



The Eljamel and NHS Tayside Public Inquiry: Dundee public event October 2024

The Eljamel Inquiry – Introduction by the Hon. Lord Weir - Chair

Welcome

1. May I begin by welcoming you all and thanking everyone for taking the time to attend this meeting. The purpose of today's meeting is to discuss the Inquiry's draft terms of reference and, importantly, we are here to listen to what you have to say about that. You may well have questions or concerns. You may wish to understand more about this Inquiry, its team and the draft terms of reference. Shortly I will introduce myself and my team to you and explain some of the work that has been happening up until now, and Mr Dawson will discuss the draft terms of reference with you.

2. But before that, I would like to take this early opportunity to speak directly to the former patients of Mr Eljamel, many of whom will be here today. I am very conscious of the length of time you have waited for answers to your questions. I understand that you may feel frustrated and worn down by the time it has taken for you to get to this point. I do not underestimate the strain this has placed upon you and your loved ones. That is why my team and I wanted to come to you today to explain the work we are doing and to hear from you on the terms of reference. Until we finalise the terms of reference we cannot start our investigation and I am determined that we start that process as soon as possible. I hope after today you will see that my team and I are committed to working at pace to get the Inquiry set up in order that we can commence our investigations with rigour. Finalising the terms of

reference is an essential part 3 of that process and that is why we want to hear from you and all those with an interest in the work of this important Inquiry.

Introductions

The Inquiry Team

3. Let me begin by introducing myself to you. My name is Robert Weir. On 29 February this year it was my privilege to accept appointment by the Cabinet Secretary for NHS Recovery, Health and Social Care to the office of Chair to this Inquiry. I am a graduate of the University of Dundee and practised as an advocate at the Scottish Bar for 20 years. In that time, amongst other things, I practised in the field of clinical negligence. I was appointed a sheriff in 2015. Between 2018 and 2020 I sat on a specialist court called the All-Scotland Sheriff Personal Injury Court before my appointment to the bench of the Supreme Courts in Scotland in April of 2020.

4. I should like to reassure you at the very outset that I regard the issues likely to be raised in this Inquiry as of very significant importance and legitimate public interest. As Chair to the Inquiry you have my personal commitment to do all that I can to ensure that it is conducted with a thoroughness that those issues deserve. To assist me in meeting that commitment I have built a team that I am confident will approach the work of this Inquiry with professionalism, compassion and dedication. I would now like to introduce you to them.

5. First, may I introduce Jamie Dawson KC who has accepted appointment as senior counsel to the Inquiry. As some of you may be aware, Mr Dawson has recent and current experience of other public inquiries, most recently representing hundreds of patients in the UK-wide Infected Blood Inquiry, as well as having been Counsel to the UK Covid Inquiry whose Scottish hearings were held in Edinburgh. He has over 20 years of experience dealing, in large part, with complex medical negligence cases and will be well used to dealing with complex medical evidence while also possessing the advocacy skills that form an integral part of the leading role he has now assumed.

6. Alex Price-Marmion, Advocate, takes on the role of junior counsel to the Inquiry. She brings to that role long experience of advocacy, particularly in the field of clinical negligence in which she has represented claimants in numerous complex cases over the years. More recently, she has taken on the role of Advocate Depute, prosecuting serious criminal cases in the High Court. In that role she demonstrated the kind of forensic skills that will be of considerable importance to the work of the Inquiry, and I was delighted that she accepted my invitation to join the Inquiry Team.

7. The solicitor team will be led by Ciara Pang, who fulfils the role of Solicitor to the Inquiry. Ciara has most recently worked as deputy solicitor to the Sheku Bayoh Inquiry. This role has many similarities with the important post which she has taken in this Inquiry. Her in-depth experience of undertaking the work of an Inquiry has already proved invaluable to me and I have no doubt that she will contribute greatly to the effective functioning of this Inquiry and the many legal issues to which it will inevitably give rise.

8. Finally, I will have the able assistance of Lauren Murdoch who has assumed the important responsibilities of Secretary to the Inquiry. Lauren's background in public administration amply qualify her to take on the practical administration and management of the Inquiry and I anticipate that she will recruit assistance in early course to run the Inquiry Secretariat.

9. The establishment of an Inquiry Team is critical to progressing the work of the Inquiry and I am delighted at having been able to put together one with such a wealth of relevant experience as well as commitment and dedication to the responsibilities that lie ahead.

This Event Purpose

10. I would now like to say a few words about the purpose of the event today. The main focus of the meeting is to discuss the terms of reference. Mr Dawson will soon speak to you about them and what they mean. He will look at them in some detail and we make no apology for that because it is important that you leave the meeting with a clear understanding of the likely scope of the Inquiry. After we have both spoken to you there will

then be an opportunity to ask questions about the terms of reference. This is your opportunity to influence what the Inquiry will ultimately consider, whatever your interest in its work. If you do have a question about the terms of reference, there will be an opportunity to ask them after you have heard from Mr Dawson and me. Once we have finished there will be a short, 10 minute comfort break. We will then return for questions. Should you have a question to ask I would ask you to raise your hand and a microphone will be brought to you.

11. That said, the main way to contribute to the consultation exercise is by way of the online form. There is absolutely no pressure or expectation on anyone to contribute from the floor today. Indeed, you may want to take time to reflect on what Mr Dawson tells you before you express any views in writing on the terms of reference. This event is primarily about providing you with information about what we are doing, and why we are doing it. Please do not feel that you need say anything at all. But if you do have questions to help you understand the terms of reference you are of course welcome to ask them.

Update

Where we are

12. It is in the nature of Public Inquiries that establishing the infrastructure to make them operate effectively can take time. Viewed from the outside it may not seem like much is happening when the reality is very different. My team has been hard at work behind the scenes trying to put in place the staff and systems required to allow the work of the Inquiry to begin. That work can only begin when the terms of reference have been finalised. At the time of my appointment a set of draft terms of reference was provided to me on behalf of the Cabinet Secretary. With the necessary Inquiry Team appointments now complete, my legal team has been actively involved in researching publicly available material about Mr Eljamel's practice and re-casting the terms of reference in anticipation of issues which might be raised during the consultation exercise which brings us together today, and Mr Dawson will say a little more about that shortly.

13. You will know that I have asked for written responses to the draft terms of reference to be submitted by 25 October. What will then happen is that my legal team and I will examine the responses and advise the Cabinet Secretary about the outcome of this consultation exercise. That exercise will include advising on your comments and any themes which emerge. How long that takes will depend on the number of responses and what they say. We have tried to anticipate areas of likely interest that may not have been covered in the original draft terms of reference. We have worked hard both to clarify and to expand upon the original draft, and the product of that is the draft we have shared with you.

14. I appreciate that this phase of the Inquiry's work takes time and that until the Inquiry is set up it is difficult for my team to communicate updates to you on the work that is being done. However, these public meetings and consulting on the draft terms of reference represent a genuinely important staging post in the progress of the Inquiry. Shortly, I will ask Mr Dawson to speak to you about the draft terms of reference, and what happens next, but before I do that it might help if I say something about my general approach to, and expectations of, the Inquiry I have been asked to chair.

General Approach/Expectations

Patient Focus

15. Let me immediately recognise that, while there are many people and organisations who will be interested in the work of the Inquiry, I am acutely conscious of the situation of the former patients of Mr Eljamel who have campaigned, and certainly waited, for a very long time for this process to unfold and many of whom will be in attendance. Let me be clear. You will be at the centre of this process. Though my team and I act in the public interest in the discharge of our responsibilities a key component in that public interest involves paying close attention to, giving respect to, and acting compassionately towards, those former patients of Mr Eljamel who have been harmed or otherwise affected by the care they received. To that end my Inquiry team will strive to be understanding of, and respond to, the impact of trauma on all those affected in this way. You can all expect the Inquiry's careful and courteous consideration in its interactions with you. Finding answers to your unresolved

questions is a task to which my team and I are committed and dedicated. I hope that will become apparent as the Inquiry progresses.

Independence

16. Let me also stress to you all, as Chair of this Inquiry, that my team and I are independent of Government. We are independent of NHS Tayside and also independent of any of the other organisations mentioned in the draft terms of reference. Once they are finalised, I will look to fulfil the Inquiry's terms of reference with no hidden agenda whatsoever just as, in my professional life hitherto, I would undertake the duties of a professional judge without any personal interest in the cases over which I presided. The independence of my Inquiry is protected by law - and I take very seriously the independent responsibility I have been asked to assume by taking on the role of Chair.

Commitment to investigate

17. The law requires me to conduct the Inquiry fairly and economically. That I will do in what I hope will be a mutual spirit of cooperation and, where possible, consensus with legal representatives of core participants and others. But you may also take it that I will not hesitate to use the powers contained in the Act that enable me to call for and recover evidence, and compel the attendance of witnesses, in order to exhaust the Inquiry's terms of reference. If that means challenging systems that were in place at the relevant time, or, ultimately, criticising individuals or organisations (or both), I will not shrink from doing so. While a public inquiry is prevented by law from determining a person's criminal or civil liability that prohibition does not prevent it from drawing conclusions and making judgments about what went wrong and why, or identifying those responsible, and if appropriate you may all take it that that is what the Inquiry will do.

Length of the Inquiry

18. Can I now say something very briefly about timing. It is in the nature of a public inquiry that it is not possible to predict with any certainty how long the whole process will take.

That is because we have to go where the evidence takes us. That said, I do wish to make it clear to everyone that my commitment to you is to conduct as thorough an investigation as I can in as short a time as is reasonable to enable me to fulfil the terms of reference. I have absolutely no personal interest in the Inquiry taking any longer than is necessary to answer the many questions people have about its subject matter. Delay is in the interests of no one and I will do all that I can to see that avoidable delays are just that, avoided. But I would also ask you to bear in mind that proceeding with excessive haste runs the risk that the Inquiry omits something important. I am fully alive to the likely complexity of many of the issues the Inquiry will be considering. That is why, amongst many other responsibilities, I have to balance the need to make progress with the need to investigate as fully as I can the finalised terms of reference.

Inquiry premises

19. To accommodate the size of the Inquiry, technical aspects and the numbers involved from day to day, but also to enable the hearings to be conducted in a properly trauma-informed way, the Inquiry's hearings will be conducted from premises in Edinburgh, and the Inquiry Team is in the process of securing premises as we speak. I understand that not everyone can attend a hearing in Edinburgh and that is why we will be exploring ways in which the hearings can be broadcast. I want to ensure the Inquiry is as accessible as possible and that anyone with an interest in the Inquiry's work can watch and listen to the evidence wherever they happen to be.

The Independent Clinical Reviews

Professor Wigmore

20. The Cabinet Secretary has previously announced his intention to establish independent clinical reviews, a process chaired by Professor Wigmore. We understand that to be for two main reasons: (i) to provide an independent review of the cases of patients who wish one, and (ii) to provide the medical and clinical context for the Inquiry's systemic analysis of NHS Tayside at the material time. Or, to put it more simply, the Clinical Reviews are intended to set out what happened and what went wrong clinically; the Public Inquiry will investigate

what systems should have existed to detect and/or prevent harm from occurring, and whether the systems that did exist were in any way defective. It is in that sense that the Inquiry has been described as carrying out a “systemic” investigation.

21. I am aware that questions have been raised about whether Professor Wigmore and I have been, or are, working together. Both the Inquiry and the ICR are independent processes. The Inquiry will, however, seek to rely on the findings of the ICR. Evidence of what happened in individual cases and what went wrong is vital material for the Public Inquiry to consider. The Inquiry needs to ensure that the ICR can provide it with what it needs in order to carry out its investigations. Mr Dawson will say a little bit more in his address to you about how these two processes expect to relate to each other, and what the Inquiry can be doing in the meantime (which is plenty).

The Name

The Eljamel Inquiry

22. Finally, one thing that you may have noticed relates to the name of the Inquiry. The materials which we made public in this consultation exercise named the Inquiry as the “Eljamel and NHS Tayside Inquiry”. As you will see, today we present ourselves to you as simply “the Eljamel Inquiry”. Mr Dawson will explain the contents of the terms of reference in a moment. He will make it clear that these are not yet finalised. He will also explain that the Inquiry currently intends to investigate the role of bodies beyond NHS Tayside in the professional practice of Mr Eljamel. But not only that, we have noted that the Inquiry has tended to be referred to by former patients and in the media as the Eljamel Inquiry. Therefore, we present ourselves to you today under that shorter title. Fundamentally, the Inquiry is about the professional practice of Mr Eljamel. He is the common factor that applies to every aspect of the proposed terms of reference. Thus, our present intention is simply to call the Inquiry “the Eljamel Inquiry”.

23. But let me stress that you will have your opportunity to express your views about this as well. If this proposal concerns you, then you can say that in your response and we will listen.

Concluding remarks

24. I hope these introductory remarks have helped you to understand where we have reached in what, on any view, will be a long process. At the root of all of this lies the National Health Service. As other Inquiries in Scotland, and elsewhere, have shown, looking back on matters which are of fundamental importance to the operation of the National Health Service will always be of value to its current and future operation, whether in Tayside or more widely. If criticism is to be levelled, let it be so. If there are lessons to be learned, let them be learned. This Inquiry will be a journey but, wherever the evidence takes us, I hope that it will be a valuable journey that meets the justifiable expectations of former patients, members of the medical profession, then and now, and the wider public who rely today, as much as they ever did, on the provision of safe, reliable and accessible healthcare. I will personally strive to make it so.

The Eljamel Inquiry – Presentation by James T Dawson KC, Senior Counsel to The Inquiry

Introduction

1. It gives me great pleasure and professional pride to introduce myself to you today. I am Jamie Dawson KC, Senior Counsel to the Eljamel Inquiry. I have been accorded the responsibility of leading the Inquiry team in this important and long-awaited process.

2. I am particularly pleased to be doing so as head of an experienced and dedicated team who will all play an important part in assisting the Chair in carrying out the important work of this Inquiry.

3. As the Chair has already kindly pointed out, I will be assisted by very able and experienced junior Counsel, Alex Price-Marmion, Ciara Pang as solicitor to the Inquiry and Lauren Murdoch, secretary to the Inquiry. It will ultimately be a matter for you to judge but I suggest to you that this is a team in whose experience, courage and compassion you can and should

have faith. I have every confidence that this team will rise to meeting the significant challenge which this Inquiry will pose.

4. I have been asked today to address you as part of the Inquiry's important public consultation process. I have been asked to set out for you what the draft Terms of Reference mean, including the legal aspects of them, as well as setting out the process by which we have got to this early, though significant point in the work of the Inquiry. I intend to try do so in this presentation and to answer some questions which may be of use to you in your participation in the current consultation exercise.

5. It gives me particular pleasure, I should say, to have been invited to do this, in light of the Chair's stated commitment to put the former patients of Mr Eljamel at the centre of this process. That is as it should be. The Chair has already said it but it merits repetition by me - though we act in the public interest in the discharge of our responsibilities, a key component of that public interest is to pay careful attention to, give respect to and act compassionately towards those former patients of Mr Eljamel who have been injured by or otherwise dissatisfied with the care they received. That is the way in which we intend to conduct our work. Though it is important that I make clear that individuals or bodies other than former patients have a right to engage with the work of the Inquiry and this consultation exercise (and we encourage them to do so and anticipate that they will), those who have been harmed deserve and will receive careful and courteous attention in this Inquiry. It is predominantly towards those patients that my remarks today are addressed.

6. It is, however, all very well, you might suggest, to say that putting patients at the centre of the Inquiry is our intention. We are all too aware of the disappointment, unkept promises and dashed hopes which this community of patients has experienced. Words and commitments are all very well but they need to be backed up with actions. In coming here today, inviting you to participate in this consultation process and in putting you, the former patients of Mr Eljamel, at the centre of the Inquiry, we intend to do so.

7. In fact, that commitment started even before today, as I will explain in due course. Today, however, marks the formal start of what we intend to be a productive and collaborative process of engagement with you.

What I will be covering today

8. This address forms part of the information sharing exercise which is designed to assist your active participation in the creation of the Terms of Reference. After both consultation events have been held, the text of what the Chair and I have said will be made available for your consideration and for the consideration of anyone with an interest in the work of the Inquiry, whether they have attended one of the public consultation events or not.

9. In my address today, I will cover the following matters:

- (a) the legal background to the Inquiry and its Terms of Reference;
- (b) the production of the Inquiry's Terms of Reference;
- (c) important features of the Inquiry's draft Terms of Reference;
- (d) the Terms of Reference consultation exercise; and
- (e) concluding remarks.

The legal background to the Inquiry and the Terms of Reference

What is a public inquiry?

10. It is important, in my view, that we are clear from the outset as to what this public inquiry is. It is an investigative process whereby an independent team, led by a Chair, is empowered to investigate and make findings about matters which fall within its Terms of Reference.

11. The Inquiry which was announced by the then Cabinet Secretary for NHS Recovery, Health and Social Care on 7 September 2023 will be one which is constituted under the Inquiries Act 2005 ("the 2005 Act"), like other prominent public inquiries. The Inquiry will have powers to do a number of things which derive from the 2005 Act and from associated

legal rules. These powers exist in order to assist the Inquiry with the investigation with which it will be charged, to enable it to carry out a reasonably thorough investigation of its remit and ultimately to be able to make authoritative findings about what happened, what went wrong and who was responsible. Its powers include the ability to take certain legally prescribed steps to compel participation in its work, if necessary.

12. Like other inquiries of which you have heard, this Inquiry (announced as it was by the Scottish Government) is a “Scottish Inquiry”. This means that our Terms of Reference do not permit us to look into issues which fall outwith the group of matters on which the Scottish Parliament can pass legislation. Some matters are beyond its powers, known as those which have been “reserved” to the Westminster Parliament. That makes sense as the Scottish Parliament has legal restrictions on what it can do and hence there are legal restrictions on what the Scottish Government can tell the Inquiry to investigate.

What are the Terms of Reference?

13. Under the legal regime which governs the Inquiry, the Terms of Reference are a highly significant document. They define the broad areas which the Inquiry is allowed to investigate. The Inquiry has no power to investigate matters beyond its Terms of Reference.

14. The Terms of Reference serve a number of purposes but, for the most part, they serve as the guide as to what the Inquiry is both obliged and empowered to look at. They also serve as a means of the outside world knowing what this Inquiry is about – thus, they attract people to the Inquiry who might be able to assist with its work. Equally, given their function, the Terms of Reference are also an important guide as to what the Inquiry is not about. Matters which fall beyond the Terms of Reference are not relevant to our work and that assists with defining, for example, the ambit of documents which need to be recovered or questions which need to be asked.

15. Because the Terms of Reference are important, so too is getting the Terms of Reference right. For them to serve these highly important purposes, we aim to arrive at a document which is clear, comprehensive but not unnecessarily specific.

16. First, it is important that the Terms of Reference are clear. We and you need to know what we are looking at and what we are not. This will allow the work of the Inquiry to proceed with a clear purpose and its work to be focussed on achieving it. It allows all those who participate to know what we are here to achieve.

17. Secondly, it is important that the Terms of Reference include everything that we need to look at. We cannot look at things beyond the scope of what is listed in the Terms of Reference. It is, in theory, possible for the sponsoring minister to be asked to change the Terms of Reference if the public interest requires it. However, if possible, this is best avoided as changes to the terms of what we are here to investigate will interrupt the efficiency of the Inquiry and inevitably result in delay. Thus, if there are matters which should be included in our investigation, they should be included now.

18. Thirdly, it is often of little use to the Inquiry for the Terms of Reference to be cast too wide, in the sense of requiring it to look at too many things. If the Inquiry requires to look at too many things, it may waste time looking at things which are unimportant (or less important), and that may delay findings being made on the things that really matter.

19. Fourthly, and connected to this, it is often unhelpful if the Terms of Reference include too much detail. They are a broad statement of the areas the Inquiry is required and empowered to investigate. If they are too specific, they may limit the Inquiry's ability to investigate things as fully as is necessary to understand what happened, what went wrong and how adverse outcomes might be avoided in the future. For the avoidance of doubt, it is the Inquiry's intention to create and publish a more specific list of issues which will be investigated and resolved when we are set up and we are allowed to start our detailed investigations. Thus, the Terms of Reference need to be broad, but full.

20. We would be grateful if you could bear these messages in mind when thinking about and providing your responses to the consultation exercise. Those responses will be very valuable to us in shaping our final views on what the Terms of Reference should look like, but they will be all the more helpful if they respect these basic principles.

The production of the draft Terms of Reference

How have the Terms of Reference got to this point?

21. On 14th September 2024, the Inquiry launched its public Terms of Reference consultation process of which this presentation is a part. A draft set of the Inquiry's Terms of Reference was published for those with an interest in the Inquiry's work to consider.

22. As part of his ongoing role as the sponsoring minister of the Inquiry, the Cabinet Secretary for Health and Social Care has a duty to consult with the Chair of the Inquiry on its Terms of Reference.⁶ We have no statutory or other duty to consult with you about the Terms of Reference but we thought it very important to do so.

23. At this stage, the Inquiry is very limited by law as to what it can do or look at. For example, we cannot at this stage consider any evidence. However, you should know that we have in the last few months not simply sat back and allowed the Cabinet Secretary to take all the responsibility for fixing the Terms of Reference. Nor have we simply sent you a blank sheet of paper asking you to tell us what to look at. Instead, we have been looking at what material we can, including what is contained in publicly available media where we found a considerable number of the views and experiences of many of those who have been harmed. We have done this to try to start to understand what happened and what needs to be investigated by this important Inquiry. As a result, the draft Terms of Reference have been compiled largely by the Inquiry team as a starting point for public consultation with you about what they contain. Now we need to know what you have to say about them.

What happens next?

24. It is important that you understand that the Terms of Reference of this Inquiry have not yet been fixed. The Terms of Reference are ultimately a matter for the Cabinet Secretary to determine. However, as part of the consultation exercise with him which the Cabinet Secretary is obliged to carry out, the Chair of the Inquiry will, in due course, make

recommendations to the Cabinet Secretary as to what the Terms of Reference should contain. He welcomes your views on these draft Terms of Reference. This is your opportunity to influence what the Inquiry will ultimately consider.

25. May I make a point of clarification about the Terms of Reference being in “draft”, a matter on which there has been some concern expressed in the media. Please take my assurance that this is a good thing. It does not mean that the Inquiry is not going to happen – it is. In fact, it just means that they are still open and not yet finalised. They have been kept open or “in draft” to allow you to input into their creation. As the Terms of Reference cover what we can look at, the fact that through this process you can influence their contents mean you can influence what the Inquiry does and what it can achieve. This is a real opportunity to do so.

26. In due course, the Cabinet Secretary will announce what the final Terms of Reference will contain. In doing so he will consider the recommendations made by the Chair which will, in turn, have taken account of your contributions to this consultation process. We hope the Cabinet Secretary will make that announcement as soon as possible after the Chair provides his recommendations so as to avoid any undue delay.

27. The Inquiry will then be able to be “set up” formally and will be able to begin its work in earnest, investigating the Terms of Reference which by then will have been fixed.

28. It is important to note that ToR 19 currently charges the Inquiry with the production of a final report but also empowers it to produce interim reports if aspects of its work can be completed and findings published earlier others, in the interest of striking the proper balance between speed and reasonable thoroughness. Even the final report must be delivered as soon as reasonably practicable – so having proper regard to getting to the finishing line is part of our duty from the start.

The important features of the draft Terms of Reference

General observations

29. I intend to explain to you what it is that the draft Terms of Reference contain. However, may I first make some general observations about their contents and their objectives.

30. Firstly, the Terms of Reference seek to underpin what is in essence a systemic Inquiry into what systems existed to try to detect and act upon evidence of poor or harmful professional practice in the treatment of Mr Eljamel's patients, whether these systems functioned as they should have done, and if they did not, why they did not and who was responsible.

31. As the Chair has said, evidence of what happened in individual cases and what went wrong is important to that systemic analysis. The essence of our work is to look at whether what went wrong should have been picked up and acted upon in a different way, all in the ultimate interest of patient safety and care. We know something of that already and we will be further informed in our work by the analysis of medical records which will be undertaken by the Independent Clinical Review process which will be overseen by Professor Wigmore. Concerns over the timing of that process have been aired in the media. We leave it to Professor Wigmore to explain his own process to you in more detail. It is true to say that we will require to rely on his work and it is true that that will take time. However, it is important to know that there are aspects of our work we can be getting on with, progress we can be making once the Terms of Reference are fixed. Waiting for the Independent Clinical Review will not cause a paralysis in our work – far from it, there are many important tasks and steps we plan to get on with straight away once we are set up, with our fixed Terms of Reference determined. I will return to the way in which we intend to work with the ICR in more detail in a moment.

32. Secondly, though not formally part of the Terms of Reference, it is important to note, in my view, that we have seen fit to recognise, in the Explanatory Notes to them, our aspiration that 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. We know that damage has been done. We intend to conduct ourselves in a way that will recognise and be respectful of that fact.

33. Thirdly, I would accept that the Terms of Reference are, by the standards of other inquiries, relatively lengthy. We make no apology for this. Even our limited initial investigations have made it clear to us that there are lots of important things to look at and to resolve. However, as I have said, we have tried not to make them too lengthy. Making them too lengthy would inevitably expand the time needed for the Inquiry to come to an end. Speed in reaching decisions is of the essence, in particular against the background in which this Inquiry has come into being. However, that must and will be balanced against the requirement for reasonable thoroughness of investigation. The need to try to get quick answers must not be allowed to jeopardise the Inquiry getting the right answers.

34. Fourthly, as presently drafted, the Terms of Reference cover a wide time period, namely the entirety of the period of Mr Eljamel's employment with NHS Tayside all the way back to 1995. This will enable the Inquiry to conduct a wide analysis of systems in place during his entire NHS career. This provides an ambitious scale to the Inquiry's work but will enable evidence to be considered of any signs which ought to have been observed and acted upon which may have prevented later harm.

35. Finally, I would wish to point out that ToR 18 requires the Inquiry to identify any lessons and implications for the future and make recommendations, including interim recommendations if the Inquiry considers them appropriate. Thus, the requirement that we be a backward-looking process – to consider what happened, what went wrong and why – sits alongside our duty as a forward-thinking process – how to avoid things which have contributed to harm from happening again.

36. In this regard, may I make an important observation. We intend to call the Inquiry the Eljamel Inquiry. That is because what binds all the patients together who have an interest in our work is that they were at one time under his care. Thus, the Terms of Reference are necessarily focussed on his work, its deficiencies and, particularly, the systems around it. It is currently expected by the Cabinet Secretary that what we learn about those systems may inform improvements more broadly to help achieve better patient care in the future. In allowing us to consider making recommendations in the wider public interest, the Inquiry will be empowered to look at what needs to be done more generally within the NHS in

Scotland to make things work better in the future based on what we have learned went wrong. We will look at the systems related to Mr Eljamel's NHS practice first and foremost. We will consider the broader position now and for the future as a result of what we find, but we will not be drawn into looking at those broader systems beyond what is necessary to assist with making recommendations for the future. To go further would deflect us from our main obligation – to look at systems which ought to have existed to improve the care received by you, Mr Eljamel's former patients.

Specific aspects of the draft

37. I turn now to deal with certain specific aspects of the draft. I have split the draft into eight separate thematic sections for the sake of this presentation and will introduce and explain each in turn, which will involve moving around in the draft a bit. You should all have hard copies of the draft Terms of Reference for your use and assistance.

The Independent Clinical Review

38. As far as the Independent Clinical Review is concerned, the Cabinet Secretary has seen fit to set this up as a separate process. That process, we understand, will issue its own Terms of Reference in due course. It will be a matter for Professor Wigmore and his team to spell out for you his intentions as regards what work he will undertake and how he intends to go about it.

39. However, it is important to acknowledge that the work of that process will inform and feed into this one. That is why, under draft ToR 15, we have included an obligation on this Inquiry to work with the ICR to achieve coordination of the two separate processes. It is important that the plans for that cooperation be set out clearly for those with an interest in the work of the Inquiry. We have thus also proposed the inclusion of an obligation in the draft to set that out publicly in due course so that there is clarity and transparency about what the ICR will do and how its work will assist us in what we will do. That process will be designed to make sure we set out clearly and publicly how we intend to get the expert

neurosurgeons whom Professor Wigmore will engage to provide us with the information we need to be able to do our work.

40. In terms of draft ToR 16, we will then be obliged to take account of the ICR's findings in the work which we do. The ICR will set out what went wrong clinically. Our role will then be to investigate what systems should have existed to detect and prevent those things going wrong and harm occurring and whether those systems were in any way defective.

Documents

41. In order to be able to conduct a thorough investigation of the systems which existed to protect patients from harm at the hands of Mr Eljamel, the Inquiry will require to obtain and examine evidence. Memories of those who were there in the years between 1995 and 2015 may have faded. It is often the case that written material from the time can provide a useful if not authoritative guide as to what happened and what went wrong.

42. It is apparent from investigations which have been undertaken into the Mr Eljamel's practice in the past (to which I will return) that these have been hampered by the apparent unavailability of records in certain key areas and at certain key time periods. In order to be able to understand fully the context in which the state of documentary evidence is as it is, as well as to inform the reasons for inadequacies in previous investigative processes, the Inquiry is charged with conducting an investigation (under ToR 14) into the adequacy of document management systems.

43. If documents do not exist which should, the Inquiry will look at why and whether they ought to have been retained. If the work of the Inquiry is to be hampered by documents not being available, the Inquiry will investigate why that is the case.

Appointments

44. The processes involved leading to Mr Eljamel's appointments as a Consultant Neurosurgeon in October 1995, Head of Department/Section for Surgical Neurology,

University of Dundee in 1996 and Lead Clinician for Neurosurgery in 1998 are to be investigated in terms of ToR 1.

45. As presently advised, the Inquiry will probe the nature and adequacy of these processes (as well as any induction he received on appointment).

46. If there are other roles or positions which he held which you think we should investigate in addition to those listed, we would be very happy to hear from you as to what they were and why we should investigate how he came to hold them too.

Oversight

47. ToR 3 may be seen as the key or core Term of Reference in the current draft. It relates to the nature and adequacy of both corporate and professional systems of risk management oversight which could or should have picked up what was going on and done something to prevent it.

48. The purpose of this important Term of Reference will be to enable the Inquiry to probe whether things could or should have been done by

(a) NHS Tayside as Mr Eljamel's employer or

(b) his fellow professionals in terms of their professional and other obligations to ascertain the quality of the treatment which he was providing, discover what was going wrong and importantly, do something about it so as to avoid patients continuing to be exposed to the potential for harm.

49. As far as the latter part of this Term of Reference is concerned, ethical guidance entitled "Good Medical Practice" was issued by the General Medical Council in 1995, the year when Mr Eljamel commenced his employment at Ninewells. Paragraphs 18 and 19 of the guidance impose a "duty to protect all patients" as follows:

"You must protect patients when you believe that a colleague's conduct, performance or health is a threat to them", and;

“Before taking action, you should do your best to find out the facts. Then, if necessary, you must tell someone from the employing authority or from a regulatory body. Your comments about colleagues must be honest. If you are not 29 sure what to do, ask an experienced colleague. The safety of patients must come first at all times”.

50. For the avoidance of doubt, our interpretation of ToR 3 would include the investigation at a systemic level of who in NHS Tayside and amongst the medical professionals there knew what about Mr Eljamel’s professional practice there and when they knew it. It would also include the investigation of what was done by them as a result of that knowledge and why, as well as what was not done but ought to have been and why it was not. Importantly, it would also include what ought to have been known about Mr Eljamel but was not and what ought to have been done as a result of what ought to have been known.

51. In addition, ToR 3 also includes the requirement to consider the extent to which NHS Tayside’s oversight process included adequate consideration of issues arising from Mr Eljamel’s private practice which could or should have alerted them to a potential danger to his NHS patients.

52. I should make clear that the Inquiry as presently constituted does not require to look at cases undertaken by Mr Eljamel in his private practice or systems which existed to minimise harm for patients treated there. This is an inquiry which is predominantly about the NHS and the extent to which systems which existed in that service did enough to protect Mr Eljamel’s NHS patients from harm. It does, however, require under ToR 3 to look at whether clues from what was going on in his private practice could and perhaps should have been detected so as to protect NHS patients from harm.

53. ToR 6 covers the requirement to investigate the role of any other health agencies in the professional practice of Mr Eljamel, allowing the Inquiry to investigate whether any other health agency ought to have played a role in the monitoring or detection of inadequacies in Mr Eljamel’s NHS work. There is a non-exhaustive list of health agencies – we may add in new ones as our investigations start in earnest.

54. Two are named for now - NHS Quality Improvement Scotland (NHS QIS) and Healthcare Improvement Scotland (HIS). NHS Quality Improvement Scotland (NHS QIS) was established on 1 January 2003 as a special health board with a remit to improve the quality of healthcare in Scotland. Healthcare Improvement Scotland (HIS) was established as the national healthcare improvement organisation for Scotland which was created in April 2011. The function of these bodies has been to implement the healthcare priorities of the Scottish Government.

55. If there are other bodies which or individuals beyond these who you think ought to have had a role in monitoring Mr Eljamel's work at NHS Tayside, discovering what was going wrong and doing something about it, we would be keen to hear from you about them and what role you think they should have played.

Candour

56. In "Good Medical Practice" (1995) it was provided at paragraph 11 that:

"Successful relationships between doctors and patients depend on trust. To establish and maintain that trust you must...give patients the information they ask for or need about their condition, its treatment and prognosis;...give information to patients in a way they can understand [and]...respect the right of patients to be fully involved in decisions about their care;" and at paragraph 15 that *"because the doctor-patient relationship is based on trust you have a special responsibility to make the relationship with your patients work".*

57. ToR 7 relates to the question of whether (and if so to what extent) Mr Eljamel concealed his sub-standard professional practice by him from his former NHS patients, former professional colleagues, NHS Tayside or relevant regulatory bodies during the period of his employment. We are tasked to investigate what he knew was going on but kept to himself.

58. We are also required in terms of ToR 13 to investigate what NHS Tayside knew of sub-standard practice in Mr Eljamel's work and did not disclose to patients, the professional regulator, the police or Scottish Government. Further, if NHS Tayside did not know these

things, we are charged under ToR 13 with investigating what it ought reasonably to have known.

Clinical practice

59. As I have already said, as presently constituted, the ICR will be the primary place where the examination of individual clinical cases will be undertaken.

60. However, there are aspects of Mr Eljamel's clinical practice which the Inquiry is currently charged with investigating in an overarching sense in terms of ToR 2 which will require the Inquiry to consider the extent to which any of the following behaviours, commitments or practices contributed to adverse outcomes suffered by his patients:

- (a) his commitments to his private practice;
- (b) his supervision of professional colleagues including when surgeries were undertaken by trainees on his patients, any bullying or intimidatory behaviour;
- (c) internal workload pressures; and
- (d) his commitments within the University of Dundee, including but not limited to any research he may have been carrying out on his patients.

61. Though a certain level of assistance may be derived from the work of the ICR in this regard, these matters will be primarily for the Inquiry and not the ICR to investigate and determine.

Complaints and investigations

62. Those who did know or suspected that things had gone or were going wrong did, we understand, raise what they knew or suspected. We are charged with looking at what was done in response to complaints.

63. Thus, in terms of ToR 4, we are charged with looking at how complaints and feedback processes within NHS Tayside relating to Mr Eljamel's practice were handled, their adequacy

and effectiveness (including the way that those who made complaints were treated, be they former patients, families or staff).

64. ToR 5 requires us to look at the outcomes of any of those complaints or feedback processes – when issues were raised what was done in connection with them? What action was taken as a result? How adequate were systems which were put in place to enable actual, meaningful change based on what had been found? The requirement to look at systems designed to create action as a result of these complaints and feedback processes also extends to anything learned from systems of corporate or professional oversight of Mr Eljamel's clinical practice, which we will examine under ToR 3. The focus here is on what was done to minimise risks to patient safety and improve patient care.

65. When the scale of the issues relating to Mr Eljamel's professional practice started to come to light, investigations were undertaken in different places over many years into what had happened.

66. In ToR 12, the Inquiry is required and empowered to investigate the timeliness and adequacy of other reviews and investigations which have been undertaken into the professional practice of Mr Eljamel over the years. The reference to the timeliness of these reviews includes an ability, in our current interpretation, to look at whether these investigations should have happened sooner and if so, why they did not. We are required to look at whether these investigations did all they reasonably could to get to the bottom of matters, and if they did not, why not.

67. As this draft covers the timeliness and adequacy of the Scottish Government review in 2022, we are of the view that this ToR as currently drafted would require us to look at the question of whether the Scottish Government ought to have become involved in the matter earlier and whether it ought to have ordered a public inquiry earlier.

68. These investigations include ones undertaken by various bodies which are listed in the draft. These bodies include the Royal College of Surgeons, NHS Tayside and the Scottish Government. The reviews were ones undertaken between 2013 and 2023. If there are more

investigations or reviews which you think could or should be covered, please feel free to tell us about them in your written response.

Events of 2013 to 2015

69. We are aware that action was indeed taken to address issues with Mr Eljamel which are included in ToRs 8 to 11. Thus:

(a) in terms of ToR 8, we are charged with the investigation of 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. Should supervision have been imposed sooner? What effect did it have in minimising the risk of harm to patients? For the avoidance of doubt, in our view, this would include whether and what patients knew about the fact that clinical supervision of Mr Eljamel had been imposed.

(b) in terms of ToR 9, we are charged with the investigation of the processes and circumstances which led to the suspension of Mr Eljamel by the Board on 10 December 2013. This includes investigating whether he should have been suspended sooner than he was, and what effect the suspension had in protecting patients; and

(c) in terms of ToR 10, we are required 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 him, or censure imposed on him.

70. In terms of ToR 11, we are charged with the investigation of 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. I am required to point out an important limitation in this regard. As I mentioned earlier, the Inquiry is a Scottish Inquiry and is thus limited in its investigative powers and remit to matters which fall within the competency of the Scottish Parliament.

71. A theme which emerges from publicly available material is the extent to which the systems of regulation of the medical profession operated adequately in Mr Eljamel's case, both in general terms but also specifically with regard to the circumstances in which he came to be able to remove himself from the medical register in 2015 which some feel

- (a) precluded further investigation into his alleged shortcomings and
- (b) allowed him to continue to practice on his return to Libya, without the burden of the professional censure which further investigation may have entailed.

72. The regulation of health professionals is a matter reserved to the competency of the UK Parliament. Therefore, our current view is that this is not a matter which the Inquiry could competently look at. However, for the sake of clarity, the current draft does cover what role, if any, NHS Tayside played in the events leading to him erasing his name from the GMC's medical register voluntarily in 2015.

73. For the sake of completeness, we also considered suggesting that the role of Health and Safety Executive should be included in the draft. It is also our current view, for the same reasons, that this would not be a matter which the Inquiry could competently investigate.

The consultation exercise

74. As I said, we are fully aware that professing a commitment to the former patients of Mr Eljamel and giving practical effect to that commitment are two different things. Thus, from day one of our work on this Inquiry and in light of the legal restrictions to which I have referred, it is your experiences, your views and your aspirations of the process to which we have turned.

What can you contribute to the consultation process?

75. For former patients of Mr Eljamel and the families of former patients who have died, we do not want lengthy narrations of your medical histories or your experiences at this stage. You will have the opportunity for clinical review of your case in the ICR process in due course. The results of those independent, expert investigations will be available to the Inquiry. We will take evidence from patients, as is considered necessary to discharge our Terms of Reference. Via these processes, you will have your say. What we want from you

know now are your views on what we should cover and, if you wish, what we should not, as well as the things which are most important to you and why.

76. We would like your name and a brief description of your involvement with Mr Eljamel's work in NHS Tayside, but only so we can understand more fully your perspective on what we should cover.

77. We are aware that there are some, perhaps many, who wish to contribute but to do so confidentially. We respect your right for whatever reason to do so. We will keep your information confidential. What you have to say will be considered within the independent Inquiry team but will go no further.

78. The process is available to anyone who has an interest in our work. That includes former patients and families of deceased former patients. It includes also other organisations or individuals with a view on what we should consider.

79. The consultation process will remain open until 5pm on Friday 25th October which means that it will have run for a period of 6 weeks. Information about how to seek assistance from the Inquiry team with submitting your response is available for those who need it on the webpage where the consultation was launched. The details are also available in the information leaflet with which you have been provided today.

80. As I said earlier the text of this speech and the Chair's will be made available in due course for you to consider further, if you wish to do so after both consultation events this week have been completed.

Concluding remarks

81. The Inquiry looks forward to receiving and considering your important contributions to the consultation process. It does so as an indication of its determination that the Chair's

commitment to putting former patients at the centre of the process is not mere rhetoric but a real, collaborative and honest reality.

82. I have had the privilege of being privy to and having delivered statements like this in a number of other public inquiries. One tends to recognise a number of phrases which are repeated in them – the commitment to investigate matters “without fear or favour”, the plan to “leave no stone unturned” or the intention to “speak truth unto power”. Though these are all laudable aims, and ones to which we also commit ourselves, words mean little without action. We hope that, having applied our own minds to the draft Terms of Reference, contributed significantly to their formation, and addressed you as we have today as part of a genuine attempt to engage you in the formation of this important and long-awaited public inquiry, we have, by action, started to show you something of the way in which we intend to conduct our work.

83. Whatever the outcome of this process and the Cabinet Secretary’s decision on what the ultimate Terms of Reference should be, you can leave today with my commitment that I and the Inquiry team will approach the investigation of the Terms of Reference with courage and independence. You can leave today with my commitment that the promises made today are real, that words will be matched with action. You can leave today with my commitment that I and the Inquiry team will do our very best to ensure that this process will find the answers for which you have waited for such a long time and which you undoubtedly deserve. Thank you for your attendance, for your time and for your attention.