

Expert Evidence Protocol

Purpose of the Protocol

1. The purpose of this Protocol is to:
 - A) explain the Inquiry's approach to the use of expert evidence;
 - B) explain how experts will assist the Inquiry;
 - C) set out how expert evidence emanating from the Independent Clinical Review will be used by the Inquiry;
 - D) explain how experts instructed by the Inquiry will be so instructed;
 - E) set out obligations of confidentiality which will be owed by experts involved in the Inquiry's work; and
 - F) provide relevant further information relating to queries about expert evidence.
2. As with all of the work of the Inquiry, this Protocol and the procedures and policies set out in it should be read in the context of the Inquiry's [Statement on Protocols and Principles](#). In particular, the Chair may deem it appropriate to change or update the contents of this Protocol in accordance with the provisions of that Statement.
3. Further, this Protocol and the procedures and policies set out in it should be read in the context of the Inquiry's [Protocol on Approach to Evidence and Written Statements](#) and the

[Memorandum of Understanding](#) entered into between the Chair of the Inquiry and the Chair of the Independent Clinical Review.

4. References to “core participant” and to “recognised legal representative” are as defined in rules 2, 4, 5 and 6 of the Inquiries (Scotland) Rules 2007.

A) Approach to the use of expert evidence

5. This Protocol sets out the way in which the Inquiry intends to instruct, receive and use expert advice so that all expertise provided to the Inquiry is transparent and subject to scrutiny, and that appropriate experts are encouraged to participate, with their work helping to shape the Inquiry’s findings and recommendations.
6. Where expertise is relevant to the work of the Inquiry, the Chair of the Inquiry will invite individuals with recognised experience in those particular fields of expertise to accept instructions as experts to the Inquiry. The purpose of the instruction of experts is to inform and support the Inquiry’s work, both to ensure that its factual conclusions are soundly based and to ensure that any recommendations it makes are supported by the weight of the best expert opinion.
7. The instruction of experts is a matter for the Chair in the exercise of his discretion to direct the procedure and conduct of the Inquiry under section 17 of the Inquiries Act 2005. As such, the instruction of experts is ultimately a matter for the Chair to determine. The Chair will, however, consider suggestions from core participants as to who should be instructed as an expert witness. Experts will be subject to an overriding duty to assist the Inquiry on matters within their expertise.
8. Experts to the Inquiry will be instructed according to their expertise. The fields of expertise to be covered will include but may not be limited to neurosurgery, medical ethics and health administration/ management. Core participants are welcome to make submissions

to the Inquiry as to other areas of expertise in which they contend that expert evidence should be instructed by the Inquiry.

9. The Inquiry will operate in a transparent and open way, with expert reports and other input (as per paragraph 12 below) given to the Inquiry open to public scrutiny. Such reports will be disclosed to core participants and will be published on the Inquiry's website, subject only (where relevant) to any redaction necessary to respect confidentiality and in accordance with the Inquiry's [Protocol on Disclosure, Publication, Restriction and Anonymity](#) and its [Restriction Order Application Protocol](#). Issues arising from the evidence of the Inquiry's expert witnesses will be able to be tested during oral hearings.
10. Individuals who are appointed as experts are commissioned by the Inquiry to give it their independent, professional opinions. The Inquiry looks to receive the best available input each is able to give, and to be informed by the best available independent expert opinion. No expert will be expected to act as spokesperson for or representative of any individual or organisation interested in the Inquiry nor will they be instructed for that purpose.
11. In the first instance, the Inquiry will seek to appoint individual experts in areas of expertise of relevance to the Inquiry's work. However, in appropriate circumstances, given the range of matters which the Inquiry requires to consider under its Terms of Reference, the Chair would be willing to consider the instruction of an expert group. In such cases, if divergences of opinion or emphasis arise in the expert evidence provided by the group, these will be able to be explored at oral hearings. If groups are instructed, the Chair will ask a member of any group to act as its convenor, to coordinate the group's work and contributions to the Inquiry. In every other respect the convenor will have the same status as the other members in a group.

B) How Experts will assist the Inquiry

12. Experts or expert groups will be asked to assist the Inquiry in three principal ways; by providing (i) written reports and opinions; (ii) attending oral hearings to give evidence in person, if required; and (iii) responding to specific questions asked of them by the Inquiry or (through the Inquiry team) by core participants.
13. The Inquiry team will provide administrative and other support to the experts who have been instructed. Initially, the experts will be asked to provide reports on matters falling within their expertise and relevant to the Inquiry's Terms of Reference and provisional List of Issues, but they will also have the freedom to express a view upon any matter they judge may be of importance to the Inquiry.
14. It should be understood that the Chair will not be bound by any factual evidence given, or opinion expressed, by any expert or group of experts. Experts will be instructed to provide independent technical evidence to provide context to the Inquiry's work and to express opinions which they are qualified to provide on matters of importance to the Inquiry's remit. Findings and recommendations on any issue remain matters for the Chair and the Chair alone to determine in his report(s).

C) Expert evidence from the Independent Clinical Review ("ICR")

15. The ICR will instruct independent expert neurosurgeons to undertake reviews of cases of former patients of Mr Eljamel.¹ These experts will not routinely be called to provide separate evidence in written or oral form to the Inquiry. Summary evidence relating to the themes which have emerged from the clinical evidence uncovered by the ICR will be available to the Inquiry in the form of the interim or final reports by Professor Wigmore, the Chair of the ICR.² However, if the Inquiry deems that it would be helpful for clarificatory evidence on clinical matters to be led within the Inquiry, individual expert neurosurgeons will be called to give oral evidence to the Inquiry in section 2 of the Inquiry's evidential plan.

¹ See paras 27 *et seq* of the Memorandum of Understanding

² See para 38 of the Memorandum of Understanding

16. The reviews undertaken by the ICR's neurosurgical experts will be part of the evidence available to the Inquiry, upon which the Chair will make his findings and recommendations. Thus, expert neurosurgical evidence about individual cases will be available to the Inquiry from the clinical investigation being undertaken by the ICR. It will be considered by the Chair alongside the independent expert evidence which the Inquiry instructs directly, which will be designed to assist with the Inquiry's predominantly systemic remit and with which this Protocol is primarily concerned.

D) Instruction of Experts

17. Instruction of experts will be by invitation from the Chair. The Chair welcomes suggestions, in particular from core participants, as to the experts he should invite to provide expert evidence to the Inquiry. Similarly, he welcomes any offers of assistance from individuals who have expertise to offer. In any event, those appointed will need to demonstrate they meet the following criteria:

- Be recognised as a leading member of their field/ profession and be an active practitioner or commentator in their field of expertise;
- Be independent of key individuals and bodies whose roles are covered by the Inquiry's Terms of Reference or otherwise relevant to the Inquiry's work, including but not limited to Mr Eljamel, NHS Tayside and the Scottish Government;
- Be a good communicator;
- Be willing to facilitate the work of the Inquiry and to assist it in formulating its recommendations; and
- Be prepared to express their own independent views.

18. A letter of instruction will detail the parameters of the work the experts have been asked to undertake and the principal questions for their consideration. Each letter of instruction will be published. Experts will also be free to raise, and comment on, any matter they believe the Inquiry should consider. Core participants will be invited to contribute

suggestions in relation to matters to be put to expert witnesses instructed to provide evidence to the Inquiry in their letters of instruction.³ The identity of experts witnesses whom the Inquiry intends to instruct will be intimated to core participants before the experts are instructed. Core participants will also be invited to submit questions in connection with oral evidence given by expert witnesses, as per the Inquiry's processes in this regard.⁴

Remuneration

19. Experts to the Inquiry will be remunerated on a similar basis to expert advisers to parliamentary committees or experts in litigation, subject to the Chair's obligations to have regard to the need to avoid unnecessary cost under section 17(3) of the Inquiries Act 2005. In addition to covering fees in this way, experts will be reimbursed for any reasonable expenses, such as travel, and, with the advance approval of the Inquiry Team, the Inquiry will cover the reasonable costs of relevant support provided. If called to give oral evidence a daily fee will be paid.

Time commitment

20. These are not full-time appointments. The Chair anticipates that a currently active professional would be able to carry out this work alongside their substantive role: in a similar way to an active role on a professional committee or pursuing personal research interests.

21. Appointment is for the duration of the Inquiry (unless agreed otherwise). Though experts will be engaged initially to provide contextual reports to assist with the work of the Inquiry as it progresses, experts may be called upon to provide further reports or provide further evidence to the Inquiry as issues arise, in particular (but not limited to) in relation to section 6 of the Inquiry's evidential plan, which will consider recommendations, in order to provide evidential context to that part of the Inquiry's work.

³ As per para 6 of the Core Participant Protocol

⁴ See para 34 of the Public Hearings Protocol

Immunity

22. Experts will report their findings and views at public hearings, as required, and their written reports will be published on the Inquiry's website. Their responses will be covered by section 37 of the Inquiries Act 2005, which provides immunity from being sued in connection with their work on the Inquiry.

E) Confidentiality

23. Experts will have such access to the Inquiry materials as the Inquiry team deems necessary or appropriate for their work. The same obligations of confidentiality apply to them in this respect as apply to core participants and their recognised legal representatives and other recipients of the Inquiry's materials. They are covered by the terms of the [First Order of the Inquiry](#) and will be required to sign confidentiality undertakings to the Chair of the Inquiry in respect of their work.

F) Further information

24. All queries about any matter related to the Inquiry's use and instruction of expert evidence should be sent to the Solicitor to the Inquiry, as follows:

- (i) By email to: legal@eljamelinquiry.scot
- (ii) By post to: The Eljamel Inquiry, LG2 Floor, Waverley Gate, 2-4 Waterloo Place
Edinburgh EH1 1AA.

Issued under the authority of the Chair on 10 December 2025.