

THE ELJAMEL INQUIRY

Written Submission on behalf of NHS Tayside

in response to Note by Counsel to the Inquiry for the Procedural Hearing of the Eljamel Inquiry on 14 May 2026

Introduction

1. NHS Tayside is grateful to the Inquiry for the opportunity to respond in writing to Counsel to the Inquiry's Note for the Procedural Hearing of the Eljamel Inquiry on 14 May 2026 ('CTI's Note').
2. This submission addresses the following matters raised in CTI's Note:
 - NHS Tayside's position regarding representation and support to current and former employees.
 - Trauma-informed policy.
 - Lessons learned.
 - Preparations for Section 1 hearings.
 - The instruction of expert witnesses.

NHS Tayside's position regarding representation and support to current and former employees

3. NHS Tayside's legal representation in this Inquiry and the support available to current and former employees are matters which NHS Tayside brought to the attention of the Inquiry from an early stage in proceedings. It has sought to set out its position in submissions to the Inquiry published on the Inquiry website dated 4 September 2025, 13 November 2025, and 21 November 2025, and in its submission to the Inquiry dated 3 December 2025 which Counsel to the Inquiry circulated to core participants last week, five months after receipt. It was published on the Inquiry website on 18 December 2025 but, so far as NHS Tayside is aware, with no notification given to core participants at that time. There has also been more recent correspondence on this matter between Counsel for NHS Tayside and Counsel to the Inquiry in March and April 2026.

4. NHS Tayside has been keen to ensure from the outset that any current or former employees who are required to provide evidence to the Inquiry are supported in doing so. It reiterates to its current and former employees that support is available to them. In previous submissions, it has explained the pastoral and practical/administrative support available, and how that can be accessed by current or former employees. It has also set out its proposed legal support – that term is used to describe support by a solicitor in the preparation of a witness’s evidence.
5. In this submission, NHS Tayside seeks to set out again its position and to clarify certain matters raised by CTI’s Note.
6. First, by advising the Inquiry of its proposed position on the issue of legal support to current and former employees, NHS Tayside is not seeking to make an application to the Chair for an endorsement of its plans. Rather, it was felt appropriate to raise this matter with the Inquiry at an early stage in accordance with the Inquiry’s collaborative approach, which NHS Tayside fully adopts. NHS Tayside has sought to be open and transparent about its approach. The detail of the delivery of its proposed support has evolved in consideration of and response to certain of Counsel to the Inquiry’s queries.
7. As has been made clear in previous submissions, the solicitors within the Central Legal Office (CLO) are instructed by health boards in NHS Scotland to provide those public bodies with legal representation and advice.¹ The solicitors within the CLO are not instructed to and do not represent individual employees, whether current or former. NHS Scotland health boards do not offer to provide legal advice or legal representation to their current or former employees through their instructed solicitors.
8. In this Inquiry, NHS Tayside’s legal team (both those within the CLO and counsel) are its recognised legal representatives in terms of Rule 5 of the Inquiries (Scotland) Rules 2007. That legal team is not the recognised legal representative of any individual in this Inquiry. That legal team will provide support in the preparation of corporate witness statements. Support by that legal team to witnesses who are representatives of the public

¹ Article 2 of the National Health Service (Functions of the Common Services Agency) (Scotland) Order 2008: “The functions of the Agency are to...(k) provide legal services to Health Boards and Special Health Boards”.

body NHS Tayside, in the preparation of corporate witness statements, is consistent with the legal team's role as recognised legal representative of NHS Tayside.

9. Legal support (and again, this means support by a solicitor in the preparation of witness evidence) is always available to NHS Tayside's current and former employees who are witnesses in proceedings such as public inquiries. This support, however, does not involve legal advice to or legal representation of the individual witness. This is the approach adopted by health boards across NHS Scotland. The approach proposed by NHS Tayside in terms of the support it can offer to its current and former employees in this Inquiry is not novel, although for the reasons given below, the appointment of a solicitor separate from a health board's legal team in an Inquiry to provide such support is not usually required. That is the only difference in the support being offered: the actual content of the support being offered will be similar to that usually provided to witnesses by legal teams acting for NHS Scotland health boards in an Inquiry.
10. It must be borne in mind that not all witnesses require to be individually represented in an Inquiry. This is clear from the Inquiry's own Protocol on Approach to Evidence and Written Statements and Protocol on Public Hearings. Often in inquiries there will be no reason for an individual employee of a health board to require to obtain their own legal advice or representation, particularly where they will not be subjected to personal criticism by the Inquiry. In such circumstances, an individual current or former employee who is a witness in an inquiry may simply benefit from pastoral and practical/administrative support, including from a solicitor instructed by the health board, in the preparation and giving of their evidence, with no legal advice or representation being required. Such support is clearly distinct from legal advice or representation and can therefore be offered by health boards and provided by the CLO. This has always been the position.
11. The reason for raising with the Inquiry the matter of legal support (i.e. support by a solicitor) for individual witnesses at an early stage was because it was recognised that there may be a concern by former patients of Mr Eljamel that NHS Tayside and its legal team in this Inquiry would be too closely involved in the preparation of evidence of witnesses who are giving evidence to the Inquiry not as representatives of NHS Tayside (senior leaders currently in post, speaking on behalf of the board), but as individuals in

their own right. NHS Tayside has therefore been conscious to ensure that the nature of the support that it would usually provide to those individuals in connection with the preparation of their evidence remains arms-length. Adopting a collaborative approach, it has been keen to ensure that its proposed provision of support to witnesses is acceptable to the Inquiry and the core participants, particularly the former patients of Mr Eljamel.

12. Given the wish to ensure that the support given to witnesses is demonstrably at arms-length, an approach slightly different to that usually taken has been proposed in this Inquiry. It is suggested that a solicitor of the CLO who is not part of NHS Tayside's legal team in this Inquiry should provide that pastoral and practical/administrative support to individual current or former employees who wish that assistance in the preparation of their evidence to the Inquiry. This would ensure that NHS Tayside and its legal team in this Inquiry remain at arms-length from the evidence of those individual current and former employees who are giving evidence to the Inquiry in their own right, rather than as representatives of NHS Tayside. It is hoped that this proposed approach is satisfactory and will alleviate any concerns that former patients may otherwise have.
13. NHS Tayside would therefore instruct a senior solicitor at the CLO, separate to its legal team in this Inquiry, for the particular task of assisting witnesses in the preparation of their evidence. This solicitor would not be a recognised legal representative of NHS Tayside in this Inquiry. NHS Tayside would instruct and fund this support, but otherwise would have no involvement in the support given by the solicitor. The solicitor would not disclose any information or document included with or within the request or notice, or the response, to NHS Tayside or its recognised legal representatives. An information barrier would be in place within the CLO. The role of the Project Management Officer (PMO), who would be the witness's first point of contact, would simply be one of gatekeeping. The PMO would not need to be provided with any information or document included with or within the request or notice, as their role is simply to signpost the witness to the solicitor at the CLO.
14. The solicitor would support the individual witnesses by explaining the general process of giving evidence to the Inquiry, and by reviewing the witness's statement to check

that it answers the questions being asked and is properly formatted. The purpose of this role is to support the witness through the Inquiry process and to assist them in providing their best evidence to the Inquiry, to the benefit of all involved. This is similar to the role performed by solicitors appointed by health boards in other inquiries, who support but do not represent individual witnesses. If it appears that there may be personal criticism which ought to be evident at an early stage, the solicitor would signpost the individual to seek their own independent representation.

15. To enable an individual recipient of a Rule 8 request or Section 21 notice to receive support through such a solicitor in connection with the preparation of their evidence, it is suggested that under paragraph 17(g) of the First Order by the Chair of the Inquiry, the Chair could provide written agreement that the individual recipient can share the request for evidence with the named CLO solicitor tasked with offering that support. Arrangements could be made for that solicitor to sign the Inquiry's confidentiality undertaking.
16. In accordance with paragraph 27 of the Inquiry's Protocol on Approach to Evidence and Witness Statements, an evidence request directed to an individual witness providing evidence in their own right, rather than on behalf of NHS Tayside, ought to be sent directly to that individual. NHS Tayside will seek to assist the Inquiry in identifying the location of potential witnesses who are current or former employees of the Board, if so required.
17. As the proposed approach is now for a solicitor separate from NHS Tayside's legal team to provide the support to individual witnesses in connection with the preparation of their evidence, a conflict check would no longer be necessary.
18. In those cases where current or former employees *would* benefit from independent legal advice and representation, NHS Tayside understands that this is likely to be offered by medical defence organisations. This ought to include cases where former employees are not currently members of such an organisation, but nevertheless held such membership at the relevant time. Whilst this is NHS Tayside's understanding of the position, the Inquiry will require to confirm the position with the relevant organisations.

19. NHS Tayside would not wish any current or former employees who have good reason to seek independent legal representation, but who do not have current or former membership of a medical defence or similar organisation, to be precluded from obtaining that representation, where required. In such circumstances, NHS Tayside would be willing to consider potential funding arrangements for legal representation for such individuals on a case-by-case basis, mindful that such funding would be from public funds.

Trauma-informed policy

20. NHS Tayside welcomes that the Inquiry will implement a trauma-informed policy. There is, however, an indication at paragraph 44 of CTI's Note that this policy will not apply to everyone. It is respectfully submitted that any such policy of the Inquiry ought to apply equally to all involved. The policy itself will no doubt set out the approach to be taken dependent on an individual's circumstances. It is important to bear in mind that participation in an Inquiry can be traumatising for a range of individuals and for a variety of reasons which may not always be immediately apparent.

Lessons learned

21. NHS Tayside notes from paragraph 71h) of CTI's Note that in future the Inquiry will endeavour to provide witnesses and their recognised legal representatives with better advance notice as to when they are likely to receive requests and the likely timescale, and that it is intended for discussions to take place between the Solicitor to the Inquiry and recognised legal representatives to improve ways of doing things going forward. NHS Tayside welcomes this, given difficulties to date. NHS Tayside hopes to work collaboratively with the Inquiry for realistic deadlines to be set in relation to any future requests for evidence, so that these can be achieved.

Preparations for Section 1 hearings

22. It is noted that one additional week has been assigned for the hearings which are planned to take place in September 2026. At paragraph 56 of CTI's Note, he sets out matters on which evidence will be heard in the Section 1 hearings and refers to the Provisional Outline of Scope for Section 1 hearings previously published and dated October 2025. It would be helpful for NHS Tayside to understand whether the Inquiry

intends at the Section 1 hearings to explore any matters beyond those set out at paragraph 56 of CTI's Note and the Provisional Outline of Scope.

23. It is noted from paragraphs 76 and 77 of CTI's Note that the Inquiry intends to disclose Section 1 materials to core participants on a rolling basis and further in advance of the Section 1 hearings that might have been possible had the hearings proceeded in April 2026, with a target now of 22 June 2026 as the date by which it is hoped the bulk of the Section 1 statements and materials will be disclosed to core participants. NHS Tayside welcomes this approach. In order for NHS Tayside to efficiently and effectively prepare for the Section 1 hearings, given the anticipated large volume of documents, the Inquiry is respectfully invited to commence disclosure as early as possible and on a rolling basis. As the Inquiry were initially preparing for Section 1 hearings to commence in April 2026, it is hoped that the Inquiry team will be well placed imminently to disclose to core participants a number of the statements and materials.

24. Paragraph 78 of CTI's Note indicates that in the week commencing 6 July 2026 core participants will receive a draft witness list/timetable indicating the witnesses whom the Inquiry intends to call to give evidence at the Section 1 hearings. It is respectfully requested that a draft list of witnesses is intimated to core participants at an earlier date. It is important that any individuals whom the Inquiry intends to call to give evidence has notice of this as soon as possible so that they can make arrangements to ensure their availability to attend. It is anticipated that any witness from NHS Tayside called to give evidence at the Section 1 hearings on behalf of the board will likely hold a senior leadership position and will therefore have significant diary commitments. As it is understood that the Inquiry's preparations for the Section 1 hearings due to commence in April 2026 were well underway, and presumably included a draft witness list/timetable, it is hoped that the Inquiry will be in a position to provide a draft witness list/timetable in very early course.

The instruction of expert witnesses

25. NHS Tayside welcomes the Inquiry's intimation now of the identity of the neurosurgical experts and the medical ethics experts who have been instructed to provide reports. It is, however, noted that intimation has not yet been provided as to the

identity of experts instructed to prepare reports in respect of healthcare administration. The Inquiry is respectfully invited to provide that information now.

26. The Inquiry's Expert Evidence Protocol states at paragraph 18 that:

“The identity of experts witnesses whom the Inquiry intends to instruct will be intimated to core participants before the experts are instructed.”

This does not appear to have been complied with by the Inquiry given that core participants have not received any intimation of any expert witnesses in advance of their instruction.

27. In the future, the Inquiry is respectfully invited to intimate the identity of all expert witnesses to core participants in advance of them being instructed, in accordance with its protocol.

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12 May 2026