

Witness Name: Katherine Ibbotson

Statement No.: KI/1

Exhibits: KI/01-KI/07

Dated: 16 July 2024

THIRLWALL INQUIRY

WITNESS STATEMENT OF KATHERINE IBBOTSON

I, Katherine Ibbotson, will say as follows: -

Introduction

1. The facts in this witness statement are true, complete and accurate to the best of my knowledge and belief. Where I refer to my beliefs, those beliefs, and my knowledge contained in this statement are informed by members of the NHS England Inquiry Team, external solicitors advising NHS England in the preparation of this statement, and the corporate Privacy, Transparency and Trust team's Information Governance – Records Management sub team (Corporate IG and Records Management team).
2. In the following paragraphs, I describe why I am the appropriate person to give this witness statement.
3. I am the Director of Inquiries at NHS England. I stepped permanently and fully into this role in September 2023 when I handed over responsibilities of the majority of my previous role: Director of Governance, Legal and Inquiries. I established the legal team in NHS England in 2014 (merging the legal teams of NHS England and NHS Improvement in late 2020), took on the additional governance responsibilities in 2017, and was asked to establish a small team to manage preparations for the UK Covid-19 Inquiry in 2021. In September 2023, I was asked to oversee the response to this Inquiry, and subsequently the Fuller and Lampard inquiries.
4. I am also a solicitor and have retained my registration with the Solicitors Regulation Authority in my capacity as Director of Inquiries. In my capacity as Director of Inquiries, I am responsible for ensuring that NHS England remains legally compliant with current public and independent Inquiries not managed elsewhere in the organisation (pre-dating the team's widening remit). I ensure that there is an efficient, effective process for responding to evidence requests, preparing for hearings and

reports, and supporting our witnesses. This includes using the services of external legal advisers to assure us and support us on the above.

5. As Director of Inquiries, I am supported in my role by the NHS England Inquiry Team and have oversight of its functions including the process by which documents (whether exhibits or otherwise) are searched, collated, legally reviewed and disclosed to Inquiries. I rely on the Corporate IG and Records Management team to set and ensure implementation of the organisation's approach to records generally, and my team looks to them for advice.
6. The NHS England Inquiry Team includes 'domains' with particular focus. We draw from the domains to create sub-teams dedicated to specific current Inquiries Governance. I am supported in my role by a Deputy Director for the Thirlwall Inquiry.
7. There are four domains:
 - a. Operations and disclosure, which provide operational oversight and co-ordination, and ensure disclosure via compliant systems of records. I will expand on this later in this statement.
 - b. Response, which oversee the strategy for all Inquiries and aim to respond to requests to time and quality.
 - c. Support, which support witnesses for hearings, communicate and support people across the organisation, the response to lessons.
 - d. Professional (clinical and legal), which oversees engagement on professional advisers and clinical matters for all Inquiries.
8. I and my team work closely with other assurance functions within NHS England. This includes in particular other specialist teams and governance such as:
 - a. Corporate IT, who lead on corporate IT provision, including email, electronic storage and communication systems.
 - b. The Privacy, Transparency and Trust team, who set organisational policy for managing information in line with UK GDPR and records management principles, and provide guidance and advise. This team includes the Corporate IG and Records Management team.
 - c. Other corporate functions, such as internal legal, Corporate Governance and HR.
 - d. Various policy teams, as required.

e. Where appropriate, with the Board of NHS England and the Executive Group.

9. I also liaise with external stakeholders, including the Department of Health and Social Care to support NHS England in meeting its statutory requirements and in supporting the Department to respond to Ministerial requirements.

10. The diagrams below illustrate, at Figure 1, the Inquiry Team governance arrangements and, at Figure 2, the Thirlwall Inquiry Governance arrangements.

Figure 1: NHS England Inquiry Team Governance

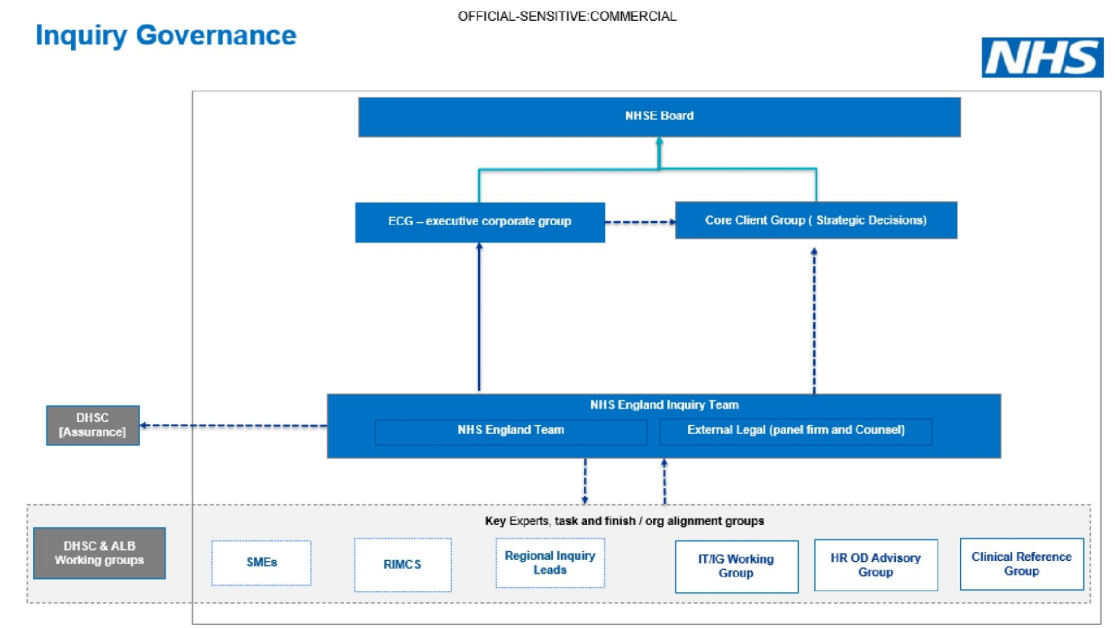
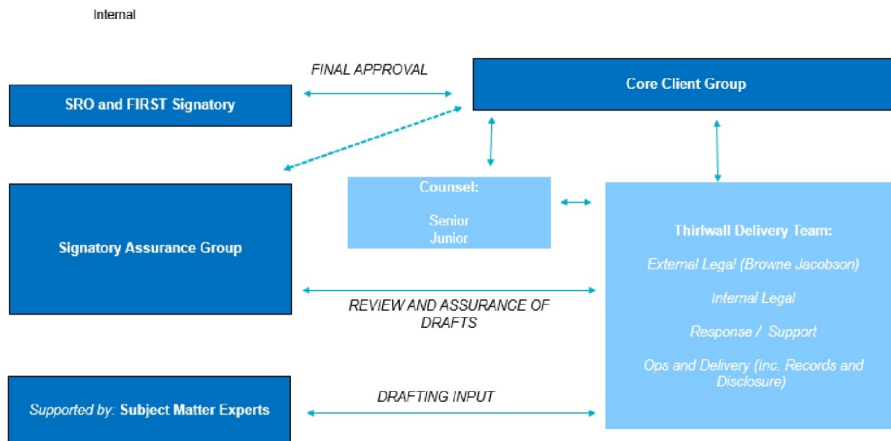


Figure 2: Thirlwall Inquiry Governance

Thirlwall Inquiry Governance



11. Before responding to the specific questions that the Inquiry has asked me to address within this Disclosure Statement, I would like to set out the structure that this statement adopts, provide a brief background to the records systems in place within NHS England today and outline some of the key issues arising in relation to the records of the Legacy Bodies (and specifically in this context the NHS Trust Development Authority and Monitor, including when acting as separate and distinct bodies and when operating as NHS Improvement). These issues were explained to the Inquiry in our first formal meeting with the Inquiry Solicitors on 5 October 2023.

12. Although this statement is concerned with disclosure managed as part of NHS England’s response to the Thirlwall Inquiry, I have also described the work that was done prior to this as part of the Project Columbus incident response. We have described in NHSE/1 what Project Columbus was and provided a brief overview of the work carried out in that context. Materials collated as part of Project Columbus were used as a starting point for our approach to disclosure to the Thirlwall Inquiry and so I have briefly described below this initial phase by way of context to what took place subsequently.

13. This statement is structured as follows:

- a. **Part A:** background to NHS England's records systems and those of the Legacy Bodies;
- b. **Part B:** Project Columbus incident response; the rapid work carried out as part of this in terms of information collation and how this has informed subsequent searches, collation, review and disclosure by the Thirlwall Inquiry Team;
- c. **Part C:** immediate steps taken in preparation for an inquiry, following the verdicts in LL's criminal trial (August 2023);
- d. **Part D:** Processes to identify relevant information, including documents;
- e. **Part E:** Disclosure to the Inquiry;
- f. **Part F:** Anticipated further disclosure
- g. **Part G:** Summary of NHS England's position on disclosure

Part A: background to NHS England's records systems and those of the Legacy Bodies

14. NHSE/1 sets out the Legacy Bodies that existed during the Indictment Period and their subsequent merger with NHS England. NHS Mail (via the domain NHS.net) has been used by NHS England since its establishment as its email platform and accordingly that is the email platform that we have most ready access to.
15. A variety of different servers and systems have transferred from the Legacy Bodies to NHS England during the period that the Thirlwall Inquiry's Terms of Reference covers. Many of these (including Legacy Body emails prior to their adoption of NHS.net, as described below at paragraph 16) have now been archived pursuant to the retention policies described below.
16. In terms of email, the Legacy Body that is most relevant for the Thirlwall Inquiry is Monitor (and subsequently part of NHS Improvement for part of its time period of operation). Monitor used non-NHS IT systems and did not use NHS.net emails for parts of the Relevant Period and I am not advised of their arrangements before they

were migrated onto the NHS.net system. My understanding is that Monitor began using NHS.net in or around 2016, as part of its operational working arrangement with the NHS Trust Development Authority. However, my understanding is that full migration to NHS.net did not take place until sometime in or around early 2018, as part of the preparation for NHS Improvement's joint working with NHS England.

17. For any employee who had an nhs.net email and left NHS England or one of the Legacy Bodies prior to September 2020 (the significance of this date is covered below in paragraph 30) and did not retain an NHS.net email address following their departure, their email account will have been deactivated when the Corporate IT team was notified that they had left. The account will have been moved to a deleted state after 30 days, and all data purged 180 days after that. Accordingly, there are some nhs.net email accounts (such as those of NHS Improvement's former Executive Regional Managing Director for the North) which are no longer accessible. This was an NHS Mail policy. The NHS Mail service was, at that time, operated by Accenture and managed by NHS Digital.

NHS England's records systems

18. In order to provide some consistency of record management across disparate teams and IT systems, NHS England has had a corporate records management team since its establishment as the NHS Commissioning Board in 2012. This is now the Corporate IG and Records Management Team.
19. The Corporate IG and Records Management Team produces and owns the Corporate Document and Records Management Policy, which sets out advice and guidance to all NHS England staff regarding creation, management, storing and disposal of records. The current version of the policy is 5.0, which was updated in January 2024 **[exhibited to this statement as KI/0001, INQ0103031]**;
20. The Corporate IG and Record Management Team maintains a network of Records and Information Management Coordinators (RIMCs), who are staff in the organisation who have attended additional training and regular update meetings with the Corporate IG and Record Management Team. RIMCs are expected to act as local liaisons for good records management practice, advocating locally for the Records Management policy and providing guidance where appropriate, linking colleagues back to the national Corporate IG and Record Management Team where more complex issues arise. All NHS England staff have been expected to complete

specific Records Management training annually since 2020, this forms part of their Mandatory and Statutory Training.

21. The other key relevant policies are:

- a. Records Management Code of Practice – NHS England, the current version is **exhibited to this statement as KI/0002, INQ0103051**; This builds upon previous versions of the guidance published by NHSX in 2021 and by or on behalf of the Department of Health between 2006 and 2016.
- b. Legal Holds Litigation Holds Guidance for NHS England staff on document preservation (legal holds) **exhibited to this statement as KI/0003, INQ0103099**.
- c. Records Retention and Disposal Schedule **exhibited to this statement as KI/0004, INQ0103030**.

22. These policies apply to all of NHS England, whether operating as part of a national or regional team. Therefore, as part of their daily work, NHS England staff must keep a record of 'decisions' (guidance sets out what constitutes this); this can be done by updating a register or database, writing a note of a meeting or telephone call, audio recordings of customer interaction or filing a letter or email in order to ensure that they and their successors have something to refer to in the future.

23. When NHS England creates a record it must be saved to a repository (Office 365)/SharePoint) as a 'declared' record. Email accounts and other communications systems on devices (e.g. text messages or WhatsApp messages) are not regarded as record repositories. Documents and records in these should be moved to the applicable official records repository in a timely way.

24. Neither NHS England nor the Legacy Bodies have ever had a single Electronic Documents and Records Management System. A mix of network shared drives, SharePoint and Microsoft Teams sites have been used across Office 365 as documents repositories across the organisation. NHS.net email accounts have also been used as back up repositories, although this is not in line with current policies and emails which are that formal records should be saved in SharePoint in a timely way. As explained above, a variety of servers and systems have been replaced,

transferred and/or archived from the Legacy Bodies to NHS England since the Indictment Period meaning not all historically stored data is easily accessible. The organisation has also moved to SharePoint and Teams over the years and is now coalescing into a single centralised cloud service.

25. I have exhibited the current policies as all existing records are covered by these policies. Due to the variation in systems and policies used by NHS England and its Legacy Bodies and the fact that it would be very difficult to establish which of those policies would be relevant for any previously deleted record I have not exhibited any old versions of policies.
26. In practice, given the massive amount of data NHS England generated and generates, there is no proportionate and systematic method of ensuring that records are properly categorised by every employee (currently around 16,000) other than relying on the teams generating the record, supported by their RIMCs, to handle them in line with the organisation's policies.

Legal Holds and Litigation Holds

27. NHS England has an established process through which litigation holds and associated technical measures are put in place in the context of known or reasonably anticipated legal case, investigation and inquiry specific records retention. The current version of the organisation-wide guidance on Legal Holds and Litigation Holds is referred to above at paragraph 20(b) and exhibited to this statement as **KI/0003, INQ0103099**. Eleven current Holds are listed in that guidance, one of which is the Thirlwall Inquiry.
28. The Legal Holds Litigation Holds guidance adopts the following definition: "A legal hold, also known as a litigation hold, is an instruction from senior management to employees to preserve (and refrain from modifying) certain records and information (in any format) which may be relevant to the subject matter of a pending or anticipated lawsuit or investigation. NHS England have a duty to preserve relevant information when a legal case, investigation or inquiry is reasonably anticipated".
29. The potential need for a non-destruction order is explained in the Legal Holds Litigation Holds guidance, which states that "Records within the scope of a legal hold may need to be held beyond their retention period and restrictions may need to be put in place on our information systems to prevent automated disposal actions".

30. In September 2020, in anticipation of the UK Covid-19 Inquiry, a non-destruction order was implemented by Corporate IT for all information held at that point in time on the NHS England corporate Office 365 environment (i.e. encompassing SharePoint, Teams, OneDrive and emails). The effect of this non-destruction order is that all information held on NHS England's Office 365 environment as at September 2020, even if subsequently deleted from individual user accounts, is retained indefinitely for eDiscovery in a central SharePoint repository.
31. Information retained in this way is preserved in the Office 365 environment for recovery by a system administrator or records specialist. However, information retained in this central repository is held in an unstructured way, meaning that searching can be time consuming and needs to be done by a system administrator or records specialist. The non-destruction order is, therefore, intended as a backstop to ensure information, including critical emails and corporate documentation, can be recovered via this repository if necessary in the context of a statutory inquiry, legal case or investigation.
32. However, for the reasons described at paragraph 31 above, the organisation-wide non-destruction order is supplemented by additional measures to facilitate more efficient searching for potentially relevant information, including in particular:
- a. The Legal Holds and Litigation Holds put in place on an organisation-wide basis, as per the guidance referred to at paragraph 20(b);
 - b. User-specific Legal Holds and Litigation Holds, which are applied to user accounts for individuals identified as being of importance to specific legal cases, investigations or inquiries. This is often, but not exclusively, done for individuals who are leaving NHS England prior to the completion of one or more legal case, investigation or inquiry.
33. These user-specific Legal Holds and Litigation Holds facilitate more structured records retention, enabling more efficient and targeted searching of the information. When a user-specific Legal Hold and Litigation Hold is applied, a copy of the user's account, as at the point-in-time the Hold is applied, is taken. This retains the information in a readily locatable way as at the date the Hold is applied. In addition, information will also be held on the general repository, as a result of the Covid-19

Inquiry non-destruction order. The Thirlwall specific user account litigation holds that have been applied are described below at paragraph **Error! Reference source not found.**

34. To summarise, therefore:

- a. Since September 2020, NHS England has put in place a non-destruction order that pauses routine destruction of information held on its Office 365 environment. This is an IT measure and is intended as a backstop to enable retrieval of critical information. This remains in place as of the current date;
- b. In addition, inquiry, legal case and investigation specific holds are applied on a case-by-case basis.
- c. The first Thirlwall-related litigation hold was applied in August 2023, in the context of the announcement of the then Independent Inquiry. All NHS England staff were advised of this hold through an update to the Legal Holds and Litigation Holds guidance issued in August 2023, exhibited at **KI/0005, INQ0103026** (this has since been further updated and the current version is exhibited as **KI/0003, INQ0103099**);
- d. The Legal Holds and Litigation Holds guidance requires staff to make the Corporate IG and Records Management Team aware of any relevant documents or information they may hold and notes that a derogation from the normal retention and deletion processes may be needed as a result;
- e. User-specific litigation holds can also be applied to those identified as key individuals in the context of responding to an inquiry, legal case or investigation. The effect of these is to retain information held on their accounts in a structured form, so as to enable more efficient searching.
- f. The user specific holds applied in relation to the Thirlwall Inquiry are described in more detail below in Part C.

Part B: Project Columbus Incident Response – collation of information

35. The background and context to the establishment of Project Columbus is described in NHSE/1. As part of developing an informed incident response, information was collated by those supporting Project Columbus. This work was not done by the (then Covid only) Inquiry Team. However, my understanding from speaking with staff who were involved with Project Columbus is that the rapid work consisted of the following key workstreams:

- a. Collation of information and materials from the North Regional Team. This was then used to inform the development of a key events timeline. The searches that were carried out as part of this workstream are described in Part C of this statement.
- b. Collation of information and materials relating to subsequent appointments held by members of the Countess of Chester Hospital Board. This was then used to inform the development of an appointments timeline.
- c. Collation of information and materials specific to the work of the Specialised Commissioning (North Region) Team and the development of a Specialised Commissioning timeline. [INQ0014692, INQ0014653]

36. Legal support during this incident response phase was provided by NHS England's Director of Legal. I was not directly involved in the incident response work and became more fully aware of what had been carried out when preparation began for the establishment of this Inquiry – as described below in Part C.

Part C: Immediate steps taken in preparation for the establishment of an Inquiry

Litigation Holds – August 2023 update

37. As explained above in Part A, an updated version of the Legal Holds and Litigation Holds guidance was issued in August 2023 to all staff. This followed the announcement of what was then established as an Independent Inquiry into neonatal deaths and injuries at the Countess of Chester Hospital.

38. The August 2023 guidance informed staff about current Legal Holds and Litigation Holds in place in relation to known legal cases, investigations or inquiries (either underway or within reasonable anticipation) at that point in time.
39. The guidance requires staff who consider they may have relevant documents or information relating to one or more of the known litigation holds listed in the guidance are asked to make sure that these are retained for the duration of the inquiry and contact the Corporate IG and Records Management Team for further advice. Following the formal establishment of the Thirlwall Inquiry as a statutory inquiry and the consequential establishment of the NHS England Thirlwall Inquiry Team a further update to the Legal Holds and Litigation Holds guidance was issued (**KI/0003, INQ0103099**), which asked staff who think that they may have relevant documents or information to the Thirlwall Inquiry to inform the NHS England Inquiry Team.

Establishment of the Thirlwall Inquiry Team and related infrastructure

40. In September 2023, NHS England's response to the events involving LL shifted to a formal Inquiry response and the Inquiry Team as a result was asked to manage the response. I tasked the Inquiry Team with establishing key infrastructure for the management of information, including the creation of an electronic records management system specific to the Thirlwall Inquiry (ThERMS, the Thirlwall Electronic Records Management System). Access to ThERMS is carefully controlled and is restricted to a specific list of authorised individuals, broadly grouped into the following categories:
- a. Members of the NHS England Inquiry Team working on the Thirlwall Inquiry;
 - b. External legal teams and counsel representing NHS England in the Thirlwall Inquiry; and
 - c. Specialist technical support.
41. In October 2023 a dedicated SharePoint facility was established for the Thirlwall Inquiry response. This is the system used by all those, whether internal or external, supporting the Inquiry Team's response. ThERMS is hosted on the Thirlwall SharePoint.

42. One of the first steps my team took was to migrate the Project Columbus SharePoint to ThERMS. This took place in early September 2023.
43. An initial review of the Project Columbus material was carried out by the Inquiry Team to identify relevant individuals and where user-specific Legal Holds would need to be actioned, as described above at paragraphs 31-33.
44. Following the publication of the terms of reference for the Thirlwall Inquiry, the NHS England-wide Legal Holds and Litigation Holds was updated and reissued, as described in Parts A and B above and exhibited as **KI/0003, INQ0103099**. In tandem, a further review of the scope of user-specific Legal Holds in place was carried out by NHS England's Thirlwall Inquiry Team and additional user specific Legal Holds were put in place to reflect the final terms of reference.
45. An update was also issued to all NHS England staff on 19 October 2023 that included a reminder regarding the organisation-wide Legal Hold in place "for all documentation relevant to the Inquiry". A copy of this update is exhibited to this statement as **Exhibit KI/0006, INQ0103052**. This update made it clear that it is a criminal offence under section 35 of the Inquiries Act 2005 for anyone to personally (or encourage others to) alter, destroy or prevent relevant documents from being provided to an Inquiry.
46. The August 2023 updated guidance issued to NHS England as a whole also generated contact from individuals who felt they might hold relevant information. Each contact made in this was logged by the Corporate IG and Records Management team and followed up.
47. In tandem with this work, NHS England's Inquiry Team worked with the Corporate IG and Records Management team to identify any available 'data lakes', including legacy data drives. These are described further at paragraphs 53-57 below.

Initial meetings with key individuals and policy teams

48. A rolling programme was initiated and managed by those in the Inquiry Team allocated to this Thirlwall Inquiry whereby information was requested from relevant policy teams and meetings with key individuals held. The purpose of the request was

to inform the Inquiry Team's initial understanding of what involvement policy teams had in relation to matters relevant to the Inquiry's terms of reference and to begin the process for the collation and review of potentially relevant information. The table of individuals who undertook searches at **Exhibit KI/0006, INQ0103052** out the policy teams from whom relevant information was requested as part of responding to the various Rule 9 Requests received (either in a corporate capacity or in the context of supporting one of the witnesses under NHS England's umbrella who had received personal witness statement request).

49. During the course of November 2023 initial meetings were held with some of the key NHS England individuals identified as having had some involvement with the Countess of Chester Hospital during the Indictment Period. I attended almost all of these meetings, along with other members of the Inquiry Team. NHS England's lead external legal representative also attended some of these meetings. During the course of these and supplemental meetings, the breadth of the documents in scope was discussed and requests were made for relevant information (including emails and other documentary records, whether hardcopy or electronic) and attendees were reminded of the need to hold this information, not to delete it, and to provide this to the Inquiry Team for review. Following the individual meetings that were held, a follow-up email was sent formally noting these points.
50. This process resulted in further documents being provided to NHS England's Thirlwall Inquiry Team, the contents of which informed the content of NHS England's Corporate Witness Statement where appropriate.
51. As drafting on NHS England's Corporate Witness Statement progressed, further requests were made in response to review of initial information provided and in light of discussions with key individuals and policy teams.
52. The records held on ThERMS were then bulk uploaded to the Relativity platform for external solicitors to conduct further searches for relevant documents.

Part D: Processes to identify relevant documents

The approach taken by NHS England

53. No general disclosure request has been made to NHS England by the Inquiry. Instead, requests for specific disclosure have been made by the Inquiry in the context of each of the Rule 9 Requests made to NHS England and in those made to the individuals who have received a personal witness statement request and who are being supported by NHS England. The list of those witnesses supported by NHS England is at paragraph 70 of this statement.

54. This process began with the Inquiry's Rule 9 letter to NHS England on 2 November 2023 (NHSE/1). In this letter, the Inquiry explained that (emphasis added):

The Inquiry is keen to ensure that responses to its requests for documents are proportionate and focused, and that it is not overwhelmed with large quantities of materials which are unlikely to touch upon the matters being investigated in accordance with the Terms of Reference and the questions which the Inquiry seeks answers to.

55. In addition, paragraph 4 of Annex B to the Rule 9 (The Document Protocol) indicated that (emphasis added):

The Inquiry is currently seeking disclosure of key documents exhibited to the witness statement.

Key documents should be exhibited to the draft statement, in particular where it is considered they:

- a. Answer, support or illustrate a matter addressed in the witness statement;*
- b. Provide important context for a matter addressed in the witness statement; or*
- c. Will otherwise assist the Chair in understanding a matter addressed in the witness statement.*

56. Consistent with the approach requested by the Inquiry, NHS England has therefore taken a proportionate approach to the disclosure of relevant documents with a targeted focus on searching for and exhibiting those documents that are relevant to the specific questions set out in the various Rule 9 letters sent to NHS England and those individuals under its umbrella.

57. Before explaining steps taken on each Rule 9, I set out some information on the approach and training of those in my team supporting the records search and other aspects of disclosure.

- a. My team has undertaken training on effective management of records, including how to effectively search for information.
- b. The team is overseen by senior managers with extensive experience and qualifications in their areas of expertise.
- c. The team follows a standard process to perform searches, which includes proper search planning; identification of the repositories to be searched; refining of searches to minimise both false positives (i.e. irrelevant documents being included in the results) and false negatives (i.e. relevant documents being excluded from the results); and presenting those search results for review by our legal teams and those preparing statements.
- d. We use Relativity One to manage potentially relevant documents. To support us with this we have a contract with Anexsys, who are eDisclosure specialists.
- e. Following identification of potentially relevant documents, they are uploaded to Relativity One for a more complete review for relevance.
- f. Once candidate exhibits have been identified, they are reviewed by senior internal lawyers in the Inquiry Team. They are then prepared for disclosure and provided to the Inquiry using the processes agreed for sending information.
- g. This disclosure process is undertaken by specialist members of the team and is supported by Anexsys.

Legal support

58. External solicitors (Browne Jacobson LLP) and Counsel (Jason Beer KC (5 Essex), Adam Fullwood (39 Essex) and Hannah Slarks (11KBW)) were appointed to provide legal support to NHS England's response to the Thirlwall Inquiry. The external legal support has worked as part of an aligned virtual team, alongside the NHS England Thirlwall Inquiry Team. Importantly, the team have worked with signatories and attended meetings with relevant teams and individuals so are providing informed

support and can 'join the dots'. External legal support in relation to disclosure has included the following:

- a. Additional advice on the search process through which documents and other categories of information are obtained and collated. This has been in the context of responding to the Rule 9 requests issued to NHS England in its corporate capacity and in response to Rule 9 requests issued to witnesses that NHS England is supporting. This approach is described in detail below at paragraph 62;
- b. Legal review of such information to determine those that are potentially relevant for ingest onto NHS England's Relativity system, with this information entered onto an evidence log on a statement-by-statement basis. Ingest onto Relativity is then managed by the Systems, Records, and Disclosure domain of the Inquiry team;
- c. Structured first and second pass review of information ingested onto NHS England's Relativity system;
- d. Preparation of disclosure indexes for submission to the Inquiry;
- e. Liaising with the Inquiry to finalise and agree approach to disclosure where needed;
- f. Preparing proposed disclosure bundles for signatory review and meeting with signatories to agree final disclosure;
- g. Applying INQ references once provided by EPIQ to draft statements prior to these being signed by signatories; and
- h. Carrying out Material Provider Review prior to disclosure of NHS England's Materials Provided to other Core Participants.

Search process

59. The Inquiry has asked for a description of the steps taken to identify potentially relevant documents, whether hard copy or electronic, the people who conducted

those searches and by whom those staff were supervised. Some of this is set out already above.

60. The following common aspects apply to the statement as a whole:

- a. I provided overall direction and decision-making on the process through which potentially relevant information was obtained, collated and reviewed, informed by those with experience from our work on the multi modular UK Covid 19 Inquiry.
- b. The Thirlwall Head of Legal (internal) provided internal legal support to this process.
- c. Browne Jacobson LLP as NHS England's external legal support for the Thirlwall Inquiry provided external legal support to this process. Overall supervision of the external legal team has been provided throughout by Charlotte Harpin, who is a Partner at Browne Jacobson LLP. Further Partner supervision has been provided by Matthew Alderton.
- d. Counsel review and support in relation to NHSE/1 has also included advising on the disclosure approach.

61. The table exhibited as **KI/0007, INQ0103100** lists each of the Rule 9 requests received by NHS England in its corporate capacity and for those individuals under its umbrella. It also sets out the associated request for documents included in each Request, as well as a summary of the searches undertaken for each Request, noting that the general approach adopted is as described above.

62. Where the Rule 9 request was made in relation to an individual supported by NHS England, most of the searches carried out were not directly within the Inquiry Team's control. Instead, each witness was asked to carry out searches for any potentially relevant materials in the context of the specific Rule 9 request that had been made to them. In most cases they were supported in this process by members of their team. Advice on the search process and scope was provided by the Inquiry Team and by the legal advisors supporting each witness. Specific requests for searches to be carried out were made during the drafting process, informed by the information

- obtained during witness meetings and review of relevant materials. In some cases, this process was supplemented by searches carried out by NHS England, on their behalf (because they could no longer access relevant repositories, for instance, or where they made us aware of other potentially relevant individuals who may have held relevant materials).
63. Searches were also performed on NHS England staff records systems to check whether potentially relevant individuals were still employed by NHS England and/or whether their email and other document repositories could still be accessed.
64. Where personal witness statements have been requested from individuals who contributed to the drafting and disclosure associated with NHSE/1 and NHSE/2, this provided a further opportunity for those individuals (supported by their Private Office and teams, where applicable) to carry out further, focussed searches, in order to respond as fully as possible to the specific Rule 9 questions they had been asked.
65. **Exhibit KI/0007, INQ0103100** sets out all those who have been involved in providing information or carrying out searches (supported by their Private Office and teams, where indicated) in relation to one or more of the Rule 9 Requests, also listed in the Table.

Records for the North West Neonatal Operational Delivery Network (“NWODN”)

66. During the course of completing NHSE/1, the Inquiry Team took steps to obtain the NWNODN records held by Alder Hey Children’s Hospital NHS Foundation Trust, which is the host organisation for this ODN. The NWNODN is described by Louise Weaver-Lowe in her statement dated 26 April 2024.
67. NHS England received approximately 54,000 documents on 2 February 2024 and a targeted search was conducted by NHS England’s external legal team using key search terms (such as “CoCH” and “Countess of Chester”) to identify whether any documents were relevant to NHS England’s response to NHSE/1.
68. During the course of considering how the NWNODN records ought to be provided to the Inquiry (noting that the Inquiry had already indicated that it did not wish to be overwhelmed with large scale disclosure), Louise Weaver-Lowe informed the External Legal Team that she has access to a bundle of documents that had been collated by the NWNODN team in 2019 in the expectation that these documents may be needed for the criminal trial or future public inquiry. This bundle is explained at

paragraph 43 of Ms Weaver-Lowe's statement. The External Legal Team have reviewed this bundle and identified 236 documents that appear to be relevant to the Inquiry's Terms of Reference. An index of these documents was provided to the Inquiry on 17 June 2024.

69. The Inquiry have asked that the way in which relevance was determined for the NWODN records disclosed to the Inquiry is explained and I can confirm the following:

- a. The 2019 bundle provided by Louise Weaver-Lowe contained 1,118 documents;
- b. This bundle was uploaded onto Relativity and a de-duplication process was applied, using a duplication threshold of 95-100%. This reduced the number of documents to 578;
- c. Manual review of the documents was then carried out by the External Legal Team to review any further duplication and any documents that did not reference the Countess of Chester Hospital and which were not, therefore, considered relevant. Following this, the total number of documents assessed as being relevant for disclosure to the Inquiry was 236.

Part E: Disclosure to the Inquiry

70. Following the completion of the searches and processes explained above, I can confirm that:

- a. Approximately 74,800 documents have been uploaded to ThERMS at the time of writing. This consists of:
 - i. Approximately 54,000 NWODN documents
 - ii. Approximately 1,300 documents from the North Regional team
 - iii. Approximately 17,800 corporate records, including board papers and minutes
 - iv. Approximately 1,700 documents from other sources, such as documents provided directly by those mentioned in Table 2 and documents from publicly available sources (such as the reports from previous statutory inquiries)
- b. 2,540 documents were tagged as relevant. It is important to note that the documents tagged as being relevant included publicly available documents,

documents disclosed by other Core Participants and duplicates. This is fewer than the total of “documents tagged as relevant” in the table in paragraph 71 below, as documents may have been relevant to more than one statement.

- c. 597 documents have been disclosed to the Inquiry at time of writing. This is expected to increase as detailed in Part F below. This number is less than the total of “documents exhibited to statement” in the table in paragraph 71 below, as documents may have been exhibited to more than one statement.

71. The table below breaks this down according to each witness statement.

Statement	Documents tagged as relevant	Documents exhibited to statement
Corporate Witness statement	1,524	246
Supplemental statement on the insulin survey	13	13
Appointments statement	171	83
Dr Eleri Adams	75	33
Dr Alan Fletcher	56	51
Sir Andrew Morris OBE	15	13
Dr Edile Murdoch	33	9
Louise Weaver-Lowe (excluding the NWODN Records)	39	39
Louise Weaver-Lowe (additional NWODN records)	579	N/A
Dame Ruth May	11	10
Duncan Burton	60	60
Anne Eden	29	29
Elizabeth O'Mahony	29	28

Dr Amanda Doyle OBE	2	2
Lyn Simpson	7	7
Andrew Bibby	46	46
Margaret Kitching MBE	32	32
Michael Gregory	55	55
Robert Cornall	97	97

72. In relation to the Corporate Witness Statement NHSE/1 in particular there were a significant volume of documents that were considered relevant and would have been disclosed if NHS England was under a general duty of disclosure but were not exhibited to the statement on the basis that they were either:

- a. publicly available
- b. had already disclosed by other Core Participants, or
- c. did not add anything material to the narrative/timeline of events contained within section 2 of the Corporate Witness Statement.

73. As the Inquiry knows, the former Director of Commissioning Operations for the North Region is currently the Chief Executive of another Core Participant, the NHS Cheshire and Merseyside Integrated Care Board (and has provided a witness statement in this capacity to the Inquiry), so NHS England has not interviewed him for the purposes of our response to the Inquiry. We are also unable readily conduct any searches for potentially relevant materials held on his user-specific accounts because these were transferred to the Integrated Care Board when he took on his current role. This is consistent with the general approach taken, as confirmed at paragraph 74, below.

74. The External Legal Team also used the timelines that had been created by the North Regional Team either contemporaneously in 2017 [INQ0014692] or in the context of Project Columbus to identify whether any additional documents that were relevant to the Inquiry's Terms of Reference could be located. For example, it was apparent from these timelines that certain documents had not been retained such as the entirety of the hotspot reports, Quality Risk Profiles, Regional Management Team minutes and North Specialised Services Quality Committee reports prepared by the

North regional team during the 2016-2018 period. Where these documents were subsequently located and considered to be relevant to the questions asked by the Inquiry, they were exhibited to NHSE/1 or the personal witness statements of those individuals who have received a Rule 9 request. Where a document could not be located but the event could be verified by other documents (such as email correspondence or the timelines), then it was included in the narrative contained in section 2 of NHSE/1.

75. There have also been some other instances where NHS England knows that documents existed at the time but have not been located. For example, the Regional Chief Nurse (North) recalls a call having taken place between with the Countess of Chester Hospital Medical Direct on 28 April 2017. This note could not be located by NHS England, although it has been disclosed to the Inquiry by the Countess of Chester Hospital ([INQ0003193], [INQ0005461] and [INQ0005462]).
76. The decisions taken at the time of responding to NHSE/1 and NHSE/2 around what searches to conduct were informed by the information gathered, conversations with relevant individuals, and triangulation against other source materials.
77. In this context, the conversations with the former Chief Executive Officers of NHS Improvement, Ian Dalton and Sir James Mackey, indicated that neither had knowledge of the events specific to LL's offending. Whilst Ian Dalton had some knowledge of the events involving TC's departure from the Countess of Chester, this was primarily handled by Lyn Simpson and is covered in her statement. Given the demands of other searches and statements, a decision was taken at that point in time that it would be disproportionate to put resources to the task of restoring and accessing (if possible) the NHS Improvement legacy systems to determine whether any potentially relevant materials were held, whether on their named accounts and/or in the CEO-accounts. Both individuals would have had two accounts, one in their own name and a corporate account, using their role title (Chief Executive Officer).
78. As part of providing this statement, I have now asked my team to consider whether any further proportionate searches could be undertaken in relation to Ian Dalton and Sir James Mackie's legacy accounts. I am not yet advised of the final position in terms of what this would involve but once I am, a final decision will be taken on what further searches (if any) it is reasonable and proportionate to undertake.

Part F: Anticipated further disclosure

79. Subject to what I have described above in Part E, NHS England does not anticipate significant further disclosure to the Inquiry. However, there are currently two known instances where further disclosure will be provided.
80. First, NHS England received a third supplementary Rule 9 request on 19 June 2024 relating to any policies, protocol or Memorandum of Understanding between the Department of Health and Social Care, police and NHS England which applied during June 2015 to May 2017. It is anticipated that some limited further disclosure will be provided when responding to this request. This third supplementary Rule 9 Request has been further updated on 28 June to incorporate additional questions relating to incident reporting and the Operational Delivery Network. Again, we anticipate that some limited further disclosure will be provided in relation to these aspects.
81. Second, further disclosure will be provided where this has already been flagged with the Inquiry (for example, the follow up work arising from the analysis being done in relation to the insulin survey) or where there are policy or operational changes that are relevant to the Inquiry's Terms of Reference. Any such further disclosure of this nature will not be voluminous.

Part G: Summary

82. NHS England considers that it has taken reasonable and proportionate steps in relation to disclosure, consistent with the approach outlined in the Inquiry's Rule 9 letters and in the context of where general disclosure was not requested. Exhibit KI/0007 illustrates the breadth of the search process undertaken.
83. There is a small amount of anticipated further disclosure likely in relation to the Rule 9s / updates described at Part F above.
84. There are further steps NHS England could take to review archived material but my view is that this is unlikely to assist the Inquiry.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

PD

Signed: _____

Dated: _____ 16 July 2024 _____