



**Note by Counsel to the Inquiry for the Opening Statement Hearing of the
Eljamel Inquiry on 26th and 27th November 2025**

Introduction

1. The purposes of this Note are as follows:
 - (a) To provide an update on the agenda for the opening statement hearing on Wednesday 26th and Thursday 27th November 2025, insofar as it can be set out at this stage; and
 - (b) To set out, primarily for the benefit of Core participants, information concerning the nature of the Inquiry's work since the Preliminary hearing on 10th September 2025, to enable them to file written submissions, if they wish, in advance of the opening statement hearing and to prepare for that hearing. Any brief written submissions on these procedural matters should be received by 10 am on Monday 24th November 2025.
2. 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 the procedural matters which will be covered at the hearing and to provide information to inform any contributions which Core participants would like to make at or in advance of the hearing to those procedural aspects of the Inquiry's work. 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 2025.¹

Opening statements

3. The opening statement hearing of the Inquiry is primarily designed to allow Core participants to make opening statements to the Inquiry. The agenda will remain broadly as previously intimated to core participants in the guidance Note sent to CPs by the Solicitor to the Inquiry on 29th October 2025, other than possible amendments to (a) timings for the oral contributions of NHS Tayside and the Scottish Ministers on the afternoon of Wednesday 26th November, who have indicated that it is likely that their Counsel will not need all of the time allocated to them and (b) the contribution on behalf of the University of Dundee (addressed below). Any further, more specific timetabling updates will be provided either in advance of the hearing or at the hearing itself, as deemed appropriate by the Inquiry to allow adequate preparation.
4. Therefore, the opening statement hearing will be attended by representatives of the following Core participants, on whose behalf written and oral opening statements will be submitted/ delivered:
 - (a) Patient and patient representative CPs represented by Levy & McRae;
 - (b) NHS Tayside;
 - (c) The Scottish Ministers;

¹ <https://www.eljamelinquiry.scot/key-documents/first-order-inquiry>

- (d) Healthcare Improvement Scotland;
- (e) NHS Education for Scotland; and
- (f) The Royal College of Surgeons (Edinburgh).

5. At the time of writing, it remains unclear if representatives of the University of Dundee will submit or deliver a written or oral opening statement or whether they will be represented at the hearing. Any update in this regard will be provided to CPs when it is available.

Matters relating to progress in the Inquiry's work

6. The opening statement hearing will also serve as an opportunity for the Inquiry to provide an update on its work since the Preliminary hearing on 10th September 2025. In this regard, this Note and the submissions which will be made by Senior Counsel to the Inquiry will cover the following topics:

- (a) Inquiry staffing update;
- (b) Core participant update;
- (c) The Inquiry's List of Issues;
- (d) Rule 8 Requests/section 21 notices;
- (e) The Independent Clinical Review;
- (f) Instruction of Expert Witnesses;
- (g) Consultation and the Inquiry's trauma-informed approach;
- (h) Future hearings dates; and
- (i) Next steps relating to the opening statement hearing.

a) **Inquiry staffing update**

7. Since the preliminary hearing, the Inquiry has had the benefit of being able to add a number of key members to the Inquiry team. For the information of Core participants, the following senior roles have now been filled by the following individuals.
8. The role of Secretary to the Inquiry has been filled by Ms Natalie Smith. Ms Smith already has significant experience from her long career in the UK civil service, including as deputy Secretary of the Lampard Inquiry, an ongoing public inquiry set up by the UK Government into the deaths of mental health patients in Essex. In that role, she was involved in many aspects of the inquiry's work which will be of considerable relevance and assistance to the work of this Inquiry, including financial and project management, development of strategic policy on governance and coordinating engagement with the inquiry's stakeholders.
9. The Inquiry's former interim Secretary, Mr Dan Farthing, has taken the role of deputy Secretary. In this role, amongst other important responsibilities, Mr Farthing will continue to take the lead on the Inquiry's engagement strategy and trauma-informed policy, based on his extensive experience in the charitable sector. The current developments in this area are set out below.
10. The Inquiry continues to engage in active recruitment processes for a number of other positions in its team. These processes are heavily dependent on the recruitment processes operated by the Scottish Government. As such, the Inquiry often requires to work at the pace of Scottish Government recruiters, which does not work at speed. However, Core participants should be aware that processes are well underway for the recruitment of further staff to important Inquiry positions, as the Inquiry moves from its preliminary to its evidential phase.

b) Core participant update

Patient and patient representative Core participants

11. On 25th September 2025, in response to an application received from Levy & McRae, the Chair of the Inquiry granted Core participant status to a further 5 former patients of Mr Eljamel and 2 representatives of former patients, represented by that firm. This takes the total number of patient and patient representative Core participants in that group to a total of 159, comprising 138 former patients and 21 former patient representatives.
12. The Inquiries (Rules) 2007 enable the Chair to grant core participant status at any time during the lifetime of the Inquiry.² Therefore, the Chair will continue to consider applications from individuals or bodies who wish to be designated as Core participants beyond the initial application period set out in the Inquiries Core participant protocol.³ However, the Chair is mindful of the need for Core participants to be able to participate fully and equally in the Inquiry's work. As (a) the current group of individuals and organisations who/ which have been granted core participant status represent a wide range of interests and matters to be covered by the Inquiry and (b) key stages in the Inquiry's plans for active participation have now passed or will pass soon, as the Inquiry's preliminary phase nears its end, the Chair will be less minded to grant further Core participants status to future applicants, and will require an explanation of the timing of the application from any such individuals or bodies.⁴
13. Core participants who wish to receive funding for their legal representation to support their participation in the Inquiry should be aware that the Solicitor to the Inquiry will imminently issue a further invitation for funding to be granted by the Inquiry, to cover funding for the Inquiry's evidential phase, or at least the first part of it. As it is anticipated that requests for written statements will be part of the next phase of the Inquiry's work, the invitation will cover applications for legal representation for the provision of such witness statements as well as the legal representation involved in being a Core participant in the Inquiry.

² Inquiries (Scotland) Rules 2007, rule 4(1)

³ Paragraph 18 of the Inquiry's Core Participant protocol

⁴ Paragraph 18 of the Inquiry's Core Participant protocol

Support being offered by NHS Tayside for participation in the Inquiry's work

14. At the preliminary hearing on 10th September 2025, an issue was ventilated relating to the support being offered by NHS Tayside to its current and former employees. NHS Tayside had set out its position in that regard in a written submission to the Inquiry. As far as the Inquiry was concerned, the position remained unclear – various issues were raised by Counsel to the Inquiry at the hearing, in particular the apparent lack of legal support being offered to current and former employees of the Board.
15. As was the inquiry's stated intention at the hearing, the Inquiry has followed this matter up with the representatives of NHS Tayside. They have clarified and updated NHS Tayside's position in a written submission, which is sent to core participants along with this Note. The Inquiry is grateful to the representatives of NHS Tayside for the clarification of their position in this regard.
16. The Note clarifies that NHS Tayside's position is that it will offer legal support (as well as pastoral and administrative support) to current and former employees who wish to avail themselves of that support. The proposed arrangements are broadly acceptable to the Inquiry, subject to administrative matters which may still require to be raised by the Inquiry with the representatives of NHS Tayside, any issues which are raised by other CPs and the matters raised below. The Inquiry will signpost the available legal support services to those former or current employees of NHS Tayside who receive a rule 8 request from the Inquiry or a section 21 notice for a written statement or documents to be provided to the Inquiry. This will include (a) the broad nature of the support services being offered by the CLO and NHS Tayside and (b) the possibility that individuals may wish to consider seeking alternative representation (as is included in all requests sent to individual rule 8 recipients). In the case of medical professionals, for example, this may include legal representation by a medical defence organisation or the NMC. The arrangements will include an assessment being made by NHS Tayside as to whether the legal support service being offered by NHS Tayside can be extended to an individual, based on whether there appears to be a conflict of interest between the position of that individual and the position of the Board.

17. The submission by the legal representatives of NHS Tayside makes clear that they do not represent former or current employees of the Board. As this is a submission about the legal relationship between those RLRs and those individuals, the Inquiry assumes (and the RLRs for NHS Tayside are asked for their position in this regard) that this should be taken to mean that those RLRs do not consider themselves to be recognised legal representatives in terms of the Inquiries (Scotland) Rules 2007. That status brings with it certain rights and responsibilities under the legislation governing the Inquiry, the associated Rules in the Inquiry's procedures. No provision is made in any of those for a party providing legal advice in connection with the Inquiry's work. This will require care on the part of NHS Tayside and its employees to ensure that their role as legal supporters should not be confused with their role as RLRs of the Board. Steps will require to be taken to ensure that appropriate systems are in place to facilitate reasonable legal support (a concept of the Board's making) as this capacity is one which appears to the Inquiry to be one which is not contemplated by the Rules. This will require to be addressed by the Inquiry in certain respects in due course, including in relation to the permissions which are referred to in the written submission, allowing access to legal advisors.
18. It is further requested that the RLRs of NHS Tayside provide clarification as to how it will be ensured that there is an appropriate separation between the advice/ support being provided to individuals and the advice/ support being provided to the Board in particular in light of the apparent acceptance on the part of the Board that "it would not be necessary or desirable for NHS Tayside itself to have sight of a rule 8 request or section 21 notice sent to an individual current or former employee, or indeed their response to that request".
19. Given that NHS Tayside have indicated in their written submission that they had or have a concern that the arrangements may cause concerns within the patient body, other core participants are invited to make submissions (if they wish to do so) on this proposed arrangement. If so, they can make a written submission on the matter in the brief written submissions on the matters covered by this Note which they are asked to provide by 10 am on Monday 24th November 2025. Representatives of core participants can then take the matter up further in their oral opening statement submissions, if they wish to do so.

c) The Inquiry's List of Issues

20. 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 for the Terms of Reference. A considerable number of these were incorporated into the Inquiry's provisional List of Issues dated June 2025⁵, which is a living document setting out in greater detail the matters which the Inquiry intends to investigate and ultimately to determine.
21. The Inquiry believes that the provisional List of Issues published in June 2025 provided a proper framework in which to include all the issues and matters that the Inquiry is likely to inquire into and 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 for the work of the Inquiry and their involvement with it. 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.
22. Since the preliminary hearing, the Inquiry has received helpful suggestions from Core participants relating to matters which should be covered in the List of Issues. The Inquiry is grateful for these contributions. These have been considered by the Inquiry team and additional issues have been included in an updated version, to October 2025, (available on the Inquiry's website⁶) relating to the following areas:
 - (a) Policies, regulations, systems, guidance or mechanisms which existed relating to clinicians working within NHS Tayside (insofar as relevant to the care of the former NHS patients of Mr Eljamel) regarding the completeness and accuracy of medical

⁵ <https://www.eljamelinquiry.scot/about/list-of-issues>

⁶ <https://www.eljamelinquiry.scot/sites/default/files/2025-10>ListOfIssues.pdf>

records (whether imposed by NHS Tayside or other agencies) and the systems involved in ensuring compliance with them (ToR 14).

- (b) Medical records being insufficiently legible, intelligible or detailed for their purposes (ToR 14).
- (c) Medical records being completed by junior staff as opposed to senior staff, including consultants (ToR 14).
- (d) Medical records not being completed contemporaneously to the events they describe (ToR 14).
- (e) Medical records being altered retrospectively (ToR 14).
- (f) Falsification of medical records (ToR 14).
- (g) Medical records insufficiently or inaccurately recording patient consent to treatment (ToR 14).
- (h) Assessment of Mr Eljamel's technical capabilities in surgery at the time of his key appointments in NHS Tayside (ToR 1).
- (i) The organisation of the neurosurgical service offered within NHS Tayside and the role of its possible restructuring or withdrawal in the handling of issues with Mr Eljamel.
- (j) Mr Eljamel's use of products or devices in surgery, in particular where they were unlicensed or used experimentally.
- (k) Issues with multi-disciplinary meetings or pre-operative clinics in Mr Eljamel's practice (ToR 3).
- (l) Formal information sharing arrangements between NHS Tayside and Fernbrae Hospital (ToR 3).
- (m) The involvement of NHS Tayside in the maintenance of Mr Eljamel's practising privileges in Fernbrae Hospital (ToR 3).
- (n) The role of Mr Eljamel's positions at the University of Dundee (including his role in training and supervision associated with them) in the lack of compliance by junior staff in NHS Tayside whistleblowing or other clinical governance processes (ToR 3).
- (o) The differing interpretations and implementation of clinical governance, corporate governance and professional governance within NHS Tayside (ToR 3).
- (p) Mr Eljamel's external and internal training requirements and compliance (ToR 3).
- (q) Reporting of issues to the HSE (ToR 3).

- (r) Systems for issues about Mr Eljamel being brought to the attention of bodies listed under ToR 6.
- (s) The extent to which the outcome of previous reviews was reported to Scottish Government (ToR 12).

d) Rule 8 requests/ section 21 notices

Section 1

23. 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).

24. A fuller provisional scope for section 1 of the hearings has been released to Core participants and published.⁷ 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.
25. Rule 8 requests for corporate written statements and the production of documents relevant to the scope of section 1 of the Inquiry's evidential plan have now been completed and issued. These have included reference to matters relevant to the section 1 scope (now published on the Inquiry's website) which arose from the consultation with core participants on the Inquiry's List of Issues (set out above). The recipients of these section 1 rule 8 request are:

- 1) NHS Tayside
- 2) The Scottish Ministers
- 3) University of Dundee
- 4) Healthcare Improvement Scotland
- 5) NHS Education for Scotland
- 6) Royal College of Surgeons
- 7) Royal College of Surgeons (Edinburgh)
- 8) NHS Lothian
- 9) General Medical Council
- 10) British Medical Association
- 11) Health and Safety Executive
- 12) Circle Healthcare
- 13) Police Scotland

⁷ <https://www.eljamelinquiry.scot/sites/default/files/2025-11/Section%201%20Provisional%20Outline%20of%20Scope.pdf>

- 14) BBC
- 15) Liz Smith MSP
- 16) Michael Marra MSP
- 17) Willie Rennie MSP

26. In addition, a general disclosure rule 8 request has also been prepared for NHS Tayside, as well as for others whose section 1 rule 8 requests do not cover all documents they hold relating to the Inquiry's Terms of Reference. These will be issued to the relevant recipients in due course, when the precise role of these bodies in matters to be investigated by the Inquiry becomes clearer. In the meantime, the focus will be on the completion of responses to the section 1 rule 8 requests.

Section 2

- 27. Section 2 of the Inquiry's investigations 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.
- 28. 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).
- 29. 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).

Medical records and complaints files

30. The Inquiry has already gone about starting to recover medical records and NHS Tayside 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. So far, the Inquiry has recovered (a) all complaints files held by NHS Tayside and (b) medical records from NHS Tayside, from Circle Healthcare and from general practitioners. Records of 125 patients have been recovered falling into at least one of these categories. The Inquiry will continue to recover records for applicants to the ICR, as per the processes agreed in the Memorandum of Understanding between the two processes. The Inquiry has informed the patients who are CPs and whose medical records have been recovered by way of patient notification letters. The Inquiry will continue to issue patient notification letters as it recovers records going forward.
31. The Inquiry has begun analysing these materials for the following purposes:
 - (a) Informing the creation of a list priority cases for the ICR (see below). The hospital records for all 50 of these cases have been recovered as well as the GP records for almost all of them (the remainder will be sought when information about current GP details can be shared with the Inquiry by the ICR);
 - (b) Extracting evidence relevant to the Inquiry's List of Issues;
 - (c) Compiling a provisional list of witnesses who may have evidence on systemic matters of relevance to the Inquiry's Terms of Reference and who may in due course be sent rule 8 requests for Inquiry witness statements, from which

group certain patients/ patient representatives will be called to give oral evidence in section 2 hearings; and

(d) Informing further lines of inquiry, including the drafting of questions to be addressed to later witnesses in rule 8s/ section 21 requests.

32. Reference is made to previous materials circulated (including the CTI Note issued in connection with the Inquiry's preliminary hearing) which set out (a) the provisions of the Inquiry's General Restriction Order on the restrictions on the publication of medical records generally and (b) the Inquiry's processes related to its approach to anonymity and restriction orders relating to extracts from medical records which may be published.

e) The Independent Clinical Review ("ICR")

33. 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.

34. Given this important relationship between the two processes, an invitation has once again been extended by the Chair of the Inquiry to the Chair of the ICR in connection with the opening statement hearing. The ICR has not been invited to make an opening statement but it has been offered the opportunity to make a written submission on procedural matters and to make an oral statement on them, if the ICR wishes to do so. The ICR will be given a copy of this Note at the same time as Core participants. It will be given access to the opening statements submitted by Core participants when these are shared. Relevant matters raised by Core participants in their written submissions on procedural matters will also be shared with the ICR by the Inquiry, to enable concerns and suggestions to be addressed appropriately, as was the approach at the preliminary hearing.

35. The two processes have continued to work together to achieve their mutual aims in the period since the preliminary hearing. The follow is an indication of the progress that has been made:

- (a) The Inquiry and the ICR have finalised the applicant statement requests which will be used in the ICR to allow applicants to input their experiences to the neurosurgical reviews in their case.⁸ The applicant statement request contains a number of questions for applicants, relevant to matters which will be subject of the neurosurgical reviews. There are two versions of the applicant statements request - these contain the same questions but have different text in parts as they apply receptively to (a) cases in which the applicant consents to materials being shared with the Inquiry ("consent cases") and (b) cases where they do not ("non-consent cases"). As it is possible in cases where no such consent has been provided that the Inquiry will use its statutory powers to recover the materials anyway, it is important that the same procedure is followed for the production of applicant statements in all cases.
- (b) The Inquiry has agreed the standard form letter of instruction which will be sent to the independent expert neurosurgeons⁹, 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. Again, there are two versions, covering consent and non-consent cases – the questions are the same in each. In cases of particular complexity, which may involve the need to instruct more than one expert, the processes have agreed that the ICR will seek assistance from the Inquiry in framing an appropriate letter of instruction. The completion of the draft letters of instruction benefitted from suggestions made by Inquiry Core participants as to matters which should be included in them.
- (c) A shared operational guide has now been agreed as between the two processes. This sets out the various stages which will be followed in what is a complex operation to

⁸ As per Memorandum of Understanding, para 24

⁹ Memorandum of Understanding, paras 34-35

process the cases which are being reviewed by the ICR, along with mechanisms for tracking progress, to ensure that case reviews are finalised in an orderly fashion.

- (d) The two processes have required to have 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. This has required a number of matters to be addressed and appropriate systems designed. The two processes have now agreed the terms of a data sharing agreement between them, which, as far as the Inquiry is concerned, will allow information to be shared between the processes in early course about (i) ICR registrations and (ii) priority cases (see below). It will also allow the regular flow of data between the two processes which has been planned to commence, to enable each process to keep the other aware of the progress it has made and to allow plans to be made and updated accordingly.
- (e) The two processes have agreed systems whereby the cases which appear to the Inquiry to be of greatest systemic significance to the Inquiry (“priority cases”) will be processed to review first.¹⁰ As was announced at the preliminary hearing in September, the Inquiry has created a list of priority cases which it will ask the ICR to process first, so that the evidential material created by the ICR for applicants and for the Inquiry can be processed by the Inquiry as early as possible, to allow progress to be achieved as per the Inquiry’s ambitious timetable. The signature of the data sharing agreement will permit the details of those 50 priority cases to be shared. Those who represent applicants who fall into this top 50 list will also be informed as soon as that has happened. If it transpires that any of those in the top 50 list have not registered as applicants in the ICR, they will be sent an invitation to do so. If they do not, the cases will proceed as referral cases, as per the terms of the MoU. The Inquiry has commenced the compilation of the next batch of cases which it will ask the ICR to prioritise (see section on medical records below). This will be shared with the ICR and representatives of those whose cases fall into that category at an appropriate juncture.
- (f) 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

¹⁰ Memorandum of Understanding, para 32

the genuine independence of the experts, in particular from NHS Tayside. It is understood that Professor Wigmore has conducted further work in finalising the instruction of the experts, not least by liaising with the Society of British Neurosurgeons. He will be finalising these arrangements and has asked the Inquiry to continue to assist in proving information about what the Inquiry will expect from the neurosurgeons who are instructed. The Inquiry will be happy to do so.

36. The next steps will be that applicants in the top 50 list will be sent an applicant statement request with questions to answer. It is important that applicant statements are completed in an efficient manner to allow the work of the ICR to progress and the evidence which will be contained within them to be assimilated into the work of the ICR and the Inquiry as soon as possible. The Inquiry understands that the ICR has now managed to secure agreement in principle for the following support services to be funded and made available to applicants who wish to avail themselves of them:

- (a) Legal support – it is understood that the Scottish Government will fund this a service and that a fee level for clients of Levy & McRae has been agreed by that firm. It is also understood that a similar offering will be made to other applicants to the ICR based on the same level of fee being paid to other chosen legal representatives of applicants;
- (b) Support from the PASS service (see below) with the completion of an applicant statement where the applicant does not wish to have legal support will be available and will be funded by the Scottish Government; and
- (c) Psychological support for applicants organised via the Association of Clinical Psychologists UK will also be provided and will be funded by the Scottish Government.

37. It is understood that the ICR will publish more information about these services, to the extent that it is able, in early course.
38. The Inquiry has recently met with Professor Wigmore, in order better to understand what stage the ICR has reached in its preparations and its readiness to proceed with its work. The product of these discussions is set out above. There are a number of

matters on which further clarity is required, which fall within the remit of the Scottish Ministers, as the sponsors of the ICR process. It had been hoped (as was explained at the preliminary hearing) that these matters would have been attended to before now, to allow the work of the ICR to commence and the work of the Inquiry which will build on the ICR's evidential product (in particular in section 2 of its evidential plan) to proceed. It appears that there are still a number of matters to be finalised in this regard. The Inquiry requests that the Scottish Ministers (a) provide an update on the following matters in its written submission in response to this Note or at the opening statement hearing and (b) that they instruct appropriate representation to allow these matters to be addressed, to the satisfaction of the Chair, at the opening statement hearing:

- (a) The process by which legal services are to be engaged by the Scottish Government (both for the clients of Levy & McRae and otherwise) and the anticipated timescale for this to be in place, so as to allow the work of applicant statements being provided to the ICR to commence as soon as possible;
- (b) The precise remit of the support to be provided by lawyers instructed to assist applicants to the ICR process and the remit of Patient Advice and Support Service (Scotland) ("PASS"), for the sake of clarity amongst the applicants as to what support services they wish to avail themselves of and how they engage them;
- (c) The precise remit of the service which the Scottish Government intends to arrange for psychological support applicants to the ICR and the timing for the provision of that service; and
- (d) Arrangements which the Scottish Government still has to put on place for providing an indemnity for the involvement of consultant neurosurgeons on the ICR process and the timescales for this arrangement to be completed.

39. In addition, Levy & McRae are asked to provide an update to a query addressed to them by the Inquiry, relating to their position with regard to staffing to provide

support to clients who are applicants to the ICR, in addition to those who are engaged on the work of the Inquiry on behalf of their Core participant clients.

f) The instruction of expert witnesses

40. As set out previously, the Inquiry will itself also instruct 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 a public hearing. 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.
41. 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.
42. 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. 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 (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).

43. Draft letters of instruction of these experts containing the questions and issues that the expert witnesses 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. Core participants were invited in paragraph 13 (h) of the guidance Note sent to them on 29th October to make proposals in their opening statements relating to the identity of expert witnesses or matters which CPs think should be put to experts (including the proposed section 1 experts). The Inquiry team looks forward to considering these broad suggestions in the aftermath of the hearing.

44. Letters have been drafted to go to potential experts or bodies to assist with the identification of these section 1 experts. Counsel have started the process of drafting the section 1 experts' letters of instruction, to be disseminated for their comment to CPs as set out above. As CPs and their recognised legal representatives are busy at present with their preparations for the opening statement hearing, it is anticipated that these drafts will be sent to the RLRs of CPs for their comment in December.

g) Consultation and the Inquiry's trauma-informed approach

45. Given that the Inquiry was in a transitional phase at the time of the preliminary hearing as regards how it communicated with those with an interest in its work, the Inquiry invited 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 was and is part of the Inquiry's ongoing commitment to listening to those with an interest in its work as to how they wish it to operate. The Inquiry had little response in this regard though remains committed to trying to get communication right.
46. In order to seek to improve the ways that the Inquiry engages with those with an interest in its work, including its Core participants, the Inquiry will imminently launch a public consultation on the trauma-informed policy which it intends to implement in its work. The consultation paper which will be published in early course contains an outline of the approach which the Inquiry intends to take in this regard.
47. The Inquiry's trauma-informed policy will play an important part in its engagement strategy, given the number of key stakeholders in our work who have experienced trauma as a result of their experiences. 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. This will certainly include former patients of Mr Eljamel and may include others who will be invited to help shape the way that the policy will operate in practice.
48. The results of this exercise will be fed into the Inquiry's wider engagement strategy which 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. This will be launched

in due course, as the Inquiry moves into its evidential phase, as a means of seeking to promote the Inquiry's principles of collaboration, listening and clarity.

49. In the guidance sent out to Core participants containing guidance on the opening statement hearing in advance of this Note at paragraph 13(k), it was anticipated that the trauma-informed consultation would have commenced before the date of this Note, such that aspects of it could be addressed in CPs' opening statements. Though any comments on the trauma-informed consultation/ policy in the opening statements will be gratefully received and considered, it may be that CPs who are delivering oral opening statements (or the ICR) may wish to provide any further comments on the policy or the consultation at the opening statement hearing as the consultation exercise will be launched before the opening statement hearing.
50. Connected to its trauma-informed policy, the Inquiry has now arranged for a tender process to be commenced inviting bodies to run the Inquiry's support service for those who engage with our work. That service will ultimately involve support being available to those who are participating in the work of the Inquiry from trained counsellors. The tender process stipulates that those who wish to bid for the work must be independent of NHS Tayside, given the importance of the independence of that service to those who may wish to use it having trust and confidence in the support will be provided by it. As was the case in connection the Inquiry's public consultation events and preliminary hearing, support services will be available at the opening statement hearing, provide by The Spark, a Scottish based charity which provides counselling and mental health support for individuals, couples, families, children and young people which has provided such services for 59 years.

h) Future Hearings Dates

51. As was previously announced, the public hearings of the Inquiry will be live streamed. Transcripts of evidential hearings will be published on the Inquiry's website.

52. As far as the planning of future hearings is concerned, the position remains at present as was set out at the preliminary hearing and in the CTI Note which was circulated in connection with it. The Inquiry has entered a venue sharing agreement with the Scottish Covid-19 Inquiry, which means that its hearings will be held at the premises at Waverley Gate in Edinburgh which has been used for the hearings of that public Inquiry. The windows available to this Inquiry for its hearings in the first half of next year are in February 2026 (3 weeks from 9th February 2026) and in the spring (3 weeks from 20th April 2026). As was announced at the preliminary hearing, the plan is that the (a) evidential hearings in section 1 will be held in the February window and (b) first set of evidential hearings in section 2 will take place in the spring of 2026.

53. 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 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.

54. The Inquiry has received some intimation of issues with meeting deadlines with rule 8 requests which have been sent out relating to section 1, the process involved in which is set out above. Some have expressed issues arising from the time of year. Some of those organisations in receipt of such requests have been asked to provide an update on their progress by 20th November 2025. It is anticipated that those who are Core participants may provide updates in their written opening statements. Any impact of these updates will be factored into the Inquiry's planning, in order to make the hearings as productive and inclusive as possible. In addition, the Inquiry wishes to engage Core participants in the instruction of its expert witnesses (see above), which will mean that these expert reports are unlikely to be available for the February hearings slot, in which case oral evidence from any such experts will require to be heard at a later date, in any event. Further, the continued delays with the operational launch of the ICR (as explained above) will inevitably cause issues with preparations for the section 2 hearings currently scheduled for April 2026. Core participants will be made aware of any developments in this regard as soon as possible.

55. In any event, Core participants are reminded that 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.¹¹

i) **Next steps relating to the opening statement hearing**

56. Core participants are invited to consider the terms of this Note and to present any matters they wish to raise resulting from it in a further brief written submission (which the Inquiry intends subsequently to publish, along with this Note, after the hearing) by 10 am on Monday 24th November. Any such written submission should be sent to legal@eljamelinquiry.scot.

57. At 10.30 am on that day, the Inquiry will circulate copies of the opening statements of other parties (which will be published after the hearing) to the legal representatives of CPs, to allow their contents to be considered in advance of the oral opening statements being delivered at the hearing. It may be that those delivering oral opening statements will wish to address points raised in the written submission submitted by others.

58. Any written submissions submitted by 10 am on Monday 24th November should relate to the matters to be covered at the hearing by Counsel to the Inquiry 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 further written submissions, the Inquiry would urge Core participants and their Recognised Legal Representatives to focus on matters of immediate concern/ importance to their clients, given that the focus of the opening statement hearing will be on the oral contributions to be made on behalf of Core participants, primarily on substantive and other matters raised in the guidance Note previously intimated to CPs.

59. In advance of the hearing, the Inquiry will intamate a formal agenda (which will be published on the Inquiry's website) setting out the matters to be covered at the

¹¹ Public hearings protocol, from paras 14 et seq

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.

60. 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.
61. As was set out in the CTI Note for the preliminary hearing, it remains 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.¹² It is likely that the opening statement hearing will be difficult for many, in particular as this will be a hearing at which the positions and experiences of Core participants will be ventilated publicly by recognised legal representatives.¹³ The Inquiry expects those in attendance at and otherwise involved in the work associated with the opening statement 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 opening statement hearing will respect this approach.

Counsel to the Inquiry

Jamie Dawson KC

Alex Price-Marmion, Advocate

19th November 2025

¹² See Inquiry Statement on Protocols and Principles, para 14(c)

¹³ Details of support available for those who require it will be released by the Inquiry in advance of the opening statement hearing