

IN THE ELJAMEL INQUIRY

BEFORE LORD WEIR

IN THE MATTER OF:

THE PUBLIC INQUIRY TO EXAMINE THE PROFESSIONAL PRACTICE OF MR ELJAMEL

SUBMISSIONS IN RESPONSE TO COUNSEL TO THE INQUIRY'S NOTE DATED 7 MAY 2026

ON BEHALF OF

CORE PARTICIPANTS WHO ARE EITHER FORMER PATIENTS OF MR ELJAMEL OR THEIR REPRESENTATIVES (“the Patient Group”)

Introduction

1. On 7 May 2026, shortly before the close of business, the Solicitor to the Inquiry circulated a 54 page Note from Counsel to the Inquiry which sought to provide an update on matters in advance of the Procedural Hearing on 14 May 2026. Within the Note was an invitation to the RLR of Core Participants to respond to matters raised therein by 10am on 11 May 2026. This submission is in response to that invitation.
2. The timescales afforded for our response were challenging as they gave us only 2 working days to take instructions from the 161 patients whom we represent. Tight deadlines like this have been a recurring issue and risk compromising our ability to properly and fairly represent our clients many of whom are vulnerable and suffer from brain injuries. They need adequate time to consider lengthy documents in language and about procedures with which they are not familiar before giving instructions. Some are not email users and require to be sent documents by post. We trust the Inquiry team will take this into account when issuing future deadlines.

Delay of Section 1 Hearings

3. Within the Note, detail is provided as to the issues that have arisen impacting the availability of the hearing suite. We are grateful for the provision of this information and look forward to receiving the submissions from the Cabinet Secretary on the matters highlighted within the Note. The Patient Group are very concerned that, following their long campaign for a public inquiry, assurances given to them by the Scottish Government to the effect that the public inquiry would be patient centred, and trauma informed are not being honoured. One member

of the Group has learned from an FOI request that fire safety issues currently preventing the use of the hearing suite may have been in existence since the venue was originally selected. We wish to know if that is the case. We also wish to know exactly what consideration has been given by the Scottish Government to other potentially suitable venues including hearing suites which have been fitted out for other recent public inquiries which are now finished, such as the Hospitals Inquiry at West Register Street. Edinburgh.

4. Counsel to the Inquiry provides a number of observations about the Chair’s decision-making process to delay the commencement of the s.1 hearings at para. 26. Whilst we do not seek to presume what factors were relevant to the Chair’s decision-making process in this regard, we consider it necessary to address the implication at para. 26(g) that there was no engagement from Levy & McRae on behalf of the Patient Group on the preferred approach to the hearings. Accordingly, we consider it necessary to provide the following by way of context:

- a. On 6 March 2026, correspondence was received from the Chair advising that “an issue” relating to “building safety matters” had arisen. As a result, the hearings that were to take place over the scheduled period would need to be held remotely. The only individuals that would be permitted to attend said hearings would be the Inquiry team, witnesses, and the witness’s legal representatives. Given the proposed list of witnesses for the hearings, this arrangement would most likely permit *inter alios* witnesses from NHS Tayside and their legal representatives to be physically present when giving evidence over the destruction of theatre logbooks, with the Patient Group and their legal representatives being excluded. Although Counsel to the Inquiry has sought to address this at 26(d) of his Note, respectfully, he seeks to draw a distinction without a difference. The dismay caused to members of the Patient Group by their physical exclusion from a public hearing, at which NHS Tayside and their representative were not so excluded, should not be underestimated. Many have campaigned for this public inquiry for years. Many have lost all trust in NHS Tayside as a result of their experiences at their hands. That loss of trust was further exacerbated by the revelation that vital records had been destroyed last year despite the existence of a do not destroy order. The Patient Group understood that evidence was to be taken from NHS Tayside witnesses about the circumstances in which such evidence was destroyed and understandably many wished to be physically present to hear that evidence. Their concern was further exacerbated by the fact that the information that some core participants were going to be present in the room but not the Patient Group was not in the public domain and therefore they were prevented by the confidentiality requirements of the inquiry from discussing the full nature of their concerns with their

parliamentary representatives or otherwise publicly ventilating the full nature of that concern.

- b. By correspondence dated 13 March 2026 [see appendix 1], the Patient Group's RLR raised concerns over the discrepancy between the information provided to the public and what had been communicated to core participants, namely the implication that all participants would be attending remotely in contrast to the situation outlined above. Given the limited amount of information provided about the "issue", the Patient Group's RLR requested a short procedural hearing at the earliest possible opportunity so that the "issue" might be addressed openly and transparently.
 - c. By correspondence dated 18 March 2026, the Chair wrote to the Patient Group's RLR refusing the request for a short procedural hearing due to a lack of clarity over its intended purpose. Further, the Chair requested whether there would be support within the Patient Group for: (i) limited section 1 hearings with remote participation including the matters referred to in the letter of 6 March; (ii) some further limited version of those hearings, or (iii) postponement of the section 1 hearings altogether until the building issues had been resolved, one way or another. The Chair requested a response to the aforementioned queries within 48 hours.
 - d. The Patient Group's RLR responded on 20 March 2026 [see appendix 2]. Within the response, it was stated that it was not possible within the timescales imposed by the Chair to discuss and thereafter take instructions on the proposals put forward from the Group, which includes 161 individuals with diverse views. Further, it was highlighted that there was currently insufficient information available to permit any such instructions to be fully informed. A request was made for further information, particularly as to the stage of the Inquiry's preparedness and what was meant by 'a further limited version of the hearings'. A consideration which weighed heavily with the Patient Group's RLR was the need to avoid the Patient Group finding themselves in a position where any delay would be laid at their door. Many in the Patient Group wanted to avoid remote hearings which were in reality remote for them but not for other participants. The request for a short procedural hearing to address same was reiterated. This request was, again, refused.
5. We consider the above evidently demonstrates that the Patient Group's RLR proactively sought to engage with the Inquiry in respect of the proposals regarding the section 1 hearings. To suggest or imply otherwise is inaccurate, unhelpful and unfair to both the Patient Group and

their RLR. The Patient Group are, however, grateful to the Chair for arranging the Procedural Hearing on 14 May 2026 to update core participants on the “issue” and the progress made by the Inquiry to date.

6. Finally, the Note from Counsel to the Inquiry does not mention when it is proposed to take evidence from NHS Tayside about the circumstances in which the theatre logbooks were destroyed last year. As this matter is of the utmost importance to the Patient Group, knowing when evidence about these matters will be taken is important to restoring their trust in the public inquiry process.

ICR

7. At para. 92(b) of his Note, Counsel to the Inquiry has noted the following:

“It has become apparent that the legal support being provided by Levy & McRae appears to have been a source of delay”

8. The suggestion that provision of legal support by Levy & McRae has been a source of delay is unwarranted and it is refuted in the strongest terms. We would, again, wish to highlight the following matters in this regard:
 - a. At the hearing for opening submissions on 26 and 27 November 2025, Counsel to the Inquiry stated that an agreement in principle had been reached between the Scottish Government and Levy & McRae regarding the legal support provided to applicants for the ICR. Further, Counsel to the Inquiry expressed a desire for applicant statements to be completed by early in the new year. Shortly after the hearing, Counsel to the Inquiry was advised that the proposal for applicant statements to be completed over the festive break was neither realistic nor trauma informed. Further, despite an assertion to the contrary from the Cabinet Secretary to the Inquiry, there was no agreed funding agreement in place. This was followed up by a letter dated 1 December 2025 [appendix 3], in which Levy & McRae set out concerns regarding the timescales proposed for completion of the statements and the lack of a written funding agreement between themselves and the Scottish Government to confirm the scope of the work. This letter reiterated concerns that had been raised by Levy & McRae with the Scottish Government, the Inquiry staff and ICR staff as early as February 2025. Notwithstanding this, Levy & McRae undertook to assisting their clients with completing statements for the ICR in good faith and on the strength of an email from the Scottish Government authorising them to respond to live queries. This was done to

aid both their clients and the work of the ICR and Inquiry. However, the aforementioned issues had to be reiterated to the Solicitor to the Inquiry and the Scottish Government in correspondence by Levy & McRae in February 2026. By this stage, no funding agreement had yet been finalised to confirm the scope of work. It had also become apparent to Levy & McRae that the volume and complexity of the work were continuing to evolve and increase, including the need to review and cross-reference substantial documentation which their clients wished to rely upon in support of their statements.

- b. It is important to appreciate that the procedure for completion of the applicant statements has been developed and refined over the last several months since the opening statement hearings. The statements for the ICR form a dual purpose. The primary function is to allow former patients to express their positions on the clinical circumstances of their specific case. These statements are to be used by independent expert neurosurgeons appointed by the ICR to compile detailed case reviews. Simultaneously, these statements serve as evidence for the Eljamel Inquiry. Our clients have been informed that for many of them, the ICR statement will provide sufficient evidence for the Inquiry's systemic investigation, removing the need for a separate "Rule 8" witness statement. As such following completion of an initial draft statement, the applicant statement is shared with the Inquiry team for review and comment. This is subsequently returned by the Inquiry to the ICR, who will return the statement annotated to the former patient, or to Levy & McRae, requesting additional information which pertains to the Inquiry's work. These requests for additional information often necessitate review of patient medical records. Some queries request details of precise treatment dates and individual members of staff involved in treatment which often took place over 20 years ago. To expect applicants to be able to recall the names of individual members of staff, including staff members who may have only been fleetingly involved in their care, after a significant period of time, without access to their medical records is, unreasonable. This difficulty has consistently been highlighted to both the Inquiry and the ICR. The records in question are within the possession of the ICR and the Inquiry but have not been shared either with the applicants or Levy & McRae prior to the provision of the initial applicant statement. Accordingly, in order to address the queries, it is frequently necessary for Levy & McRae to recover and review the medical records of the applicant. Given the health issues involved, the records are often voluminous. These requests come despite earlier assurances from the Inquiry that it would not be necessary for a former patient (or their representative) to have access to their or the relevant patient's medical records in order to provide a written statement to

the Inquiry. Reference is made to paragraph 57 of the Protocol on Approach to Evidence and Witness Statements which notes that: “*the Inquiry recognises that some individuals may not wish to obtain their medical records or know that key parts of their medical records are missing. Their personal accounts are highly valuable to the Inquiry, with or without reference to contemporaneous medical records*”. Further, there are frequently delays in the time between the first draft of a statement being provided to the ICR and the statement with revisions and comments being returned by the Inquiry, via the ICR. One particular applicant’s statement was sent to the ICR on 18 March 2026, and she is still awaiting comment thereon from the Inquiry. In another case, Levy & McRae were asked to recover a patient’s former solicitors’ file by mandate in order to provide additional evidence for his statement resulting in further delay.

- c. In addition to the aforementioned, following the provision of final statements to the ICR, there is often a significant delay in those final statements being sent to applicants for signature. For example, on one occasion, an applicant has waited over 50 days to be sent her statement for signature. Further, there have been multiple occasions where an applicant has returned a signed statement at the request of the ICR only to be invited to return a further signed version due to issues that had arisen within the ICR. For one applicant, she was requested to re-sign her statement on four different occasions with the time between the first signed statement and the last being 36 days.
9. In light of the foregoing, it is surprising that there is any suggestion that the source of the delay lies with Levy & McRae. We hope that the Procedural Hearing will afford an opportunity to correct this misapprehension.
 10. Counsel to the Inquiry has further observed at para. 92(b) the following:

“Many draft applicant statements for which support has been provided have not achieved the quality that both the Inquiry and the ICR would have expected to ensure the important contribution from applicants is achieved. An explanation is also requested.”

11. As Counsel to the Inquiry will no doubt be aware, the applicant statements are not precognitions. The guidance provided by the Scottish Government in respect of the ICR notes:

*“The applicant statement is the document that provides the opportunity for former patients, or their authorised representative, to describe in **their own words** their*

experiences and concerns in response to specific questions relevant to the remit of the ICR” [emphasis added].

12. The amount of support from Levy & McRae to produce the statement varies significantly across the patients, with some preparing the statements themselves and asking for input/advice from Levy & McRae on specific issues compared with others requiring support to transcribe responses to each individual question. Levy & McRae provide their clients with a collaborative approach to the completion of the applicant statement, which offers choice to their clients as to how they wish to provide their evidence, in keeping with a trauma-informed approach. At all times, in light of the stated purpose of these statements, Levy & McRae seek to record the client’s own words. That is the nature of the statement, and it should be expressed in those terms.
13. In light of the differing levels of support requested by the applicant from Levy & McRae, and the unwillingness to provide the associated medical records to the applicant or Levy & McRae to assist, it is concerning that the Inquiry seeks to criticise the quality of the applicant statements. Many of the applicants are disabled and continue to experience significant pain. They often rely on pain relieving medication which affects their memories and ability to engage with this demanding process. To criticise the quality of the statements provided in those circumstances demonstrates a fundamental lack of understanding of the individuals who are being asked to complete these statements and is not trauma informed.
14. At para 92(e) of his Note, Counsel to the Inquiry has proposed an unrealistic timetable for the completion of the remaining ICR statements. This is particularly so when Levy & McRae are in the majority of cases, entirely dependent on the applicant contacting them to advise that they have received the request. Levy & McRae have requested on numerous occasions that the ICR advise them when such statements have been issued. On several occasions, the ICR have been provided with a mandate on behalf of the individual concerned authorising them to liaise directly with Levy & McRae. Notwithstanding this, it remains relatively common for the ICR not to contact Levy & McRae at all. Given the issues experienced with the ICR to date, some of which is noted above, the timescales suggested are wholly unrealistic.

Funding award

15. Finally, at paragraph 55 of his Note Counsel to the Inquiry refers to a “generous full time funding award” having been made to the Patient Group’s legal team for work to be carried out in relation to the public inquiry. In the interests of clarity and transparency, we would wish it to

be clearly understood that neither we as counsel nor those instructing us are being paid “full time” to represent the Patient Group. Instead, in accordance with the inquiry’s protocols we submit proposed fees for particular pieces of work carried out on a monthly basis. These proposed fees are then subject to close scrutiny by the Solicitor to the Inquiry who will carry out an assessment and has the right to refuse to honour them in full. Fees have been issued for work carried out in the months of August, September, October, November, and December 2025, and January, February and March 2026. So far none of these fees have been assessed and paid apart from those relating to the month of August 2025, which covered a period of two weeks. The fact that the RLR are not engaged on a full-time basis is an important factor in appreciating the difficulties encountered, particularly by counsel, in responding to the Inquiry’s tight deadlines.

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12 May 2025