

The Hon. Lord Weir
Chair of the Eljamel Inquiry



Liz Smith MSP
Willie Rennie MSP
Michael Marra MSP

By email only

1 May 2025

Dear Ms Smith, Mr Rennie and Mr Marra

Thank you for your email dated 21 April 2025, sent on behalf of your constituents, regarding the Terms of Reference of the Inquiry. I thought it appropriate to write to you more fully with a response on the matters which have been raised with you, and which are of concern to your constituents, about the ambit of the Inquiry, and in particular the role of the Health and Safety Executive and the General Medical Council in its work. I welcome the opportunity to clarify my interpretation of the Inquiry's [Terms of Reference](#) in this regard and my present intentions as regards the investigation of matters relevant to the remits of these two bodies.

As I said at the public consultation events which we held with patients in October last year, we intend to keep an open mind about our investigations and go where the evidence takes us. Thus, any view I express on the matters you have raised should be taken to be one which may evolve as our investigations progress.

For the moment, however, the starting point is the Terms of Reference which define, and limit, the matters which the Inquiry has power to investigate. Their contents are, of course, a matter

for the Cabinet Secretary for Health and Social Care who has fixed them. My understanding is that the final version of the Terms of Reference reflect a legal limitation of which you are aware, namely that both health and safety law and the regulation of the medical profession - and hence the role of these bodies *per se* - are matters reserved to the competence of the Westminster Parliament and cannot therefore be included more extensively in a public inquiry set up by the Scottish Ministers under the 2005 Act.¹

Beyond that starting point, you and your constituents are rightly interested in how I interpret the extent to which the Inquiry can, under these Terms of Reference, investigate matters within that important statutory context. It should be borne in mind that the Explanatory Notes to the Terms of Reference state that:

“The Terms of Reference do not attempt to present a definitive list of every issue or every person that the Inquiry will consider. Instead, they specify matters which the Inquiry is empowered to investigate. The Inquiry will interpret its Terms of Reference flexibly, in the public interest and (where appropriate) in consultation with core participants”²

In order to provide a clearer picture of the matters which the Inquiry intends to investigate and resolve, it will issue in early course a List of Issues, to which core participants will be invited to contribute suggested amendments and/or additions.

As far as patient safety is concerned, it would be wrong, in my view, to interpret the absence of reference to health and safety law or the Health and Safety Executive in the Terms of

¹ This legal limitation is reflected, for the sake of clarity, in paragraph (b) of the Explanatory Notes to the ToRs which reads “*The Inquiry is not to determine any fact or may any recommendations which are not wholly or primarily concerned with a “Scottish matter” in terms of section 28 of the 2005 Act*”

² Paragraph 2(f) of the Explanatory Notes to the ToRs

Reference as meaning that the Inquiry is somehow precluded from considering patient safety at all, a concern which has been expressed by some patients. Patient safety is, in fact, specifically referenced in Term of Reference. It is also, in my view, covered by implication in many of the other Terms of Reference. This is because the Terms of Reference all require me in some way to assess the quality of systems which were in place at the material time. That, in my view, requires an assessment of the extent to which they were adequate to safeguard the safety of patients under the care of the NHS.³ As I anticipate that the evidence will show that patient safety was a key objective in systems which were or ought to have been in operation, and which are the subject matter of the entirety of the Terms of Reference, the question whether those systems sufficiently safeguarded patient safety will be a central part of the Inquiry's investigation. In my current interpretation, I am precluded from making findings or recommendations which impinge upon the area of health and safety law or the role of the Health and Safety Executive. Investigations directed towards those objectives would not be in accordance with my obligations under the Act, in particular section 17. However, that is far from saying that patient safety is not at the core of the systemic investigation which the Inquiry is able and required to undertake – it is and it will be. We do intend to seek evidence from the HSE in our investigations. As to what that evidence will contain, that is a matter which will require to wait until the evidence from the HSE and others starts to emerge, which, as I have said, will inform where our investigations proceed thereafter.

³ For example, ToR 1 requires an assessment of the appointment and promotion systems relating to Mr Eljamel; ToR 2 requires an assessment of aspects of the clinical practice of Mr Eljamel and of their contribution to "adverse outcomes for patients"; ToR 3 requires an assessment of the "adequacy" of the corporate and professional oversight systems relating to Mr Eljamel; ToRs 4 and 5 requires an assessment of the "adequacy" of the complaints and feedback systems relating to Mr Eljamel; ToR 6 requires an assessment of the role played by other bodies, including Health Improvement Scotland and its predecessor bodies; ToRs 7 and 13 requires an assessment of whether information was concealed by Mr Eljamel or NHS Tayside relating to Mr Eljamel, which, in my view, requires an assessment of whether any evidence of concealment undermined patient safety; and ToRs 8 to 11 require an assessment of the adequacy, timelines and effect of various steps which limited the ability of Mr Eljamel to practice in light of various concerns raised about him, including in relation to patient safety. Further, paragraph 2(c) of the Explanatory Notes to the ToRs reads *"The Inquiry is empowered to make findings about matters falling within its Terms of Reference, including (where appropriate) the identification of things which fell below a reasonable standard, why they did as well as who or what organisations were responsible"*

As far as the General Medical Council is concerned, you will see that it is, in fact, mentioned in (a) Terms of Reference 7 and 13, which relate to the subject of candour and the reporting obligations of Mr Eljamel and NHS Tayside respectively, to, among other bodies, the GMC and (b) Term of Reference 11, which relates to the role of NHS Tayside in the removal of Mr Eljamel's name from the GMC's medical register. Evidence will be sought from the GMC in the Inquiry's investigation of these Terms of Reference. Indeed, you will note that Term of Reference 3 makes specific reference to systems of professional oversight which were, or ought to have been, designed to monitor and regulate issues with the practice of Mr Eljamel, in addition to other corporate aspects of the clinical governance regime. Evidence will also be sought from the GMC relevant to the investigation of bodies and individuals whose action or inaction does form part of the Terms of Reference, both as a matter of fact and as a matter of best practice. Though obtaining such evidence could not serve the purpose of making findings or recommendations about the role of the GMC itself, as I have explained above, its factual role will nonetheless have a bearing on any assessment of the adequacy of the steps taken by other individuals and bodies in connection with the practice of Mr Eljamel.

You will be aware of the statutory provisions relating to the opportunity for those with an interest in the work of the Inquiry to apply for core participant status and that that process is ongoing at present. We have attempted, in our published Core Participant Protocol (available on our website), to make the process of applying for core participant status as simple and as swift for the former patients of Mr Eljamel as the relevant statutory provisions permit, consistent with my commitment to put patients at the centre of the Inquiry. I very much hope that your constituents who fall into the group who have raised these issues will apply to be core participants. If they do so, they will be able to contribute to how the work of the Inquiry develops, including but not limited to our work on patient safety and professional regulatory issues, as permitted by our Terms of Reference. Those former patients who do become core participants will be contacted in that capacity on a regular basis about our work and progress and will be able to make further representations about issues which they think the Inquiry should investigate.

I note your kind offer to assist with the work of the Inquiry and your willingness to make case files available to us. This is most helpful and appreciated, given your long involvement in, and knowledge of, many of the matters of interest to the Inquiry. Members of our legal team will be in touch separately about the material which you hold and the possibility of its recovery to assist our work.

I hope that this clarification of the Inquiry's position regarding these important matters provides you with the information you need to provide reassurance to your constituents, such that the meeting you have requested is not necessary. Indeed, it may be that we will seek evidence from you as part of our investigations. As such, it may not be appropriate for me to meet with you meantime. I am, however, grateful to you for raising these issues in correspondence. It would be my intention is to publish your email to the Inquiry and this response, for the sake of transparency, and to make clear to those who take an interest in our work how we intend to deal with these matters.

Your sincerely

A handwritten signature in dark ink, appearing to read "David Smith", with a stylized flourish at the end.

The Hon. Lord Weir

Chair of the Eljamel Inquiry

EMAIL DATED MONDAY 21 APRIL 2025

FROM: Liz Smith MSP

CC: Michael Marra MSP; Willie Rennie MSP

TO: Eljamel Inquiry Chair

Dear Lord Weir

First of all, thank you for the updates you have provided regarding the progress of the Eljamel Public Inquiry. Please assure your secretariat that we will do everything we can to support your Inquiry and to release case-notes as required.

You will have seen from letters you received from Mr Pat Kelly (written on 4th and 7th April respectively) and from social media comments by Mrs Jules Rose that there is considerable disquiet amongst some quarters of the former patient group that the terms of reference do not include the full remit to investigate both HSE and the GMC respectively because these bodies are reserved to Westminster.

It is our view that this would not preclude you calling witnesses from these two bodies (or indeed any other relevant reserved agency) but it would be helpful if we could discuss this further in order to assist our constituents.

We would therefore be very grateful if you could provide us with some times when you could meet with the three of us.

Yours sincerely,

Liz Smith MSP, Michael Marra MSP, Willie Rennie MSP

Sent from my iPhone