</p> |

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| <p>1 that would be healthcare ethics; and a further subset</p> <p>2 would be medical ethics. Is that right?</p> <p>3 <b>A. That's the way I understand it, yes.</b></p> <p>4 Q. And so if medical ethics is a subset of healthcare</p> <p>5 ethics, there must be some other ethical activities</p> <p>6 involved in healthcare ethics that are not medical</p> <p>7 ethics. What would those activities be, or those</p> <p>8 ethical rules be?</p> <p>9 <b>A. So one example might be, but this -- but people debate</b></p> <p>10 <b>where this sits in that typology I just gave you, but</b></p> <p>11 <b>public health ethics might be an example. It could</b></p> <p>12 <b>involve doctors, it could involve other professionals;</b></p> <p>13 <b>indeed, it could involve other sorts of professionals</b></p> <p>14 <b>entirely. But there's an example.</b></p> <p>15 Q. Would organisational ethics sit within healthcare</p> <p>16 ethics?</p> <p>17 <b>A. Yes, I think it probably would, but it might sometimes</b></p> <p>18 <b>need to widen its focus, indeed, beyond bioethics to</b></p> <p>19 <b>ethics at large.</b></p> <p>20 Q. Yes. But if we were talking about healthcare</p> <p>21 organisational ethics, if you like, that would sit</p> <p>22 within healthcare ethics as a sort of separate topic; is</p> <p>23 that right?</p> <p>24 <b>A. I think that's fair. That's a fair account, yes.</b></p> <p>25 Q. Thank you.</p> <p style="text-align: center;">Page 25</p>                                                                                                   | <p>1 <b>but if the manager is of a different sort, or indeed the</b></p> <p>2 <b>person at the top of the organisation is from</b></p> <p>3 <b>a different background, I'm not quite sure what the</b></p> <p>4 <b>standards would be that they would be held to.</b></p> <p>5 <b>I do know there are some discussions occurring --</b></p> <p>6 <b>these are academic backroom discussions at the moment --</b></p> <p>7 <b>about: is there more that could be done to support</b></p> <p>8 <b>an ethics of healthcare management in an organisation?</b></p> <p>9 <b>But there I reach pretty quickly the reach of my</b></p> <p>10 <b>knowledge.</b></p> <p>11 Q. Thank you, that's helpful. I won't push you any further</p> <p>12 on that area if it's not an area of particular expertise</p> <p>13 for you.</p> <p>14 However, one connected area which you do comment on</p> <p>15 in the report is the -- are the obligations of</p> <p>16 organisations, healthcare providers, to oversee and</p> <p>17 facilitate medical ethics. That is something that you</p> <p>18 tell us more about in the report; is that right?</p> <p>19 <b>A. That's right.</b></p> <p>20 Q. Because there is, I think, as we'll come to in more</p> <p>21 detail, in guidance documents, academic literature etc,</p> <p>22 the various different sources where one might find</p> <p>23 ethical rules, an interface between what doctors have to</p> <p>24 do, if I could put it like that, and what healthcare</p> <p>25 providers have to do in order to create environments in</p> <p style="text-align: center;">Page 27</p> |
| <p>1 I think you were asked some questions in the report,</p> <p>2 I think, or in the Rule 8 that was sent that led to the</p> <p>3 report being created, about organisational ethics. And</p> <p>4 I think you pointed out to us, in accordance with your</p> <p>5 obligation to do so under the instruction, that you</p> <p>6 wouldn't consider that to be an area in which any of you</p> <p>7 were particularly expert; is that right?</p> <p>8 <b>A. That's right.</b></p> <p>9 Q. But you have helpfully provided with us some high-level</p> <p>10 explanations as to what that field might involve; is</p> <p>11 that correct?</p> <p>12 <b>A. That's correct.</b></p> <p>13 Q. And without wishing to stray beyond that relatively</p> <p>14 high-level explanation, is it correct to say that the</p> <p>15 providers of healthcare have a body of ethics to which</p> <p>16 they have to comply?</p> <p>17 <b>A. Well, I would be slightly cautious here. I believe so,</b></p> <p>18 <b>but I think it's an open question -- and certainly it</b></p> <p>19 <b>exceeds my knowledge -- as to what sort of ethical</b></p> <p>20 <b>standards they would be held to, and indeed what their</b></p> <p>21 <b>regulator, if there is such a regulator.</b></p> <p>22 <b>So I may be at risk of getting this wrong, but my</b></p> <p>23 <b>impression would be if the relevant manager is</b></p> <p>24 <b>themselves a doctor, they would of course be accountable</b></p> <p>25 <b>to the doctors' regulator, the General Medical Council;</b></p> <p style="text-align: center;">Page 26</p> | <p>1 which doctors can deliver their services ethically. Is</p> <p>2 that right?</p> <p>3 <b>A. That's right.</b></p> <p>4 Q. And that would be a sort of facilitating role, if you</p> <p>5 like. But beyond that, there are certain obligations on</p> <p>6 healthcare providers effectively to police, if I could</p> <p>7 put it that way, the adherence of doctors to their</p> <p>8 medical ethical requirements; is that right?</p> <p>9 <b>A. Broadly, yes, I would agree with that.</b></p> <p>10 Q. Thank you. And we'll look at that, and no doubt you</p> <p>11 will tell me if we're straying beyond what you feel</p> <p>12 comfortable with. But that, as a broad definition, is</p> <p>13 extremely helpful.</p> <p>14 To return then, away from bioethics and the</p> <p>15 definitions, to Dr McMillan's CV. She tells us that:</p> <p>16 "She has led funded research on the governance of</p> <p>17 women's health technologies and medical devices as</p> <p>18 a British Academy Postdoctoral Fellow and previously</p> <p>19 contributed to the Wellcome-funded Senior Investigator</p> <p>20 Award project on the regulation of health research."</p> <p>21 Is that your understanding?</p> <p>22 <b>A. It is.</b></p> <p>23 Q. And that she is the "co-editor of the Cambridge Handbook</p> <p>24 of Health Research Regulation"; is that right?</p> <p>25 <b>A. That's right.</b></p> <p style="text-align: center;">Page 28</p>                                                                                                                                                              |

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| <p>1 Q. And that she has also published widely, including "on<br/>2 medical devices regulation, reproductive technologies,<br/>3 and other legal and ethical dimensions of innovation in<br/>4 healthcare"; is that right?</p> <p>5 <b>A. That's right.</b></p> <p>6 Q. And:</p> <p>7 "She served as Convener of the Law Society of<br/>8 Scotland's Health and Medical Law Committee, where she<br/>9 led committee legislative responses and gave expert<br/>10 evidence to the Scottish Parliament on multiple<br/>11 occasions."</p> <p>12 Is that right?</p> <p>13 <b>A. That's right.</b></p> <p>14 Q. And as you understand it, did she, in November 2025,<br/>15 receive "the Royal Society of Edinburgh's<br/>16 Dame Muriel Spark Medal for her impact and achievements<br/>17 in research"?</p> <p>18 <b>A. She did.</b></p> <p>19 Q. Thank you.</p> <p>20 We've already looked, Professors, at the declaration<br/>21 which you've confirmed to me you made on the last page<br/>22 of your report. You received separate letters of<br/>23 instruction; is that correct?</p> <p>24 PROFESSOR HUXTABLE: Yes.</p> <p>25 PROFESSOR MCNAIR: Yes.</p> <p style="text-align: center;">Page 29</p>                                                                                         | <p>1 were asked, is a range of opinion in any given area?</p> <p>2 PROFESSOR HUXTABLE: Yes.</p> <p>3 Q. And as I think we'll come to see, you did so?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And is it also the case that you understood it to be<br/>6 your obligation to indicate if matters were beyond your<br/>7 expertise?</p> <p>8 <b>A. That's right. And some -- I would add, if I may, we<br/>9 realised that we are reaching the limit of our knowledge<br/>10 in some places, most obviously on organisational ethics<br/>11 in a general sense.</b></p> <p>12 Q. As we've already discovered, you made it clear that<br/>13 there were limits to what you felt you could assist the<br/>14 Chair of the Inquiry with; is that right?</p> <p>15 <b>A. That's right.</b></p> <p>16 Q. And you also undertook, I think, to indicate to the<br/>17 Inquiry if you thought there was someone better placed<br/>18 to provide any opinion; is that an obligation that you<br/>19 felt you had?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And did you comply with that also?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Did you understand that you were under an obligation to<br/>24 be clear as to what your evidence was on the matters<br/>25 that were raised with you?</p> <p style="text-align: center;">Page 31</p>                                                                             |
| <p>1 Q. And as I've said already, the only difference in terms<br/>2 of what you were being asked to cover and the<br/>3 conditions, if you like, was that Professor Huxtable was<br/>4 being asked to be the lead, whereas Professor McNair and<br/>5 Dr McMillan were asked to be part of the group; is that<br/>6 right?</p> <p>7 PROFESSOR MCNAIR: Yes.</p> <p>8 PROFESSOR HUXTABLE: Yes.</p> <p>9 Q. And did you understand it to be the case that you were<br/>10 required to provide independent evidence to the Inquiry?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And you did so?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And did you understand that you were required to have no<br/>15 conflict of interest with NHS Tayside, the Scottish<br/>16 Government, Mr Eljamel, Circle Healthcare,<br/>17 Fernbrae Hospital in Dundee, or any other body mentioned<br/>18 in the Inquiry's Terms of Reference?</p> <p>19 <b>A. Yes, that's right.</b></p> <p>20 Q. And is it correct that that is the position: you have no<br/>21 such conflict?</p> <p>22 <b>A. Correct.</b></p> <p>23 PROFESSOR MCNAIR: Correct.</p> <p>24 Q. And did you understand it to be your obligation to<br/>25 indicate where there, in response to the questions you</p> <p style="text-align: center;">Page 30</p> | <p>1 <b>A. We do.</b></p> <p>2 Q. And did you attempt to be clear?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And did you understand that you were obliged to indicate<br/>5 where, amongst the three of you, there were any<br/>6 differences in opinions on matters that you were<br/>7 addressing, and why?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And did any material differences of opinion arise?</p> <p>10 <b>A. Not as I recall. We did each take the lead on different<br/>11 sections of the report but we all reviewed and made some<br/>12 minor edits, but to my recollection they were mainly<br/>13 minor edits. I can't, in fact, recall any major edit or<br/>14 indeed any situation of disagreement.</b></p> <p>15 Q. Thank you very much. And I think what you've described<br/>16 there is the process that you also describe in the<br/>17 report as to the way in which you went about dividing up<br/>18 the work, and you were entitled to do that in terms of<br/>19 your instruction; is that right?</p> <p>20 <b>A. That's right.</b></p> <p>21 Q. And so what I think broadly you did was that you<br/>22 allocated sections in the request to a single member of<br/>23 the group to provide a first draft; is that right?</p> <p>24 <b>A. That's right.</b></p> <p>25 Q. And those allocations were done on the basis of each</p> <p style="text-align: center;">Page 32</p> |

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| <p>1 individual's particular area of interest, experience and</p> <p>2 expertise?</p> <p>3 <b>A. That was the predominant consideration.</b></p> <p>4 Q. Yes.</p> <p>5 <b>A. To a degree, we had an eye on capacity at the relevant</b></p> <p>6 <b>time, and really we were tailored to expertise.</b></p> <p>7 Q. Understood, thank you. And did you then come together</p> <p>8 and effectively review each other's sections, such that</p> <p>9 by the end of the process, I think you have told us that</p> <p>10 you have provided a report which is a report of the</p> <p>11 whole group; is that fair?</p> <p>12 <b>A. That's fair.</b></p> <p>13 Q. And did you understand, in providing your evidence, that</p> <p>14 you're required to exercise reasonable skill and care,</p> <p>15 complying with any codes of practice that are incumbent</p> <p>16 upon you, based on your qualifications?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And did you do that?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And did you understand that you had an overriding duty</p> <p>21 to assist the Chair of the Inquiry in the fulfilment of</p> <p>22 his Terms of Reference?</p> <p>23 <b>A. Absolutely.</b></p> <p>24 Q. And did you do that?</p> <p>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 33</p>      | <p>1 Q. And insofar as the allocation of the various</p> <p>2 responsibilities amongst the three of you went, you</p> <p>3 considered those documents and, insofar as it was</p> <p>4 considered appropriate, incorporated aspects of them</p> <p>5 into your analysis?</p> <p>6 <b>A. That's right, and I took the lead on the incorporation,</b></p> <p>7 <b>with Professor McNair contributing to that. By that</b></p> <p>8 <b>stage, our colleague was on maternity leave.</b></p> <p>9 Q. Thank you very much.</p> <p>10 The ... bear with me two seconds. Could we go,</p> <p>11 please, to paragraph 49 of the report. We asked you in</p> <p>12 question 49 to:</p> <p>13 "... highlight any limitations on your ability to</p> <p>14 compile the report, based on the material provided or</p> <p>15 available to you, including (where relevant) materials</p> <p>16 relating to the matters you have been asked to address</p> <p>17 in your report which you would suggest that the Inquiry</p> <p>18 should recover to assist with its investigations."</p> <p>19 Broadly speaking, did you understand your remit to</p> <p>20 be to provide contextual information about ethics and</p> <p>21 ethical rules in the areas on which questions had been</p> <p>22 addressed to you?</p> <p>23 <b>A. That's right, yes.</b></p> <p>24 Q. And did you understand that, at this stage at least, we</p> <p>25 were not asking you to address any specific evidence</p> <p style="text-align: center;">Page 35</p> |
| <p>1 Q. Thank you very much.</p> <p>2 I think for the sake of completeness, there was</p> <p>3 a letter of instruction which, as we've said, was sent</p> <p>4 separately to the three of you in three separate</p> <p>5 letters, but comprising effectively the same questions</p> <p>6 and obligations, and that the Inquiry reviewed</p> <p>7 an initial draft of the report and sent back some</p> <p>8 comments; is that right?</p> <p>9 <b>A. That's right.</b></p> <p>10 Q. And two of the things that happened as part of that</p> <p>11 process were that the questions were tweaked slightly in</p> <p>12 places; do you recall that?</p> <p>13 <b>A. I do, yes.</b></p> <p>14 Q. And also that some materials were provided which were</p> <p>15 available to the Inquiry in order to assist your</p> <p>16 analysis insofar as they were of assistance in certain</p> <p>17 areas; is that right?</p> <p>18 <b>A. That's right.</b></p> <p>19 Q. And the documents that were provided were in -- they</p> <p>20 were predominantly in the area of informed consent; is</p> <p>21 that right?</p> <p>22 <b>A. Yes, that's right.</b></p> <p>23 Q. And they were to a lesser degree in the area of</p> <p>24 research?</p> <p>25 <b>A. Yes. Yes, correct.</b></p> <p style="text-align: center;">Page 34</p> | <p>1 relating to matters pertaining to Mr Eljamel's practice</p> <p>2 or any other systems around that which the Inquiry is</p> <p>3 most directed to dealing with?</p> <p>4 <b>A. Yes, we did understand that.</b></p> <p>5 Q. And that you are aware that the Inquiry may, at a later</p> <p>6 stage, come back to seek your opinions on such specific</p> <p>7 matters and/or in relation to recommendations that it</p> <p>8 may make for the future?</p> <p>9 <b>A. Yes, we understand that.</b></p> <p>10 Q. Thank you.</p> <p>11 You say in response to the question 49 that:</p> <p>12 "We believe that we have reasonably captured the</p> <p>13 general tenor of the academic and professional sources</p> <p>14 we identified.</p> <p>15 "However, our ability to compile the report has been</p> <p>16 constrained by:</p> <p>17 "The limited time available, including alongside our</p> <p>18 other commitments;</p> <p>19 "The considerable complexity of the regulatory</p> <p>20 landscape;</p> <p>21 "The significant volume of professional guidance</p> <p>22 that needed to be identified, located, read, summarised,</p> <p>23 and analysed; and</p> <p>24 "The difficulty in obtaining relevant historical</p> <p>25 iterations of professional guidance, especially sources</p> <p style="text-align: center;">Page 36</p>                                                                                                                                                                        |

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| <p>1 that exist only in print and not online."</p> <p>2 You tell us that:</p> <p>3 "These constraints meant that:</p> <p>4 "We could not run time-consuming systemic searches,</p> <p>5 e.g., to identify further academic literature that</p> <p>6 addresses relevant theoretical ethical obligations ..."</p> <p>7 And that:</p> <p>8 "We were limited to professional guidance we could</p> <p>9 identify online. This meant that, in some of our</p> <p>10 answers, we focused primarily on the current</p> <p>11 professional position."</p> <p>12 You say that:</p> <p>13 "Depending on the needs of the Inquiry, [you] are</p> <p>14 prepared to review and revise [your] answers after [you]</p> <p>15 have been granted access to additional (older)</p> <p>16 materials."</p> <p>17 Is that broadly the position as regards where you</p> <p>18 felt there were limitations?</p> <p>19 <b>A. That's right, yes.</b></p> <p>20 Q. Yes. And as far as older materials are concerned, the</p> <p>21 Inquiry did, as I've said, provide some of those to you,</p> <p>22 in particular in relation to consent; is that right?</p> <p>23 <b>A. That's right.</b></p> <p>24 Q. And you've analysed and expressed your views on those</p> <p>25 documents as you saw fit; is that right?</p> <p style="text-align: center;">Page 37</p>                                                                                                                                                                                                                                                                   | <p>1 <b>A. That's correct.</b></p> <p>2 Q. And I think you also make clear there, as we've</p> <p>3 discussed, that you were aware, in compiling the report,</p> <p>4 that it may be that the Inquiry would be in a position</p> <p>5 at a later date to provide you with further materials on</p> <p>6 which your opinion could be sought?</p> <p>7 <b>A. Yes, that's right.</b></p> <p>8 Q. And also, in addition to that, you, I think, would be</p> <p>9 prepared to reconsider, to the extent necessary, any</p> <p>10 expression of opinion that you have given insofar as it</p> <p>11 was necessary based on those additional materials; is</p> <p>12 that correct?</p> <p>13 <b>A. Very much so, yes.</b></p> <p>14 Q. Thank you very much indeed.</p> <p>15 So if I can just set out, as I -- we heard evidence</p> <p>16 from our neurosurgical group on Friday and I will try to</p> <p>17 set out now for your enlightenment, as well as anyone</p> <p>18 who is listening, how I intend to go about taking the</p> <p>19 evidence.</p> <p>20 You've helpfully, as I say, provided to us</p> <p>21 a breakdown of the various different questions that each</p> <p>22 individual in the group was allocated for the first</p> <p>23 draft element of the exercise, so I think I will</p> <p>24 probably try to go initially to the person who drafted</p> <p>25 that.</p> <p style="text-align: center;">Page 39</p>                                                                                                               |
| <p>1 <b>A. That's right, yes.</b></p> <p>2 Q. And also I think you may be selling yourself short in</p> <p>3 that limitations section because you have in fact</p> <p>4 provided a considerable range of materials over quite</p> <p>5 a wide period of time, and I think it's clear to say</p> <p>6 that you have been quite painstaking in making clear</p> <p>7 precisely what the dates are of any materials you were</p> <p>8 relying upon. Was that your intention?</p> <p>9 <b>A. It was indeed, yes, and thank you for the comment.</b></p> <p>10 Q. Thank you. Because I think one of the aspects of your</p> <p>11 report that will become apparent is that, as I think</p> <p>12 this passage highlights, there is a complex regulatory</p> <p>13 landscape and also there is a certain complexity around</p> <p>14 what materials one should rightly have regard to, to</p> <p>15 answer the question as to what was the ethical rule, if</p> <p>16 you like, that applied in a given situation?</p> <p>17 <b>A. That's right, yes.</b></p> <p>18 Q. We'll come on to that in due course, as to the sources</p> <p>19 that might exist. But you were conscious, I think, in</p> <p>20 the way in which you went about your task, that it was</p> <p>21 important that the Inquiry and the Chair of the Inquiry</p> <p>22 be aware as to precisely when certain guidance or</p> <p>23 certain rules applied, because that might have had</p> <p>24 an influence on the way in which you answered particular</p> <p>25 questions. Is that correct?</p> <p style="text-align: center;">Page 38</p> | <p>1 And Professor McNair, you've informed me that you've</p> <p>2 helpfully picked up aspects, if you like, of areas that</p> <p>3 Dr McMillan drafted, in particular in relation to</p> <p>4 consent, because that's an area in which you too have</p> <p>5 an expertise; is that right?</p> <p>6 PROFESSOR MCNAIR: Yes.</p> <p>7 Q. I would -- given what we've already discussed, and your</p> <p>8 distinct roles, it's become apparent even in the</p> <p>9 questions I have asked so far that you both have</p> <p>10 different perspectives on matters. And so if there are</p> <p>11 questions that are asked, as you have done, and you wish</p> <p>12 to direct them to your colleague, please feel free to do</p> <p>13 so.</p> <p>14 Equally, if there are questions where you feel,</p> <p>15 based on your particular experience and expertise, that</p> <p>16 you have something to ask, then please feel free to</p> <p>17 speak up. We're very interested in your different</p> <p>18 perspectives from different backgrounds, which is very</p> <p>19 much one of the reasons why the group was put together</p> <p>20 in the way that it was. So please don't be hesitant, if</p> <p>21 a question is addressed to one of you, if the other has</p> <p>22 something they would feel they would wish to add, please</p> <p>23 feel free to do so.</p> <p>24 One of the aspects of the instruction which I'd just</p> <p>25 like to draw attention to is that in the letter of</p> <p style="text-align: center;">Page 40</p> |

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| <p>1 instruction, we defined something called "the relevant</p> <p>2 period". Do you recall that phrase being used in the</p> <p>3 instruction?</p> <p>4 PROFESSOR HUXTABLE: Yes.</p> <p>5 Q. And for the sake of clarity, "the relevant period" was</p> <p>6 defined as being between 1995 and 2015. The reason</p> <p>7 why -- and as we've already indicated, there are</p> <p>8 temporal aspects to your evidence that are</p> <p>9 significant -- we framed that period as "the relevant</p> <p>10 period" is that's the period from the point at which</p> <p>11 Mr Eljamel started as a consultant neurosurgeon in</p> <p>12 NHS Tayside, that's 1995, running through to 2015, when</p> <p>13 we understand he voluntarily had his name removed from</p> <p>14 the GMC medical register.</p> <p>15 So although this is the period in which we are</p> <p>16 predominantly interested, we also asked you to provide</p> <p>17 evidence to us of ethical matters which were pertinent</p> <p>18 in the succeeding period up to the present day. Did you</p> <p>19 understand that to be the position?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And the reason why we did that was that we are also</p> <p>22 interested in how things have changed subsequent to this</p> <p>23 period, in particular with a view to the Chair's</p> <p>24 obligation to consider possible recommendations for the</p> <p>25 future. Was that your understanding of "the relevant</p> <p style="text-align: center;">Page 41</p>                    | <p>1 already have in your evidence, to tailor it as best you</p> <p>2 can to the audience that's listening, in particular</p> <p>3 a number of interested parties including former patients</p> <p>4 of Mr Eljamel, that would be most appreciated, to the</p> <p>5 extent that you can within the boundaries of talking</p> <p>6 about a complex subject such as this.</p> <p>7 So to turn then to the discussion in your report</p> <p>8 about medical ethics. Could we go to paragraph 2.7,</p> <p>9 please. We'll get on in a moment to talking about the</p> <p>10 different sources of ethical obligations that you tell</p> <p>11 us about slightly before this, but you say in this</p> <p>12 paragraph that:</p> <p>13 "Theoretical ethical obligations primarily derive</p> <p>14 from moral philosophy. Generally, 'ethics' -- and the</p> <p>15 related notions of 'morals' and 'morality' -- refers to</p> <p>16 ideas of the right (as opposed to the wrong) and the</p> <p>17 good (as opposed to the bad). There are various schools</p> <p>18 of ethical thought, which attempt to specify ... which</p> <p>19 is good or right. In doing so, these schools of thought</p> <p>20 are typically directed towards answering one (or both)</p> <p>21 of two questions: 'What should I do?' and 'How should</p> <p>22 I live (or: Who should I be)?' Some theories hold that</p> <p>23 the answers to these questions will be universal, and</p> <p>24 therefore apply to everyone, everywhere; however, others</p> <p>25 suggest that the answers will be relative to particular</p> <p style="text-align: center;">Page 43</p> |
| <p>1 period" and what time period overall we were interested</p> <p>2 in?</p> <p>3 <b>A. Yes. Yes, it is.</b></p> <p>4 Q. And indeed that wouldn't exclude, and it hasn't excluded</p> <p>5 in your evidence, the possibility of looking at the</p> <p>6 period before 1995, because you have drawn our</p> <p>7 attention -- despite your self-critical comments in the</p> <p>8 limitations section, you have in fact drawn our</p> <p>9 attention to a number of potential sources or sources of</p> <p>10 ethical guidance and rules which pre-date 1995, because</p> <p>11 you consider them also to be of relevance to the Chair's</p> <p>12 consideration of these matters. Is that right?</p> <p>13 <b>A. That's right.</b></p> <p>14 Q. Thank you very much.</p> <p>15 One other aspect that I would just like to refer to,</p> <p>16 which I also did with the neurosurgical group, although</p> <p>17 I think it was slightly more challenging for them to</p> <p>18 achieve it, is that you should be aware that there are</p> <p>19 many people both in the room where I am at the moment</p> <p>20 and also listening to our livestream online who will be</p> <p>21 very interested in the matters which you cover.</p> <p>22 It is the case that there are a number of areas</p> <p>23 where your analysis of things is complex and your</p> <p>24 analysis of matters you've been asked about touches on</p> <p>25 technical concepts. If you could try, as I note you</p> <p style="text-align: center;">Page 42</p> | <p>1 people, places, or times."</p> <p>2 This is a good example -- I'll just set out -- this</p> <p>3 is a passage which Professor Huxtable answered, so</p> <p>4 I'll direct the questions to him; but, Professor McNair,</p> <p>5 if there are any aspects to which you would like to</p> <p>6 contribute, please feel absolutely free to do so.</p> <p>7 Is it correct to say that morality is a key</p> <p>8 fundamental concept in medical ethics?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And in trying to create and obey ethical rules, are we</p> <p>11 trying to do what is considered to be morally right?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And morally good?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. And when looking at schools of thought about what is</p> <p>16 ethical, or morally right and good, and trying to work</p> <p>17 out if they apply in a given situation, is it correct to</p> <p>18 say that they may do where they apply to be universally</p> <p>19 agreed, but may not if they are not or apply only to</p> <p>20 particular types of people?</p> <p>21 <b>A. Yes, I think that's fair.</b></p> <p>22 Q. And I think one of the things that really the entirety</p> <p>23 of your report is about is trying to work out, in</p> <p>24 response to specific questions, which were generally</p> <p>25 along the lines of "What are the ethical rules that</p> <p style="text-align: center;">Page 44</p>                                                                                                                                                                                                |

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| <p>1 apply in this situation?", you have wrestled with</p> <p>2 various different sources of evidence to try to work out</p> <p>3 what the right answer to that is; is that correct?</p> <p>4 <b>A. That's right.</b></p> <p>5 Q. And I think, as I understand the analysis -- please tell</p> <p>6 me if I'm wrong -- that one needs to take care when</p> <p>7 looking at some of those sources, in particular academic</p> <p>8 literature, because some academic literature may promote</p> <p>9 or describe ethical rules that are either controversial,</p> <p>10 and therefore not universally accepted, or ethical rules</p> <p>11 that only apply in very specific situations; is that</p> <p>12 correct?</p> <p>13 <b>A. That's correct.</b></p> <p>14 Q. And in contradistinction to that, there are other</p> <p>15 sources of ethical rules that are universal, that are</p> <p>16 not controversial, and therefore are perhaps a firmer</p> <p>17 basis upon which to answer a question in any given</p> <p>18 situation, "What are the ethical rules that apply to</p> <p>19 this situation?" Is that, broadly speaking, correct?</p> <p>20 <b>A. Yes, I think the concepts we've got in play here are</b></p> <p>21 <b>a distinction between, on the one hand, that which has</b></p> <p>22 <b>authority; on the other hand, that which might have</b></p> <p>23 <b>influence; and I'm going to add a third hand,</b></p> <p>24 <b>controversially: that which, at most, is of interest.</b></p> <p>25 <b>That which is authoritative might be universal, might be</b></p> <p style="text-align: center;">Page 45</p>                                                                                                                                                     | <p>1 subject matter we're talking about. So, for example, in</p> <p>2 the context of what we're looking at here, you have</p> <p>3 helped us by looking at generally applicable medical</p> <p>4 ethical rules, you have helped us by looking at a range</p> <p>5 of different academic literature, and you have done so</p> <p>6 and been careful to point out where that literature or</p> <p>7 source of potential ethical rules is specific to the</p> <p>8 field of neurosurgery.</p> <p>9 The reason, I think -- please comment on this if you</p> <p>10 think this is wrong -- that that body of material may be</p> <p>11 a more authoritative guidance as to what ethical rules</p> <p>12 existed or should have existed is because of the fact</p> <p>13 that they are created and discussed in the particular</p> <p>14 context in which we are discussing them. Is that</p> <p>15 an accurate interpretation of why one source might be</p> <p>16 more authoritative than another in this field?</p> <p>17 <b>A. Yes. Yes, I would agree with that. Relevance is</b></p> <p>18 <b>certainly very important.</b></p> <p>19 Q. Because we will come to some of these sources in due</p> <p>20 course, but some of the sources, for example, come from</p> <p>21 general medical discussion and general medical</p> <p>22 background, which, we've already heard evidence from</p> <p>23 representatives of the GMC, necessarily requires to be</p> <p>24 general in nature; would that be fair?</p> <p>25 <b>A. Yes, yes.</b></p> <p style="text-align: center;">Page 47</p>                    |
| <p>1 <b>particular, but that's the stuff we should be listening</b></p> <p>2 <b>to; indeed, we must be listening to. The other stuff is</b></p> <p>3 <b>more of a question of relativity and "perhaps".</b></p> <p>4 Q. And the third concept that you mentioned was?</p> <p>5 <b>A. That of interest. So if I just briefly flesh this out.</b></p> <p>6 <b>If we think in terms of what I must do, in terms of</b></p> <p>7 <b>an authoritative source, certainly law would fall into</b></p> <p>8 <b>that category, but so might the rules set down by the</b></p> <p>9 <b>regulator of the medical profession. If one wishes to</b></p> <p>10 <b>continue as a doctor, one must listen to the regulator.</b></p> <p>11 <b>Those are "musts": those are authoritative.</b></p> <p>12 <b>In the middle, you have areas of influence, where</b></p> <p>13 <b>there may be, for example, a medical association like</b></p> <p>14 <b>the British Medical Association. It doesn't as such</b></p> <p>15 <b>have authority as such over doctors, but it certainly</b></p> <p>16 <b>says influential things that indeed our judges listen to</b></p> <p>17 <b>as well. Whereas the academic literature, some of it</b></p> <p>18 <b>might be influential, but some of it might, at most, be</b></p> <p>19 <b>something to ponder, scratch one's head over, but it</b></p> <p>20 <b>doesn't as such have to influence your daily practice.</b></p> <p>21 Q. Thank you, that's helpful.</p> <p>22 And one other aspect of this which might be of</p> <p>23 relevance in determining whether a potential source of</p> <p>24 ethical rules should be deemed to fall into any one of</p> <p>25 these categories is its relevance to the particular</p> <p style="text-align: center;">Page 46</p> | <p>1 Q. Because if the GMC is writing guidance which applies to</p> <p>2 all doctors, if it were to be specific, it would be too</p> <p>3 unwieldy to be able to be used; wouldn't that be fair?</p> <p>4 <b>A. That is fair indeed.</b></p> <p>5 Q. So therefore what the GMC guidance does, it has -- it's</p> <p>6 very high on authority, because it comes from the</p> <p>7 regulator, but it doesn't seek to impose specific rules,</p> <p>8 for example, relating to how a neurosurgeon should carry</p> <p>9 out a particular procedure; is that right?</p> <p>10 <b>A. I think that's right.</b></p> <p>11 Q. But one might find guidance on the fundamental question</p> <p>12 of "What is the ethical rule that applies in this</p> <p>13 neurosurgical situation?" from a body of less authority</p> <p>14 but of more specific relevance, and you've told us about</p> <p>15 some neurosurgical bodies that may provide contemporary</p> <p>16 evidence of what, in the specific neurosurgical context,</p> <p>17 might be deemed to be the applicable rule?</p> <p>18 <b>A. That's right, yes.</b></p> <p>19 Q. And even although those bodies are not the regulator or</p> <p>20 they're not the law, those bodies may, I think, provide</p> <p>21 useful guidance as to the more specific rules which may</p> <p>22 apply, because their rules and their guidance have been</p> <p>23 created within the specific context of neurosurgery?</p> <p>24 <b>A. Yes, correct.</b></p> <p>25 Q. And as your report points out, it's important to</p> <p style="text-align: center;">Page 48</p> |

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| <p>1 understand, when determining what the ethical rules</p> <p>2 might be, as to what context in which one is searching</p> <p>3 for ethical rules. Because the ethical rules that apply</p> <p>4 in the extreme position of neurosurgery, which tends to</p> <p>5 be complex, serious, difficult to understand, these may</p> <p>6 not be the same ethical rules that apply in other fields</p> <p>7 where those almost automatic conditions do not apply.</p> <p>8 Is that fair?</p> <p>9 <b>A. That is entirely fair. And I think Professor McNair has</b></p> <p>10 <b>further thoughts on this topic actually.</b></p> <p>11 Q. I'd be very interested to hear them, thank you.</p> <p>12 PROFESSOR MCNAIR: Thanks.</p> <p>13 Listening to this discussion, I just want to</p> <p>14 highlight that idea of universality and the authority</p> <p>15 that the GMC, for example, as a regulator applies. The</p> <p>16 added specificity of a neurosurgical organisation does</p> <p>17 not negate the broader requirement set out by the GMC,</p> <p>18 for example.</p> <p>19 One way to think about this might be around how one</p> <p>20 might go about operationalising what is more general</p> <p>21 ethical rules to a specific context. So in that way,</p> <p>22 they wouldn't be an additional rule or -- you know, and</p> <p>23 we can talk about what we mean by a "rule" -- but it</p> <p>24 would be the way one would apply that within this</p> <p>25 particular context.</p> <p style="text-align: center;">Page 49</p>                                               | <p>1 in your report I think you provide to us a huge list of</p> <p>2 different bodies that might provide different levels of</p> <p>3 guidance that be would relevant to working out ethical</p> <p>4 rules, and indeed you provide some information about</p> <p>5 specialist associations. One that we've heard about, by</p> <p>6 way of example, in the field of neurosurgery, I think</p> <p>7 would be the Society for British Neurological Surgeons.</p> <p>8 Is that correct, Professor McNair?</p> <p>9 <b>A. Yes, that would be correct.</b></p> <p>10 Q. So that would be the sort of body you're talking about</p> <p>11 that could take the general guidance from, say, a body</p> <p>12 like the regulator, the GMC, or a royal college, and</p> <p>13 then could make it more specific in order to try to make</p> <p>14 it easier to understand for a neurosurgeon as to what</p> <p>15 specific rules might apply to him or her?</p> <p>16 <b>A. Yes, that's correct.</b></p> <p>17 MR DAWSON: Okay. Sir, that would be a convenient moment</p> <p>18 for a break.</p> <p>19 THE CHAIR: Yes. 20 minutes?</p> <p>20 MR DAWSON: That would be fine.</p> <p>21 THE CHAIR: Gentlemen, we'll break there for about</p> <p>22 20 minutes and resume again just after 3.15.</p> <p>23 As I'm sure you appreciate, we've reached a formal</p> <p>24 stage in which you are now in the middle of giving</p> <p>25 evidence, and to keep matters regular, we do ask that,</p> <p style="text-align: center;">Page 51</p> |
| <p>1 Q. Understood. So what you're pointing out there is if you</p> <p>2 have a rule which comes from the GMC, which is a very</p> <p>3 authoritative body -- perhaps the most authoritative</p> <p>4 body -- for a doctor, one can't evade applying that rule</p> <p>5 to one's professional practice because it's too vague</p> <p>6 and doesn't apply to the specific situation. One has</p> <p>7 an obligation to take that rule, to take it seriously,</p> <p>8 and to challenge oneself as to how it should be applied</p> <p>9 to the specific situation. Is that fair?</p> <p>10 <b>A. I think that's fair. And that -- it demonstrates the</b></p> <p>11 <b>value of some of these specialty organisations, because</b></p> <p>12 <b>they fill a gap in operationalising this evidence that</b></p> <p>13 <b>is particular to the group.</b></p> <p>14 <b>I apologise for the noise. I might just close the</b></p> <p>15 <b>window. Excuse me for a moment.</b></p> <p>16 Q. Thank you. (Pause)</p> <p>17 <b>A. They are sadly drilling the road outside. I hope it</b></p> <p>18 <b>doesn't carry too far.</b></p> <p>19 Q. Okay. We've had some background noise at this end as</p> <p>20 well on various days, which it tends to be -- seems to</p> <p>21 be quite quiet today, but it can happen. So that's not</p> <p>22 a problem.</p> <p>23 So in relation -- you mentioned there something</p> <p>24 which in a different context we have heard some evidence</p> <p>25 about already, which is a specialist association. And</p> <p style="text-align: center;">Page 50</p> | <p>1 outwith your own number, obviously, you don't discuss</p> <p>2 your evidence with anyone else in the meantime.</p> <p>3 I look forward to seeing you in 20 minutes' time.</p> <p>4 Thank you.</p> <p>5 PROFESSOR HUXTABLE: Thank you.</p> <p>6 PROFESSOR MCNAIR: Thank you.</p> <p>7 (2.57 pm)</p> <p>8 (A short break)</p> <p>9 (3.19 pm)</p> <p>10 THE CHAIR: Yes, can we have the witnesses back, please.</p> <p>11 Gentlemen, good afternoon. I'll hand over to</p> <p>12 Mr Dawson.</p> <p>13 MR DAWSON: Thank you, sir.</p> <p>14 Can you see and hear me okay?</p> <p>15 PROFESSOR HUXTABLE: Yes.</p> <p>16 PROFESSOR MCNAIR: Yes.</p> <p>17 Q. Great, thank you.</p> <p>18 We were talking about some of the important concepts</p> <p>19 and approaches to determining where one might find</p> <p>20 ethical rules in any given situation. In your report,</p> <p>21 could we go to paragraph 2.12, please. You tell us here</p> <p>22 some important context, I think, where you say:</p> <p>23 "Within the field of medical ethics, the four</p> <p>24 principles approach is particularly well-known. This</p> <p>25 approach -- which is also known as 'principlism' -- was</p> <p style="text-align: center;">Page 52</p>                                                                                                                                                                                                                                                                                    |

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| <p>1 developed in the USA and has been adopted by</p> <p>2 professionals in many settings and countries. According</p> <p>3 to this approach, the aim should be to strike</p> <p>4 an appropriate balance between four principles:</p> <p>5 "Respect for autonomy (self-determination,</p> <p>6 self-rule): the obligation to respect the</p> <p>7 decision-making capacities of those persons who are</p> <p>8 capable of making decisions. Some, such as Gillon in</p> <p>9 an article from 2003, have suggested that this should be</p> <p>10 the primary principle in contemporary medical ethics.</p> <p>11 Professional organisations have noted how the principles</p> <p>12 has indeed gained prominence in recent decades: for</p> <p>13 example, the British Medical Association (BMA), the</p> <p>14 doctors' trade union, noted in 1988 that 'Society is</p> <p>15 moving away from paternalism towards partnership'</p> <p>16 between doctors and patients, and in 1993 it asserted</p> <p>17 the importance of the principle for respect for</p> <p>18 autonomy, which it saw as underpinning the need to</p> <p>19 obtain patients' consent.</p> <p>20 "Non-maleficence: the obligation to avoid causing</p> <p>21 harm, and therefore to protect and safeguard patients.</p> <p>22 "Beneficence: the obligation to provide benefits and</p> <p>23 to balance benefits against risk."</p> <p>24 And fourthly:</p> <p>25 "Justice: obligations to aim for the fair</p> <p style="text-align: center;">Page 53</p>                              | <p>1 I think you've called it -- and suggests that it is</p> <p>2 important that there be a balance, you mentioned that</p> <p>3 principlism "is particularly well-known". Could we take</p> <p>4 that to mean that the approach that's being advocated</p> <p>5 here is not a fringe belief of medical ethics but is</p> <p>6 a sort of staple, if you like, of the way ethical</p> <p>7 questions should be approached?</p> <p>8 <b>A. That's fair. So a few remarks, if I may.</b></p> <p>9 <b>On the one hand, counsel occasionally used the</b></p> <p>10 <b>phrase "ethical rules", and that might be something we</b></p> <p>11 <b>want to finesse or even nuance, because it's an open</b></p> <p>12 <b>question whether these amount to rules as such; they're</b></p> <p>13 <b>more like principles or guidelines, is one way of</b></p> <p>14 <b>accounting for them.</b></p> <p>15 <b>The second thing to say is with regard to the reach</b></p> <p>16 <b>of this approach. So we go back to that earlier</b></p> <p>17 <b>distinction we discussed between the universal and the</b></p> <p>18 <b>particular, and by that we're mainly referring to: is</b></p> <p>19 <b>this an approach that applies to everyone everywhere?</b></p> <p>20 <b>In other words, is this an approach to the world at</b></p> <p>21 <b>large, as opposed to other approaches that might be for</b></p> <p>22 <b>parts of the world or particular people in the world?</b></p> <p>23 <b>It's for particular people in the world,</b></p> <p>24 <b>specifically doctors. The authors themselves think it</b></p> <p>25 <b>is a universal approach. So it could be a doctor in an</b></p> <p style="text-align: center;">Page 55</p> |
| <p>1 distribution of benefits and risks.</p> <p>2 "These are principles, which amount to general</p> <p>3 guides that leave room for the judgment of the</p> <p>4 individual clinician or a team of clinicians. The</p> <p>5 authors acknowledge that there may be situations in</p> <p>6 which the principles conflict. In such situations, they</p> <p>7 suggest that a balance should be struck between the</p> <p>8 principles, through a process of 'reflective</p> <p>9 equilibrium'. That process involves moving</p> <p>10 back-and-forth between the principles, background</p> <p>11 ethical theories (like those described in 2.8 to 2.10),</p> <p>12 and particular moral beliefs and judgments, in an effort</p> <p>13 to achieve coherence between them by bringing them all</p> <p>14 into balance."</p> <p>15 So is it correct to say -- we're going to try to</p> <p>16 take care, I think, to make sure that in answering</p> <p>17 questions in your evidence about what ethical rules</p> <p>18 might exist in a certain situation -- I think we've</p> <p>19 already established, to be clear, that one has to be</p> <p>20 cautious about the sources one is looking at and one has</p> <p>21 to be cautious about the time period that one might be</p> <p>22 looking at. Is that a fair starting point?</p> <p>23 PROFESSOR HUXTABLE: That's right, yes.</p> <p>24 Q. So as far as we are looking at this approach which</p> <p>25 identifies these four principles -- "principlism",</p> <p style="text-align: center;">Page 54</p> | <p>1 African country or a doctor in the US, where it</p> <p>2 originated, or it could be doctors here. There are some</p> <p>3 critics, some academic critics, so people based in</p> <p>4 universities, who think that actually this isn't the</p> <p>5 right universal approach, it doesn't speak to all</p> <p>6 cultures.</p> <p>7 <b>But in terms of your question about influence and</b></p> <p>8 <b>reach, I think it's fair to say certainly my personal</b></p> <p>9 <b>professional experience has been: this is the approach</b></p> <p>10 <b>that most practising doctors to whom I speak about</b></p> <p>11 <b>ethics, and indeed most undergraduate doctors in our</b></p> <p>12 <b>culture at large, the UK at large, this is the one</b></p> <p>13 <b>they're most familiar with. In fact, one might say --</b></p> <p>14 <b>we say on occasion that if a medical graduate nowadays</b></p> <p>15 <b>emerges with nothing else of medical ethics, they will</b></p> <p>16 <b>at least emerge with a basic sense of these four</b></p> <p>17 <b>principles.</b></p> <p>18 <b>But I think my colleague has himself gone through</b></p> <p>19 <b>medical training and he might have remarks on this.</b></p> <p>20 Q. Thank you.</p> <p>21 PROFESSOR MCNAIR: Well, I'm interested in this idea of</p> <p>22 reach and permeation of this concept into general</p> <p>23 knowledge. And I'll just give the anecdote that I sit</p> <p>24 on the undergraduate admissions programme, so we</p> <p>25 interview pupils who are maybe 17 years old about</p> <p style="text-align: center;">Page 56</p>                                                                                                           |

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| <p>1 different issues around medicine with a view of studying</p> <p>2 medicine, and they regularly explain to me the four</p> <p>3 principles. So if we're considering how far this has</p> <p>4 become general knowledge within the population, for</p> <p>5 a 17-year-old pupil who is interested in medicine but</p> <p>6 had no training, they understand this.</p> <p>7 Q. Okay.</p> <p>8 So the "reflective equilibrium" that you've set out,</p> <p>9 which is a process -- given the fact that the different</p> <p>10 considerations involved in each of the four principles</p> <p>11 may gravitate towards a certain course being more</p> <p>12 ethical than another course in a particular situation,</p> <p>13 what you've suggested the correct approach might be is</p> <p>14 to go through a process of "reflective equilibrium",</p> <p>15 which, as I understand it, would be a balancing of the</p> <p>16 various different considerations which would arise if</p> <p>17 one were to consider a given situation as set against</p> <p>18 these four principles. Is that right?</p> <p>19 PROFESSOR HUXTABLE: That's right, and I can give you a very</p> <p>20 quick illustration of that.</p> <p>21 I think it's fair to say that if one thinks</p> <p>22 historically -- and in terms of the popular depiction of</p> <p>23 medical ethics, one can go all the way back to Ancient</p> <p>24 Greece and the Hippocratic Oath, and there the first</p> <p>25 instruction really is: first do no harm. And so that's</p> <p style="text-align: center;">Page 57</p>                  | <p>1 <b>may be of interest to them, it may have a degree of</b></p> <p>2 <b>influence, because we know that a great many doctors</b></p> <p>3 <b>have learnt this approach, and indeed the approach</b></p> <p>4 <b>influences authoritative positions, but the approach in</b></p> <p>5 <b>and of itself is not strictly authoritative. But other</b></p> <p>6 <b>than that caveat, I would say yes.</b></p> <p>7 Q. So in trying to work out whether a certain course should</p> <p>8 be followed, whether it should be ethical, doctors</p> <p>9 should be considering the sorts of things that are</p> <p>10 considered here, which is: "Am I giving enough respect</p> <p>11 to the patient's autonomy?", "Is what I am doing going</p> <p>12 to cause too much harm?", "Is what I am doing likely to</p> <p>13 have a benefit to the patient?", "Is what I am doing</p> <p>14 just?" Are these considerations which should be part of</p> <p>15 a doctor's decision-making process?</p> <p>16 <b>A. Yes, on the account of principlism, certainly.</b></p> <p>17 Q. Perhaps Professor McNair may be best placed to answer</p> <p>18 this question, in the context of some evidence he's</p> <p>19 already given.</p> <p>20 That rise to the top, if you like, of the autonomy</p> <p>21 principle being the one which is in modern ethics</p> <p>22 dominant, you've referred there to an article from</p> <p>23 Gillon from 2003. This was an area which you described</p> <p>24 earlier, Professor McNair, as one of particular interest</p> <p>25 to you, as I understand it. And therefore could you try</p> <p style="text-align: center;">Page 59</p> |
| <p>1 this idea of non-maleficence, not bringing harm to</p> <p>2 patients, and indeed attempting to address harm wherever</p> <p>3 one can. That was probably the dominant ethic at that</p> <p>4 time in Ancient Greece.</p> <p>5 Come all the way to the present day, and we have</p> <p>6 colleagues like Professor Raanan Gillon there suggesting</p> <p>7 that nowadays -- on his account, certainly, and some</p> <p>8 people's account, plural -- it's respect for autonomy</p> <p>9 that is the dominant ethic these days. But we could say</p> <p>10 the same -- at a given time, it might be in a particular</p> <p>11 situation one or other the principles comes to the fore.</p> <p>12 But the idea from the authors, at least, is that we try</p> <p>13 to balance them all.</p> <p>14 Q. Thank you. And does it therefore follow, if one</p> <p>15 subscribes to this well-known approach, that it should,</p> <p>16 theoretically at least, be necessary for a doctor who</p> <p>17 has taken a certain course or a decision, done</p> <p>18 something, provided some advice, that he</p> <p>19 theoretically -- he or she -- should be able to justify</p> <p>20 how that decision was reached in terms of the reflective</p> <p>21 equilibrium?</p> <p>22 <b>A. In theory, yes, if they are attentive to the academic</b></p> <p>23 <b>literature, because it is of course the academic</b></p> <p>24 <b>literature. So it does not -- if we go back to that</b></p> <p>25 <b>other set of concepts we discussed, it's something that</b></p> <p style="text-align: center;">Page 58</p> | <p>1 to help us with that question as to when that transition</p> <p>2 took place, if it's a transition that is -- I have a</p> <p>3 feeling that that might be a very complicated question</p> <p>4 to answer. But if you could try to help us with that,</p> <p>5 that would be very helpful.</p> <p>6 PROFESSOR MCNAIR: It is. I mean, when you're dealing with</p> <p>7 a given reference, I would refer you back to Richard for</p> <p>8 that one, because he specifically wrote that section.</p> <p>9 But in general terms -- well, why don't you go ahead</p> <p>10 first and I'll jump in.</p> <p>11 Q. Thank you.</p> <p>12 PROFESSOR HUXTABLE: If you're happy for me to do so.</p> <p>13 Q. Absolutely. Please do.</p> <p>14 PROFESSOR HUXTABLE: Yes, thank you.</p> <p>15 So accounts vary, but broadly, on my understanding</p> <p>16 of talking to people working in the broad field of</p> <p>17 medical ethics and indeed historians of medical ethics</p> <p>18 in this country, it's around about the 1960s/1970s we</p> <p>19 start to see the concept really coming to the fore.</p> <p>20 I've spoken with American philosophers who talk about</p> <p>21 linking it to civil rights movements and the like in the</p> <p>22 US. But if we come over here, certainly you can see it</p> <p>23 in the academic literature, it's growing, and then the</p> <p>24 professionals, the professional organisations, really</p> <p>25 start to wrestle with it in -- certainly by the 1990s,</p> <p style="text-align: center;">Page 60</p>                                                                                                        |

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| <p>1 but definitely in the 1980s as well.</p> <p>2 That said, a quick side note: I did, on a separate</p> <p>3 piece of work, read an account from a lawyer commenting</p> <p>4 on surgery in 1915, so I'm going back over 100 years</p> <p>5 ago, and they were talking about the prominence of</p> <p>6 consent. So this is not an entirely new concept but its</p> <p>7 prominence has risen, certainly over the last four,</p> <p>8 five, six decades.</p> <p>9 PROFESSOR MCNAIR: Just to add then, if we consider the idea</p> <p>10 of paternalism or -- as a concept, this would be</p> <p>11 a medical professional typically making a decision on</p> <p>12 behalf of a patient, which is in many ways the anathema</p> <p>13 of autonomy in its classic form: paternalistic</p> <p>14 decision-making would completely remove somebody's</p> <p>15 autonomy -- we start to see the sort of language of</p> <p>16 "shared decision-making" start to appear in the very</p> <p>17 early '80s. So that would be kind of -- the kind of</p> <p>18 balance with your timeline of ideas in the '60s and '70s</p> <p>19 that then start to become the earlier concept of "shared</p> <p>20 decision-making" in the early to mid-'80s.</p> <p>21 Q. So just to flesh out some of those concepts that would</p> <p>22 be helpful here, I think, for us to understand and to</p> <p>23 put them into their timeframe.</p> <p>24 What you've talked about there is something called</p> <p>25 "shared decision-making". And I know in some of the</p> <p style="text-align: center;">Page 61</p>                                                 | <p>1 <b>in the middle of that, which is a recognition that both</b></p> <p>2 <b>patients and professionals have useful skills to bring</b></p> <p>3 <b>to the situation to have a decision together. And it</b></p> <p>4 <b>has certain components, which I can either go into now</b></p> <p>5 <b>or, as you say, later, in the shared decision-making</b></p> <p>6 <b>discussion.</b></p> <p>7 Q. We'll come back -- we're still at the stage of dealing</p> <p>8 with some of the important basic concepts. We'll</p> <p>9 definitely come back to that later, Professor.</p> <p>10 There's an aspect -- you've mentioned paternalism,</p> <p>11 and just to contextualise the time and to build a little</p> <p>12 on what Professor Huxtable has already told us about the</p> <p>13 evolution of respect for autonomy as being the foremost</p> <p>14 principle in the "four principles" theory.</p> <p>15 We heard some evidence on Friday from our</p> <p>16 neurosurgical group and we -- I asked some questions</p> <p>17 about something that appeared in their report, which</p> <p>18 you've not seen, which was to do with what were</p> <p>19 described as "yellow flags". I'm just putting this into</p> <p>20 context so you understand. Yellow flags were</p> <p>21 effectively things that might influence advice given by</p> <p>22 a doctor that were more psychosocial in nature, rather</p> <p>23 than being traditionally just related to the procedure</p> <p>24 that might be being proposed. I'm simply explaining</p> <p>25 that for context.</p> <p style="text-align: center;">Page 63</p> |
| <p>1 later sections I think that you were responsible for,</p> <p>2 Professor McNair --</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. -- you use the concept -- you call it "SDM", "shared</p> <p>5 decision-making". Could you tell us broadly what that</p> <p>6 is, and how it plays a part in these concepts that we're</p> <p>7 discussing, these principles that we're discussing?</p> <p>8 <b>A. Yes. So there is no unified definition of "shared</b></p> <p>9 <b>decision-making". In the report you'll see, I think,</b></p> <p>10 <b>the last significant systematic review of the idea</b></p> <p>11 <b>identified 161 or thereabout different sort of ways of</b></p> <p>12 <b>characterising it. So I can't give you a unified</b></p> <p>13 <b>definition because one doesn't exist. But I think it</b></p> <p>14 <b>might be helpful to describe some of the other extremes</b></p> <p>15 <b>and then think a little bit about what -- the idea of</b></p> <p>16 <b>"shared decision-making" fits in the middle.</b></p> <p>17 I've already described paternalism, which, at one</p> <p>18 extreme, doctors make decisions for patients. Academics</p> <p>19 do describe the opposite situation, which is sometimes</p> <p>20 referred to as "consumerism", which is where doctors are</p> <p>21 excluded from decision-making and patients would choose</p> <p>22 wholly upon themselves what treatment they wanted to</p> <p>23 take forward, based on their knowledge and understanding</p> <p>24 and their own research.</p> <p>25 And the idea of shared decision-making sort of fits</p> <p style="text-align: center;">Page 62</p> | <p>1 But I asked a question whether a more</p> <p>2 patient-focused attitude within the neurosurgical field</p> <p>3 was one that was prevalent in the period that we are</p> <p>4 looking at from 1995 onwards. And one of the</p> <p>5 neurosurgeons, who was a consultant at that time and</p> <p>6 a member of the expert group, said:</p> <p>7 "I think we were very much of the time -- at that</p> <p>8 time ..."</p> <p>9 Meaning the beginning of the relevant period:</p> <p>10 "... that the patients were involved in the</p> <p>11 decision-making process. The age of paternalism had</p> <p>12 gone. So patients were involved, we would discuss what</p> <p>13 the risks of a particular procedure were, what the</p> <p>14 benefits were, what the alternative -- ... I can't [now]</p> <p>15 say ... whether I ... recall whether [it] was by</p> <p>16 statute, but that was what the practice was ... You</p> <p>17 know, these are things that are important to patients."</p> <p>18 So from a neurosurgeon's point of view, a consultant</p> <p>19 at the time in the period, his position was that by 1995</p> <p>20 the age of paternalism had gone, as Professor McNair has</p> <p>21 helpfully described what that was, and we were in</p> <p>22 a position where patients were routinely involved in</p> <p>23 decision-making.</p> <p>24 Does that description of the particular sort of</p> <p>25 neurosurgery fit in with the broad timeline of the</p> <p style="text-align: center;">Page 64</p>                                                                                         |

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| <p>1 emergence of the respect for autonomy principle as the</p> <p>2 foremost one that you've given us, Professor Huxtable?</p> <p>3 PROFESSOR HUXTABLE: I think so. I might need to consult</p> <p>4 one of the more specific documents that pertains to</p> <p>5 neurosurgeons. And one of the things colleagues who</p> <p>6 have access to the report will note is that there is</p> <p>7 a good number of materials for doctors generally, and</p> <p>8 indeed for surgeons generally. We found fewer</p> <p>9 distinctly ethical materials, containing ethical</p> <p>10 obligations, for neurosurgeons specifically.</p> <p>11 The main document that we were able to find that</p> <p>12 seemed to be most useful to the variety of questions</p> <p>13 before the Inquiry was a document from the World</p> <p>14 Federation of Neurosurgical Societies, and that was</p> <p>15 a document to which a British organisation and</p> <p>16 a European neurosurgery organisation contributed, but</p> <p>17 this was a global statement. And I think we're just</p> <p>18 going to look for it to see if we can find where in that</p> <p>19 it makes any reference to autonomy. My --</p> <p>20 Q. Professor --</p> <p>21 A. Yes.</p> <p>22 Q. -- I'm planning on taking you to that document very soon</p> <p>23 indeed.</p> <p>24 A. Oh.</p> <p>25 Q. So you're one step ahead of me. But we will look at</p> <p style="text-align: center;">Page 65</p> | <p>1 Professor McNair, on shared decision-making, before</p> <p>2 I move away from this.</p> <p>3 You contrasted the extremes of paternalism and</p> <p>4 consumerism and suggested, I think, that what we're</p> <p>5 trying to achieve is something of a balance in between.</p> <p>6 That was, I think, to do with it not being deemed to be</p> <p>7 ethically preferable for the doctor to make the</p> <p>8 decision, but equally not to be ethically preferable for</p> <p>9 the responsibility for decision-making to be completely</p> <p>10 handed over to the patient.</p> <p>11 Are those the two extremes that we're seeking to</p> <p>12 avoid, and trying to get somewhere -- a balance in the</p> <p>13 middle? Is that fair?</p> <p>14 PROFESSOR MCNAIR: Well, if we give a little window into</p> <p>15 what we're going to discuss later.</p> <p>16 Q. Yes.</p> <p>17 A. So one of the -- some of the ways we can think about</p> <p>18 shared decision-making is by considering the patient's</p> <p>19 reasoning, based on their cultures, values, experience,</p> <p>20 skills and knowledge, and then the practitioner's</p> <p>21 reasoning, also based on their cultures, values and</p> <p>22 skills, but also their professional training, as well as</p> <p>23 the broader multi-disciplinary team.</p> <p>24 And when you have a process which excludes one or</p> <p>25 either of those, you are missing an important part of</p> <p style="text-align: center;">Page 67</p>                                        |
| <p>1 various aspects of that document, because I think it was</p> <p>2 quite apparent -- please correct me if I'm wrong -- that</p> <p>3 in your search to assist the Chair of the Inquiry to</p> <p>4 find specific sources of neurosurgical guidance that</p> <p>5 would answer our specific neurosurgical questions, you</p> <p>6 found that document to be of particular help. Is that</p> <p>7 right?</p> <p>8 A. That's right. And notably, given the relevant period,</p> <p>9 that document was published in 2007.</p> <p>10 Q. Indeed.</p> <p>11 A. So it may have been a flaw in our search strategy or the</p> <p>12 limitations we discussed earlier, but that seemed to be</p> <p>13 the prominent one, which is a good 12 years after the</p> <p>14 period begins.</p> <p>15 Q. Thank you very much.</p> <p>16 THE CHAIR: Is it a Statement of Ethics from the -- is it</p> <p>17 called the Statement of Ethics?</p> <p>18 MR DAWSON: I think it may be, yes, sir. There is a table</p> <p>19 that's produced helpfully in the report --</p> <p>20 THE CHAIR: Yes.</p> <p>21 MR DAWSON: -- with various important components lifted from</p> <p>22 that document, and we'll go through that table</p> <p>23 imminently.</p> <p>24 THE CHAIR: All right.</p> <p>25 MR DAWSON: Just on one matter that you raised,</p> <p style="text-align: center;">Page 66</p>                                                                                    | <p>1 a reasoning process that may help make good decisions,</p> <p>2 and it's the interaction and combination of those</p> <p>3 different perspectives that gives the sort of power to</p> <p>4 the idea of shared decision-making.</p> <p>5 Q. And that's the goal; is that right? That would be the</p> <p>6 goal from an ethical perspective?</p> <p>7 A. From an ethical perspective, yes, that would be the</p> <p>8 goal. And in fact when we consider the authoritative</p> <p>9 guidance that exists currently, that is what it states</p> <p>10 as, you know, where we are in 2026.</p> <p>11 Q. Indeed.</p> <p>12 Interestingly -- or, well, from my point of view</p> <p>13 interestingly -- the member of the group with whom we</p> <p>14 discussed this didn't like the expression "shared</p> <p>15 decision-making" because he didn't think it adequately</p> <p>16 reflected the balance that you've described,</p> <p>17 Professor McNair. He called it "supported</p> <p>18 decision-making" in order to try to describe what he</p> <p>19 thought the correct balance was.</p> <p>20 Do you understand that perspective, in the sense</p> <p>21 that I think what he was trying to say is that "shared</p> <p>22 decision-making" might involve too much of an abdication</p> <p>23 of responsibility to the patient, and that it should be</p> <p>24 supported, as I think you've said, by having regard to</p> <p>25 the surgeon's responsibilities and technical knowledge?</p> <p style="text-align: center;">Page 68</p> |

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| <p>1 A. Yes, and I keep an open mind as to what labels people<br/>2 want to apply to this sort of process because, as<br/>3 I said, there's no unified definition of "shared<br/>4 decision-making". There is a general sort of backing of<br/>5 "shared decision-making" as a phrase. But I would need<br/>6 to get under the surface as to what my colleague defined<br/>7 as "supported decision-making" to check how it aligned<br/>8 with some of the ideas I understand by "shared<br/>9 decision-making".</p> <p>10 But because somebody -- just because somebody<br/>11 applies a different label to something that's going on<br/>12 doesn't make it either right or wrong. I would need to<br/>13 know more about it and look to see how it conceptually<br/>14 aligned with my understanding of "shared<br/>15 decision-making".</p> <p>16 Q. Thank you. But I think what I'm trying to identify is<br/>17 that you both talked, from a neurosurgical perspective<br/>18 or an ethical perspective, of the need for the balance<br/>19 between the two extremes that you've pointed out. You<br/>20 would agree with that, at least to that point?</p> <p>21 A. Yes.</p> <p>22 Q. Thank you.</p> <p>23 Could I have a look, please, at paragraph 2.3 of the<br/>24 report, if we could bring that up on the screen. We've<br/>25 had quite a few key terms and principles already, but</p> <p style="text-align: center;">Page 69</p>                       | <p>1 between these different types of source was something<br/>2 that was well recognised certainly by the period that<br/>3 we're looking at; yes?</p> <p>4 A. I would feel so.</p> <p>5 Q. Yes. So as far as theoretical ethics is concerned, if<br/>6 we can look at paragraph 2.4; just scroll down a little<br/>7 bit. You tell us that:</p> <p>8 "We use the phrase 'theoretical ethical<br/>9 obligation(s)' (and related terms) to refer to those<br/>10 ethical obligations specified in particular ethical<br/>11 schools of thought, which generally derive from academic<br/>12 sources, in particular the academic field of moral<br/>13 philosophy.</p> <p>14 "We will primarily refer to theoretical ethical<br/>15 obligations when addressing questions about what should<br/>16 be (or become) the legal or professional ethical<br/>17 position.</p> <p>18 "Different types of obligations can share similar<br/>19 content: e.g., theoretical ethical obligations can<br/>20 inform the content of professional and legal<br/>21 obligations. But there are also differences between the<br/>22 various obligations, including in the consequences that<br/>23 can follow from failure to honest the obligation in<br/>24 question. Someone might judge a person negatively for<br/>25 failing to honour a theoretical ethical obligation, but</p> <p style="text-align: center;">Page 71</p>     |
| <p>1 this paragraph sets out, I think, something quite<br/>2 fundamental to the approach that you've taken in the<br/>3 report, where you say:</p> <p>4 "The questions we have been asked [by the Inquiry]<br/>5 use such terms as 'ethics', 'ethical obligations',<br/>6 'ethical principles', and 'ethical standards'."</p> <p>7 That's probably as a result of my poor drafting.<br/>8 But it goes on to say:</p> <p>9 "In our answers, we refer to 'theoretical ethical',<br/>10 'professional ethical', and 'legal' obligations,<br/>11 positions, standards, etc. We explain here how we<br/>12 understand and use these terms in this report. Table 2<br/>13 summarises the key points, including the main<br/>14 distinctions between the three domains; such differences<br/>15 have long been recognised and would certainly have been<br/>16 recognised by the 1990s."</p> <p>17 So, what you're setting out here and in subsequent<br/>18 paragraphs is, I think, a distinction between three<br/>19 different types of sources that one might look to in<br/>20 order to answer our numerous questions about what<br/>21 ethical rules, standards, guidelines might have been at<br/>22 any given time. Is that correct?</p> <p>23 PROFESSOR HUXTABLE: That's correct.</p> <p>24 Q. And again, I think you're -- as we're going to be clear<br/>25 about timing and authority of approach, the distinction</p> <p style="text-align: center;">Page 70</p> | <p>1 their non-compliance is unlikely to result in the<br/>2 imposition of any formal penalty, such as might flow<br/>3 from failure to honour a professional or legal<br/>4 obligation. Although theoretical ethical sources lack<br/>5 overt authority, some may nevertheless exert influence<br/>6 over practice, e.g., publications that are widely-read<br/>7 and/or are authored by esteemed figures. As the<br/>8 Francis Report put it ..."</p> <p>9 The report by Sir Robert Francis in the<br/>10 Mid Staffordshire Inquiry:</p> <p>11 "... 'The messages transmitted [from academic<br/>12 learning, teaching and training] range from the near<br/>13 mandatory, where there is no room for controversy, to<br/>14 the completely discretionary, where there are many<br/>15 'schools of thought' and little evidence base'."</p> <p>16 Over the page:</p> <p>17 "Theoretical ethical obligations primarily derive<br/>18 from moral philosophy. Generally, 'ethics' -- and the<br/>19 related notions of 'morals' and 'morality' -- refers to<br/>20 ideas of the right (as opposed to the wrong) and the<br/>21 good (as opposed to the bad)."</p> <p>22 As we've seen.</p> <p>23 So in looking at these theoretical ethical<br/>24 obligations, would it be wrong to think that they are<br/>25 theoretical in the sense that they're only of relevance</p> <p style="text-align: center;">Page 72</p> |

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| <p>1 to an academic, for example, given that their source, as</p> <p>2 Sir Robert Francis pointed out, may, in certain</p> <p>3 circumstances, increase their validity in terms of their</p> <p>4 uses as a guide to what someone should do in a specific</p> <p>5 situation, to what he describes as "the near mandatory"?</p> <p>6 <b>A. Apologies, could you rephrase the question for me?</b></p> <p>7 Q. Certainly. I'm just trying to understand whether the</p> <p>8 use of the word "theoretical" is a way of describing</p> <p>9 these types of obligations, but that it shouldn't be</p> <p>10 thought that that means these are purely academic or</p> <p>11 unrelated to actual practice because there is</p> <p>12 a possibility, dependent on their source, that they</p> <p>13 could in fact reach the status of what</p> <p>14 Sir Robert Francis described as "near mandatory".</p> <p>15 <b>A. Yes, thank you. So thank you for the clarification.</b></p> <p>16 <b>Yes, absolutely that. So they begin their life in, if</b></p> <p>17 <b>I put it very simply, theoretical head-scratching,</b></p> <p>18 <b>perhaps desk-based, over-a-coffee conversations. So</b></p> <p>19 <b>it's about their source really, as opposed to any later</b></p> <p>20 <b>authority or influence they may gain.</b></p> <p>21 Q. I see. So this would be the sort -- of literature, for</p> <p>22 example, were, as Sir Robert Francis put it, by a very</p> <p>23 esteemed author or were generally accepted within</p> <p>24 medical practice and training as being a standard which</p> <p>25 should be adhered to, even if that source has not</p> <p style="text-align: center;">Page 73</p> | <p>1 about the next body, if you like, of guidance or</p> <p>2 information which might guide the answer to our</p> <p>3 questions, which is professional ethical obligations.</p> <p>4 And you say there:</p> <p>5 "We use the phrase 'professional ethical</p> <p>6 obligation(s)' (and related terms) to refer to those</p> <p>7 ethical obligations that apply to particular</p> <p>8 professionals. Some such guidance is intended only to</p> <p>9 apply to particular professionals, for example, to those</p> <p>10 working in a specific setting or to those undertaking</p> <p>11 particular tasks or roles. Professionals should be</p> <p>12 aware of -- and heed -- any general or specific guidance</p> <p>13 that is applicable to their practice in the jurisdiction</p> <p>14 in question; this is the case irrespective of whether</p> <p>15 (for example) they were trained in [any other] country</p> <p>16 or culture."</p> <p>17 And you tell us in the footnote at the bottom that:</p> <p>18 "... the General Medical Council's website, which</p> <p>19 states that doctors must hold a licence to practice in</p> <p>20 the UK, which in turn requires them to register with</p> <p>21 this regulator and then observe its standards ..."</p> <p>22 At least from the current General Medical Council</p> <p>23 position.</p> <p>24 So what you're telling us here is that one can</p> <p>25 have -- in the professional ethical obligation field,</p> <p style="text-align: center;">Page 75</p> |
| <p>1 reached the stage of yet being incorporated or at all</p> <p>2 being incorporated into a professional or legal</p> <p>3 obligation, it is possible that that's one to which</p> <p>4 someone should have particular regard in making ethical</p> <p>5 decision; is that fair?</p> <p>6 <b>A. I think that's fair. I suppose I would still erect some</b></p> <p>7 <b>caveats to the extent that it's still -- because it</b></p> <p>8 <b>lacks that bindingness, that quality of having</b></p> <p>9 <b>authority, it may well that be everyone in the world who</b></p> <p>10 <b>has given thought to a given topic, has read all the</b></p> <p>11 <b>books, they all think this, apart from one person, you</b></p> <p>12 <b>can't always conclusively say that that one person is</b></p> <p>13 <b>absolutely wrong. They might well have a well-reasoned</b></p> <p>14 <b>reason for saying, "No, I don't agree with the</b></p> <p>15 <b>mainstream on this".</b></p> <p>16 <b>So I still have a degree of caution around the</b></p> <p>17 <b>authority question, I suppose.</b></p> <p>18 Q. But I think what we're agreed on is that one should not</p> <p>19 disregard this as a source simply because it derives</p> <p>20 predominantly from academic literature.</p> <p>21 <b>A. That's true.</b></p> <p>22 Q. One should be careful as to what the source is, however?</p> <p>23 <b>A. That's quite right, yes.</b></p> <p>24 Q. Excellent.</p> <p>25 And you then go on at paragraph 2.13 to tell us</p> <p style="text-align: center;">Page 74</p>                                                                                                                                | <p>1 there can be general or specific guidance. Might that</p> <p>2 be the difference between Good Medical Practice from the</p> <p>3 GMC, on the one hand, which might be general guidance,</p> <p>4 but then something more specific in the nature of</p> <p>5 something coming from, say, a specialist association</p> <p>6 such as the one we've mentioned earlier? Would that be</p> <p>7 broadly what you mean by that?</p> <p>8 <b>A. Broadly, yes.</b></p> <p>9 Q. And you point out there that there is an obligation,</p> <p>10 I think, for these to be followed by the particular</p> <p>11 professionals to whom they are directed, whether that</p> <p>12 person effectively has trained through our system or</p> <p>13 not?</p> <p>14 <b>A. That's correct.</b></p> <p>15 Q. That's right.</p> <p>16 We've already heard some evidence about the way in</p> <p>17 which, for example, doctors who have trained abroad can</p> <p>18 go through a different pathway to become effectively</p> <p>19 a doctor -- an independent medic in the United Kingdom,</p> <p>20 which we were told broadly involves various different</p> <p>21 steps that are required to be taken to satisfy the</p> <p>22 regulatory authorities that that doctor has reached the</p> <p>23 equivalent standard of a doctor who had trained through</p> <p>24 the British system. From an ethical perspective, is</p> <p>25 that broadly what we're talking about here?</p> <p style="text-align: center;">Page 76</p>             |

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| <p>1 <b>A. Yes. Yes, it is.</b></p> <p>2 Q. You go on to say:</p> <p>3 "We will primarily refer to professional ethical</p> <p>4 obligations when addressing questions about what is or</p> <p>5 was the (professional) ethical position at a given time.</p> <p>6 "Professional ethical obligations will generally</p> <p>7 align with legal obligations. Professional ethical</p> <p>8 obligations may also be informed by theoretical ethical</p> <p>9 obligations."</p> <p>10 So there I think you're telling us that there's</p> <p>11 three different categories. Would it be wrong to think</p> <p>12 that professional ethical obligations, for the group of</p> <p>13 individuals to whom they are directed, are any less</p> <p>14 mandatory than legal obligations?</p> <p>15 <b>A. No, that's right: I think they would have the same</b></p> <p>16 <b>import for the given professional.</b></p> <p>17 <b>And I would venture -- and perhaps Professor McNair</b></p> <p>18 <b>would like to come in on this -- that for the jobbing</b></p> <p>19 <b>doctor, they are -- probably in their day job, if they</b></p> <p>20 <b>need any reassurance or reminder of the guidance, would</b></p> <p>21 <b>look to the guidance from particularly their regulator</b></p> <p>22 <b>first, before looking to any primary legal sources. So</b></p> <p>23 <b>both do have a bearing on them, but probably day-to-day</b></p> <p>24 <b>they're looking first to the regulator.</b></p> <p>25 Q. So -- yes, Professor McNair?</p> <p style="text-align: center;">Page 77</p>                       | <p>1 given your extensive involvement in training around</p> <p>2 300 doctors a year, whether these are texts that those</p> <p>3 who are training to be doctors, perhaps even at the</p> <p>4 undergraduate level, should be familiar with?</p> <p>5 PROFESSOR MCNAIR: Yes.</p> <p>6 Q. And when a doctor is training as a doctor, or perhaps</p> <p>7 especially a consultant doctor, these are texts to</p> <p>8 which -- with which one should have considerable</p> <p>9 familiarity; is that fair?</p> <p>10 <b>A. Yes, familiarity, absolutely, especially the Good</b></p> <p>11 <b>Medical Practice; at the very least, having</b></p> <p>12 <b>an understanding that one could refer back to it at</b></p> <p>13 <b>a point to -- you know, to support any given event.</b></p> <p>14 Q. And would you expect a consultant surgeon to have copies</p> <p>15 of these documents to which they can access -- which</p> <p>16 they could access in order to be able to assist with</p> <p>17 answering day-to-day ethical questions that arise in</p> <p>18 their practice?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Thank you.</p> <p>21 One of the aspects of the discussion at this point,</p> <p>22 I think, Professor Huxtable, is that you tell us that</p> <p>23 the sources from these three different areas influence</p> <p>24 and shape each other; is that correct?</p> <p>25 PROFESSOR HUXTABLE: Yes, that's right.</p> <p style="text-align: center;">Page 79</p>                                                                                                                            |
| <p>1 PROFESSOR MCNAIR: Yes, I guess I would just add to that --</p> <p>2 and as I say, I'm not a legal expert -- but my</p> <p>3 understanding is that the professional guidance can be</p> <p>4 more responsive and can change faster than legal</p> <p>5 guidance, which can take, I understand, longer to</p> <p>6 change. So they might be in a position where the</p> <p>7 certain professional standard has kept pace with perhaps</p> <p>8 changes that we've seen as a result of any number of</p> <p>9 events that the law hasn't caught up to, so for example.</p> <p>10 Q. You mention in your report, I think both of you at</p> <p>11 various different places, two general -- well, one</p> <p>12 slightly more specific than the other -- guides that</p> <p>13 might fall into this category: Good Medical Practice,</p> <p>14 which I think came about in 1995 for the first time,</p> <p>15 which is issued by the GMC; is that correct?</p> <p>16 PROFESSOR HUXTABLE: That's right.</p> <p>17 Q. And then a slightly more specific but still quite</p> <p>18 general guidance, which is Good Surgical Practice, which</p> <p>19 I think is issued by the Royal College. And I think you</p> <p>20 tell us something that we didn't know when we were</p> <p>21 discussing it last week: that the first edition of that</p> <p>22 was in 2002. Is that right?</p> <p>23 <b>A. I believe that's correct.</b></p> <p>24 Q. Yes. We'll come to the text of that in due course.</p> <p>25 I wonder, Professor McNair, whether you could --</p> <p style="text-align: center;">Page 78</p> | <p>1 Q. So, for example, Professor McNair mentioned a moment ago</p> <p>2 the possibility that professional guidance may move at</p> <p>3 a quicker pace than legal obligation. I think you</p> <p>4 broadly agreed with that?</p> <p>5 <b>A. I do, and I venture to -- I'm going to peer into his</b></p> <p>6 <b>mind and think I can predict where he might have been</b></p> <p>7 <b>heading with that.</b></p> <p>8 <b>So I think the example that certainly I've discussed</b></p> <p>9 <b>with other colleagues in the past is that of consent.</b></p> <p>10 <b>So to my mind, my reading of the relevant guidance and</b></p> <p>11 <b>indeed the law, I think the guidance to doctors was</b></p> <p>12 <b>ahead of the law in terms of seeking informed consent</b></p> <p>13 <b>from patients, probably a good ten years in advance of</b></p> <p>14 <b>the legal profession.</b></p> <p>15 Q. Yes.</p> <p>16 <b>A. That was ultimately adopted in around about 2015.</b></p> <p>17 Q. Yes. So what you're referring to there I think is the</p> <p>18 Supreme Court case of Montgomery; is that correct?</p> <p>19 <b>A. That's correct.</b></p> <p>20 Q. And effectively, tell me if my interpretation is wrong,</p> <p>21 but that case decided -- you mentioned sanctions in your</p> <p>22 analysis here of theoretical obligations. What it</p> <p>23 decided was that the law was that if proper informed</p> <p>24 consent was not taken from a patient, then that could</p> <p>25 result in the patient being able to claim in law damages</p> <p style="text-align: center;">Page 80</p> |

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| <p>1 or compensation from the organisation or the individual</p> <p>2 who had failed in that legal duty; is that correct?</p> <p>3 <b>A. That's correct.</b></p> <p>4 Q. And indeed, the -- I think we included a copy of the</p> <p>5 case if we need to go to it, but I'm not planning</p> <p>6 ongoing to the specifics. Indeed, the decision-making</p> <p>7 in that case I think was based in no small part on the</p> <p>8 fact that that -- the requirement for informed consent,</p> <p>9 as defined now in the law, had been the position in</p> <p>10 professional guidance for some time?</p> <p>11 <b>A. Yes, that's my sense.</b></p> <p>12 PROFESSOR MCNAIR: And I'm looking at it now and I think</p> <p>13 probably the document that's most relevant is the 2008</p> <p>14 edition of the GMC document about consent, so "Consent:</p> <p>15 patient and doctors making decisions together", which</p> <p>16 details some of the standards, I think, that were</p> <p>17 subsequently described within the Montgomery ruling, as</p> <p>18 you said there. So nearly ten years before.</p> <p>19 Q. Indeed. So that would be a good example, I think, of</p> <p>20 the phenomenon that you're describing of there being</p> <p>21 a concept which becomes, I think you said originally,</p> <p>22 part of the emerging academic literature, as the respect</p> <p>23 for autonomy principle became most prominent, which then</p> <p>24 had an influence, at least by 2008, on the professional</p> <p>25 guidance, which then by 2015 was an important factor in</p> <p style="text-align: center;">Page 81</p>              | <p>1 <b>should or should not be done. So they are not saying</b></p> <p>2 <b>what must, strictly speaking, be done, but rather should</b></p> <p>3 <b>be done. So they are somewhat softer in their</b></p> <p>4 <b>authority.</b></p> <p>5 Q. Indeed.</p> <p>6 I wonder if it might be a useful thing to do to have</p> <p>7 a look at this stage at one of the documents that we've</p> <p>8 been referring to which may illustrate this point; no</p> <p>9 doubt we'll come back to this in due course, but to</p> <p>10 illustrate the sort of points we're talking about.</p> <p>11 Could we have a look, please, at ELJ0002-00180. Thank</p> <p>12 you.</p> <p>13 Is this -- this is a document that you provided with</p> <p>14 the report, which I think is the 2002 -- ie first --</p> <p>15 edition of Good Surgical Practice; is that right?</p> <p>16 <b>A. That's right.</b></p> <p>17 Q. And could you just -- I've referred to this briefly</p> <p>18 myself. But could you just tell us what body issued</p> <p>19 this and where this fits in the hierarchy, if you like,</p> <p>20 of authoritative sources of ethical standards?</p> <p>21 <b>A. Absolutely.</b></p> <p>22 <b>So this was issued by the Royal College of Surgeons</b></p> <p>23 <b>(of England), and the Royal College of Surgeons stand in</b></p> <p>24 <b>relation to the GMC, first and foremost, I would</b></p> <p>25 <b>suggest. So the GMC, the doctors' regulator, they will</b></p> <p style="text-align: center;">Page 83</p>                                                                             |
| <p>1 determining what the law was in that regard. Is that</p> <p>2 right?</p> <p>3 PROFESSOR HUXTABLE: Yes, I think that's a fair account.</p> <p>4 Q. Thank you.</p> <p>5 And as far as the way in which these rules are</p> <p>6 policed, set and policed, if you like, professional</p> <p>7 ethical rules for doctors are set by the GMC; is that</p> <p>8 right?</p> <p>9 <b>A. I'd go further than that actually. I would distinguish</b></p> <p>10 <b>the different types of professional ethical obligations.</b></p> <p>11 <b>On the one hand, you do have those, like the GMC,</b></p> <p>12 <b>that can set down something very much authoritative, so</b></p> <p>13 <b>something of the character of law, where, if I may,</b></p> <p>14 <b>I'd characterise the law as saying, "This is what you</b></p> <p>15 <b>must do", or indeed, "This is what you must not do".</b></p> <p>16 <b>Similarly, there are professional organisations,</b></p> <p>17 <b>like the regulator and indeed like the Royal College of</b></p> <p>18 <b>Surgeons, both England and Edinburgh: basically, they</b></p> <p>19 <b>can set down rules about what you must do or must not do</b></p> <p>20 <b>if you wish to, in the first instance, be -- remain</b></p> <p>21 <b>a doctor, but in the second instance, if you wish to</b></p> <p>22 <b>become a surgeon or indeed a neurosurgeon.</b></p> <p>23 <b>Then there are other sorts of professional</b></p> <p>24 <b>organisations out there that don't have such overt</b></p> <p>25 <b>authority, but they will still offer a view on what</b></p> <p style="text-align: center;">Page 82</p> | <p>1 <b>say whether you get to be or remain a doctor; but then</b></p> <p>2 <b>once you're doctoring, you'll want to specialise. And</b></p> <p>3 <b>if you're going to specialise, then the Royal College of</b></p> <p>4 <b>Surgeons, in this instance, will control entry to that</b></p> <p>5 <b>specialty.</b></p> <p>6 <b>And so one has to heed what the GMC is saying, Good</b></p> <p>7 <b>Medical Practice; but additionally, if one is a surgeon,</b></p> <p>8 <b>one must heed Good Surgical Practice.</b></p> <p>9 Q. Yes. So this, as we said earlier, was a kind of</p> <p>10 particularisation for surgeons, who don't cover all</p> <p>11 doctors. But would it be fair to say that this</p> <p>12 document, although not issued by the GMC but by the</p> <p>13 Royal College of Surgeons of England, carries similar or</p> <p>14 the same authoritative weight, if I can put it that way,</p> <p>15 as the GMC, but for surgeons only?</p> <p>16 <b>A. That's my sense, yes.</b></p> <p>17 Q. Yes. So as we said earlier, if one were to want to know</p> <p>18 what the rules were that applied -- the rules,</p> <p>19 I'm emphasising that in this situation, that applied in</p> <p>20 any given clinical dilemma, if I can put it that way,</p> <p>21 this would be a good place or the first place that</p> <p>22 a surgeon should look?</p> <p>23 <b>A. I think so. Perhaps Professor McNair has a view.</b></p> <p>24 Q. Yes, Professor McNair may have a view.</p> <p>25 PROFESSOR MCNAIR: I think that's a very reasonable</p> <p style="text-align: center;">Page 84</p> |

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| <p>1 proposition in that this is, certainly for surgeons, a</p> <p>2 professional body, and therefore for ease of access and</p> <p>3 wide distribution, this would be a very reasonable first</p> <p>4 port of call, as opposed to, for example, an academic</p> <p>5 paper.</p> <p>6 Q. Thank you. That's in line with the hierarchy that</p> <p>7 Professor Huxtable set out already for us.</p> <p>8 Also I note that on the first page, if you just</p> <p>9 scroll down a little bit further, one can see that this</p> <p>10 document, although issued formally by the Royal College</p> <p>11 of Surgeons of England, is in fact endorsed by a number</p> <p>12 of other professional bodies, some of whom we've heard</p> <p>13 about already, which include the Royal College of</p> <p>14 Physicians and Surgeons of Glasgow, the Royal College of</p> <p>15 Surgeons in Ireland and the Royal College of Surgeons in</p> <p>16 Edinburgh, as well as the Society of British</p> <p>17 Neurological Surgeons that we referred to earlier.</p> <p>18 So again, if one is trying to work out a hierarchy,</p> <p>19 as this is a publication by one of the Royal Colleges,</p> <p>20 endorsed by the other, does that push it up the list, if</p> <p>21 you like, in terms of its authoritative nature?</p> <p>22 PROFESSOR HUXTABLE: Yes.</p> <p>23 Q. Thank you.</p> <p>24 There's one aspect of this -- we'll come back to</p> <p>25 this document, as you refer to it in many, many places,</p> <p style="text-align: center;">Page 85</p>                                         | <p>1 which is selected in order to illustrate the point -- it</p> <p>2 talks here about the treatment of emergencies. It says:</p> <p>3 "Emergency care is a major component of surgical</p> <p>4 practice."</p> <p>5 And then:</p> <p>6 "When on-call, surgeons must: ..."</p> <p>7 Indeed, in this list, if one goes down to the third</p> <p>8 bullet point:</p> <p>9 "ensure they are able to respond promptly to a call</p> <p>10 to attend an emergency patient ..."</p> <p>11 And then further down, at the bottom of the list:</p> <p>12 "ensure that on-call rotas are published in advance</p> <p>13 and that any alternative cover arrangements are</p> <p>14 specifically made and clearly understood; and</p> <p>15 "ensure the formal handover of patients to</p> <p>16 an appropriate colleague following periods on duty."</p> <p>17 So the combination there of the "must" and "ensure"</p> <p>18 is again emphasising the prescriptive nature of those</p> <p>19 sorts of obligations; is that correct?</p> <p>20 <b>A. That is correct.</b></p> <p>21 Q. And that's been the position since at least 2002?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Thank you.</p> <p>24 I wonder if at this stage I could ask you some</p> <p>25 questions about an already-trailed document that we've</p> <p style="text-align: center;">Page 87</p>                                                                                                                                                                                                                             |
| <p>1 for the reasons you've explained: as this being the</p> <p>2 place you would go to find out the answer to our</p> <p>3 questions, as at least one of the places, and an</p> <p>4 important place, where you might find one.</p> <p>5 But I wanted to try to look at one aspect of this</p> <p>6 which you've referred to already. If I could look,</p> <p>7 please, at page 5. This is a page where a number of</p> <p>8 principles are set out, I think, that come from the Good</p> <p>9 Medical Practice from the GMC; is that right?</p> <p>10 <b>A. That's right.</b></p> <p>11 Q. And it is important, I think, to understand there's</p> <p>12 a whole list of things here that a doctor must do, and</p> <p>13 in this case a surgeon must do, because it's been</p> <p>14 reproduced in this document. But it is important to see</p> <p>15 on that page that it says there:</p> <p>16 "In particular as a doctor you must ..."</p> <p>17 That is prescriptive, is it not?</p> <p>18 <b>A. That's right. And the General Medical Council makes</b></p> <p>19 <b>clear in a great deal of its modern guidance, at least,</b></p> <p>20 <b>that it will sometimes use the word "must" and sometimes</b></p> <p>21 <b>use the word "should", and certainly the word "must" is</b></p> <p>22 <b>the one that has priority. That's the authoritative</b></p> <p>23 <b>"You really must obey this".</b></p> <p>24 Q. And another word which pops up, if one looks, for</p> <p>25 example, at page 11 -- this is a relatively random page</p> <p style="text-align: center;">Page 86</p> | <p>1 talked about, which is the document from 2007 from the</p> <p>2 World Federation of Neurological Societies, which you</p> <p>3 have used as a source of important obligations</p> <p>4 pertaining particularly to neurosurgery in a number of</p> <p>5 places in your report. The document itself is</p> <p>6 ELJ0002-00070, but you have very helpfully, as you've</p> <p>7 done in a number of different places, recorded what you</p> <p>8 consider to be important aspects of this in table 5 of</p> <p>9 your report.</p> <p>10 But before we get to that, I wonder if we might in</p> <p>11 fact look at table 4, where you have set out for us</p> <p>12 a number of organisations, professional organisations,</p> <p>13 which provide some information and guidance with regard</p> <p>14 to where one might find pertinent ethical standards.</p> <p>15 And if we could just run through these, because it helps</p> <p>16 in understanding where the World Federation of</p> <p>17 Neurological Societies fits into this matrix, if that</p> <p>18 would be an appropriate way of putting it.</p> <p>19 You say -- if we go to the statement, please, at</p> <p>20 page 67. And you've set out there -- first of all,</p> <p>21 we've talked about the GMC, its scope relating to</p> <p>22 doctors, and that this is the statutory regulator for</p> <p>23 doctors. And as far as authority is concerned, you say</p> <p>24 the authority of the GMC is to:</p> <p>25 "Determine[] who is entitled to (continue to)</p> <p style="text-align: center;">Page 88</p> |

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| <p>1 practice as a doctor."</p> <p>2 And you tell us that:</p> <p>3 "Current GMC guidance uses the terms 'must' and</p> <p>4 'should' in the ways quoted below. We have reflected</p> <p>5 their use of these terms in our answers:</p> <p>6 ""You must" is used for a legal or ethical duty</p> <p>7 you're expected to meet (or be able to justify why you</p> <p>8 didn't) ..."</p> <p>9 And then over the page, as Professor Huxtable has</p> <p>10 already told us:</p> <p>11 ""You should" is used for duties or principles that</p> <p>12 either: may not apply to you or to the situation you're</p> <p>13 currently in, or you may not be able to comply with</p> <p>14 because of factors outside your control."</p> <p>15 So in the GMC guidance, that's the language that's</p> <p>16 used: prescriptive, "You must", for a legal or ethical</p> <p>17 duty you're expected to meet, or be able to justify why</p> <p>18 you didn't; and "should" for things that may only apply</p> <p>19 in certain situations, may only apply to certain</p> <p>20 individuals, and you may not be able to comply with</p> <p>21 because of factors which make it impossible for you to</p> <p>22 do so.</p> <p>23 Is that broadly how the GMC guidance works?</p> <p>24 <b>A. Yes, that's how I understand it.</b></p> <p>25 Q. Thank you.</p> <p style="text-align: center;">Page 89</p>                                                   | <p>1 a little bit about that, and why you've ranked that in</p> <p>2 the broad "Influence" category rather than in the</p> <p>3 "Authority" category?</p> <p>4 <b>A. And I confess this may be a mistake on my part in</b></p> <p>5 <b>particular in putting this table together, but my sense</b></p> <p>6 <b>was it certainly doesn't have the authority of the level</b></p> <p>7 <b>or type of the regulator and of the Royal Colleges. So</b></p> <p>8 <b>certainly it would be expected, I would assume, that the</b></p> <p>9 <b>BMA would expect its members to observe its guidance,</b></p> <p>10 <b>but as I say, my sense is that it doesn't carry that</b></p> <p>11 <b>level of authority of the other groups.</b></p> <p>12 <b>But it would be for the BMA to say if I'm wrong,</b></p> <p>13 <b>that actually all doctors are obliged to follow this by</b></p> <p>14 <b>virtue of --</b></p> <p>15 Q. Yes.</p> <p>16 THE CHAIR: Just as a matter of interest, and it may not be</p> <p>17 wholly irrelevant to the point you've just made,</p> <p>18 Professor, do all doctors require to be members of the</p> <p>19 BMA, or is it optional?</p> <p>20 PROFESSOR MCNAIR: No.</p> <p>21 THE CHAIR: No. Thank you.</p> <p>22 MR DAWSON: We have a statement from the BMA in which their</p> <p>23 position on these matters is set out in some detail, but</p> <p>24 obviously from your perspective we're interested in</p> <p>25 understanding how this would rank in a hierarchy of</p> <p style="text-align: center;">Page 91</p>  |
| <p>1 And as we've already discussed, there are Royal</p> <p>2 Colleges. Their authority is:</p> <p>3 "Membership is a pre-requisite for entering</p> <p>4 specialty training in surgery."</p> <p>5 And therefore, because they set the entrance</p> <p>6 requirements, they are setting, at least at that stage,</p> <p>7 authoritative principles to which a surgeon would have</p> <p>8 to demonstrate he or she has complied and will comply,</p> <p>9 and therefore they too carry high authoritative status?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Then again you talk, connected to that, of the Joint</p> <p>12 Committee on Surgical Training. Its authority is:</p> <p>13 "Trainees must be enrolled with an SAC, which then</p> <p>14 recommends their certification to the GMC."</p> <p>15 So similar function of a kind of entry -- a body</p> <p>16 that dictates entry, and therefore important?</p> <p>17 THE CHAIR: Sorry, could we just have that up on the screen?</p> <p>18 MR DAWSON: Certainly. That's the following page.</p> <p>19 THE CHAIR: Yes.</p> <p>20 MR DAWSON: Thank you.</p> <p>21 And then at the bottom, which may become relevant</p> <p>22 later, you tell us about the British Medical</p> <p>23 Association: it has "Influence", and "Issues ethics</p> <p>24 [guidebooks] and toolkits".</p> <p>25 As far as the BMA is concerned, could you tell us</p> <p style="text-align: center;">Page 90</p> | <p>1 ethical obligations in particular, and I know that they</p> <p>2 perform other functions as well.</p> <p>3 So if one then moves -- I suppose, Professor, that</p> <p>4 what you've said about influence, again, it might be</p> <p>5 useful to try to put this into the context of evidence</p> <p>6 you've already given about the fact that whether a body</p> <p>7 gets into the "Authority" category or the "Influence"</p> <p>8 category is really -- you're just giving us a guide</p> <p>9 here, because it rather depends on what obligations one</p> <p>10 is talking about.</p> <p>11 Because, for example, we may later come to some BMA</p> <p>12 guidance where one can see that the BMA, for example,</p> <p>13 was not the only body recommending that a certain</p> <p>14 proposed course would be ethical, and because of the</p> <p>15 weight of different bodies -- as we saw with Good</p> <p>16 Surgical Practice and the number of bodies which</p> <p>17 assented to its content -- the weight of authoritative</p> <p>18 bodies might push it up into the "Authority" category.</p> <p>19 Is that, in principle at least, something that you</p> <p>20 would accept?</p> <p>21 PROFESSOR HUXTABLE: Oh, very much so. And we referred to</p> <p>22 one such document earlier where there were multiple</p> <p>23 signatories and I know of situations where the BMA,</p> <p>24 amongst others, are signatories or co-preparers of</p> <p>25 documents. So, yes, absolutely.</p> <p style="text-align: center;">Page 92</p> |

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| <p>1 Q. It may be, for example, that because of the particular</p> <p>2 nature of a document and what it was covering, it was</p> <p>3 deemed appropriate for the BMA to take it forward</p> <p>4 whereas a different document might have been taken</p> <p>5 forward by a Royal College or something like that; is</p> <p>6 that fair?</p> <p>7 <b>A. Yes, I think that's fair.</b></p> <p>8 Q. I think we heard some evidence in the first week of our</p> <p>9 block from someone who was a representative of the Royal</p> <p>10 College of Surgeons of Edinburgh who told us for example</p> <p>11 that that Royal College had become particularly</p> <p>12 interested because of the skillset and interest of some</p> <p>13 of its members in providing guidance on non-technical</p> <p>14 surgical skills. So it had published a number of papers</p> <p>15 in that area, against that background. Which didn't</p> <p>16 necessarily mean anything, other than the fact that it</p> <p>17 had particular persuasiveness based on its particular</p> <p>18 membership and their diligence and expertise in that</p> <p>19 area.</p> <p>20 Is that the sort of consideration that one would in</p> <p>21 theory at least want to be taking into account as</p> <p>22 a doctor to work out are the rules or standards that are</p> <p>23 written down here, ones that I absolutely have to follow</p> <p>24 or are they ones that I should simply have regard to?</p> <p>25 <b>A. Yes, I think that's fair. I mean, the other observation</b></p> <p style="text-align: center;">Page 93</p>                           | <p>1 <b>put together a guidance document on topic X or Y. But</b></p> <p>2 <b>it can sometimes be contingent on who is out there and</b></p> <p>3 <b>who is doing the work.</b></p> <p>4 Q. Thank you. I'll resist the temptation to get involved</p> <p>5 in a discussion about the particulars in relation to</p> <p>6 Covid guidance but for present purposes that's very</p> <p>7 helpful.</p> <p>8 If we can then look at page 70. You tell us here</p> <p>9 about the body -- the much trailed body we've talked</p> <p>10 about, the World Federation of Neurosurgical Societies.</p> <p>11 Can you tell us broadly, professor, what this</p> <p>12 organisation is?</p> <p>13 <b>A. As we see in the third column there, this is, so far as</b></p> <p>14 <b>I could gauge, a voluntary organisation where</b></p> <p>15 <b>neurosurgeon groups in different countries around the</b></p> <p>16 <b>world come together to basically share their expertise,</b></p> <p>17 <b>share their knowledge and with a view to improving</b></p> <p>18 <b>neurosurgical care, training and research globally. So</b></p> <p>19 <b>it has aspirations to ensure that such care is the best</b></p> <p>20 <b>it can be in terms of safety, timeliness and so on.</b></p> <p>21 <b>On my reading -- and I might apply a similar caveat</b></p> <p>22 <b>to that with the BMA, but on my reading I sense that</b></p> <p>23 <b>this was a body that might well have influence over</b></p> <p>24 <b>neurosurgeons but I couldn't see anything that indicated</b></p> <p>25 <b>it had overt authority over their practice. Although</b></p> <p style="text-align: center;">Page 95</p> |
| <p>1 I'd add, if I may, is that one sometimes encounters</p> <p>2 a situation where there's a deficit of guidance that</p> <p>3 no one, whether they have authority or influence, is</p> <p>4 saying something about a given issue, event, phenomenon,</p> <p>5 and then conversely one encounters situations where</p> <p>6 everyone is saying something about it. And certainly</p> <p>7 from my academic perspective I might raise the question,</p> <p>8 well why do we have so many people opining on what are</p> <p>9 the ethical obligations in this scenario?</p> <p>10 The one that comes to mind for me was a situation we</p> <p>11 encountered nationally but also globally with Covid and</p> <p>12 the ethical response to Covid. In addition to the</p> <p>13 clinical, societal response, there was a point where</p> <p>14 there seemed to be no certainly no authoritative</p> <p>15 guidance in England -- I know the situation varied in</p> <p>16 Wales and Scotland -- and then suddenly there were</p> <p>17 hundreds of such documents. So sometimes it can get</p> <p>18 very noisy in trying to navigate who one should be</p> <p>19 listening to.</p> <p>20 And so the related observation is I also know from</p> <p>21 working with ethics committees on the clinical ethics</p> <p>22 side is sometimes you're reliant on the members to whom</p> <p>23 you refer. So you're reliant on your people and if you</p> <p>24 have an ethics enthusiast, or a collection of ethics</p> <p>25 enthusiasts, they might be the ones to come together and</p> <p style="text-align: center;">Page 94</p> | <p>1 the obvious rejoinder or point to add there is, if</p> <p>2 you've got all your surgeons in a given area signing up</p> <p>3 to a particular society that then signs up to a world</p> <p>4 federation, one would be well-advised to heed whatever</p> <p>5 it is that that federation says. So it may not overtly</p> <p>6 have influence but certainly -- sorry, may not overtly</p> <p>7 have authority but certainly one would think if everyone</p> <p>8 in your specialty in that part of the country or the</p> <p>9 world is heeding it, you should probably be doing so as</p> <p>10 well.</p> <p>11 Q. So if one looks at the specifics here in order to try to</p> <p>12 rank where one would place documents issued by this</p> <p>13 organisation, you say it comprises five continental</p> <p>14 neurosurgical societies and 119 national neurosurgical</p> <p>15 societies representing over 49,000 neurosurgeons</p> <p>16 worldwide. Is that your understanding?</p> <p>17 <b>A. That is my understanding, yes.</b></p> <p>18 Q. And in particular with -- because I think you mentioned</p> <p>19 earlier that it's possible that one could look at</p> <p>20 international or foreign bodies and that could perhaps</p> <p>21 be misleading because such a body may apply ethical</p> <p>22 principles that don't apply in the United Kingdom or</p> <p>23 maybe not apply in certain parts of the world. You do</p> <p>24 tell us that:</p> <p>25 "The Society of British Neurological Surgeons (SBNS)</p> <p style="text-align: center;">Page 96</p>                                                                                                 |

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| <p>1 is a member organisation, which has [over] 1,000 members</p> <p>2 (NHS figures suggest that, in 2021, there were 362</p> <p>3 consultant neurosurgeons in England)."</p> <p>4 So just to trace this through with some of the</p> <p>5 terminology we've used so far. We know that that body</p> <p>6 is a specialist association which is consulted on</p> <p>7 neurosurgical matters by the Royal College of Surgeons</p> <p>8 of England. We know that because in relation to the</p> <p>9 matter we are looking at, they were the specialist</p> <p>10 association that were consulted by the Royal College of</p> <p>11 Surgeons of England when they carried out an invited</p> <p>12 review of Mr Eljamel's practice in 2013. So it is one</p> <p>13 of the specialist associations, I think that we</p> <p>14 confirmed with Professor McNair earlier, that pertains</p> <p>15 to neurosurgery. And of course as we also know, if one</p> <p>16 goes up the hierarchy, the Royal College of Surgeons of</p> <p>17 England is a very important body in providing guidance</p> <p>18 related to surgery which is then overseen by the</p> <p>19 ultimate regulator, the General Medical Council, in the</p> <p>20 setting mandatory standards for surgeons; is that</p> <p>21 correct?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Thank you. So through that process, it shouldn't be</p> <p>24 difficult I think for a neurosurgeon to work out that</p> <p>25 a document that emanates from this body, because of its</p> <p style="text-align: center;">Page 97</p> | <p>1 "Ensure a favourable risk/benefit balance;</p> <p>2 "Work well with colleagues;</p> <p>3 "Ensure continuity of care;</p> <p>4 "Support and oversee junior colleagues; [and]</p> <p>5 "Maintain accurate records."</p> <p>6 You have selected some quotations there to try and</p> <p>7 illustrate in some more detail some of these points:</p> <p>8 "We must avoid serving as the surgeon of last resort</p> <p>9 for a desperate patient seeking surgical intervention</p> <p>10 that has been rejected by many of our peers, and that</p> <p>11 may not help the patient or stop the advance of disease.</p> <p>12 "When patient care may be compromised by inadequate</p> <p>13 facilities or equipment, lack of reimbursement for</p> <p>14 important medical services, or shortages of medical and</p> <p>15 support staff, neurosurgeons should address the issues</p> <p>16 to the best of their ability" and:</p> <p>17 "We should keep clear, up to date, detailed, and</p> <p>18 accurate clinical records, with full descriptions</p> <p>19 of [...] significant medical events..."</p> <p>20 So these are extracts from that document in relation</p> <p>21 to general neurosurgical practice, is that right?</p> <p>22 <b>A. That's right.</b></p> <p>23 Q. And if I could just focus in on some of those, it might</p> <p>24 be that you could provide some help from an ethical</p> <p>25 perspective as to why it is of ethical importance to</p> <p style="text-align: center;">Page 99</p>                                                                                                                        |
| <p>1 associations, at its wide reach is likely to be one that</p> <p>2 contains a number of important principles which should</p> <p>3 guide ethical practice; is that fair?</p> <p>4 <b>A. Yes. Yes, I think so.</b></p> <p>5 Q. And as I say, you have very helpfully for us, which will</p> <p>6 save me considerable time at the moment, set out some of</p> <p>7 the key principles and obligations which exist within</p> <p>8 a document, the reference for which I've already read</p> <p>9 out, which is a statement of ethics emanating from this</p> <p>10 body from 2007; is that right?</p> <p>11 <b>A. That's right.</b></p> <p>12 Q. And in particular you have helpfully split the quotes</p> <p>13 that you've taken from the document into a number of</p> <p>14 different categories of practice, if one can put it that</p> <p>15 way, some of which arise I would imagine every day and</p> <p>16 some of which are quite particular to particular types</p> <p>17 of neurosurgical practice; is that right?</p> <p>18 <b>A. Yes, I think so.</b></p> <p>19 Q. So if we could just look at some of these, please. In</p> <p>20 the first box you tell us, in relating to general Good</p> <p>21 Medical Practice for neurosurgeons, it says the key</p> <p>22 principles and obligations are to:</p> <p>23 "Maintain a high level of professional competence;</p> <p>24 "Recognise (and work within) limits of competence;</p> <p>25 "Undertake careful assessments of patients;</p> <p style="text-align: center;">Page 98</p>                        | <p>1 work well with colleagues and in particular to support</p> <p>2 and oversee junior colleagues in the field of</p> <p>3 neurosurgery?</p> <p>4 PROFESSOR HUXTABLE: I'm looking to Professor McNair to see</p> <p>5 if he would like to lead on this one.</p> <p>6 PROFESSOR MCNAIR: No, that sounds fine. Can you ask the</p> <p>7 first part of the question again? I might take them</p> <p>8 both separately.</p> <p>9 Q. Absolutely. Why is it important for neurosurgeons to</p> <p>10 work well with colleagues?</p> <p>11 <b>A. Because from an ethical perspective working well with</b></p> <p>12 <b>colleagues facilitates best patient care. So it enables</b></p> <p>13 <b>a bunch of -- several different functions really. If</b></p> <p>14 <b>you think about decision-making as in the first</b></p> <p>15 <b>instance, working well with colleagues supports clinical</b></p> <p>16 <b>reasoning, that one half of that shared decision making.</b></p> <p>17 <b>So, for example, surgeons will work as part of</b></p> <p>18 <b>a multi-disciplinary team where they will review</b></p> <p>19 <b>patients together or look at results, test results or</b></p> <p>20 <b>other sorts of clinical information that might inform</b></p> <p>21 <b>professional reasoning. If you don't have good working</b></p> <p>22 <b>relationship between those individuals then the</b></p> <p>23 <b>reasoning starts to break down which then might impact</b></p> <p>24 <b>on the decision-making, for example. But there may be</b></p> <p>25 <b>other examples as well.</b></p> <p style="text-align: center;">Page 100</p> |

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| <p>1       <b>If you heard last week about human factors from</b><br/> 2       <b>other colleagues, then you may know that different sorts</b><br/> 3       <b>of interpersonal relationships may directly influence</b><br/> 4       <b>outcomes. For example in an operating theatre where</b><br/> 5       <b>perhaps there are a number of different colleagues who</b><br/> 6       <b>are performing different roles, all with the shared to</b><br/> 7       <b>goal of completing an operation to its highest standard</b><br/> 8       <b>and if there are miscommunications or misunderstandings</b><br/> 9       <b>or difficult relationships between those people then</b><br/> 10       <b>care may not be delivered to the highest standard.</b><br/> 11       Q. So you've identified within that I think two specific<br/> 12       components of working well with colleagues which might<br/> 13       have particular significance in the field of<br/> 14       neurosurgery. One is -- the latter one you mentioned<br/> 15       was working well effectively with what one might<br/> 16       describe as neurosurgical colleagues, so within the<br/> 17       operating room space. That is important one might say<br/> 18       particularly in neurosurgery because of its complexity<br/> 19       and usually its very severe potential consequences if<br/> 20       things go wrong, would that be fair?<br/> 21       <b>A. Yes, that's fair.</b><br/> 22       Q. And the other thing you mentioned, which again resonates<br/> 23       with some evidence we heard from our neurosurgical<br/> 24       colleagues last week, was in relation to the<br/> 25       multi-disciplinary aspect of working with colleagues.</p> <p style="text-align: center;">Page 101</p> | <p>1       sense. So if we take two elements of this it is, as the<br/> 2       GMC made clear, that patients' care should be our<br/> 3       primary concern. And so the balance between training<br/> 4       someone as a future neurosurgeon, the ethical balance if<br/> 5       you will, is to maintain the highest possible level of<br/> 6       care whilst also taking somebody from a novice through<br/> 7       to an expert. Because from an ethical perspective if<br/> 8       you do not train future neurosurgeons, then there comes<br/> 9       a point where patient care suffers because there are no<br/> 10       neurosurgeons to perform the care. But that is at<br/> 11       a different sort of scale. And so neurosurgery being,<br/> 12       as you've highlighted, particularly complex, has to try<br/> 13       and walk that tightrope between maintaining that high<br/> 14       level care for an individual but also maintaining the<br/> 15       care for those people who need their support in the<br/> 16       future by training neurosurgeons.<br/> 17       Q. Thank you. From the quotations that we went to, it<br/> 18       was -- something that was referred to particularly in<br/> 19       these principles, that: "where a patient care may be<br/> 20       compromised by inadequate equipment or reimbursement for<br/> 21       important services or shortages of staff, neurosurgeons<br/> 22       should address the issues to the best of their ability".<br/> 23       Is that perhaps, Professor McNair, connected with<br/> 24       a comment you've just made, that I think you say<br/> 25       elsewhere, from other sources, that neurosurgical</p> <p style="text-align: center;">Page 103</p>                                               |
| <p>1       The reason why I might suggest to you that that<br/> 2       resonates particularly in the field of neurosurgery is<br/> 3       because of both its complexity and its variety as<br/> 4       a field. We heard last week that, well, the way<br/> 5       I characterised it, was that neurosurgeons at some point<br/> 6       or other appear to work with almost every other type of<br/> 7       medical professional that I could think of, the most<br/> 8       obvious being radiologists, anaesthetists, neurologists.<br/> 9       But the very long and extensive list we received from<br/> 10       the neurosurgical group made it clear that they in fact<br/> 11       worked with a number of other fields much more regularly<br/> 12       than one might expect, for example ear, nose and throat<br/> 13       doctors or surgeons.<br/> 14       So would those factors, the complexity and the<br/> 15       breadth if I can put it that way of the field, mean that<br/> 16       although these are important principles no doubt in<br/> 17       every surgical field, they have particular resonance in<br/> 18       the field of neurosurgery from an ethical perspective?<br/> 19       <b>A. Yes, so that evidence that you've received certainly</b><br/> 20       <b>seem to amplify this particular issue within that</b><br/> 21       <b>complex context.</b><br/> 22       Q. Thank you. And the other component to my clumsy<br/> 23       question was the importance from an ethical perspective<br/> 24       of supporting and overseeing junior colleagues?<br/> 25       <b>A. Yes. And this is important from -- in a kind of broader</b></p> <p style="text-align: center;">Page 102</p>                                                         | <p>1       equipment and staff can sometimes be hard to find or<br/> 2       very expensive to provide but that it is important that<br/> 3       neurosurgeons understand that even within those<br/> 4       limitations they require to do their best to deliver<br/> 5       what is an essential component of surgical care?<br/> 6       <b>A. I have thought about this sentence quite a lot because</b><br/> 7       <b>the -- it's the end bit "to the best of their</b><br/> 8       <b>ability" -- and rightly or wrongly I have been</b><br/> 9       <b>characterising this sort of almost in two parts where</b><br/> 10       <b>a surgeon, a doctor would have an ethical responsibility</b><br/> 11       <b>to use the resources at their disposal in the best</b><br/> 12       <b>possible way. Now, this, for me, I'd characterise</b><br/> 13       <b>slightly differently as perhaps changing an organisation</b><br/> 14       <b>or health system to match the resources provided to</b><br/> 15       <b>those that are needed. And so I'd like to think of</b><br/> 16       <b>those things, or I have been thinking about those things</b><br/> 17       <b>as sort of subtly different.</b><br/> 18       So, let's take a specific example. If<br/> 19       a neurosurgeon has been assigned a particular operating<br/> 20       list, say 8 hours of operating, it is important for them<br/> 21       to use those resources to enable the best possible care.<br/> 22       But there might be a further obligation for<br/> 23       a neurosurgeon to ensure that there are enough operating<br/> 24       theatres or enough operating days to ensure that all<br/> 25       patients have access to that resource in a way that also</p> <p style="text-align: center;">Page 104</p> |

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| <p>1 <b>is to the best of their ability. So I think it works on</b></p> <p>2 <b>multiple levels.</b></p> <p>3 Q. Thank you. As far as the practicalities are concerned</p> <p>4 in relation to that second component, the requirement</p> <p>5 that where facilities appear to be limited to be able to</p> <p>6 provide the best care there may be obligations to try to</p> <p>7 improve or seek those facilities being made available.</p> <p>8 Presumably that obligation would be centred on senior</p> <p>9 doctors who would have responsibility for liaising for</p> <p>10 example with a health board or a health trust to perform</p> <p>11 that function; is that correct?</p> <p>12 <b>A. Yes, and within the limitations of aforementioned sort</b></p> <p>13 <b>of lack of expertise within organisational ethics, this</b></p> <p>14 <b>is where that interface sits for me. And it wouldn't</b></p> <p>15 <b>necessarily then be for every neurosurgeon to meet with</b></p> <p>16 <b>every health minister, for example, but to create and</b></p> <p>17 <b>ensure that there is a structure by which clinical</b></p> <p>18 <b>concerns about resourcing could be adequately escalated</b></p> <p>19 <b>up to people who have influence over the organisation to</b></p> <p>20 <b>support high standards of care. And that obligation</b></p> <p>21 <b>would, I think, sit all the way with the sort of very</b></p> <p>22 <b>distributed at the coalface level surgeon, even if</b></p> <p>23 <b>they're not having the discussion with the health</b></p> <p>24 <b>minister.</b></p> <p>25 Q. And I think what you've identified there is that that</p> <p style="text-align: center;">Page 105</p> | <p>1 in order to comply with his or her ethical obligations?</p> <p>2 <b>A. Yes, and if I refer back to our original ethical</b></p> <p>3 <b>principlism, this is where ethical justice comes in</b></p> <p>4 <b>because the healthcare organisation will have to be</b></p> <p>5 <b>thinking about the balances of scarce resources and</b></p> <p>6 <b>perhaps taking an operating theatre away from another</b></p> <p>7 <b>surgeon to give it to a neurosurgeon may have broader</b></p> <p>8 <b>impact on patient care and the balances of that are</b></p> <p>9 <b>where things in ethics become extremely challenging</b></p> <p>10 <b>because often in this situation there isn't necessarily</b></p> <p>11 <b>a right or wrong answer but it becomes a matter for</b></p> <p>12 <b>a broader debate within society.</b></p> <p>13 Q. And in a practical sense -- you might be able to help us</p> <p>14 with this, professor, based on your own clinical</p> <p>15 practices -- we've heard an expression used "a clinical</p> <p>16 lead". Would that be an expression that you're familiar</p> <p>17 with as being someone within a surgical team or</p> <p>18 a medical team that would have the greatest degree of</p> <p>19 responsibility for this sort of thing, bearing in mind</p> <p>20 what you've already said is that that does not mean</p> <p>21 complete responsibility because even a junior surgeon</p> <p>22 would have some level of responsibility in this regard?</p> <p>23 <b>A. Yes, the term "clinical lead" is familiar to me.</b></p> <p>24 <b>I'm not sure how it works in Scotland. Within my own</b></p> <p>25 <b>department there is a lead for colorectal surgery and</b></p> <p style="text-align: center;">Page 107</p> |
| <p>1 interface within the confines of your expertise not</p> <p>2 extending into organisational ethics I think as a matter</p> <p>3 of logic must mean the following: the organisation has</p> <p>4 an obligation to have a system whereby the doctor can</p> <p>5 comply with these ethical obligations, is that fair?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And indeed viewed from the other perspective, the doctor</p> <p>8 has an obligation to carry out his work in a way which</p> <p>9 facilitates the healthcare provider being able to</p> <p>10 deliver their obligations, such as being able to provide</p> <p>11 good standard healthcare to the people who live in the</p> <p>12 locality or something like that?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. So effectively what that means in a practical sense, if</p> <p>15 you're talking about for example the availability of</p> <p>16 operating theatres, as you've said, is that the doctor</p> <p>17 has an obligation to make it known to the healthcare</p> <p>18 provider that another operating theatre is required for</p> <p>19 good standard of care to be delivered and why, is that</p> <p>20 right?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And by way of logical deduction, it must be then the</p> <p>23 case that there is a reasonable -- an obligation on the</p> <p>24 healthcare provider to take reasonable steps to comply</p> <p>25 with that in particular because the doctor has said that</p> <p style="text-align: center;">Page 106</p>                                                                                                                                                                                        | <p>1 <b>issues around the service in terms of standards of care,</b></p> <p>2 <b>that clinical lead would be a first port of call to</b></p> <p>3 <b>discuss such issues.</b></p> <p>4 Q. Thank you. And just as we've touched on the area,</p> <p>5 before we finish for today, the other aspect that you've</p> <p>6 quoted here or I have taken from your table 5, which is</p> <p>7 of importance in the general standard of care, relates</p> <p>8 to the importance in neurosurgery of maintaining</p> <p>9 accurate records with what's described as clear,</p> <p>10 up-to-date, detailed and accurate clinical records with</p> <p>11 full descriptions of significant medical events. We've</p> <p>12 heard a little bit of evidence about that from</p> <p>13 a neurosurgical perspective already but from an ethical</p> <p>14 perspective, why is that an ethical obligation, if I can</p> <p>15 put it that way?</p> <p>16 PROFESSOR HUXTABLE: I will pick up on Professor McNair's</p> <p>17 reference to those four principles we mentioned earlier.</p> <p>18 So we've just engaged to a degree with the principle</p> <p>19 of justice a moment ago. I would link both the passage</p> <p>20 we were just looking at and this passage as broadly</p> <p>21 connected to the idea of beneficence and</p> <p>22 non-maleficence, which I see basically as two sides of</p> <p>23 the same coin. On the one hand or on the one side of</p> <p>24 that coin you're looking to benefit the patient. On the</p> <p>25 other side you want to avoid bringing them to harm. So</p> <p style="text-align: center;">Page 108</p>                                                                                                                           |

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| <p>1 you want to find a way. Sometimes you will have to</p> <p>2 inflict a degree of harm in order to benefit but broadly</p> <p>3 it's those two obligations you've got in view here. So</p> <p>4 of course if we don't have accurate information, future</p> <p>5 harm might ensue, particularly if we've missed something</p> <p>6 or indeed we've told an incomplete story, it might well</p> <p>7 mean we're missing an important part of the story which</p> <p>8 could lead to benefits for the patient or indeed could</p> <p>9 enable us to avoid any further harm to the patient.</p> <p>10 So I myself would link this sort of obligation, much</p> <p>11 as the previous one, to benefit and harm.</p> <p>12 Q. So there is -- it might be thought that something as</p> <p>13 practical if you like as keeping records is far removed</p> <p>14 from principles and ethics and that sort of thing, but</p> <p>15 I think what you're telling us is that's not the case?</p> <p>16 <b>A. Yeah, I think it's not entirely clear. Certainly there</b></p> <p>17 <b>is something practical, pragmatic, it's useful for</b></p> <p>18 <b>people. There may be a degree of autonomy in there, in</b></p> <p>19 <b>that I want to look back at my medical record and see</b></p> <p>20 <b>the story, but I think in seeing that story and having</b></p> <p>21 <b>a detailed and accurate picture one can then get a more</b></p> <p>22 <b>comprehensive view of that person's medical status and</b></p> <p>23 <b>what needs to happen next or indeed not happen next.</b></p> <p>24 <b>But I do think it's linked to benefit and harm.</b></p> <p>25 MR DAWSON: Thank you very much. Sir, that's 4.30, so</p> <p style="text-align: center;">Page 109</p> | <p>1 INDEX</p> <p>2 PAGE</p> <p>3 PROFESSOR .....1</p> <p>4 RICHARD HUXTABLE (called)</p> <p>5 PROFESSOR ANGUS MCNAIR .....1</p> <p>6 (called)</p> <p>7 PROFESSOR .....2</p> <p>8 RICHARD HUXTABLE (affirmed)</p> <p>9 PROFESSOR ANGUS MCNAIR .....2</p> <p>10 (affirmed)</p> <p>11 Questions by COUNSEL TO THE .....2</p> <p>12 INQUIRY</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 111</p> |
| <p>1 I think we'll probably come to a break.</p> <p>2 THE CHAIR: Yes, indeed.</p> <p>3 Gentlemen, we're going to stop for the afternoon now</p> <p>4 and we'll aim to start again at 10 o'clock tomorrow</p> <p>5 morning. Just a polite reminder about what I said about</p> <p>6 not discussing your evidence out with your group.</p> <p>7 Thank you very much for your evidence this</p> <p>8 afternoon. I'll look forward to seeing you in the</p> <p>9 morning. Thank you.</p> <p>10 PROFESSOR HUXTABLE: Thank you.</p> <p>11 PROFESSOR MCNAIR: Thank you.</p> <p>12 (4.35 pm)</p> <p>13 (The hearing adjourned until 10.00 am</p> <p>14 on Tuesday, 22 September 2026)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 110</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

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