CHAIR'S STATEMENT
ON STAFF EVIDENCE AND REMAINING PHASES

ISSUED ON 2 NOVEMBER 2023

1. The patient experience evidence was completed on Thursday 12 October 2023. At the close of that day's hearing, counsel provided statistics on the number of witnesses who had assisted the Inquiry during this important phase of its work.

2. The Panel heard oral evidence from 62 witnesses relating to the patient experience. A further 28 statements were read to the Panel. The Panel also received a summary presentation in respect of 16 others who had provided statements to the Inquiry and whose evidence did not fall within the terms of reference.

3. Now that the patient experience evidence is complete, the Panel has had an opportunity to reflect on the value of this evidence to its consideration of the terms of reference. It is important to acknowledge again the contribution of those who came forward to assist the Inquiry. Before the Inquiry hearings commenced, every effort was made to reach out to those who might be in a position to assist the Inquiry by providing an account of their personal experience of the hospital and the experience of their relatives. It is fair to say that the range of experiences that the Inquiry has had the benefit of hearing is much greater than one could have reasonably expected to achieve when the Inquiry embarked on its work.

4. As we prepare to hear from staff who worked at the hospital during the relevant period, it is important to remind ourselves of the nature and objectives of a public inquiry. The core objectives of this Inquiry are set out clearly in the terms of reference. They are to examine the issue of abuse of patients at the hospital, to

determine why the abuse happened and the range of circumstances that allowed it to happen and to ensure that such abuse does not occur again. The terms of reference also provide that the Inquiry will examine the nature and extent of abuse and the role of staff and others in positions of responsibility in respect of that abuse.

5. Importantly, the Inquiry has a much broader role than other types of legal proceedings in which the issue of abuse might fall to be considered by a court or a tribunal. A criminal trial will focus exclusively on the allegations against the accused. Civil proceedings will focus exclusively on the facts that are said to give rise to the claim. Disciplinary proceedings will focus on the conduct of the individual and the extent to which that conduct may justify sanction.

6. A public inquiry is specifically prohibited from ruling on or determining any person's criminal or civil liability. Importantly, however, an inquiry panel is not prevented from discharging its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes. Quite apart from the statutory prohibition, both the nature and the scale of the Inquiry's task also render it a largely unsuitable forum for making findings of fact about individual incidents that have been the subject of evidence before the Inquiry Panel.

7. The terms of reference require the Inquiry to look beyond the circumstances of individual witnesses and individual incidents. The Inquiry is required to conduct a careful analysis of how the issue of abuse (in its multiple forms) developed and impacted on the life of the hospital and its patients. The Inquiry also has an important forward-looking role in making recommendations that will prevent a recurrence of the situation in Muckamore itself or in any comparable facility in Northern Ireland. The nature of the Inquiry's work is such as to require a much more holistic type of examination of the facts than in other legal proceedings.

8. As for the scale of the Inquiry's work, one can see immediately that it would be impossible within any reasonable timeframe for the Inquiry to seek to make findings of fact about individual incidents that have been discussed in evidence. The 90

accounts of the patient experience within the timeframe of the terms of reference that the Inquiry has received have contained details of multiple interactions between patients and their relatives and the staff and management at the hospital. Both negative and positive experiences have been recounted. The various reports and other documents received by the Inquiry (such as the Ennis Report and the Way to Go Report) also provide detailed information about the patient experience gleaned prior to the establishment of the Inquiry.

9. No inquiry of this kind could reasonably be expected to drill down into the multiple incidents and interactions that have been brought to the Inquiry's attention with a view to making specific findings of fact or adjudicating on them. This may come as a disappointment to some. Individuals may very naturally wish their own particular circumstances to be investigated including some against whom allegations of poor practice have been made. Organisations and authorities too may take issue with some of the accounts that have been given by witnesses about individual incidents or interactions with staff and others with responsibility for care at the hospital. It is important, however, that the Inquiry does not lose sight of the larger picture. As counsel to the Inquiry noted in his opening remarks back in June 2022, the Inquiry will need to adopt a "suitably proportionate approach" to the issues in order to complete its work within a reasonable timeframe.

10. It is important to emphasise that this is not simply a matter of time and resources. It is also about the effectiveness of the Inquiry. As I mentioned earlier, the Inquiry is tasked with the responsibility of making recommendations to protect against the possibility of the abuse of the vulnerable in a hospital setting in the future. The public is entitled to expect that such recommendations be made expeditiously and on a sound evidential basis. A protracted forensic investigation of multiple incidents occurring over a period of two decades would arguably run the risk of impeding the impetus for the real change that is demanded by events at the hospital.

11. I made a similar point when explaining the Inquiry's targeted approach to patient documentation. There is a real risk that immersion in multiple records relating to

patients, many of whom who have spent very lengthy periods in the hospital, would deflect from the Inquiry's responsibility to deliver meaningful conclusions within a reasonable timeframe. The Inquiry has therefore prioritised the hearing of individual accounts of personal experience over the analysis of many hundreds of thousands of pages of records compiled over the timespan covered by the terms of reference. The value of hearing those accounts live in the Inquiry chamber cannot be overestimated.

12. Just as the Inquiry has heard from patients and their relatives, it will now hear from staff. The observations that have been made above about the nature of a public inquiry are important in this context too. The Inquiry is not a trial or a forum for resolving civil disputes. No staff witness attending the Inquiry to give their evidence is doing so in defence of a criminal charge or a civil claim, nor are they doing so to answer a disciplinary charge that has been brought against them.

13. Further, this Inquiry is in the highly unusual position of running in parallel to a large scale criminal investigation, which has resulted in criminal proceedings being initiated against a number of staff who worked at the hospital. The investigation is ongoing. Further prosecutions may follow. While the primary focus of that particular investigation is on an approximate six month period in 2017, that does not preclude lines of investigation being pursued in relation to other matters during the timeframe of the Inquiry.

14. The Inquiry cannot and will not replicate the criminal investigation. Moreover, the Inquiry must be very careful to avoid doing anything that would impact adversely on or interfere with the ongoing criminal proceedings or future criminal proceedings. All will be aware that the Inquiry has entered into a Memorandum of Understanding (MOU) with the Police Service of Northern Ireland and the Public Prosecution Service. Just as the Inquiry has been vigilant to its responsibilities under the MOU during the patient experience evidence, so too will it have to take care to avoid any possible prejudice that may arise from the staff evidence that will

be heard in the next phase. Such vigilance will not however prevent the Inquiry performing its function and meeting its terms of reference.

15. As has been emphasised before, it is very important that the Inquiry should hear the staff perspective on what occurred at the hospital. Some members of staff may wish to recount positive experiences of their time working at the hospital. Others may be highly critical of their colleagues or may even wish to draw attention to occasions when they themselves on reflection could have managed particular situations more effectively. Others may have both positive and negative things to say about their experience at the hospital. Some may wish to express disagreement with the portrayal of the hospital during the patient experience evidence. Some may have critical things to say about how the hospital was managed or about how they were treated as staff. Some may wish to criticise the Trust, the Department or other organisations and authorities responsible for care, inspection and regulation of the hospital.

16. It is imperative that staff who have worked day to day in the hospital should feel that they can provide their account to the Inquiry without any inhibition whatsoever. The subject matter of the Inquiry is highly emotive. It is perhaps understandable if a member of staff might have some reluctance in coming forward to assist the Inquiry. For example, a person may feel uneasy about saying things that reflect badly on a present or past employer, or another member of staff, equally a person may feel uneasy about saying something contrary to the evidence given by a patient or their relative. It is, however, essential that everyone should feel free to provide their account to the Inquiry even if others may not wish to hear it. It should also be borne in mind that the law is very strict in prohibiting anything being done to prevent relevant evidence being given to an inquiry.

17. The Inquiry has also been very proactive in ensuring that witnesses are facilitated in giving their account in a way that enables them to give their best evidence. Some witnesses will not need to attend at all but may be able to have their statements simply read into the record. For those who do give oral evidence, I will listen

carefully to any requests for special measures, including anonymity, screening or giving evidence from another location if witnesses are concerned about attending to give evidence in the normal way. Witnesses will also be aware of the undertaking given by the Director of Public Prosecutions that a person's written statement or oral evidence to the Inquiry will *not* be used in evidence against that person in any criminal proceedings or in deciding whether to bring criminal proceedings against that person.

18. Of course, as the Chair of this Public Inquiry I do ultimately have powers to require a witness to provide a statement and to give evidence. As I have repeatedly emphasised however, my preferred approach is to persuade people who have relevant information to give to come forward voluntarily to provide their evidence to the Inquiry. The use of compulsory powers should not be a measure of first resort.

19. The inquisitorial aspect of these proceedings is also worth mentioning again in this context. Questioning is conducted by counsel to the Inquiry. While Inquiry counsel are free to ask questions to test the witness's evidence, this is not cross-examination as in a court of law. The primary function of the questioning is to ensure that the witness's account is effectively conveyed to the Panel to assist the Panel in its consideration of the terms of reference.

20. The point made earlier about the Inquiry not conducting a focused investigation into multiple individual incidents is also relevant when it comes to the questioning of staff witnesses. While the staff who are called to give evidence may be asked to address issues that have arisen in the patient experience evidence, this will not be for the purpose of "adjudicating" on individual factual disputes, but to ensure that the staff perspective is not lost in the Panel's assessment of how the hospital arrived at the parlous state that resulted in the establishment of this Inquiry.

21. The Inquiry has taken significant steps to ensure that staff who have worked at the hospital during the timeframe of the terms of reference are heard. From the outset of its work, the Inquiry invited all whose experience of the hospital would be of

assistance to the Panel's consideration of the terms of reference to contact the Inquiry. Some staff were among those who contacted the Inquiry in its very early stages.

22. More recently, in February and March 2023, the Inquiry conducted a media campaign (on the radio, in newspapers and in social media) to encourage staff to come forward to assist the Inquiry. The Inquiry held engagement sessions with staff to explain the Inquiry's work and how the Inquiry would go about taking statements from staff. The Inquiry also appointed an independent firm, Napiers Solicitors, to provide independent advice to staff who preferred not to use the services of the Trust solicitors. Counselling has also been made available to members of staff coming forward who might find that of assistance.

23. With the benefit of the evidence that it has already heard and the contact that has been made with the Inquiry by staff, the Panel has sought written statements from a number of members of staff both current and former who, it is believed, will be in a position to assist the Inquiry with its work. As the work of the Inquiry progresses it is likely that further members of staff will be identified and contacted by the Inquiry. The statements are being taken by Cleaver Fulton Rankin Solicitors on behalf of the Inquiry.

24. It is important to note that the Panel has been and will be guided in its approach to requesting statements from staff witnesses by the overriding objective of meeting the Inquiry's terms of reference. In this context, it is also important to recall some of the matters outlined above. First, the Panel has had to be mindful of the Inquiry's responsibilities under the MOU. In the MOU, I acknowledge the need to make every effort to ensure that the work of the Inquiry does not impede, impact adversely on or jeopardise in any way the PSNI investigation into abuse at the hospital and the prosecutions that result from that investigation (see paragraph 16 of the MOU). The Inquiry has taken and will continue to take great care to respect this commitment.

25. Secondly, recalling the nature and purpose of the Inquiry as outlined above, the Panel has not sought to obtain evidence from all the staff witnesses who have been mentioned, whether favourably or unfavourably, during the patient experience evidence. As noted above, the Inquiry will not be engaging in individual arbitration on the multiple incidents that have been discussed in evidence nor determining every allegation, not even every serious allegation. The question of whether a witness will be able meaningfully to assist the Panel in its consideration of the terms of reference has been accorded priority over whether a witness will be in a position to assist with an individual set of circumstances that has been revealed in evidence.

26. Thirdly, it must be recalled that this phase of evidence is primarily devoted to staff who worked on a day-to-day basis with patients in the hospital. At a later stage, the Inquiry will hear from those in senior management positions. It is anticipated that senior management will be asked specifically to address the thematic criticisms and failings that have been identified during the patient experience evidence.

27. It will be evident from the above that the objective of the staff evidence is not simply to provide an account in response to the evidence given by patients and their relatives about their individual experiences of the hospital. There will, however, be members of staff who have been asked to make an Inquiry statement and who have in fact been the subject of criticism or allegation in the course of the patient experience evidence. The question then arises as to how that ought to be dealt with in the process of taking statements and in evidence.

28. On one view, it may be argued that a witness ought in fairness to be invited to respond to any criticism that has been made of them in evidence. On the other hand, it must be recalled that a very precautionary approach has been adopted to the ciphering of staff subject to criticism, so as to provide as much protection as possible from the danger of staff facing public criticism with no opportunity to respond. Further, as has been repeatedly stated, the Inquiry is not going to be adjudicating on individual incidents and it is important that the Inquiry's work should not be sidetracked by evidential disputes that may appear significant to the

individual concerned but the resolution of which is not going to assist the Inquiry in its work.

29. There are also some potential obstacles to putting the specifics of patient experience accounts to staff. First, Restriction Order No 2 accords anonymity to all patients. Anonymity has been waived by or on behalf of some patients but not others who form the majority. Some patients or their relatives may be entirely content for a criticism or allegation that they have made against a member of staff (along with the patient's identity) to be specifically put to them. Others may not be so content and indeed may be very resistant to the loss of anonymity in such circumstances. It would not be satisfactory to put specific criticism or allegations to witnesses only where the patient or their relative wished that to occur, as that would result in an inconsistent approach to the provision of an opportunity to respond on the part of staff.

30. Secondly, a considerable body of the patient experience was given subject to restriction orders tailored for the particular circumstances of the witness and some of the evidence was governed by what was termed a 'Full Restriction Order' prohibiting any publication or wider dissemination of any part of it. The communication of evidence that was given under restriction may not only be in breach of the Restriction Order itself, but may also offend against the general harm that most restriction orders are designed to prevent, that is avoiding any possible prejudice to ongoing or future prosecutions.

31. For all the above reasons, where a member of staff is asked to make a statement, the Inquiry does not propose generally to put individual criticism and allegation arising out of specific factual scenarios that arose in the patient experience evidence. Rather, the Inquiry will, where appropriate, ask staff to respond to generic themes and lines of criticism that are relevant to their particular area of work. As indicated above, it is important to recall that those in a position of management will also be asked to account for the perceived failings that have been highlighted in the patient experience evidence.

32. In adopting this approach, I have been conscious of the need to act with fairness to all concerned in the conduct and procedure of the Inquiry. On balance, it seems to me that this approach is the most fair, proportionate and reasonable to ensure that: (a) the Panel can properly arrive at an understanding of the difficulties that have been discussed in the patient experience; (b) the staff narrative can fairly be put before the Panel; (c) the Inquiry remains focused on its key objectives; and (d) the requirements of the MOU are properly respected.

33. There is one qualification to the above general approach that first needs to be set in context. Witnesses have given highly personal accounts of their experience and the experience of their family members. It is worth noting, however, that witnesses have generally not engaged in wholesale criticism or attacks on the character of named individual members of staff.

34. Having said that, there have been a limited number of instances in which very serious criticism or allegations of a personal, specific and direct nature have been made against named members of staff from whom the Panel may ask for a statement. In those instances, the Panel may conclude that a criticism or specific allegation should be put to the witness, where it is possible to do so, to invite a response from the witness. That may arise because it is necessary having regard to the terms of reference or to ensure that no unfairness is caused to the person who gave the evidence or the person against whom the criticism or allegation was directed or their employer.

35. For this very limited number of potential witnesses, the Inquiry may therefore produce a summary of the very serious criticism or allegation that has been directed against the individual concerned and invite the individual to respond. It will be a matter for me following discussion with the Inquiry Panel to assess if and when that may be necessary. The process to be adopted may vary depending on the circumstances.

36. It should be noted that the adoption of such a process may not be without complication. As a starting point, the anonymity of the patient concerned must be maintained unless waived by the patient or by the person entitled to waive anonymity on the patient's behalf. If it were decided that very serious criticism or allegation ought to be put to a witness, the Inquiry team would be obligated to inquire whether there are any concerns about anonymity being forfeited should the criticism or allegation be put.

37. Further, if the relevant evidence had been given under a Restriction Order, the evidence could not be put to any potential witness without the Order being varied or revoked. If the PSNI or PPS had applied for the Order, they would have to be given an opportunity to make representations in respect of any prospective variation. It should be noted therefore that, even if it were determined that it may be appropriate to put particular evidence to a witness, other factors may militate against that course being adopted.

38. It is apparent that some degree of flexibility will need to be retained. It is emphasised that the issue may arise with regard to only a small number of potential witnesses if any. Due regard will need be given to the multiplicity of interests involved, including the Panel's consideration of the terms of reference, patient anonymity, any relevant Restriction Order, fairness to the person who gave the relevant evidence, fairness to the witness asked to make a statement and the Inquiry's commitments under the MOU.

39. I also bear in mind that there are other ways during the course of Inquiry proceedings in which a person who is criticised may be given an opportunity to respond to that criticism. I am mindful in particular of the process set out in Rules 13 to 16 of the Inquiry Rules 2006 in respect of warning letters. It is worth drawing attention specifically to Rule 13(3), which precludes explicit or significant criticism of a person in a report unless the individual concerned has been notified and given a reasonable opportunity to respond.

40. If an individual is not given the opportunity now to respond to direct criticism, they would inevitably under the rules have that opportunity should there be a real risk of any such criticism appearing in the final report.

41. The staff evidence will begin in week commencing 13 November 2023. There will be no evidence in weeks commencing 20 or 27 November 2023. There will be two further weeks of staff evidence in weeks commencing 04 December and 11 December 2023. It is intended to complete this phase of staff evidence by no later than February 2024.

42. The Inquiry's attention will then turn to the completion of Module 6, which it will be recalled requires focused consideration of the Ennis Review and its aftermath, the Leadership and Governance Review and other significant reports regarding care at the hospital. The Inquiry will then hear evidence from management of the hospital, the inspectors and regulators, others responsible for responding to concerns at the hospital and other authorities responsible for the delivery of care at the hospital. Finally, the Inquiry will hear from persons in a senior position within the Trust and the Department of Health. The Inquiry has already heard a considerable body of evidence about the procedures, policies and practices of the hospital. The Inquiry's later focus will be on their effectiveness.

43. With the above schedule in mind, the Inquiry will be writing (before the end of November 2023 or shortly thereafter) to all those who will be expected to assist the Inquiry in the remaining phases of its work. The Inquiry will indicate to each individual, organisation and authority what will be expected of them in terms of written and oral evidence.

44. The Inquiry wishes to thank all of those who have assisted the Inquiry to date in its work and looks forward to receiving the level of co-operation and commitment that will be required to bring the important work of the Inquiry to its conclusion.

Tom Kark KC

MAHI Chair