Note by Counsel to the Inquiry for the Preliminary Hearing of the Eljamel Inquiry on 10th September 2025

Introduction

1. The purposes of this Note are as follows:

(a) To set out, in overarching terms, the background to the Eljamel Inquiry and its Terms of Reference.[1] In particular, the Note will focus on events since the Inquiry's public consultation on its Terms of Reference in October 2024 though it will also set out broadly what occurred before that time, as certain Core participants and Recognised Legal Representatives were not involved in that process;

(b) To introduce the agenda for the Preliminary Hearing on Wednesday 10th September 2025; and

(c) To set out, primarily for the benefit of Core participants, information concerning the nature of the Inquiry's work so far, to enable them to file written submissions, if they wish, in advance of the Preliminary Hearing and to

[1] https://www.eljamelinquiry.scot/about/terms-reference

prepare for that hearing. Any brief written submissions should be received by 10am Friday 5th September 2025.

2. The Preliminary Hearing on 10th September 2025 will serve as an opportunity for aspects of this Note and other matters to be ventilated for the benefit of the wider public. In the meantime, the contents of this Note are shared with the recipients of it (including Core participants, their Recognised Legal Representatives and other recipients selected by the Chair to the Inquiry, including members of the team of the Independent Clinical Review and its Recognised Legal Representatives) in order to inform them of matters which will be covered at the hearing and to provide information to inform any contributions which Core participants would like to make to the hearing. This information is shared in the interests of promoting engagement and participation in the Inquiry's work and strictly under the Terms of the Inquiry's First Order dated 7 May 2025.[2]

3. The Preliminary Hearing on 10th September 2025 will address the following issues:

(a) The commencement and progress of the Inquiry;

(b) Designation of Core participants;

(c) The Independent Clinical Review;

(d) Approach to evidence and public hearings;

(e) The Terms of Reference and List of Issues;

(f) Rule 8 Requests/ Section 21 notices;

(g) Disclosure of documents;

(h) Instruction of Expert Witnesses;

(i) Communication and the Inquiry's trauma-informed approach;

[2] https://www.eljamelinquiry.scot/key-documents/first-order-inquiry

(j) Protection of information;

(k) Future hearings dates; and

(l) Next steps relating to the preliminary hearing.

a) The Commencement and progress of the Inquiry

4. The Inquiry was announced by the then Cabinet Secretary for NHS Recovery, Health and Social Care on 7th September 2023. On 29th February 2024, the Cabinet Secretary appointed the Hon. Lord Weir as Chair of the Inquiry.

5. Draft terms of reference were drawn up by the Scottish Ministers. These were passed to the Inquiry. Though the Inquiry was prohibited from considering evidence before its formal set-up[3], publicly available information was considered by Inquiry Counsel. This included what was contained in publicly available media where the Inquiry found a considerable number of the views and experiences of many of those who have been harmed. Before considering any evidence, this provided some insight into what appeared to be important matters, potentially for investigation by the Inquiry. As a result, the draft Terms of Reference were revised by the Inquiry team. The updated draft was agreed by the Scottish Ministers for the purposes of public consultation.

6. On 14th September 2024, the Chair announced the launch of a public consultation process on the Inquiry's draft terms of reference so that public concerns and issues could be reflected in the final Terms of Reference and inform the scope of the Inquiry's investigations.

[3] As per section 5(2) of the 2005 Act

7. Interested members of the public were asked whether the Inquiry's draft terms of reference covered all the areas that they thought should be addressed. The public consultation was open to everyone with an interest in the Inquiry's work, and the public could contribute to the discussion at public events which were held in Dundee on 7th October 2024 and online on 10th October 2024. The first event was attended by 134 people. 34 devices were logged in to attend the second event.[4] The texts of the Chair and Senior Counsel's addresses to these meetings were made available publicly after the events. Interested parties were asked to make any written submissions they wished to contribute in response to a series of questions about the Inquiry's remit. The consultation ran for 6 weeks, until 25th October 2024.

8. The Inquiry received 31 written responses to its public consultation, of which 26 came from former patients of Mr Eljamel or family members of deceased former patients of Mr Eljamel, 2 came from legal representatives of groups of former patients and 3 came from organisations with an interest in the Inquiry's work. Inquiry Counsel carried out an assessment of the responses (both written and oral), and the helpful suggestions made by those with an interest in the work of the Inquiry as to how they might be altered (either by addition or deletion), so as best to serve the purposes of the Inquiry process and the wider public interest.

9. In light of the information which had been shared via the public consultation process, on 20th November 2024, the Chair wrote to the Cabinet Secretary proposing certain amendments to ensure greater clarity and reach in the Inquiry's remit, based on the Chair and the Inquiry team's understanding of what the Scottish Ministers had intended that the broad purposes of the Inquiry should be. These included a number of proposed changes to the consultation draft which had been circulated in advance of the consultation, based on proposals which had been made by respondents to the public consultation process, including:

[4] Some logins to the event involved more than a single person attending

(a) The expansion of Term of Reference 1 to include other key positions held by Mr Eljamel in his professional capacity in Scotland beyond those listed in the draft;

(b) A clarification that Term of Reference 3 covered the operation and adequacy of NHS Tayside's clinical governance systems;

(c) Expansion of Term of Reference 3 to include whistleblowing and reporting processes and the extent to which any clinical governance systems within NHS Tayside were adequately engaged and participated in by those working in NHS Tayside;

(d) The addition in Term of Reference 6 of NHS Education for Scotland and its predecessor bodies;

(e) The addition in Term of Reference 6 of the predecessor bodies of Healthcare Improvement Scotland;

(f) The expansion of the role of the Scottish Executive/ Scottish Government in the investigation by their addition to Term of Reference 6;

(g) Clarity that the remit of Term of Reference 14 would include document management systems relating to medical records, as well as administrative records, given concerns expressed by patients who had tried to recover their medical records;

(h) Clarity around the statutory limitations of the Inquiry to determine any fact or make any recommendation which are not wholly or primarily concerned with a "Scottish matter" in terms of section 28 of the 2005 Act in Explanatory Note (b);

(i) Clarity around the Inquiry's responsibility to analyse and criticise by the insertion into in Explanatory Note (c) of its ability 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; and

(j) Expansion of in Explanatory Note (e) to cover the ability of the Inquiry to make recommendations about bodies other than health boards.

10. In January 2025, the Cabinet Secretary responded, accepting the changes that had been proposed with some minor, non-substantive amendments.

11. The Chair of the Inquiry provided an update on developments in the Inquiry's work to those who had registered an interest in the work of the Inquiry on 27th November 2024, informing them (amongst other things) of his report to the Cabinet Secretary on the Terms of Reference, the issuing of "Do Not Destroy" letters to key organisations, the development of the Inquiry website, the creation of the Inquiry's Protocols and the work which would be required before formal set-up.

12. The Chair of the Inquiry provided a further update on progress to the same recipients on 27th February 2025, informing them, in particular, of the need for the finalisation of the Inquiry's Terms of Reference to await the Terms of Reference of the Independent Clinical Review being similarly fixed by the Cabinet Secretary, progress with the completion of a Memorandum of Understanding between the Inquiry and the Independent Clinical Review, the development of the Inquiry's website, the publication of certain Protocols, updates on recruitment, training and accommodation and plans for a preliminary hearing.

13. The 'set up date' of the Inquiry was confirmed to be 3rd April 2025, at which time the Inquiry was formally opened. This was announced to the Scottish Parliament in response to a written question by Liz Smith MSP. Parties who or which had taken an interest in the Inquiry's public consultation exercise were informed of this in advance, on 2nd April 2025.

14. The Inquiry's website was also launched on 3rd April 2025. It will be used as the Inquiry's main means of public communication, with news items being uploaded

regularly as to the Inquiry's progress. It will also be the place where documents will be published.[5]

15. The Inquiry has also published a number of Protocols relating to its work. These set out the structures and operational processes which the Inquiry and those who interact with it will use to underpin the investigation of its Terms of Reference, with the ultimate objective of producing a comprehensive, evidence-based report. On 3rd April 2025 the Inquiry published a Statement on Protocols and Principles.[6] These principles emerged, in part, from representations made to the inquiry at its public consultation exercise.

16. The Protocols themselves (which can be accessed on the Inquiry's website) currently comprise:

(a) Core Participant Protocol dated 3rd April 2025;[7]

(b) Legal Expenses Protocol dated 26th June 2025;[8]

(c) Protocol on the Production, Handling and Retention of Documents dated 8th May 2025;[9]

(d) Protocol on Disclosure, Publication, Restriction and Anonymity dated 10th June 2025;[10]

(e) Protocol on Restriction Order Applications dated 10th June 2025;[11]

(f) Protocol on the Approach to Evidence and Written Statements dated 10th June 2025;[12] and

[5] As opposed to disclosed to core participants – see below
[6] https://www.eljamelinquiry.scot/key-documents/statement-protocols-and-principles
[7] https://www.eljamelinquiry.scot/key-documents/core-participant-protocol
[8] https://www.eljamelinquiry.scot/key-documents/legal-expenses-protocol
[9] https://www.eljamelinquiry.scot/key-documents/protocol-production-handling-and-retention-documents
[10] https://www.eljamelinquiry.scot/key-documents/protocol-disclosure-publication-restriction-and-anonymity
[11] https://www.eljamelinquiry.scot/key-documents/restriction-order-application-protocol
[12] https://www.eljamelinquiry.scot/key-documents/protocol-approach-evidence-and-written-statements

(g) Public Hearings Protocol dated 10th June 2025.[13]

17. Although these Protocols bear the hallmarks of the approach taken by other public inquiries, dictated by the statutory framework which is common to them all, they represent a genuine attempt on the part of the Inquiry team and ultimately the Chair to seek to tailor the work of this Inquiry to its particular background, remit, stakeholders and ambitions. In particular, they seek to take account of matters raised with the Inquiry about its structure and approach as part of the public engagement with interested parties.

18. In accordance the principles of open-mindedness and collaboration, the Chair of the Inquiry is prepared to entertain the possibility of adapting the Inquiry's approach and the contents of the Inquiry's Protocols in the event that better systems of operation come to light, whether as a result of suggestions made by Core participants or otherwise.[14]

19. Some important aspects of these Protocols are set out below. The Inquiry encourages those with an interest in its work to read them and consider their terms. The Inquiry has deliberately sought to set out the contents of these Protocols early in its work, even though some set out plans and systems will be of more relevance to later stages in the process. This approach is intended to show those with an interest in the Inquiry's work the direction of travel and to seek to promote a cohesive structure to our whole process. It is anticipated that the Inquiry will publish further protocols in early course, in particular in relation to expert evidence, warning letters and claiming witness expenses.

20. The Inquiry provided further updates on key developments and progress in its work to those who had registered an interest in the work of the Inquiry in June 2025, relating (amongst other things) to the launch of the Inquiry's invitation for application

[13] https://www.eljamelinquiry.scot/key-documents/public-hearings-protocol
[14] Inquiry Statement on Protocols and Principles, para 9

for Core participant status, the publication of the Inquiry's provisional List of Issues and correspondence received from a group of MSPs about aspects of the Terms of Reference.

b) Designation of Core participants

21. Those wishing to take a formal role in the Inquiry were invited to apply to become Core participants, within the meaning of Rule 4 of the Inquiries Scotland Rules 2007 ("the 2007 Rules").

22. The applications for Core participant status have been considered by the Chair in accordance with Rule 4 of the 2007 Rules, which provides:

"4.—(1) The chairman may designate a person as a core participant at any time during the course of the inquiry (but only with the consent of that person).
(2) In deciding whether to designate a person as a core participant the chairman must have particular regard for the desirability of including as core participants persons who–

(a) *played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;*
(b) *have a significant interest in an important aspect of the matters to which the inquiry relates; or*
(c) *may be subject to significant or explicit criticism–*

(i) during the proceedings at the inquiry, or
(ii) in the report (or any interim report) to be delivered under section 24 of the Act (submission of reports).

(3) The chairman may, before the end of the inquiry, specify in writing that a person ceases to be a core participant."

23. In making determinations, the Chair considered whether, in each case, the application fulfilled the criteria set out in Rule 4(2) in relation to the issues which the Inquiry will investigate.

24. He exercised his wide discretion, bearing in mind a number of features. The Chair considered the applications in light of his obligation to run the Inquiry as thoroughly and as efficiently as possible, bearing in mind the Inquiry's wide-ranging Terms of Reference and the need for the Inquiry process to be rigorous and fair. As is set out in the Core Participant Protocol, the Chair was obliged to assess very carefully whether applicants could assist the Inquiry in its work an whether their designation would actively contribute to the efficient and thorough operation of the Inquiry.

25. By way of overview, the Inquiry received 182 applications for Core participant status which were not withdrawn. Of these 182 applications, applicants have been designated as Core participants as follows:

(a) 133 former patients of Mr Eljamel and 19 representatives of former patients of Mr Eljamel represented by Levy & McRae, Solicitors as individual core participants. Consistent with the commitment made by the Chair to put patients at the centre of the Inquiry, his approach to Core participant designation has been to seek to engage a large number of patients in the process, to grant individual Core participant status (as opposed to status to a group) in order to seek to allow the voices of those who have been designated to be heard, to seek to include within the patient Core participant body as full a range as possible of patient experiences of the professional practice of Mr Eljamel and the systems which surrounded it and to involve representatives of patients where they have applied;

(b) NHS Tayside. In the interests of clarity and transparency, the Inquiry would wish to invite NHS Tayside to consider addressing the issue of the extent of its representation of its former employees, both medical and administrative, including Mr Eljamel, and the Board's role in the provision of evidence by any such individuals to the Inquiry. NHS Tayside may wish to consider addressing this matter in their written submissions and/ or in any oral submissions they wish to make at the preliminary hearing;

(c) Healthcare Improvement Scotland;

(d) NHS Education for Scotland;

(e) The Scottish Ministers;

(f) The University of Dundee; and

(g) The Royal College of Surgeons (Edinburgh).

26. All of these Core Participants are legally represented.

27. It is also, of course, not necessary for an individual or organisation to be a Core participant in order to provide information or evidence to the Inquiry. All applicants and others may have relevant information to provide in relation to matters being examined in the Inquiry, either to the Inquiry directly or indirectly via participation in the Independent Clinical Review (see below). In due course, the Inquiry will be approaching a range of individuals, organisations and bodies to seek information, to gain their perspective on the issues raised in the Inquiry's remit and, where appropriate, to ask for witness statements and documents. More information about the planning for the early stages of the Inquiry's investigations in this regard is set out below.

c) <u>The Independent Clinical Review ("ICR")</u>

28. Prior to the announcement of the Inquiry, the then Cabinet Secretary announced an intention to offer independent clinical reviews into cases of former patients of Mr Eljamel, where one was wanted.

29. When the Inquiry was announced, the then Cabinet Secretary said on 7th September 2023 that:

"…a full public inquiry will not necessarily answer each former patient's clinical questions about their own circumstances.

For that reason, I still consider that an independent case review of patients' individual clinical cases—where that is what individual patients want—remains necessary. That will allow a person-centred and trauma-informed review of each patient's clinical case, addressing their individual needs and circumstances and attempting to offer answers in a bespoke and personalised way that an inquiry will not offer."[15]

30. In terms of the Inquiry's Term of Reference 16, the Inquiry will be obliged to take account of the ICR's findings in its work. The intention is that the ICR will set out what went wrong clinically. The Inquiry's 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.

31. Communications received by the Inquiry indicate that there remains a degree of concern and misunderstanding about the role of the ICR, its objectives and the way in which it intends to work with the Inquiry. In accordance with its fundamental principle of clarity, the Inquiry hopes that the preliminary hearing can be used as a mechanism for increasing understanding of and engagement with the ICR. In order to seek to

[15] https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-07-09-2023?meeting=15420&iob=131572

achieve this, in addition to Core participants being invited to attend the preliminary hearing via legal representatives, a similar invitation has been extended by the Chair of the Inquiry to the Chair of the ICR. As a non-statutory process, the ICR does not have the powers and structures available to it to enable it to hold hearings in the same way as the Inquiry can. In the spirit of co-operation between them, and to promote the mutual interests of the two processes, it is hoped that this approach will enable progress to be made with the ICR and its important work via the Inquiry's preliminary hearing. In order to achieve these aims, the ICR will be given a copy of this Note at the same time as Core participants. It is intended that relevant matters raised by Core participants in their written submissions will also be shared with the ICR by the Inquiry, to enable concerns and suggestions to be addressed appropriately.

32. The independence of the ICR is confirmed by its Terms of Reference.[16] That means that it is a process which requires to be independent of the State (including Scottish Government and the NHS) and indeed the Inquiry. As the Inquiry requires under its Terms of Reference to use the evidential product of the ICR to inform it about the clinical picture relating to the treatment of former patients of Mr Eljamel, the two processes have required and will continue to require to work together to achieve their mutual aims. The independence of the ICR is, at all times, enshrined in the clinical independence of the expert neurosurgeons whom it will instruct to carry out its work.

33. In light of concerns expressed to the Inquiry about the ICR, the Inquiry is committed to seeking to assist in explaining the function and process of the ICR and has the following observations about important features of the ICR and its interaction with the work of the Inquiry:

(a) Given the importance of the two processes working together, the Terms of Reference of each require the processes to set out publicly how they intend to

[16] Para 1 of the ICR's Terms of Reference - https://www.gov.scot/publications/eljamel-independent-clinical-review-terms-of-reference/

work together operationally.[17] This has been done in a Memorandum of Understanding was entered into between the Chairs of the two processes dated 3rd April 2025.[18]

(b) In order to be able to provide the expert neurosurgeons who will compile reports on cases with material from which they can conduct their analysis, the Inquiry will recover medical records using its statutory powers of recovery. That process is already underway (see below). The material which will be made available to the experts in each case will comprise:

- Full available hospital records;
- Full available GP records;
- Full available private hospital records (in appropriate cases); and
- A statement provided to the ICR by the applicant ("the applicant statement")

(c) The ICR and the Inquiry have agreed that these materials are necessary to provide the experts with sufficient information to enable a meaningful analysis of the cases and also to enable the applicants to have their voice heard, their recollections of events considered, and their positions understood and taken into account. Where there are gaps in hospital records (a concern legitimately raised by a number of patients), the aspiration is that the contents of GP records and/ or the applicant statement will supplement the factual picture.

(d) The purposes of the ICR are to produce expert clinical reviews of cases of former patients of Mr Eljamel for applicants and to provide a clinical body of evidence related to possible sub-standard care on his part or on the part of those working under him. As the evidence which the ICR produces will form a large part of the clinical basis upon which the Inquiry's systemic investigation will proceed, the Inquiry has a strong interest in making sure that the material available to the ICR experts is provided in a timely, orderly and informative

[17] Inquiry Term of Reference 15; and Para 15 of the ICR's Terms of Reference
[18] https://www.eljamelinquiry.scot/key-documents/memorandum-understanding

manner and form, and that the ultimate neurosurgical reports are produced in an independent, comprehensive, evidence-based and well-reasoned way. Thus, though the ICR's clinical independence is enshrined in the MoU[19], the ICR has agreed to allow the Inquiry to have input into the ICR's processes in the following important ways:

- The Inquiry has been involved in the compilation of the template which will be used for requesting applicant statements[20] and the standard form letter of instruction which will be sent to the neurosurgeons[21], in particular to ensure that the questions which are asked cover the range of matters on which the Inquiry requires the ICR's clinical evidence;
- The Inquiry will be permitted to comment on, and suggest revisals to, drafts of each applicant statement[22] and neurological report[23], in order to serve the same objectives in relation to the answers provided; and
- The ICR has shared with the Inquiry copies of other important ICR documentation (such as its Terms of Reference, registration form, consent form and privacy notice), to which the Inquiry has been permitted to suggest revisals, in order to ensure that the documents are accurate, informative and comprehensive and that the operation of two processes is streamlined for the mutual benefit of each.

(e) The ICR processes the information which it receives on the basis of the applicant's consent – the internal process of the ICR is a voluntary one as the ICR is not a statutory process with the powers of the Inquiry. By way of contrast, the Inquiry has statutory powers of recovery which it will use to recover evidence relevant to its remit. This may include materials held by the ICR, where the use of such powers is deemed appropriate, though the Inquiry

[19] Memorandum of Understanding, para 40
[20] Memorandum of Understanding, para 24
[21] Memorandum of Understanding, paras 34-35
[22] Memorandum of Understanding, para 25
[23] Memorandum of Understanding, para 39

hopes that applicants to the ICR will consent to the material in the ICR's possession in which they have an interest being passed to the Inquiry to inform and thus help with its work.

(f) Because the ICR is a voluntary process, it is possible that clinical cases of importance to the Inquiry's remit and which come to the Inquiry's attention by other means may not be part of the ICR process. For example, the patient in question may have passed away or moved abroad. In such cases, the ICR has agreed to accept referrals for review from the Inquiry.[24] As it would be preferable that such cases would include an applicant statement alongside the records for the expert's information, the Inquiry will endeavour to contact the patient where possible in such cases, to offer the opportunity of making an application to the ICR within a reasonable timeframe. If that does not happen, the case will process to neurosurgical review in any event.

(g) The ICR has agreed that cases will be processed and neurosurgical reviews conducted in an order which is set by the Inquiry. This is so that cases which appear to the Inquiry to be of the greatest representative or systemic significance will be analysed first, to enable the work of the Inquiry to proceed without undue delay. The two processes have agreed systems whereby the cases which appear to the Inquiry to be of greatest systemic significance will be processed to review first.[25]

(h) The expert neurosurgeons selected for instruction will be so selected by the ICR. Professor Wigmore, the Chair of the ICR, is taking the lead in that process, ensuring the genuine independence of the experts, in particular from NHS Tayside.

(i) Ultimately, all evidence emanating from the ICR which the applicant consents to being shared with the Inquiry, or which the Inquiry requests by the use of its statutory powers, will become evidence in the Inquiry. Thus, the ICR will provide the Inquiry with a large body of clinical evidence and expert analysis of it. This will include clinical evidence which emerges from later cases which go through the ICR process, which will be available to the Inquiry (where there

[24] Memorandum of Understanding, para 37
[25] Memorandum of Understanding, para 32

is consent or a request by the Inquiry) and which will be factored into its analysis and decision-making. The greater the number of people whose cases are analysed by the ICR, the greater the amount of potentially relevant clinical evidence will be able to inform the Inquiry's systemic investigation.

(j) Ultimately, reports compiled by the expert neurosurgeons will be made available to the applicant, as well as to the Inquiry.

(k) The ICR will also provide the Inquiry with summary report(s) relating to key clinical themes which have emerged from the ICR's work.[26]

34. Operational documents agreed as between the two processes, with particular regard to the complexities and sensitivities relating to data protection, in light of the nature of the medical information which will pass between the two processes.

35. The formal documents which describe the ICR's procedures for internal and external are very nearly in final form. Once finalised, the work of the ICR will begin in earnest in early course. It is understood that the ICR has already received a considerable number of registrations.

36. The next steps will be that those who have registered will receive the ICR's privacy notice and a consent form to sign, which will allow information to be passed to the Inquiry for the process to move forward. The applicants will be given an applicant statement form with questions to answer. The answers to those will constitute the applicant's statement, which will be completed after the Inquiry has provided what are hoped will be helpful and constructive comments, which will be passed back to the applicant for consideration via the ICR. Once the applicant statement is signed, it will be passed to an expert for review in the order of priority set out by the Inquiry, along with available records which the Inquiry will have processed and bundled together for the ICR to pass to the expert, who will receive a letter of instruction in accordance with the agreed standard form.

[26] ICR Term of Reference 17; Memorandum of Understanding, paras 12 and 38

37. Entirely understandable concerns have been expressed to the Inquiry about its intentions with regard to the publication of material emanating from the ICR, which will ultimately become evidence in the Inquiry and hence be subject to the obligation of the Inquiry to publish it under section 18 of the 2005 Act. Before publishing an applicant statement, the neurosurgical report and any attached medical records, the patient in question will be given the right to apply to the Inquiry for anonymity before the applicant statement is disclosed to others or published. The process for this is set out below.

d) Approach to evidence and public hearings

38. Evidence contained in documents, including in ICR applicant statements and other witness statements provided to the Inquiry, will be deemed by the Inquiry to be evidence in the Inquiry which the Chair of the Inquiry can consider in making findings and recommendations in the fulfilment of the Inquiry's Terms of Reference. Such evidence will be able to be relied upon without the need for it to be spoken to in oral evidence in hearings or otherwise adduced formally. The Chair has determined that such formality would be inconsistent the inquisitorial nature of the Inquiry and likely to involve unnecessary cost.[27]

39. The Inquiry's evidential hearings will serve the purpose of the public ventilation of issues covered by the Inquiry's Terms of Reference, challenge of evidence received by the Inquiry and the opportunity for Core participants to submit questions for consideration by the Inquiry as part of its investigative process.[28]

[27] Protocol on Approach to Evidence and Written Statements, para 12
[28] Public Hearings Protocol, para 5(c) to (e)

40. Section 1 of the Inquiry's investigations is primarily concerned with setting the scene for the rest of the evidence to be heard by the Inquiry. It will be an introductory section at which it is intended that evidence will be heard relating to a number of areas which are designed to provide evidential context to the hearings sections to follow including:

(a) general background, structure and roles of the various key organisations, key people and key policies;
(b) evidence relating to ToR 1 (appointments), including evidence about the broad trajectory of the career of Mr Eljamel and statistical evidence about the nature and spread of his work, as well as the systems for complaints and areas in which complaints were made and when (ToRs 4 and 5);
(c) evidence relating to the systems underpinning Term of Reference 14 (document management systems within NHS Tayside);
(d) the broad ambit and findings of the investigations to be looked at under Term of Reference 12; and
(e) independent expert evidence on rules and systems relating to key areas covered by the Terms of Reference (see below).

41. A fuller provisional scope for section 1 of the hearings will be released to Core participants and published in due course. It should be emphasised that as section 1 of the evidence is intended to provide important factual context to the sections which follow, it will not be necessary for all issues to be ventilated with witnesses who are called to give evidence in section 1. It is intended that a fuller exploration of the detailed issues of controversy which arise from the analysis of the full range of evidence available to the Inquiry will be able to be undertaken at later sections of the Inquiry. The Inquiry will be willing to consider having witnesses return to provide oral evidence again, at an appropriate later stage in its hearings, in line with this approach.

42. The Inquiry's investigations will then proceed to section 2, which will focus on the evidence of patients and the evidence which has emerged from the ICR of the timing, nature and extent of clinical issues arising from Mr Eljamel's practice.

43. In section 2, the Inquiry will hear evidence from a selection of patients and (if necessary) their representatives relating to (i) the key clinical themes of sub-standard practice experienced by patients, including factors listed in Term of Reference 2 and those with experience of the matters listed in Terms of Reference 8 to 11 (ii) key aspects of the Terms of Reference relating to the patient experience of relevant systems, including but not limited to complaints and feedback processes (Terms of Reference 4 and 5), campaigning for a public Inquiry and the experience of other investigations (Term of Reference 12) and lack of candour (Terms of Reference 7 and 13) and (iii) issues with document management and access (Term of Reference 14).

44. In section 2 of the hearings, the Inquiry will also hear evidence from the Independent Clinical Review about its findings of sub-standard clinical practice on the part of Mr Eljamel or those working under his supervision from that process (Terms of Reference 15 and 16).

45. In section 3, the Inquiry will hear evidence from medical and possibly other professionals on a wide variety of aspects of the Terms of Reference, with a focus on Term of Reference 2 (matters affecting clinical outcomes), Term of Reference 3 (systems of professional clinical governance) Terms of Reference 7 and 13 (candour) and Term of Reference 8 (clinical supervision). Evidence will also be addressed from the General Medical Council, relating to their involvement in relevant matters, with a focus on Terms of Reference 8, 11 and 13.

46. In section 4, the Inquiry will hear evidence from other organisations which could or should have had a role in oversight in the interests of Mr Eljamel's patients on a wide variety of aspects of the Terms of Reference, with a focus on Term of Reference 6 (the role of these organisations).

47. In section 5, the Inquiry will hear evidence from representatives of NHS Tayside and the Scottish Government on a wide variety of aspects of the Terms of Reference, with a particular focus on Term of Reference 3 (corporate clinical oversight), Terms of Reference 4 and 5 (complaints etc), Term of Reference 6 (insofar as it relates to the actions of Scottish Government) and Term of Reference 12 (investigations). Terms of Reference 8 to 11 (the period from 2013 to 2015) and Term of Reference 13 (organisational candour) will also feature.

48. In section 6, the inquiry will hear evidence relating to lessons which might be learned from the evidence that it will have heard by that point in prior evidential sections, as well as recommendations which the Inquiry might make as part of its forward-facing function (Term of Reference 18).

e) Terms of Reference and List of Issues

Terms of Reference

49. The process of the development of the Terms of Reference is laid out above, including the process by which the draft Terms of Reference were created for public consultation and additions made to them in light of that process. The Terms of Reference are wide-ranging and will enable and require a detailed investigation into systems surrounding the professional practice of Mr Eljamel over the whole span of his career in Scotland and beyond, as well as enabling and requiring the Inquiry to consider making recommendations for the future arising from that investigation.[29]

50. The Inquiry has become aware of issues which have been raised relating to the role of the General Medical Council and the Health and Safety Executive. Though a matter for the Cabinet Secretary to have reached a view on as the minister responsible for setting

[29] Term of Reference 18

the Inquiry's Terms of Reference, it is the Inquiry's current interpretation of the Terms of Reference that the role played by these bodies could not form part of the findings or recommendations of the Inquiry, nor could the Inquiry seek to use its powers to compel evidence designed towards those ends. This is because the roles of these bodies do not form part of the Inquiry's Terms of Reference. Particular attention is made to paragraph (b) of the Explanatory Notes to the Terms of Reference.[30] It is our interpretation that it was deemed by the Cabinet Secretary to be the position that the Inquiry could not investigate the roles of these bodies as they fall outwith the legislative competence of the Scottish Parliament and are thus beyond the ambit of a "Scottish Inquiry" as defined by sections 27(7) and 28 of the 2005 Act.[31]

51. For the sake of clarity, evidence will be sought by the Inquiry from the HSE and the GMC which will be considered but only insofar as that evidence may help inform the discharge of the Terms of Reference, as they stand. For example, the GMC will be called on to produce evidence relating to the role of NHS Tayside under Term of Reference 11. It is also worthy of note that the Inquiry has the power to investigate the roles of other bodies which could have played a role in the care provided by Mr Eljamel to his from NHS patients, even if they are not listed in Term of Reference 6. If their role is not excluded by these legal considerations, the Inquiry could look into them, given the fact that the list in that paragraph is not exclusive.

<u>List of Issues</u>

52. During the public consultation on the Terms of Reference, a number of helpful suggestions were made by participants in that process as to matters which should be included in the Inquiry's remit but which were deemed to be too detailed or specific

[30] *"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"*

[31] See also Scotland Act 1998, Head G2 of Schedule 5; Medical Act 1983; and Scotland Act 1998, Head H2 of Schedule 5

for the Terms of Reference. A considerable number of these have been incorporated into the Inquiry's provisional List of Issues dated June 2025[32], which is a living document setting out in greater detail the matters which the Inquiry intends to investigate and ultimately to determine. The consideration and incorporation of these matters into the List of Issues is part of the commitment it has made to listening and to collaboration with its stakeholders.

53. The Inquiry believes that the provisional List of Issues provides a proper framework in which to include all the issues and matters that the Inquiry is likely to inquire into, and (alongside the hearings timetable explained above) a sufficient indication for persons and organisations who have relevant information and evidence, as well as Core participants, to be able to commence their preparations. The List of Issues to be addressed and indeed those to be addressed in each of the Inquiry's evidential sections, however, will be further developed once the responses to Rule 8 requests for evidence have been received.

54. If there are broad matters or areas of inquiry that the Core Participants would additionally wish the Inquiry to consider or to consider as part of the provisional scope of its evidential sections, these will be considered.

55. In order to facilitate input in this regard, the Inquiry will imminently seek the comments of Core Participants on the contents of the Inquiry's List of Issues, as well as a draft standard form letter of instruction for ICR neurosurgical experts (see above). It is anticipated that Core Participants will be able to seek their clients' instructions on these important documents, alongside their instructions being taken from them on the preliminary and opening statements hearings (see below).

f) Rule 8 Requests/ Section 21 notices

[32] https://www.eljamelinquiry.scot/about/list-of-issues

56. The Inquiry has drafted formal requests for evidence, pursuant to Rule 8 of the 2007 Rules, to a significant number of organisations already, including the following:

(a) NHS Tayside;

(b) Scottish Ministers;

(c) NHS Education for Scotland;

(d) Healthcare Improvement Scotland;

(e) Circle Healthcare;

(f) The General Medical Council;

(g) The Health and Safety Executive;

(h) Police Scotland;

(i) The British Medical Association;

(j) Royal College of Surgeons (Edinburgh);

(k) Royal College of Surgeons (London);

(l) NHS Lothian; and

(m) The BBC.

57. It is currently planned that section 1 rule 8s will also be served on particular individuals whose evidence is considered to be relevant to the provision of relevant background and context as to how issues relating to the professional practice of Mr Eljamel came to light. As section 1 of the hearings will focus on systemic and introductory matters to provide a context in which later evidence can be considered, the focus in this section will be on corporate written statements. If it proves necessary to seek written

statements from particular individuals, the Inquiry will issue rule 8 requests to them in the usual way. Rule 8 requests for a wider range of documents from these organisations and others will be issued, as the Inquiry deems necessary, in early course. The plans for the processing of these documents are set out elsewhere in this Note.

58. The Rule 8 requests are being issued on an iterative basis, as part of which further requests will be made of recipients, focusing on particular issues or topics which arise. Further Rule 8 Requests will be issued, on a rolling basis, to organisations and witnesses as issues come into greater focus. Insofar as the Inquiry's consultation on its List of Issues is concerned, if this gives rise to the need for further issues to be ventilated with corporate or individual witnesses, further rule 8 requests can be issued relating to these issues, as necessary.

59. The Inquiry has already gone about starting to recover medical records and complaints files (using its powers of statutory recovery under the 2005 Act) relating to certain former patients of Mr Eljamel, whose cases appear to the Inquiry to be of particular significance to its remit and in anticipation of cases which it will refer to the ICR for review or otherwise assist in within the ICR process. Patients whose medical records are being recovered will be informed by the Inquiry. Particular measures which the Inquiry has put in place relating to the protection of confidential or irrelevant medical information are set out below.

60. Measures which will routinely be taken to restrict access to certain general types of information are set out in the Inquiry's General Restriction Order dated 7 May 2025.[33] The Inquiry intends to apply ciphers over redacted material as per the categories set out in the General Restriction Order so that recipients of it know why redactions have

[33] https://www.eljamelinquiry.scot/key-documents/general-restriction-order

been applied and that thought has gone into why information requires to be restricted from publication.

Mr Eljamel

61. Though the remit of the Inquiry is predominantly systemic in nature, the Inquiry recognises that legitimate questions arise in connection with that remit, the answers to which would logically be assisted by evidence from Mr Eljamel himself. It is inevitable that evidence which the Inquiry receives will contain substantial criticism of Mr Eljamel, which, in turn, will require consideration of the Inquiry's obligations to serve warning letters under rule 12 et seq of the 2007 Rules.

62. In light of these considerations, the Inquiry has made efforts to locate Mr Eljamel since it was set up and acquired statutory powers to recover and consider evidence. The steps which have been taken to this point have comprised as follows:

(a) The Inquiry received information that Mr Eljamel was working in a hospital-based role in Misrata, Libya, though it was not clear which hospital or hospitals. The Inquiry attempted telephone contact with the largest hospital in Misrata, Misrata Medical Center, and contacted it by email in April and again in May 2025, seeking information about how to get in contact with Mr Eljamel, without success or reply.

(b) Further information received by the Inquiry suggested that Mr Eljamel may be working in a hospital called Al-Nadha Hospital. Further investigation suggested that there was a hospital of that name in Misrata, Libya which claimed to specialise (amongst other things) in neurosurgery, spine surgery and chronic pain. A letter was sent to Mr Eljamel at this address on 28th May 2025, intimating the Inquiry's process for applying to be a Core participant and seeking details of his contact information and any legal representation via

various tracked methods. No reply has been received. Additionally, an email was sent to the hospital on 2nd July 2025 to which no response has been received.

(c) The Inquiry had information available to it which suggested that two major medical defence organisations may have represented Mr Eljamel at some point in the past at least. Both have confirmed to the Inquiry that they do not act for him.

63. The Inquiry will continue to use what avenues are available to it to seek to contact Mr Eljamel. If Core participants or others are aware of additional information about his whereabouts or means by which we might contact him, the Inquiry would be pleased to hear from them in that regard.

g) Disclosure of documents

64. The obvious purpose of disclosure is to enable the Core Participants to participate effectively in the public hearings of the Inquiry and otherwise to inform their important role. This Inquiry will be as open as possible with the Core Participants and with the public in relation to the disclosure of documents, though the precise approach will inevitably depend on the speed with which documents are provided by material providers and any issues which the Inquiry experiences with that or the comprehensiveness of their response to the receipt of rule 8 requests or, if necessary, section 21 notices.

Process prior to Disclosure

65. The Inquiry's approach is to request material providers, through the Rule 8 process, to provide information and documents that are likely to be relevant to the issues and

matters identified as part of the Inquiry's remit. Recipients of Rule 8 requests are being made aware of this obligation and of the strict duties the law places upon them in relation to the preservation and retention of documentation.

66. Draft initial Rule 8 requests which have been prepared or are being prepared are complex and wide-ranging, reflecting the width of the remit of the Inquiry as set out in its Terms of Reference. Though limited in its scope to the systems relating to the professional practice of a single individual, the initial indications in response to requests for information issued by the Inquiry suggest that tens of thousands of documents are potentially responsive to the Inquiry's Terms of Reference. Though a sizeable quantity of documents, this is a relatively small number in comparison to other public inquiries. The Inquiry is aware of the historic nature of the subject matter of much of its remit as well as the basis for its investigation under Term of Reference 14, namely the suggestion that key documentary materials may not have been created or, if created, retained. If this proves to be the case, the Inquiry will endeavour to seek witness evidence in the form of written statements via rule 8 requests and oral evidence, as appropriate. In any event, if documents are missing within the record of NHS Tayside, the Inquiry will wish to know why, as Term of Reference 14 requires.

67. Relevance reviews by the material providers will be expected when the rule 8s are formally served. Organisations have also been asked to ensure staff have the opportunity to flag particularly important materials so that the most crucial materials are identified and reviewed by the Inquiry as soon as possible, such that they can be processed, analysed and disclosed as soon as is reasonably practicable. The Inquiry will engage in dialogue with material providers to monitor progress, in accordance with its required timelines. Providers will be called to account for what they have produced and the time they have taken to produce it, in writing and in public hearings, if necessary.

68. Each document provider will be asked to provide an account setting out details of the nature of the review carried out, how the documents were originally stored and the search terms used or other processes used to locate documents. Where the Inquiry has any queries or concerns about a provider's processes for locating relevant documents, it will raise and pursue them and, of course, as documents are reviewed and gaps identified, further documents will be sought.

69. The Inquiry will then itself have to review all such material prior to disclosure being given to the Core Participants. Having been analysed, this documentation will then be the subject of further focused requests, if necessary, which can be completed in advance of the detailed analysis of the material available to the Inquiry in later evidential sections.

70. Core Participants will not routinely be provided with copies of the Rule 8 requests made by the Inquiry. Disclosure to the Core Participants of the Rule 8 requests themselves (as opposed to the relevant documents and material generated by them) is not required by the 2007 Rules. However, where rule 8 requests are made in order to elicit a written statement, recipients will be asked to repeat in their response the questions they have been asked, so that the answers provided in the written statements can be understood in the context in which they were sought.

71. In addition, in order to ensure that Core participants are kept properly informed, the Inquiry will ensure that the Solicitor to the Inquiry updates Core Participants on a regular basis as to progress, including but not limited to the progress of Rule 8 work. Such updates would, in general terms, include details of what requests have been made, whether documents have been received, when further documents are expected, and when further Rule 8 requests have been made.

72. For the purpose of the introductory material which will be elicited and examined by the Inquiry in section 1 of its evidential approach, the majority of the written statements which will be sought and disclosed will be corporate written statements. The rule 8 requests for corporate written statements will also seek particular documents which are relevant to the matters being examined in section 1 of the hearings. Where it is deemed necessary and, in light of the introductory nature of section 1 of the hearings, individual rule 8 requests for written statements will be issued (as is set out above). These rule 8s will be prioritised so that progress towards disclosure of material can be made to allow Core participants to prepare it for the purpose of the section 1 hearings.

73. As with all material received by the Inquiry, the information and documents received will be assessed for relevance and then redacted in line with the General Restriction Order (so as to remove sensitive material, such as personal data, amongst other generally applied restrictions) and the two restriction-related Protocols which have been prepared and published.[34]

74. Shortly after the rule 8 requests for corporate (and possibly individual) written statements and documents for section 1, the Inquiry will issue wider documentary rule 8s, seeking documents more generally relating to the full ambit of the Inquiry, as appropriate to their involvement in the subject matter of the Inquiry. These will be processed and assessed as above, a process which the Inquiry anticipates will take a longer period of time due to the likely volume of material which will be sought.

Disclosure

[34] See the Inquiry's General Restriction Order; Protocol on Disclosure, Publication, Restriction and Anonymity; and Protocol on Restriction order Applications in this regard

75. The Inquiry anticipates that disclosure of the documents received in response to rule 8 requests will be done in an order which is appropriate to the way in which the Inquiry's hearings sections are structured. Given that the Inquiry will, in section 2, focus on the evidence of patients and evidence emerging from the ICR, it is considered likely that disclosure for that section of the Inquiry's hearings will focus on written statements from patients and exhibits, applicant statements and exhibits and the ICR neurosurgical reports and exhibits. Material disclosed is likely mainly to comprise medical records, complaint files and other material which is closely related to the patient experience of, and perspective on, the subject matter of the Inquiry (suitably redacted as set out below). The Inquiry has already taken steps to start to recover these documents.

76. It is neither necessary nor proportionate for the Inquiry to disclose every document that it receives, or every request that it makes, or every piece of correspondence. That is not required and would hinder the Inquiry in the performance of its functions. It would also be a derogation of the Inquiry's functions were it to pass to the Core Participants all the material that it receives.

77. The disclosure of the relevant and redacted documentation will be in tranches, relevant to the sectional approach to the hearings (as set out above).

78. The electronic disclosure system which will be used to provide documents to Core Participants will be Objective Connect. Details of how to access the system and use it will be provided to the Recognised Legal Representatives of Core Participants shortly before disclosure commences. Only those who have provided a signed undertaking to the Chair will be permitted access to the material that the Inquiry discloses to Core Participants.

79. The Inquiry is working to begin the process of disclosing materials to Core Participants as soon as possible. The current plan is that Core Participants will be asked to focus on various important elements of the Inquiry's work (set out elsewhere in this Note) and focus on their preparing and delivering an opening statement to the Inquiry at a dedicated hearing for that purpose which the Inquiry intends to hold towards the end of the year (see below). Many patient Core participants will also be occupied providing applicant statements to the ICR over that time, to enable the process of the production of ICR neurosurgical reports to be progressed as soon as possible. The process of disclosure to Core Participants of materials recovered connected to section 1 of the hearings will begin by before the end of the year and as soon as possible.

h) <u>The instruction of expert witnesses</u>

80. This Note sets out above that the Inquiry will benefit from the evidence of the independent neurosurgeons instructed to prepare clinical reports within the ICR process. However, the Inquiry will itself also appoint qualified experts in particular fields of expertise as experts to the Inquiry. They will assist the Inquiry, either individually or as part of a group of such persons, by way of the provision of written reports and opinions and, where appropriate, the giving of oral evidence at the public hearing.

81. Alongside the neurosurgical reports provided by the ICR, such reports and evidence will inform and support the Inquiry's work during the public hearings, as well as the Chair's recommendations, by ensuring that its factual conclusions are soundly based and supported by the weight of the best expert opinion.

82. Such experts will have the appropriate expertise and experience for the particular instruction. They will be independent and objective and subject to an overriding duty to assist the Inquiry on matters within their expertise.

83. The identity of the expert witnesses and the questions and issues that they will be asked to address will be disclosed to the Core Participants before the expert reports are instructed. Core participants will therefore be provided with an opportunity to provide observations on the scope of the matters which the experts are being asked to address. Where there are significant differences of view or emphasis among the members of any group of experts, these will be made clear on the face of the reports and, of course, these can be tested during oral hearings.

84. The appointment of experts to the Inquiry, and whether they are assigned to a group of experts considering particular issues, are matters exclusively for the Inquiry, although it will consider suggestions from Core Participants as to who should be appointed.

85. The Inquiry has provisionally identified a number of specialist areas in relation to which expert witnesses are likely to be giving evidence in section 1. Additional suggestions from Core Participants are welcome.

86. These areas are likely to include:

(a) Neurosurgery – In order to supplement the significant body of expert neurosurgical evidence which the Inquiry will have available to it from the ICR, the Inquiry currently intends to seek expert evidence on matters including background to types of surgery performed by Mr Eljamel, responsibilities of consultant neurosurgeons, issues raised about problems with surgery/ care (Terms of Reference 4 and 5), management of

surgical lists, workloads (Term of Reference 2), training of junior staff (Term of Reference 2);

(b) Medical ethics – including peculiarities of surgery/ neurosurgery, consent issues, duties of candour (Terms of Reference 7 and 13), pressures of private practice, (Term of Reference 2), obligations relating to research/ roles etc (Term of Reference 2), training of junior staff and associated obligations (Term of Reference 2), clinical supervision and suspension (Terms of Reference 8 and 9), duties when things go wrong, obligations with regard to notes/ records (Term of Reference 14); and

(c) Health administration – including the responsibilities of health boards or other health bodies with regard to appointments and induction/ training (Term of Reference 1), management of workloads (Term of Reference 2), clinical governance, separation between professional and corporate clinical governance (Term of Reference 3), private hospital co-ordination (Term of Reference 3), requirements relating to complaints and feedback systems (T Term of Reference 4 and 5), investigative responsibilities (Term of Reference 12), duties of reporting to other bodies (Term of Reference 13), document management and associated obligations (Term of Reference 14).

87. In addition to the important background expert evidence to be sought by the Inquiry in connection with section 1, it is anticipated that experts will be re-contacted for further input, as necessary, as the Inquiry's investigations progress, including (but not limited to) its consideration of lessons learned and recommendations in section 6.

i) Communication and the Inquiry's trauma-informed approach

88. The means by which the Inquiry communicates with those with an interest in its work has recently gone through a phase of transition. The Inquiry previously corresponded with those interested in its work via (a) a contact list which was generated from those who were involved in the Inquiry's public consultation exercise and who wished to be

kept appraised of the Inquiry's progress, and (b) a temporary website which was used until the Inquiry's website was set up and went live on 3rd April 2025. As is set out above, the Chair has now awarded Core Participant status to many of those who applied for it, based on their significant interest in the Inquiry's work. All of these Core participants have Recognised Legal Representatives.

89. These developments have altered the character of many of those with an interest in the Inquiry's work and their relationship with the Inquiry and set them on a more formal footing, in accordance with the 2005 Act, the 2007 Rules and the Inquiry's Core Participant Protocol. The Inquiry has invited direct contact and communication from Core participants in a number of ways, including in connection with the administrative arrangements for the preliminary hearing. The statutory framework and the Inquiry's own procedures (as set out in its Protocols and Orders) require various legal matters to be conducted via Recognised legal Representatives. Contact with them on various legal matters is formally necessary and in others more efficient. The Inquiry is, however, keen to ensure that its lines of communication with those with an interest in its work remain appropriate and effective, in order to allow it most efficiently to comply with its commitments to the principles of co-operation, clarity and listening.

90. As a result of this transitional position, the Inquiry invites contributions from Core participants at or in connection with the preliminary hearing as to their views on how they would wish the Inquiry to communicate with them about the multiple matters on which they may come into contact with its work. This is part of the Inquiry's commitment to listening to those with an interest in its work as to how they wish it to operate. Core participants may wish to consider addressing this matter in their written submissions and/ or in any oral submissions they wish to make at the preliminary hearing.

91. In order to seek to improve the ways that that the Inquiry engages with those with a interest in its work, including its Core participants, the Inquiry intends to launch the following initiatives:

(a) The Inquiry's engagement strategy will set out the means by which the Inquiry intends to engage with those with an interest in and a role to play in the Inquiry's important work; and

(b) The Inquiry's trauma-informed policy will play an important part in the engagement strategy, given the number of key stakeholders in our work who have experienced trauma as a result of their experiences. Work on this policy is already underway. Key members of the Inquiry's staff have been engaged in it based on their experience of trauma-informed work in the charitable and legals sectors, separate from government and other State entities, like the NHS. The policy will be built around the trauma-informed principles of safety, trustworthiness, choice, collaboration and empowerment and will seek to create a bespoke approach for a trauma-informed public inquiry, based on the principles to which the Inquiry has already committed itself and the reasonable requirements of those who have suffered trauma who are engaged in our work.

92. The Inquiry will publish more details about these initiatives in due course, once it understands more about how Core participants would like to receive and undertake communication with the Inquiry which, it is hoped, will be a product of the preliminary hearing and its associated work. Those details will include plans for engagement with the Inquiry's stakeholders about the initiatives, as a means of seeking to promote collaboration, listening and clarity.

j) Protection of information

93. The Inquiry is aware of concerns which have been expressed by former patients of Mr Eljamel in the past and more recently relating to the handling of personal data, in particular material contained within medical records, and the Inquiry's obligation under section 18 of the 2005 Act to publish material which comes into its possession in connection with its investigations. The Inquiry takes these concerns and its obligations in this regard seriously.

94. As a result, the Inquiry has worked to create systems to respect and address these legitimate concerns, whilst also recognising the need for it to obtain, analyse, disclose and publish such information in the conduct of its work. As such, the Inquiry has set out its approach to the disclosure and publication of medical information in its General Restriction Order and other Protocols. Medical information will not routinely be published unless appended to applicant or witness statements or the ICR's neurosurgical reports, or otherwise necessary for the purposes of the Inquiry's oral hearings.[35] It will not be published if not relevant to matters falling within the Inquiry's Terms of Reference.[36] Where material falling within the category of potentially relevant evidence comes to be considered for disclosure and publication, individuals to whom the medial information relates will have the opportunity to apply for:

(a) Anonymity[37] – the Chair has set out a process by which the opportunity to apply for anonymity will be accorded to those who provide an applicant statement to the ICR or witness statement to the Inquiry or otherwise, as material containing sensitive information comes to be considered for disclosure.[38] Though open to all, he has indicated that he would be minded to grant such applications in cases of former patients of Mr Eljamel[39]; and/ or

[35] General Restriction Order, paras 6 and 7
[36] General Restriction Order, para 14
[37] General Restriction Order, paras 8-11
[38] Protocol on Disclosure, Publication, Restriction and Anonymity, para 42 et seq, Protocol on the Approach to Evidence and Witness Statements, para 18
[39] Protocol on Disclosure, Publication, Restriction and Anonymity, para 41

(b) A Restriction order otherwise limiting the nature of the material which will be disclosed and published.

95. Any material disclosed to Core participants or others will in any event be disclosed subject to the provisions of the Inquiry's First Order.

96. As sensitive medical information will necessarily pass between the Inquiry and the ICR, which will be the process with which many patients first come into contact, the Inquiry and the ICR have worked together to ensure that the ICR's internal and public facing documentation will make clear what the Inquiry's intentions and processes are with regard to the ultimate publication of the material which the ICR will consider and produce, and which will become evidence in the Inquiry. For the sake of clarity, medical information will be held within both the Inquiry and the ICR in secure document storage systems designed for each process. These are systems which are similar in nature but each will operate its own system. Both the Inquiry and the ICR have a management system which will be accessible only to the individuals working within either the ICR or the Inquiry, respectively or under their control. Secure systems and processes have been put in place to enable medical information to be securely passed between the processes, as set out above.

k) <u>Future Hearings Dates</u>

97. The public hearings of the Inquiry will be live streamed. Transcripts of evidential hearings will be published on the Inquiry's website.[40]

98. The Inquiry is aware of the relatively historic nature of its subject matter and the considerable length of time many have waited to obtain answers to their legitimate questions. Our timetable reflects the need which has been expressed to the Inquiry (amongst other places through its public consultation on the Terms of Reference) to

[40] Protocol on Disclosure, Publication, Restriction and Anonymity, para 15

move things forward, in a way which the Chair hopes will provide an appropriate balance between speed and reasonable thoroughness.

99. As far as the planning of future hearings is concerned, the Inquiry has discovered that the venue in which the preliminary hearing will be held on 10th September 2025, which has been used and continues to be used for hearings of the Scottish Covid-19 Inquiry, is available for use, based on that Inquiry's existing plans and commitments. The hearing room and many of the associated arrangements for it to be fitted out and used for various aspects of the hearings of a public inquiry are already in place. The use of any venue for the hearings of the Inquiry, not currently used for that purpose, would result in considerable delay.

100. Thus, the Inquiry has entered into a venue sharing agreement with the Scottish Covid-19 Inquiry meaning that its venue at Waverley Gate, Edinburgh, will be available to this Inquiry for its future hearings. This has the consequence, in the short to medium term, that the Inquiry will have to work around the availability of the venue for its hearings. This has been able to be done in a way which will facilitate the hearings proceeding in an orderly fashion and in accordance with the Inquiry's existing plans and operational priorities. In the longer term, it is anticipated that the Scottish Covid-19 Inquiry will have no further use for the space for public hearings, at which time this Inquiry will acquire the space for its exclusive use, providing a greater degree of flexibility in our future hearings planning.

101. A further hearing will be held late November/ early December 2025 at the Inquiry's hearings venue in Edinburgh. The principal purpose of this hearing will be to allow the Inquiry's core participants to deliver opening statements to the Inquiry. Given the importance which the Inquiry attaches to engagement by and with its Core participants, it has been deemed appropriate to hold this separate opening statements hearing, as opposed to allowing opening statements to be delivered at the first evidential hearing of the Inquiry. This has been done in order to make sure that contributions made on behalf of Core participants can be made at a time when they

can have a real impact on the Inquiry's work, whilst also allowing Recognised Legal Representatives sufficient time to take instructions on their contents. It is likely that the opening statement hearing will also facilitate the public communication of a further update on the Inquiry's progress, as per paragraph 7 of the Inquiry's Public hearings Protocol.

102. The precise format and date of this opening statement hearing will be announced in due course. This is because the Inquiry will require to gauge the wishes of the Core participants as regards whether they wish to make an opening statement and the matters they would like to address. It is currently envisaged that a hearing of one or two days is likely to be necessary and sufficient for this purpose.

Evidential hearings

103. The public hearing in evidential section 1 will take place in Edinburgh (with live streaming) in early 2026. The exact dates will be intimated to Core participants as soon as possible. It is likely that this will be in February 2026, to allow sufficient time for preparation for the hearings.

104. It is likely that the first set of evidential hearings in section 2 will take place in the spring of 2026. Further information about those hearings will be made available to Core participants as soon as possible.

105. Information about the conduct of those evidential hearings and the broad outline of the process which will be followed in advance of it and at it is as set out in the Inquiry's Public Hearings Protocol.[41]

[41] Public hearings protocol, from paras 14 et seq

106. It is hoped that the subsequent evidential hearings of the Inquiry will be able to take place at times when the hearings space is generally more available for the Inquiry's use. This will enable the Inquiry will be able to plan these hearings with a greater degree of flexibility. Details of the timing of and arrangements for these hearings will be announced to Core participants as soon as possible.

l) Next steps relating to the preliminary hearing

107. Core participants are invited to consider the terms of this Note and to present any matters they wish to raise at the Preliminary hearing on 10th September 2025 in a brief written submission (which the Inquiry intends subsequently to publish, along with this Note, after the hearing). Any such written submission should be sent to legal@eljamelinquiry.scot.

108. Any written submission should relate to the matters to be covered at the hearing as per the agenda set out above, along with any formal applications which the Core participant(s) on whose behalf the written submission is made intends or intend to make at the hearing. In formulating their written submissions, the Inquiry would urge Core participants and their Recognised Legal Representatives to focus on matters of immediate concern/ importance and in light of the fact that a fuller opportunity for (a) contributions to the Inquiry's List of Issues (b) contributions to expert instructions and (c) an opening statement to be made will be available in relatively early course, as is set out above. Written submissions intimated to the Inquiry will be published, most likely after the preliminary hearing. As stated above, relevant aspects of any written submission may be shared by the Inquiry in advance of the hearing with the ICR.

109. Once the written submissions have been received, the Inquiry will intimate a formal agenda for the day (which will be published on the Inquiry's website) setting out the matters to be covered at the hearing, the names of those Recognised Legal representatives who will speak, the order in which they will do so and the time allocated to them, which will be adhered to on the day in the interests of efficient use of time on the day.

110. Any queries can be raised on behalf of Core participants by their Recognised Legal Representatives with legal@eljamelinquiry.scot or with Counsel to the Inquiry in the usual way, as legal representatives of core participants deem fit.

111. It is a key part of the principles of the Inquiry that it endeavours to interact with those with whom it comes into contact in a way which is courteous and respectful.[42] It is likely that the hearings of the Inquiry will be difficult for many, even (and perhaps particularly) the preliminary hearing.[43] The Inquiry expects those in attendance at and otherwise involved in the work associated with the preliminary hearing to interact with others with courtesy and respect, as they would expect to be treated themselves. The Inquiry is confident that those who attend or are otherwise be involved in the work of the preliminary hearing will respect this approach.

Counsel to the Inquiry

Jamie Dawson KC

Alex Price-Marmion, Advocate

29th August 2025

[42] See Inquiry Statement on Protocols and Principles, para 14(c)
[43] Details of support available for those who require it will be released by the Inquiry in advance of the preliminary hearing