

## **TERMS OF REFERENCE OF THE ELJAMEL INQUIRY**

The Inquiry is a public inquiry under and in terms of the provisions of the Inquiries Act 2005 (“the Act”) and the Inquiries (Scotland) Rules 2007 (“the Rules”) and has the powers and responsibilities of a public inquiry established by the Scottish Ministers under the provisions of the Act and the Rules.

The Inquiry's Terms of Reference are listed below in accordance with section 5 of the Act. They contain the matters to which the Inquiry relates, in connection with which the Inquiry has the power to exercise its powers under the Act and the Rules, and other matters relating to the scope of the Inquiry specified by the Minister. The terms of reference have been set after consultation with the Chair of the Inquiry in terms of section 5(4) of the Act.

### **Terms of Reference**

#### **Appointment processes**

1. To investigate the processes leading to the appointment of Mr Eljamel to key positions he held in his professional capacity in Scotland, including (a) Consultant Neurosurgeon, Ninewells Hospital, Dundee on around 9 October 1995 (b) Head of Department /Section for Surgical Neurology, University of Dundee in around 1996 and (c) Lead Clinician for Neurosurgery and Pain, Ninewells Hospital, Dundee in around 1998, including any induction he may or may not have received upon assuming such roles and the adequacy of the systems in place in that regard within NHS Tayside and the University of Dundee.

#### **Mr Eljamel’s professional practice with NHS Tayside**

2. To investigate the role, if any, of the following factors in contributing to adverse outcomes for former patients of Mr Eljamel during the course of his employment with NHS Tayside:
  - (a) Mr Eljamel’s private practice;

- (b) Mr Eljamel's supervision of professional colleagues within the NHS, including but not limited to the circumstances in which surgeries were undertaken by trainee surgeons on Mr Eljamel's patients and any allegations of bullying or intimidation of professional colleagues by him;
- (c) Workload pressures within NHS Tayside;
- (d) Mr Eljamel's employment by or appointments within the University of Dundee; and
- (e) Any research undertaken by Mr Eljamel on or involving his former patients.

### **Clinical governance**

- 3. To investigate the operation and adequacy of clinical governance and risk management processes in place within NHS Tayside for the oversight of Mr Eljamel's work during the period of his employment with NHS Tayside, including for the avoidance of doubt (a) any corporate and professional governance processes, including whistleblowing and reporting processes (b) the extent to which any such systems were adequately engaged and participated in by those working in NHS Tayside as well as (c) the interaction between NHS Tayside and any private provider of medical services for which Mr Eljamel also provided professional services or lack thereof.
- 4. To investigate the adequacy and effectiveness of complaints and feedback processes operated by NHS Tayside relating to Mr Eljamel's employment with NHS Tayside, including processes relating to any complaints, concerns or feedback received from either his former patients or their representatives and/ or staff and how NHS Tayside communicated with those complainants.
- 5. To investigate any findings, lessons learned and recommendations from any complaints or feedback process or systems of oversight of the professional activities of Mr Eljamel during the course of his employment with NHS Tayside as well as the nature, adequacy and effectiveness of any systems or processes put in place to implement or otherwise act on any such findings, lessons learned or recommendations from those processes or minimise any risks to patient safety, quality of care or experience.

6. To investigate the role of any other bodies which played or could have played a role in the care provided by Mr Eljamel to his former NHS patients, including but not limited to:
  - (a) the Scottish Council for Postgraduate Medical and Dental Education and NHS Education for Scotland relating to the maintenance of standards in the training of doctors and surgeons;
  - (b) the Clinical Standards Board for Scotland, NHS Quality Improvement Scotland (NHS QIS) and Healthcare Improvement Scotland (HIS) relating to the maintenance of healthcare standards; and
  - (c) the Scottish Executive/ Government relating to its overall responsibility for the NHS in Scotland.

#### **Candour**

7. To investigate whether (and if so to what extent) Mr Eljamel concealed or failed to disclose evidence of sub-standard professional practice by him from or to his former NHS patients, former professional colleagues, NHS Tayside or relevant regulatory bodies during the period of his employment with NHS Tayside.

#### **Restrictions relating to Mr Eljamel's practising privileges**

8. To investigate the circumstances and processes which led to the clinical supervision of Mr Eljamel which was imposed by NHS Tayside on 21 June 2013, its timeliness, adequacy and effectiveness.
9. To investigate the processes and circumstances which led to the suspension of Mr Eljamel by the NHS Tayside on 10 December 2013, including whether he was suspended timeously.
10. To investigate the processes and circumstances in which Mr Eljamel came to resign from his position on 31 May 2014, including the impact of the resignation on any investigation into or censure imposed on him.

11. To investigate the role of NHS Tayside in the process by which Mr Eljamel came to erase his own name from the General Medical Council's medical register in 2015.

### **Reviews and investigations**

12. To examine all previous reviews or investigations undertaken (a) by, on behalf or on the instructions of NHS Tayside or (b) the Scottish Executive/ Scottish Government into the professional activities of Mr Eljamel during the course of his employment with NHS Tayside and to consider the adequacy and timeliness of these reviews or investigations, including the adequacy of steps taken in light of the findings and recommendations of them, including but not limited to the following:

- (a) Royal College of Surgeons report relating to Mr Eljamel commissioned by NHS Tayside dated 2013;
- (b) Interim report of NHS Tayside relating to Mr Eljamel dated October 2013;
- (c) Final report of NHS Tayside relating to Mr Eljamel dated 6 December 2013;
- (d) The NHS Tayside review of complainant cases relating to Mr Eljamel 2014/15;
- (e) The External Review by the Executive Medical Director of NHS Lothian to review the process and decision-making regarding the management of Mr Eljamel 2018/2019;
- (f) The Scottish Government Review of Unresolved and Outstanding Concerns regarding Mr Eljamel, Former Consultant Neurosurgeon at NHS Tayside 2022;
- (g) The NHS Tayside Executive Medical Director Response to Patient A on undertaking a detailed review of surgery carried out and matters arising in theatre 2023;
- (h) The NHS Tayside look back at operative cases during the period of Mr Eljamel's supervision (June 21 2013 to December 10 2013) June 2023;
- (i) The NHS Tayside Executive medical director report relating to Mr Eljamel dated 25 August 2023; and
- (j) The NHS Tayside due diligence review of documentation held relating to Mr Eljamel dated 25 August 2023.

13. To investigate whether and if so to what extent NHS Tayside concealed or failed to disclose evidence of which it was or ought reasonably to have been aware (either though any such

investigations or reviews or otherwise) of sub-standard professional practice by Mr Eljamel during his employment with NHS Tayside including in the treatment of his former patients in that employment from or to his former NHS patients, relevant professional regulatory bodies, the police or the Scottish Government.

14. To investigate document management and retention systems within NHS Tayside relating to the professional practice of Mr Eljamel during the course of his employment there (for the avoidance of doubt including medical records and other documentation relating to his practice), including but not limited to the extent to which reviews or investigations into his professional practice during the course of that employment were to any extent undermined by lack of available documents.

#### **Independent Clinical Review**

15. To liaise with the Independent Clinical Reviews, which will run in conjunction and cooperation with the Inquiry and to set out publicly how the Inquiry intends to work alongside and cooperate with the Independent Clinical Reviews so as to best discharge the respective terms of reference of each process.
16. To consider any findings of the Independent Clinical Reviews, as the Chair deems appropriate in the fulfilment of these terms of reference.

#### **Evidence**

17. To consider any evidence or reports as the Chair deems appropriate.

#### **Lessons, recommendations and reports**

18. To identify any lessons and implications for the future and make recommendations, including interim recommendations if the Inquiry considers them appropriate.

19. To produce any reports (including any interim reports) to Scottish Ministers as soon as reasonably practicable.

### **Explanatory notes**

- a) As per the provisions of section 2(1) of the 2005 Act, the Inquiry is not able to make determinations of civil or criminal liability. However, the Inquiry is not inhibited in the discharge of its functions by any likelihood of any such liability being inferred from its investigations or findings;
- b) The Inquiry is not to determine any fact or make any recommendations which are not wholly or primarily concerned with a “Scottish matter” in terms of section 28 of the 2005 Act;
- c) 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;
- d) The Inquiry will provide an opportunity for public acknowledgement of the suffering of former patients of Mr Eljamel and a forum for public consideration of evidence of their experiences;
- e) This Inquiry is empowered to consider making recommendations, in part to seek to ensure that appropriate levels of governance and scrutiny are applied by Health Boards and other bodies covered by the Terms of Reference with responsibility for the maintenance of appropriate standards in the NHS in Scotland in future;
- f) 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;

- g) References in the terms of reference to Mr Eljamel mean Mr Muftah Salem Eljamel (also known as Sam Eljamel), former head of neurosurgery at Ninewells Hospital, Dundee; and
- h) References to NHS Tayside should be construed as including Tayside Health Board, any predecessor of NHS Tayside, any part or agent thereof.