IN THE ELJAMEL INQUIRY

BFORE LORD WEIR

IN THE MATTER OF:

THE PUBLIC INQUIRY TO EXAMINE THE PROFESSIONAL PRACTICE OF MR ELJAMEL

OPENING STATEMENT ON BEHALF OF CORE PARTICIPANTS WHO ARE EITHER FORMER PATIENTS OF MR ELJAMEL OR THEIR REPRESENTATIVES (hereinafter, "the Group")

Introduction

1. The Group of core participants including former patients of Mr. Eljamel and their personal representatives are grateful for the opportunity to make this opening statement to the Inquiry.

2. The Group comprises former patients, and those personal representatives of former patients, who received treatment from Mr. Eljamel prior to his suspension from NHS Tayside in 2013. At present, the number of core participants within the Group is 159. This number continues to grow as the true nature and extent of Mr. Eljamel's practice becomes more widely known. The Group is represented by Levy & McRae Solicitors LLP, but it should be acknowledged that there are many other former patients or patient representatives who do not form part of the Group but nonetheless have a keen interest in the inquiry's work.

3. The Group appreciate that the focus of this public inquiry is on the systemic failures that led to Mr Eljamel being in post for so long and continuing to treat patients notwithstanding his shocking record, his appalling behaviour which sometimes verged on the malicious, numerous complaints about him and widespread knowledge about his record and behaviour. However, in order to understand the systemic failures, it is necessary first to appreciate the experiences which patients and their loved ones have endured and continue to endure. We welcome the recognition that the Inquiry is to be patient centred, and trauma informed but we stress that this will necessitate a full

understanding of the experience endured by his patients and their loved ones. The voice of the patients and their loved ones must be heard.

4. When a patient consents to treatment from a surgeon, particularly a neurosurgeon, they are literally putting their life in that surgeon's hands. It is hard to imagine a surrender which is more complete, which renders a patient more vulnerable, and which depends upon a bond of trust which is more important. This inquiry is about how the betrayal of that trust was allowed to happen repeatedly and it is also about why it was allowed to happen for so long. It is also about the way patients and their loved ones have been treated simply for seeking answers and redress.

5. Bishop James Jones called his report about the Hillsborough families long search for truth and justice "*The patronising disposition of unaccountable power"*. He chose this phrase to describe the systemic attitude of the authorities towards the Hillsborough families and to highlight how those with power displayed a dismissive and condescending attitude while avoiding responsibility for failures that prolonged the suffering for the bereaved. This phrase is also apt to describe the experience of the Group and their loved ones both at the hands of Mr Eljamel but also at the hands of NHS Tayside, the Scottish Government and other authorities whose actions will be examined by this inquiry.

6. The Group and their loved ones need recognition, accountability and justice for years of suffering and deceit. They are seeking answers not just for Mr Eljamel's actions but also for the subsequent cover ups and the impact this has had upon them. Members within the Group have campaigned tirelessly for the establishment of a public inquiry. Campaigners first called for a public inquiry in 2014, following Mr Eljamel's suspension from NHS Tayside. The Scottish Government repeatedly resisted calls for a full public inquiry, insisting that internal NHS reviews were sufficient. Following a series of unsatisfactory internal reviews, and in the face of continued procrastination, delays and obstruction by NHS Tayside and the Scottish Government, the campaign for a public inquiry gathered momentum, with patients staging a series of public protests throughout 2022 and 2023.

7. Whilst every patient's treatment and circumstances is unique, as will become clear, the evidence before the Inquiry will reveal a common experience, both in terms of the treatment received from Mr. Eljamel but also of the actions and/or inaction of NHS Tayside in response to their reasonable concerns. A common experience is that the systems in place designed to protect and promote a patient's wellbeing were wholly inadequate. Members of the Group have been left with little or no trust in the NHS.

8. In this opening statement, we will address

    - The purpose of this public inquiry and its terms of reference
    - The Group's experiences at the hands of Mr. Eljamel and the NHS
    - The Group's experiences trying to get justice
    - Learning from the process of setting up the public inquiry and the ICR
    - Expectations and the future

The purpose of this public inquiry and its Terms of Reference ("TOR")

<u>Purpose</u>

9. The purpose of this Inquiry is to establish facts, ensure accountability, and to make recommendations for the future. That purpose could not be more important considering the concerns raised involve the NHS and how healthcare is delivered to the people of Scotland. As the Cabinet Secretary for NHS Recovery, Health and Social Care noted when announcing this inquiry:

> *"Few things are more important than the safety of patients in our health service. Perhaps equally critical is the trust that we—as individuals and communities—can have in our healthcare. Patients must also trust that any concerns that are raised about their care and treatment will be investigated and that the necessary actions will be taken. They must be able to trust that their concerns will be investigated and scrutinised and will be subject to robust governance and due diligence at the time, not several years later.*
>
> *When trust is broken and weakness in governance is identified, it is imperative that we do all that we can to investigate why that has happened and to prevent others having the same kinds of distressing and traumatic experiences."*

10. Put shortly, this inquiry is necessary to restore trust in the NHS and the various other institutions that are designed to protect patients. Too many patients have suffered both physically and mentally due to the actions of Mr. Eljamel. Many have been left with life changing injuries. In some cases, clinicians have been reluctant to provide further treatment due to concerns over what Mr. Eljamel has done. As a result, patients continue to suffer.

11. Too many patients received a wholly inadequate response to their concerns when raised with NHS Tayside. NHS Tayside have evaded moral and legal accountability. Despite placing their trust and wellbeing with the NHS, patients have experienced poor communication, a lack of candour, evasiveness, and at times, dishonesty. For the Group, their concerns are not limited solely to Mr. Eljamel and NHS Tayside, they extend to other institutions involved in or responsible for their care. Despite concerns existing over the practice of Mr. Eljamel, these organisations sat silent. Patients were still continuously referred to him for treatment. Mr. Eljamel was permitted to train and teach future clinicians that continue to work in the NHS today. The importance of investigating the lasting impact Mr. Eljamel has had on the NHS cannot be overstated.

12. The Inquiry must ensure that organisations designed to provide oversight are scrutinised to ensure the accountability of individuals within these organisations for allowing Mr. Eljamel to practice in the manner that he did for as long as he did. It is only with proper scrutiny that the public can be satisfied that these organisations are fit for purpose.

13. It is apparent from the discussions with members of the group, that Mr. Eljamel was not simply a rogue surgeon acting without the knowledge and tacit approval of colleagues within NHS Tayside. Other healthcare workers were aware. Some appear to have challenged the conduct but elected to take it no further. Others appear to have simply permitted the conduct to continue. The systems that were in place within NHS Tayside require close scrutiny. The details of a number of individual clinicians and employees of NHS Tayside from whom we believe evidence should be sought have been provided to us. We will forward their details to the Inquiry under separate cover.

14. The Group expects the Chair and Counsel to the Inquiry to scrutinise clinicians and management employed by NHS Tayside as well as NHS Tayside itself without fear or favour and we have confidence they will strive so to do. There is an expectation that the relevant facts are fully and fairly investigated so that recommendations can be made to avoid similar issues arising in the future. But first and foremost, the Group expect accountability. Accountability from the organisations that failed to put patients' interests first. Accountability from those individuals who turned a blind eye. Accountability from those individuals who permitted Mr. Eljamel to continue practicing when concerns were already evident. The Group expect accountability for both the individuals and organisations that are responsible for what has happened to them. They expect truth and justice.

TOR

15. Following a public consultation exercise, the TOR of the Inquiry have been fixed. The Group were grateful for the opportunity to provide comment on TOR and the List of Issues (LOI) that has been prepared by the Inquiry.

16. The Chair is already familiar with the concerns of the Group about what has been excluded from the TOR. It is appreciated that the TOR have been determined by the relevant Scottish Government Minister. However there remains a strong feeling within the Group, (a) that the Inquiry ought to fully examine the role of the private healthcare sector and (b) that it is unfortunate that the inquiry does not have jurisdiction to determine any fact or make any recommendations which are not wholly or primarily concerned with a "Scottish matter".

17. The Group hope that when the Inquiry comes to investigate the creation of the inquiry itself under TOR 12 both the decision to exclude a full examination of the role of the private healthcare sector and the decision not to hold a joint inquiry with the UK Government which would have enabled full investigation of organisations such as the GMC and HSE (which are the responsibility of the UK Government) will be interrogated.

18. The Group note that Counsel to the inquiry clarified at the Preliminary Hearing that evidence will be sought from the GMC and the HSE to help inform the discharge of the

TOR and that, in particular, the GMC will be called upon to produce evidence relating to the role of NHS Tayside under TOR 11 in the voluntary removal by Mr Eljamel of his name from the medical register.

19. We also note that while the inquiry cannot make findings about the role of the HSE, it can make findings about the role of Health Improvement Scotland in relation to their functions of inspecting and regulating clinical services to ensure they meet safety and quality standards.

20. On the issue of private healthcare we note that the Inquiry requires under TOR 2(a) to investigate whether Mr. Eljamel's private practice commitments contributed to adverse outcomes for his NHS patients and, under TOR 3, to look at whether there are clues from what was going on in his private practice that should perhaps have been detected so as to protect NHS patients from harm. We believe it will also be necessary to consider issues relating to the granting of practising privileges at Fernbrae Hospital, Dundee ("Fernbrae") under TOR 2(a).

21. The Group contains patients who have reason to believe they were encouraged by Mr Eljamel to "go private" for unnecessary surgeries; patients who were made to wait for private care when their condition was so grave they should have been fast tracked on the NHS and patients who believe they underwent unnecessary procedures simply because Mr Eljamel knew they had private health insurance. We note that the experience of private patients will be captured by the Independent Clinical Review ("ICR") and available to the Inquiry. These matters are also all within the purview of Health Improvement Scotland whose remit includes enabling the people of Scotland to experience the best quality of health and social care in both public and private sectors.

22. While it is acknowledged that the ICR will permit examination of Mr. Eljamel's clinical work within the private sector, the absence of such examination by the Inquiry could, respectfully, result in an incomplete and skewed analysis of the full extent of Mr. Eljamel's actions, and how he was allowed to continue for so long. This may in due course limit the effectiveness of any recommendations made. This is particularly so when given the extent that the private healthcare interacts with the NHS within

Scotland. It is hoped that the Chair might consider whether he should make representations to the relevant Minister to widen the scope of the TOR in due course.

23. Turning to Mr Eljamel's supervision of NHS colleagues within the NHS under TOR2(b), we believe it is important to consider what impact, if any, Mr. Eljamel's role at the University of Dundee had on trainee/student doctors challenging behaviour or raising clinical concerns that may have arisen within NHS Tayside. The partner of one patient within the Group overheard junior doctors discussing the potential need for them to repeat rotations undertaken under Mr Eljamel's supervision. The inquiry should investigate whether this occurred and what steps were taken to ensure that trainees under his supervision were prevented from replicating his sub optimal practices.

24. In relation to TOR2(d) and (e), one member of the Group with contemporaneous professional experience of the University of Dundee has raised with us the awe in which Mr Eljamel was held at the university, the impression that he was untouchable and concern about his role in helping the university get research funding and his relationship with organisations promoting research on new or experimental techniques.

25. Under TOR 6 the inquiry should also consider why clinicians and GPs including those within NHS Fife continued to refer patients to Mr Eljamel notwithstanding concerns raised or which should have been self-evident about his treatment of patients.

The Group and their experiences at the hands of Mr. Eljamel and the NHS

26. The Group contains patients or relatives of patients who were treated by Mr Eljamel between 1995 and 2013. Many have suffered life changing injuries, for example, loss of sight and paralysis. They have been left with injuries which are not just physical but also psychological, mental and emotional. Some have suffered suicidal ideation. Some have lost their jobs and their ability to access work and education, their homes, their marriages and their families. The impact on families and loved ones has also been profound. These are not historic experiences. Members of the Group live daily with life impacting and life limiting injuries at the hands of Mr Eljamel. Some of the Group are representatives of patients who have succumbed to their injuries and died without

seeing justice. At least one member of the Group is the relative of a patient who died from another condition, but the Procurator Fiscal insisted on a postmortem because the deceased had been a patient of Mr Eljamel, thereby causing further pain and suffering at a very difficult time.

27. The Group have been impacted not just by what Mr Eljamel did to his patients in the operating theatre but how he behaved towards them when they sought follow up. The words most frequently used to describe him are 'evasive', 'arrogant' and 'chauvinist".

28. The impact on the Group extends beyond the impact of the physical and psychological consequences of their treatment at the hands of Mr Eljamel to distress at the way they were treated by other NHS staff. Many describe being referred to as 'season ticket holders' or 'frequent flyers' because of their need for continuing treatment. Many describe feeling 'gaslit' by NHS staff and made to feel confused, anxious and unable to trust their own instincts.

29. The remit of the inquiry must extend beyond Mr Eljamel's practice at Ninewells Hospital into other NHS hospitals where he might have practiced or referred patients for procedures connected with his treatment of them, including Dundee Royal Infirmary and Perth Royal Infirmary.

30. Whilst the Inquiry's TOR largely focusses on systemic issues, the Group is grateful that an opportunity will be afforded to them to tell their story in Section 2. It is entirely proper and right that the Inquiry do so. It is only by listening to members of the Group and other patients affected that systemic issues can be properly identified and highlighted which is necessary for fulfilling the Inquiry's TOR. To that end, the Group are grateful to the Inquiry for adopting a trauma informed approach to the taking of their evidence and we look forward to being consulted on what is proposed. We also look forward to having input to the selection of witnesses to give evidence in Section 2 and to hearing which of the Group are included within the 'Priority Cases' which we understand that the inquiry team have identified.

31. Standing the above, and the importance of the evidence from members of the Group, the role of the ICR, and its interaction with the Inquiry is fundamentally important. Some members of the Group remain cautious of the ICR. They have, however, been encouraged to engage with the ICR, with its importance being emphasised.

32. As noted above, each patient experience is unique, but it is anticipated common themes will be identified. Specifically, common issues such as *inter alia*: (i) the absence of informed consent; (ii) warnings about underlying conditions in medical records being ignored; (iii) surgeries performed by junior colleagues without adequate supervision; (iv) the use of experimental techniques and medical devices which were new to the market; (v) the lack of expertise to perform specific surgeries; (vi) surgical mistakes which could have been avoided; (vii) wrong-site surgeries; (viii) ghost surgeries where the surgery for which the patient was consented was not actually carried out; (ix) the absence of basic oversight and investigation; (x) awareness of concerns that were not acted upon; (xi) bullying and intimidating behaviour; (xii) the absence of meaningful communication; (xiii) the lack of transparency; and (xiv) the lack of candour.

33. The impact of what patients have experienced at the hands of Mr. Eljamel has to be acknowledged and taken into account when the Chair makes his recommendations. That is the minimum requirement for members of the Group to feel like they have obtained a semblance of justice.

The Group's experiences attempting to get Justice

34. The conduct of Mr. Eljamel, and its impact on patients, must be examined. But the wrongs inflicted upon members of the Group did not end there. Each and every member of the Group put their trust and faith in the Mr Eljamel and the NHS when they were at their most vulnerable. They trusted all the healthcare employees involved in their care. They trusted their expertise and honesty. They trusted that their best interests would be at the forefront of their mind. That trust was, regrettably, broken by the NHS, not just in allowing Mr. Eljamel to continue practicing, but in how NHS Tayside has sought to address the concerns that have since arisen. They want answers to why that has happened to ensure it doesn't happen again.

35. We understand that individuals within the Group, as well as at least one whistleblower, raised complaints or concerns about Mr Eljamel's practices prior to 2012. The RCS report dated 6 December 2013 records that there were four complaints about Mr. Eljamel in 2012 and three in 2011. In the undated report by Mr. Donald Campbell on the Gillies report, it is recorded that: *"This surgeon had three and a half times as many complaints in a space of two years than the average number of complaints made in a whole professional lifetime for the average Neurosurgeon – that is an obvious pattern and should have raised queries in 2013 if not before".*

36. More information about this should be captured by the ICR patient statements. We will include relevant witness names with our witness suggestion list to be submitted separately.

37. These concerns are not just historic. Members within the group continue to experience difficulties in how NHS Tayside address their complaints and their continued care. There have been data protection issues. We have heard examples of NHS Tayside refusing or claiming to be unable to provide patients with their medical records. Of particular concern is where further treatment and/or investigations have been refused due to the historic involvement of Mr. Eljamel. Patients have, in effect, been 'blacklisted' because they have raised concerns.

38. Accordingly, it is vital that when listening to the former patients, the Inquiry consider to what extent institutions have contributed, and are indeed, still contributing to the wrongs originally inflicted by Mr. Eljamel.

39. With regard to the examination of previous reviews and investigations the Group wish the Inquiry to investigate concerns about *inter alia*: (i) the extent of the supervision afforded in 2013; (b) why the RCS were instructed only to investigate spinal surgery and not brain surgery; (c) why no thought was given to a conflict of interest when at least one known internal review of a complaint by NHS Tayside in 2015 was carried out by the same clinician who was responsible for his supervision; (d) Mr Eljamel's failure to attend MDMT; (e) Mr Eljamel's alleged failure to carry a bleep; and (f) the circumstances surrounding a complaint believed to have been made by the Tayside Local Medical Committee (LMC) regarding Mr Eljamel.

Learnings from the process of setting up the public inquiry and the ICR

40. Members of the Group are grateful to the Scottish Government for acceding to their request to establish the Inquiry to examine these issues. There are, however, some concerns over the manner in which these issues will be explored. As stated above, careful examination of the patient experience is necessary to properly identify systemic issues. Such identification is necessary for the Inquiry to fulfil its stated remit. The Scottish Government have, however, elected to largely 'outsource' examination of clinical issues to the ICR with little support being afforded to the Group to enable their effective participation.

41. The ICR was originally announced to provide an avenue for patients to have their personal needs addressed independently of NHS Tayside. Understandably, members of the Group considered that this would provide an avenue to explore future treatment. They have, however, been left disappointed and in some cases angry after learning that this is now not its purpose.

42. The ICR was not designed to be an adjunct to the Inquiry. It does not have the same powers that are available to the Chair of a public inquiry. For example, it cannot compel organisations to provide relevant documentation. As noted above, members of the Group have experienced significant difficulty in obtaining their medical records. A number of medical records are missing. One member of the Group has described how Mr Eljamel kept her records in a locked drawer in his room. Members of the Group have legitimate concerns that medical records have retrospectively been falsified and may even have been deliberately destroyed. The ICR is reliant on the Inquiry for the purposes of recovering medical records and issuing s.21 Notices to the relevant organisations. This has introduced an unnecessary and convoluted approach to evidence ingathering which will result in delay and confusion among former patients. The extent of the issues associated with the medical records and the absence of proper accountability of organisations to the ICR remain a concern to the Group.

43. As noted by Counsel to the Inquiry at the preliminary hearing on 10 September 2025, in order for the Inquiry to fulfil its stated remit, it requires progress with the ICR's work. Although Prof. Wigmore has made some progress, very little appears to have been achieved in progressing the clinical reviews. Indeed, it is understood that the Inquiry has only recently begun the process of recovering records to assist the ICR process and no applicant statements have yet been issued to patients for completion. It is difficult to envisage to what extent, if at all, the Inquiry will be able to comply with its current timetable standing the progress to date of the ICR.

Expectations and the future

44. The Group accept that a number of hearings will be required to properly explore the issues within the TOR and that this will take time. Their trust in the NHS has been broken. It is anticipated that the trust placed in the NHS by the wider public will be tested once the conduct of Mr. Eljamel, together with the systems and individuals that enabled that conduct to continue, is further explored. Some members of the Group accept that they may not be alive to see the Inquiry fulfil its purpose. But to properly identify the systemic issues, and to leave a legacy of change, it is imperative that the perspective of the patient is taken into account.

45. Public confidence in the NHS requires to be rebuilt. It is only with a thorough investigation that that process can begin. Questions such as the following demand answers : (i) why was Mr. Eljamel permitted to continue practicing for so long in light of the concerns being raised, and why were those concerns not taken seriously at the time?; and (ii) to what extent did NHS Tayside and the Scottish Government seek to minimise the conduct of Mr. Eljamel and other staff members, and if so, why was that the case?

46. Even then, members of the Group will continue to be distrustful of the NHS. They have faced obstacles in having their concerns listened to. They have been ignored and, in some cases, 'blacklisted'. Despite assertions to the contrary, NHS Tayside continue to adopt an overly defensive stance to both complaints and legal claims made by members of the Group. The perception by members of the Group is that their greater concern is

protecting their image as opposed to patient safety and wellbeing. This might be contrasted with the approach adopted by the Circle Health Group.

47. Whilst, the Inquiry's function is not to determine any person or bodies' civil or criminal liability, we note that Counsel to the Inquiry said at the preliminary hearing that the Inquiry can undertake investigations and make findings and recommendations from which criminality might be inferred. Equally, it has the power to undertake investigations and to make findings and recommendations from which civil liability might be inferred. There is an ongoing police investigation into Mr Eljamel's actions. Many members of the Group feel this is taking too long. Some members of the Group have been denied compensation by NHS Tayside citing legal technicalities relating to timebar. The Group would like to see the Scottish Government act to override these technicalities. We hope that recommendations may be made which will encourage them to do that. It is hoped that the inquiry will investigate whether failures on the part of any relevant organisation to inform people who were affected timeously impacted on their opportunity to seek redress or compensation and make findings in this regard and consequent recommendations.

48. Under TOR 18 the inquiry should make recommendations as to treatment, care and support for the Group in the future. It is submitted that these could be made by way of interim recommendations after the Section 2 Hearings.

49. A member of the Group has brought to our attention that Mr Eljamel has written a textbook entitled "Problem Based Neurosurgery", published in 2011, which is still available to purchase and in some university libraries. The inquiry should consider whether this should be withdrawn from circulation.

50. The Group, and the wider public, require to be satisfied that any and all lessons are identified and learned, so that they can be comfortable placing their health in the hands of the state once again.

Conclusion

51. This inquiry has been a long time coming and hard fought for. The Group are fully intent on supporting the Inquiry so that it may fulfil its remit. The former patients of

Mr. Eljamel must be at the heart of this Inquiry. Without their efforts it would not be happening. They and their representatives require to be listened to for any lessons to be learned.

52. Although the substantive part of the Inquiry has not yet begun, the Group remain confident that the Inquiry will uncover the truth and shine a light on what has, for too long, been shrouded in secrecy. They have confidence that the Chair and Counsel to the Inquiry will explore these issues without fear or favour.

53. The Group remain grateful to the Chair and Counsel to the Inquiry for the empathy and compassion shown to date. We remain committed to working further with the Inquiry knowing that those we represent will finally be afforded an opportunity to tell their story and to see justice and accountability.

Joanna Cherry KC

Euan Scott

19 November 2025