

UK COVID-19 INQUIRY – MODULE 2A

WRITTEN CLOSING STATEMENT FOR NHS NATIONAL SERVICES SCOTLAND ("NHS NSS")

Introduction

1. NHS NSS raises five matters in this submission. These relate to: (1) the role of the Antimicrobial Resistance and Healthcare Associated Infection Scotland team ("ARHAI"); (2) whether or not the Inquiry should make any recommendation in relation to the location of ARHAI within either NHS NSS or Public Health Scotland ("PHS"); (3) the initial guidance given by Health Protection Scotland ("HPS") about discharging patients from hospitals to care homes; (4) other matters better left to future modules; and (5) correction to evidence.

First: the role of ARHAI

2. Counsel to the Inquiry asked about the extent to which the reorganisation of public health services (so that ARHAI was separate from PHS) "or indeed inadequacies in the ARHAI role in providing guidance" to care home settings created a potential problem [4/167/21-24]. He asked specifically whether there was a deficiency in the service being provided with regard to guidance, which resulted either from the reorganisation or from the fact that it was not clear that guidance to be provided to care homes was a priority [4/168/11-15]. Dr McMenamin's response was that there was not any deficiency, that colleagues in infection prevention and control were very much part of the guidance team, and that they made a significant contribution to the guidance issued by HPS and thereafter PHS [4/168/17-4/168/10]. Professor Phin's response was that healthcare in social and healthcare settings has for many years been dealing with outbreaks of flu, norovirus, et cetera, in healthcare and in the community, so there are well established processes around infection control within the social care setting [4/169/12- 4/170/6].
3. NHS NSS reminds the Inquiry that ARHAI provides national expertise for infection prevention and control, antimicrobial resistance and healthcare associated infection. The same principles of infection prevention and control apply across all health and care settings, although how they are put into operation may differ. ARHAI provided infection prevention and control support to the development of public health guidance led by PHS throughout the pandemic [INQ000226464/8 **Witness statement Mary Morgan**]. In Module 6, the Inquiry will examine the impact of the Covid-19 pandemic on the Care Sector, including infection prevention and control measures. In anticipation of the evidence that the Inquiry will hear in that Module,

NHS NSS observes that, prior to the pandemic, ARHAI's remit did not include the development of specific care home guidance. Covid-19 guidance for care homes was published by the Scottish Government and PHS. ARHAI supported these publications in its provision of infection prevention and control advice, based on the evidence within the National Infection Prevention and Control Manual ("NIPCM"). During the pandemic, the Scottish Government commissioned ARHAI to develop a Care Home Infection Prevention and Control Manual. This was published in 2021. This resource was developed in partnership with relevant stakeholders. Its content is aligned to the NIPCM, but it is a context specific practice guide for use in care homes, to support effective infection prevention and control in care homes. As already noted, given the remit of Module 6, we suggest and anticipate that the Inquiry will not reach a concluded view on the scope of ARHAI's role in this module.

Second: the location of ARHAI

4. As the Inquiry heard, in 2020 there was a re-organisation of public health services in Scotland. This long-planned re-organisation took place on 1 April 2020. On that day PHS was formed, from a number of pre-existing public health bodies: (a) HPS; (b) the Information Services Division of NHS NSS; and (c) NHS Health Scotland. ARHAI remained part of NHS NSS and did not move to PHS.
5. The Inquiry heard different views about ARHAI remaining part of NHS NSS. Professor Nick Phin, who joined PHS in January 2021, considered that the separation of ARHAI from PHS should not have gone ahead at the start of the pandemic [4/162/18- 4/163/7] and [4/164/1- 4/164/18]. He was expressing his personal view that it would have been better for ARHAI not to be separate from PHS [4/164/22-4/165/2] and [4/165/15- 4/166/6]. However, his colleague Dr Jim McMenamin has at all material times, and importantly during the first nine months of the pandemic, been the Head of Infections Service and Strategic Incident Director at PHS. When asked if the administrative separation of ARHAI from HPS when PHS was established caused difficulty, he described ARHAI remaining within NHS NSS then as akin to a painless separation or divorce, with colleagues continuing to work together [4/162/1-10]. He described colleagues in infection prevention and control being very much part of the guidance team, and making significant contribution to the guidance issued by HPS or PHS [4/168/18- 4/169/10].
6. The Inquiry may be considering the issue of the location of ARHAI. The Inquiry should be aware that on 6 October 2023 NHS NSS and PHS were informed by the Chief Nursing Officer that an ARHAI Location Review was commencing. That

review is being led by Dr Jane Burns (former medical director of NHS Lanarkshire) and Mr Steve Lennox (presently an Improvement Director in NHS England). The location of ARHAI is the sole purpose of the ARHAI Location Review. The review has started and its report is expected in early 2024. Professor Phin referred to this review: he described it as an ongoing consultation to which PHS is contributing [4/164/18-21].

7. NHS NSS submits that the ARHAI Location Review is the most appropriate body to consider the location of ARHAI, rather than this Inquiry. It is able to consider matters that are outside the remit of the Inquiry (including potentially important practical and financial considerations) which are of relevance to the question of the location of ARHAI. In addition, the Inquiry into the construction of the Queen Elizabeth University Hospital Campus, Glasgow and the Royal Hospital for Children and Young People and Department of Clinical Neurosciences, Edinburgh ("Scottish Hospitals Inquiry") is ongoing. The extensive remit of the Scottish Hospitals Inquiry includes examination of advice and information given on infection control and the reporting of healthcare associated infections. However, as noted above, the ARHAI Location Review has been established to consider the sole issue of the location of ARHAI. It is likely to report in early course. It is the most appropriate body to consider and recommend the location of ARHAI, rather than a public inquiry with a much broader remit.

Third: the initial guidance given by HPS about discharging patients from care homes

8. Dr Donald Macaskill, Chief Executive of Scottish Care, gave evidence to the effect that care homes were dissatisfied at times with a number of aspects of the public health response to the pandemic. One particular topic mentioned was the movement of patients from hospitals to care homes. He was critical of the initial guidance issued on 13 March 2020 (when HPS remained within NHS NSS) [3/111/11- 3/112/9]. One aspect of his criticism related to the lack of a requirement for testing prior to a patient being moved to a care home. In his evidence, Dr McMenamin explained his understanding that there was no reference to testing because of the lack of availability of tests [4/211/3- 4/212/4]. In her evidence, Jeane Freeman, the former Cabinet Secretary for Health and Sport, confirmed that the lack of a requirement for a negative test initially was related to the lack of availability of testing capacity [9/194/24- 9/195/10] and that the guidance changed in 21 April 2020 when testing capacity had increased [9/215/8-15]. She accepted that ultimate responsibility for guidance issued rested with her and the Scottish Government [9/204/22- 9/205/2].

9. During the pandemic questions about whether patients should remain in hospitals or be discharged to care homes involved balancing different risks and interests. The perspectives of bodies with one interest (Scottish Care being one example) are valuable but only go so far. In her evidence, Jeane Freeman spoke to the different risks and interests, and what was done to balance these prior to testing being available [9/193/22- 9/194/23]. Nicola Sturgeon, the former First Minister, in her evidence about discharges from hospital to care homes in the early part of the pandemic spoke to the limited availability of testing initially, the objective to discharge people from hospital when there was not a medical need to remain there, and the early focus on isolation in care homes. Leaving people in hospital was not without risk: there were risks of nosocomial infection and of contracting Covid-19 [11/217/6-15, 11/218/25- 11/219/11, 11/221/22- 11/222/3 and 11/225/23- 11/226/7].
10. It would in some respects be easy, although plainly misconceived, to use hindsight to conclude that there was no risk of the NHS being overwhelmed and that it was unnecessary to take steps to maximise the available capacity of hospitals.
11. We note that Module 6 will examine the impact of the Covid-19 pandemic on the Care Sector, and that the Provisional Outline of Scope for that module states that it will include examination of:
- “3. The key decisions made by the UK Government and the Devolved Administrations in respect of the Care Sector, including the decisions relating to the discharge of people from hospitals into adult care and residential homes in the early stages of the pandemic.”
- Given that this issue is to be specifically addressed as an issue in Module 6, we suggest and anticipate that the Inquiry will not reach a concluded view on the matter in this module.

Fourth: other matters better left to future modules

12. Any criticisms of issues of healthcare during the pandemic will be most appropriately addressed in Module 3: Impact of the Covid-19 pandemic on healthcare systems in the four nations of the UK. Addressing those criticisms in that Module will, among other things, allow the providers of healthcare to respond. NHS NSS is aware that the territorial Scottish health boards are Core Participants in Module 3. The territorial health boards should, as a matter of basic fairness, be given the opportunity to explain (at a global, not patient-specific level) the reasons for discharging patients to care homes and the systems which operated.

13. Dr Donald Macaskill was critical of the impact of increased regulatory oversight and inspection of care homes during the pandemic [3/165/19- 3/167/7]. Such criticisms will be most appropriately addressed in Module 6 which will examine the impact of the Covid-19 pandemic on the Care Sector.

Fifth: correction to evidence

14. The evidence of Alastair Jack MP, Secretary of State for Scotland, could be read as suggesting that the UK Government purchased all of the Personal Protective Equipment (“PPE”) required for the UK during the pandemic [12/62/22 – 12/65/2]. This is incorrect. In Scotland, the majority of sourcing, purchasing, stocking and distribution of PPE was by NHS NSS. This issue of PPE procurement and distribution will be considered in Module 5, and it would be appropriate for the Inquiry to defer its consideration of it to that module.

NHS National Services Scotland
[23 February 2024]