



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

Introduction

1. The purposes of this Note are as follows:
 - (a) To provide an agenda for the procedural hearing which the Inquiry will hold on Thursday 14th May 2026, insofar as it can be set out at this stage, as well as the reasons and plans for that hearing; and
 - (b) To set out, primarily for the benefit of Core participants, information concerning the nature of the Inquiry's work since the opening statements hearing in November 2025, to enable them (and others who have been invited to be represented at the hearing) to file written submissions, if they wish, in advance of the procedural hearing and to prepare for that hearing. Any brief written submissions on these matters should be received by 10 am on Thursday 12th May 2026 – more details about the plans for the hearing are set out in section 9 below.

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 or others who have been invited to do so 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

Agenda for the procedural hearing

3. The matters which will be ventilated at the procedural hearing are as follows

- 1) Participation at the hearing
- 2) Hearings venue issues/ postponement of the section 1 hearings
- 3) Trauma-informed policy
- 4) Planning for the forthcoming hearings this year
- 5) The Independent Clinical Review ("ICR")
- 6) Inquiry staffing update
- 7) Warning letter protocol
- 8) NHST legal support issue
- 9) Next steps relating to the procedural hearing

1) Participation at the hearing

The ICR

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

4. As has been the practice of the Inquiry at previous hearings and in light of the close working relationship between the two processes, this Note will also be sent to the ICR team, who have been invited to make written representations in advance of the hearing and to make an oral submission through their recognised legal representative, if they wish to do so. The purpose of these invitations is so that the hearing can be used, in part, as a means of ventilating issues related to the progress of the ICR, the evidence emanating from which the Inquiry requires to consider in terms of its Term of Reference 16.

The format of the hearing

5. In light of the circumstances relating to the requirement to postpone the section 1 hearings in April and May 2026 (which are examined in some detail below) the hearings will require to be held remotely. This is a highly regrettable state of affairs, which the hearing has primarily been called to seek to resolve.
6. The hearing will be delivered from the hearings suite in Edinburgh. The Inquiry would like to make clear that, due to the safety issues with the building which are addressed below, the Inquiry is currently unable to have members of the public in the suite. The safety advice which the Inquiry has received and which remains current enables the Inquiry team to attend the hearings suite to deliver the hearings. This means that the Inquiry team can still benefit from the technical set up and layout of the suite which is an important part of being able to present and broadcast Inquiry hearings. However, no other individuals beyond those mentioned below will be permitted to be present within the hearings suite.
7. Indeed, the number of Inquiry team members who will be in attendance will be kept to a minimum. It is currently anticipated that those in the hearings suite will comprise the Chair, Senior Counsel and one junior Counsel to the Inquiry, the Solicitor and

deputy Solicitor to the Inquiry, the Secretary and deputy Secretary to the Inquiry, the Inquiry's media manager as well as technical contractors who are involved in broadcasting and recording the proceedings. It is anticipated that this is the minimum number of people who will be needed to deliver the hearings and to support those who are participating in it remotely. Any other staff Inquiry members or contractors will only be permitted to attend if necessary and numbers will be kept as low as possible.

8. The need for participation by recognised legal representatives ("RLRs") of core participants who wish to participate in the procedural hearing is a very important consideration. The Inquiry team has put in place systems to enable submissions to be made by RLRs of core participants who wish to do so on matters listed in the agenda for the hearing. This will be achieved via a separate live Zoom stream being made available to the lawyers who wish to make submissions and those who wish to support them. The normal Youtube link will be available for core participants, the media, other interested organisations and members of the public to follow the proceedings. This video will be published on the Inquiry's website afterwards.
9. As is the Inquiry's normal practice, the Inquiry will allocate time slots for oral submissions in the agenda in the interests of efficiency and fairness and based on the contents of the written submissions which core participants will be invited to make (see below). Those delivering oral submissions are asked to respect the time slots allocated to them.
10. Reasonable time will be made available for instructions to be taken from the core participants clients of those who intend to make a submission. RLRs should put in place systems for communication with their clients in advance of, during and after the hearing so as to allow them to participate as they normally would at an in-person hearing. In case RLRs wish to get in touch with the Inquiry staff (including Counsel and other members of the legal team in attendance, including the Solicitor to the Inquiry) emails will be monitored on the day to seek to replicate the conversations which would normally take place in the hearing room. Contact information for the Inquiry's

lawyers and Counsel are set out below. Contact information for the Inquiry's Secretariat will be made available to deal with practical questions arising in advance of, during or after the hearing as part of the technical and emotional support information which will be circulated separately. The press will be informed that the Inquiry's media manager can be contacted in connection with the hearing.

11. Support will be available for those who feel they need to access it from The Spark, the charity whose services the Inquiry has engaged for emotional support. Details of how this service can be accessed will be circulated to the recognised legal representatives of core participants and published on the Inquiry's website in early course.

12. Detailed technical information will be made available to those who wish to participate in or view the proceedings in early course. This will include the opportunity being offered to attend technical training in advance of the hearing. As has been explained at previous Inquiry hearings, in order to protect information which is confidential or may be the subject of anonymity or restriction order applications in due course, those who participate (in writing and/ or orally) should avoid using names or providing information which may fall into that category. Information of that nature can be separately communicated to the Inquiry, if necessary. Those who participate in or view the hearing should be aware that, in order to deal with the possibility that participants may inadvertently mention information which falls into this category, it may be necessary to cut the feed to the hearings. If this does happen, it will be for the purpose of protecting the release of such information. If the feed is cut in this way, it will be restored as soon as possible and an explanation will be provided as to why that was necessary, whilst respecting the confidentiality of the information.

13. The Inquiry team is keen to try to do what it can to deliver a hearing which is as near to a normal procedural hearing at which core participants, RLRs and other interested parties would be able to attend in person. RLRs will be expected to explain the Inquiry's plans in advance of and during the hearings to their clients in order to assist

in achieving that aim. The Inquiry team can be contacted for information and reasonable support in that regard.

Involvement of the Scottish Government at the procedural hearing

14. The main reason why the Chair has fixed a procedural hearing on 14th May 2026 arises from the pressing need for there to be a public explanation for the postponement of the Inquiry's section 1 hearings which were due to take place in the 3 weeks from 20th April 2026 and a clear plan to be put in place for progress to be made in light of that event. A detailed written explanation of the Inquiry's position in this regard is set out below.

15. It will be apparent from public pronouncements made by the Chair of the Inquiry on this matter before now that the inability of the Inquiry to offer hearings at which those who wished to could attend the hearings suite at Waverley Gate was the reason why the planned section 1 hearings required to be cancelled. Responsibility for the issues relating its lack of availability for the planned hearings rests with the Scottish Ministers, for reasons set out below. The Scottish Ministers are responsible for the operation of the Scottish Government. The Scottish Government has different and distinct roles to play in the operation of the Inquiry. The Scottish Ministers (and hence the Scottish Government) are core participants in this Inquiry. They participate in that capacity in various activities of the Inquiry. They have instructed a legal team comprising solicitors from Harper Macleod and Counsel, who represent the Ministers as core participants but also as material providers to the Inquiry, in which capacity they do things like produce documents or written statements in response to requests or notices from the Inquiry to do so. That legal team has been responsible, for example, for representing the Ministers in providing its response to the section 1 rule 8 request issued by the Inquiry to the Scottish Ministers (for a written statement and documents), preparing and delivering the Scottish Ministers' opening statement to the Inquiry, as well as helping with the provision of responses to other matters on which the Inquiry has

sought to seek the views and input of its core participants, from time to time. The legal team which has been involved in these activities to date continues to represent the Scottish Ministers in those capacities only, including at the forthcoming procedural hearing on 14th May 2026.

16. Separately, the Scottish Government has a distinct role to play in the work of the Inquiry in terms of the statute which underpins the Inquiry's work and defines its powers and responsibilities and the practical arrangements which the Inquiry enters into with the Scottish Government, in order to assist with its work and progress. The sponsoring minister of the Inquiry who set it up under section 5(1) of the 2005 Act is the Cabinet Secretary for Health and Social Care ("the Cabinet Secretary"). The Inquiry is an independent entity which operates under the leadership of the Chair. However, the sponsoring minister must meet any other expenses incurred in holding the Inquiry² and has agreed to meet other expenses associated with it.
17. In order to manage the relationship between the Inquiry and the Cabinet Secretary acting in his capacity as the sponsoring minister of the Inquiry, the Cabinet Secretary has appointed a sponsor team comprised of civil servants who represent him in that capacity. Normally that relationship would be managed by the Chair and the inquiry team and those civil servants without the practical details of the work done between them needing to be ventilated in public. Part of the relationship between the Inquiry and the Cabinet Secretary involved arrangements being made for the hearings suite to be used for the Inquiry's public hearings. Given the importance of the issues relating to the hearings suite being explained, explored and hopefully resolved in public, the Chair has invited the Cabinet secretary and his sponsor team to be separately represented for this hearing. The Chair considers that it would be in the public interest and in the interests of the fulfilment of the Inquiry's Terms of Reference in the manner that the Chair has directed they should be to seek to have these matters be discussed and resolved at a public hearing, as opposed to using other powers available to him under the Act to seek to resolve them. Informal efforts to do so have not, so far, proven successful in this regard, as is narrated below. The Chair has taken these

² 2005 Act, section 39(3)

unusual steps, in particular, in light of reasonable representations which have been made by patients (some of them core participants) for a clear public explanation as to what the problems were with the hearings suite and how and when they will be resolved. The Inquiry is unaware of any such explanation having been provided by the Scottish Government before this point. In addition, there are various other issues which the Inquiry seeks an explanation from the Scottish Government about, in different capacities, which are set out below.

18. The Cabinet Secretary and the sponsor team would not normally be entitled to information about a hearing of this nature in advance of it, such as the information contained in this Note - this would normally only be made available to core participants, their RLRs and others whom the Chair permitted to see it, such as the ICR team and their RLRs. The sponsor team has been informed by the Chair that they/ the Cabinet Secretary in his sponsoring capacity have the right to be represented at the hearing. In order to provide the Cabinet Secretary and his sponsor team with the opportunity properly to prepare for and contribute to the hearing, if they nominate RLRs to appear at the hearing on their behalf, the sponsor team and their RLRs will be provided with (a) extracts from this Note of matters relevant to their participation at the hearings (b) information about the timetabling for the hearings and (c) an opportunity to make written submissions in advance on matters on the agenda which concern them and oral submissions on any of those matters, if they wish to do so. The full Note and associated information will be made available to the representatives of the Scottish Government as core participants, in the normal way.

2) Hearings venue issues/ postponement of the section 1 hearings

The role of the Scottish Government in the Inquiry's work

19. The Inquiry team considers it important that there be clarity around the various roles in which the Scottish Government participates in its work. The role of the Cabinet secretary as sponsor as the Scottish Minister as funders of the Inquiry is set out above. In conducting the Inquiry, the Chair is under an obligation to act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).³ In doing so, he considered it prudent to make use of existing Scottish Government systems to assist the Inquiry in its work.

20. This is why, for example, the Chair accepted the offer of the shared use of the hearings suite for the Inquiry's hearings. As the property was already being used by another Scottish public inquiry, it would come at no extra cost to the public purse. It was well located, digitally and physically accessible to the Inquiry's participants and technologically set up for the complex project which a public inquiry essentially is. It also comprised separate rooms for use by witnesses, the media, for emotional support and consultation with clients by lawyers, where necessary. It had a proven track record of use in another public inquiry. It could be accessed immediately and was an eminently suitable venue from which the Inquiry's public hearings could be delivered. The Inquiry's complex requirements were met in this, despite the clear disadvantage of requiring to share with another public inquiry and the potential disadvantage of timetabling which such an arrangement may entail.

21. In order to regulate the relationship between the Inquiry and the Scottish Government in its support capacity, the Inquiry heavily revised a draft management agreement with which it had been provided. The purpose of the revised document was to make clear how the Inquiry would access and use the services of government in areas such as recruitment, IT support, document management and the procurement of external contracts for services, given that it appeared to the Chair that that the use of existing government systems and services would be the most efficient way of accessing that support, as opposed to reinventing the wheel within the Inquiry itself. In addition, the

³ 2005 Act, section 17(3)

agreement sought to recognise (a) the very reasonable need on the part of the Scottish Government to be informed of expenditure incurred by the Inquiry given the Government's statutory obligation under the devolution settlement to account for its spend under its allocated budget, though the Act accords wide powers to the Chair to regulate the Inquiry's own work and procedures and (b) the fact that the use of certain government systems would bring with it the need on the part of the Inquiry to respect existing government systems to a certain, mutually acceptable extent. It is important to note that the drafting proposed by the Inquiry sought to regulate the extent to which, and way in which, the Inquiry would access and use government systems in its work but also to underpin that agreement with a clear understanding of the statutory footing upon which the Inquiry was set up, in particular its independence from government and the need for its work to be undertaken confidentially, in light of its subject-matter and very reasonable concerns which had been expressed to the Inquiry in its public consultation on its Terms of Reference by those who had had experience of poor systems having operated in that regard in their dealing with the NHS.

22. It was the Inquiry's understanding that the Scottish Government had agreed to the terms of the revised management agreement which sought to achieve these important aims and whose terms have been adhered to informally by the Inquiry. The agreement remains to be formally signed on behalf of the Scottish Ministers. The sponsor team is called upon to account publicly for the Scottish Government's position and intentions in this regard.

The postponement of the planned section 1 hearings

23. The Inquiry intended to hold its section 1 hearings in a three-week slot which had been reserved at the hearings suite from 20th April 2026. Section 2 hearings had been planned to take place in a 4-week slot from the week of 7th September 2026.

24. The events leading up to postponement of the inquiry's hearings which were due to take place at that time can be seen in correspondence which has been published by the Inquiry on its website and need not be rehearsed here. The broad sequence of events is as follows:

- An issue related to the safety of the hearings suite was originally brought to the Inquiry's attention after the opening statements hearings at which the plans for the section 1 hearings were clarified and communicated publicly. These included the Chair's commitment to the hearings being held in public at the hearings suite at Waverley Gate, with Core participants and others being able to apply to attend in person, as had been the case at the Inquiry's previous hearings. This was (and had been for some time) the reasonable anticipation of not only the Core participants but those who might be called as witnesses, legal representatives, the media and the wider public.
- The issue, as now understood, related to the apparent lack of evidence to satisfy the local Council that the building had been certified as compliant with applicable fire safety regulations, in particular relating to the way in which some of the internal walls been constructed.
- The information provided to the Inquiry about the matter was very limited and often accompanied by reassurances that the issue was likely to be able to be resolved simply by the provision by the landlord of evidence relating to the way in which the hearings suite and neighbouring office (now occupied by the Inquiry) had been configured. It was usually provided orally and not in written form. It was almost always provided by the sponsor team, who were not the individuals within the Scottish Government with the best or closest acquaintance with the issues or attempts being made to resolve it. Only on occasion and in the initial stages of the issues emerging were those individuals involved. Reasonable requests for further information issued by the Secretary to the Inquiry have gone unanswered. It was not until February 2026 that it became apparent to the Chair that the issues with the hearings suite posed a real threat to the section 1 hearings being able to be held as had been planned.

- In light of these issues, the Chair communicated what he was aware of about the difficulties with the hearings suite on 6th March 2026 and invited their comment on the proposal to hold virtual hearings in the scheduled slot, with the hearings being limited in scope in light of the limited access which could be accommodated.
- On 11th March 2026, the Chair issued a public statement announcing that because of the way the Inquiry was constrained to use the building, the Inquiry required to hold its section 1 hearings virtually and that a more limited set of hearings would be held to balance the need to make progress with the limitations that virtual hearings would inevitably entail.⁴ The importance of attendance by core participants was specially recognised in the decision to defer part of the hearings until a later date. It was made clear that the situation was outwith the Inquiry's control.
- On 12th March 2026, three MSPs wrote to the Chair expressing upset on behalf of some of their constituents and seeking an explanation for the announcement he had made.⁵ It should be noted that in this letter the MSPs had assumed that the Chair had taken a positive decision to exclude patients from the hearings. This was a matter over which the Chair, in fact, had no control.
- On 18th March 2026, the Chair replied to the MSPs setting out the true position.⁶ In particular, he made clear that there was a safety issue with the hearings suite and that he had been advised (through the Inquiry team) by representatives of the Scottish Ministers in their capacity as tenants of the property that he should not bring members of the public into the hearing suite due to that safety issue. He undertook to re-assess the situation in light of the representations that they had made on behalf of their constituents.
- On the same date, the Chair wrote to Core participants to explain that the only alternative to virtual hearings would be to postpone the planned Section 1 hearings until a later date and seeking their views on these alternatives. He did so in light of the Inquiry's ongoing commitment to listening to core participants, co-operation with

⁴ <https://www.eljamelinquiry.scot/news/inquiry-plans-virtual-hearings-april-and-may>

⁵ <https://www.eljamelinquiry.scot/sites/default/files/2026-03/MSPs%20Letter%20to%20Lord%20Weir%20-%2012th%20March%202026.pdf>

⁶ <https://www.eljamelinquiry.scot/key-documents/letter-lord-weir-msps-18th-march-2026>

them, and providing clarity about his decision-making and the reasons for them, in particular in light of the apparent concerns which the situation had caused to patients.

- Having re-considered the matter in light of representations and information he had received, on 23rd March the Chair issued a determination postponing the section 1 hearings in their entirety.⁷
- In that determination, the Chair recognised the need for the Inquiry to set out, as soon as possible, what steps would be taken in light of the postponement of the hearings. The intention to hold the procedural hearing, which would likely also require to be virtual, was announced. In addition, the Chair made clear that he intended to seek a clear explanation from the Scottish Government as to when a hearings venue, be it the current hearings suite or a suitable alternative, could be made available for the evidential hearings of the Inquiry to be held. He also intimated that he intended to instruct the Inquiry team to conduct further investigations into alternative venues, for which the Inquiry would require to enter into separate arrangements to occupy, and which would inevitably take time to achieve. Those steps have now been taken, with the present position out below.

25. The Chair of the Inquiry has consistently stressed the need for a balance to be achieved in the work of the Inquiry between speed and reasonable thoroughness. A considerable amount of planning, work and time had gone into the preparations for the planned section 1 hearings, since the opening statements hearing in November and indeed well before that. The plans had been advertised to core participants, who were reasonably entitled to rely on the hearings proceeding as had been advertised. The Chair was not willing to postpone those planned and advertised hearings unless it was, in his view, absolutely necessary to do so.

26. The following important observations should be understood about the Chair's decision-making process in this regard:

⁷ <https://www.eljamelinquiry.scot/sites/default/files/2026-03/Determination%20by%20the%20Chair%20-%20Section%201%20hearings.pdf>

- (a) As is set out above responsibility for dealing with this matter rests with the Scottish Government in its capacity as tenant of the property. The Scottish Government has been involved in discussions about the issue in that capacity. This is a commercial discussion in which the Chair of the Inquiry has no direct role. His ability to explain what the problem was is and remains limited by that state of affairs and by the extent of the information which has been shared with him about the nature of the problem, whose responsibility it was, who could solve it, what efforts were being made to solve it, what impact that the lack of progress would have on the hearings. As such, the Chair has not been in a position to provide any explanation as to what has been happening, other than that he had been advised that there was a safety issue with the building.
- (b) Contrary to certain assumptions which appear to have been made in public discourse on the matter, the Chair did not make any determination that members of the public, including core participants, should be excluded from the hearings. The Chair was advised (and continues to be advised) via the sponsor team that the hearings room is not currently certified as safe for members of the public to attend. Suggestions that the Chair would ever have chosen to exclude core participants from attendance at the Inquiry's public hearings are factually unfounded.
- (c) Safety of the Inquiry's core participants was and always will be a core consideration in the Inquiry's trauma-informed strategy.
- (d) It was never part of the Inquiry's planning that any advantage would be afforded to any group. It was permitted to have the witnesses themselves attend the hearings suite for the time needed for their evidence to be given. As part of their legal right to do so, they would have been permitted to have their lawyers attend the hearings with them, which would also have been permissible based on advice received. These lawyers would have been attending not as CP representatives but as the representatives of the witnesses. Their attendance would have been only what was strictly necessary to perform that function.

- (e) As with the forthcoming procedural hearing, the Chair would always have insisted on mechanisms being put in place to enable proper participation in any remote hearings by the Inquiry's core participants.
- (f) Suggestions ventilated publicly or with the Inquiry about the possibility of arranging an alternative venue were not feasible. In the timescales available, despite considerable efforts by the Inquiry team to seek an alternative venue, no suitably assessed and equipped venue could have been obtained. The location, securing, fitting out and use of a space for a public inquiry business is a complex, time consuming process.⁸ The premises need to be able to accommodate the Inquiry team, its participants, witnesses, RLRs, members of the public, the press and numerous contractors who need to be able to provide their services to the Inquiry for the hearings to function properly. Assumptions that premises used by other Scottish Government sponsored public inquiries could be made available to this Inquiry are inaccurate. In fact, no alternatives were proposed by the Scottish Government at all.
- (g) Core participants were consulted about their preferred option for the hearings. The views of those who responded were taken into account by the Chair in reaching his ultimate decision. Though no submission about the preferred approach to the hearings was received from Levy & McRae on behalf of its core participant clients, the Inquiry took account of the views of some of them expressed via the media, social media and elected representatives who contacted the Inquiry to express their constituents' views.

27. It remains an extremely important part of the Inquiry's approach that parties with an interest in its work should be able to attend and participate fully in the Inquiry's work and its hearings, in particular core participants, in accordance with the Inquiry's published procedures. That is why (a) the section 1 hearings were postponed by the Chair, after alternative means of holding the hearings were investigated (b) the procedural hearing has been convened and (c) the process involved in this hearing has

⁸ Information available from another Scottish inquiry was that it took around 18 months to secure suitable premises for its hearings; the process of the Scottish Government procuring an office space for this Inquiry (a far less complex exercise than obtaining a hearings suite) took around a year

been set up to try to maximise information being shared and participation being facilitated.

The current position

28. As is set out above the Chair had sought a written explanation of the position with the hearings suite and other matters in February 2026 but had not received a response. He had also sought a meeting with the sponsor team at that time, which had not been forthcoming. Therefore, after the enforced postponement of the section 1 hearings, he renewed his request for a meeting on the matters that had been raised in that correspondence, including relating to the need to re-arrange the Inquiry's hearings as soon as possible. Communication between the sponsor team and the Inquiry in connection with that meeting led to the revelation that the building had recently been sold, which appeared to the Inquiry team to present a potential further hurdle in the resolution of the hearings suite issue. A meeting was eventually secured and attended by the Chair and the sponsor team on 16th April 2026.
29. Various issues were discussed at the meeting relating to the support provided by the sponsor team to the Inquiry – see below – including the pressing issue of the availability of the hearings suite or an alternative for the Inquiry's evidential hearings. At the meeting, no resolution to the buildings issues was communicated and the sponsor team committed to a final response on the matters under discussion by 23rd April. The Chair made clear that if a resolution was not found to the impasse before the procedural hearing, then an update would be given to core participants (in the form of this Note) and that a legal representative should be instructed on behalf of the Cabinet Secretary/ sponsor team to explain the situation publicly.
30. The Inquiry team has continued to chase the Scottish Government for a meaningful response and resolution of these issues. The sponsor team informed the Inquiry team that a positive update on progress towards resolution of the issues with the hearings

suite would be made available on 5th May. In fact, the sponsor team intimated that it had not received the expected update in writing from the property team within Scottish Government on that date, as had been expected. It was explained by the sponsor team that it had been expected that the Scottish Government property team's update to them would be positive in that the parties involved in the building dispute were now in agreement on what works need to be done to address the safety issue. It had been the Inquiry's understanding that there remained a possibility that the issue could be addressed to the Council's satisfaction without the delay and interruption which construction works would necessarily entail.

31. While this appears to represent a small step forward, it does not constitute the assurance which the Inquiry and its participants need that the hearings suite will be made available for the hearings slot in September. It provides no detail about the works which have been agreed, who will undertake them, who will fund them, how long they will take, what interruption (if any) there will be to the work of the Inquiry, and ultimately that these will resolve the safety issue. In short, this is unacceptable to the Inquiry. No alternatives have been proposed for the Inquiry's consideration.

32. The Inquiry's plans for the hearings slots available in September and December 2026 are set out below. The Inquiry wishes to use the hearings suite, as had been agreed, or a suitable alternative in order to be able to deliver hearings in sections 1 and 2 of its evidential plan. The team is working hard to seek to achieve meaningful and productive hearings at those times in the way that the hearings had originally been intended to be delivered, with the opportunity for those to wish to attend to do so. The Inquiry's Core participants reasonably expect to know what can be provided for those hearings to happen at that time and in that way. No clear picture has emerged from discussions with the sponsor team as to what it intends do so to enable that expectation to be met. Representatives of the Cabinet Secretary in his capacity as the sponsor of the Inquiry are called upon to provide urgent clarification on the position.

33. Issues which the Inquiry has experienced and continues to experience with recruitment of staff and the management agreement are mentioned elsewhere in this Note and responses called for. One issue which the Inquiry team considers merits public ventilation relates to the provision to the Chair of the Inquiry of confidentiality undertakings.
34. As core participants are aware, the Chair has pronounced the First Order of the Inquiry, which restricts the uses which they, their RLRs and others can make of information which is made available to them to facilitate their participation in the Inquiry. The Order imposes specific rules on how organisations which come into possession of such information can use it. In order to ensure that individuals who have access to such material are aware of these restrictions, the Inquiry also requires that individuals and organisations with whom/ which it comes into contact provide the Chair with confidentiality undertakings indicating a clear understanding and acceptance of the restrictions which come with the privileged of access to information and materials disseminated by the Inquiry. These measures are part of the Inquiry's commitment to preserving the confidentiality of the sensitive material which it recovers and which requires to be disclosed to third parties, including Core participants. It forms part of the bond of trust which underpins the Inquiry's work and active participation in it.
35. Individuals such as the patient or patient representative Core participants and, if desired, one supporter have provided or have agreed to provide such undertakings. The same applied to organisational Core participants and their staff, and to RLRs of Core participants. It is a pre-requisite of receiving and maintaining Core participant status in this inquiry that they do so.⁹ The same applies to Inquiry's own team, whether they are employees of the Scottish Government (as some are), agency staff or otherwise.

⁹ Core Participant Protocol, paras 34-36

36. The Inquiry has duly sought that confidentiality undertakings be signed by (a) those involved in the Inquiry response on behalf of Scottish Government and their RLRs in that capacity as well as (b) those who act on behalf of the Scottish Government in its sponsorship capacity and (c) those who act on behalf of the Scottish Government in its provision of services to the Inquiry, such as the recruitment of staff, the provision of the eRDM system, IT advice etc. This is because information relating to the operation of the Inquiry requires to be shared with all of those individuals, as it does with others and the Chair requires to know that those individuals understand the confidential basis upon which it is so shared. The Inquiry team has experienced considerable difficulty in securing an agreement from the Scottish government that such undertakings, which the Chair considers to be entirely necessary and reasonable be so signed. The Chair clearly reiterated his expectation that confidentiality undertakings would be completed at the meeting which he attended with the sponsor team on 16th April. Again, he was informed that the matter would be resolved by 26th April. It was not. By email dated 7 April 2026, the solicitors acting for the Scottish government as a Core participant intimated to the Inquiry that though confidentiality undertakings had been sought from the individuals who act for the Scottish Government in that capacity that their provision was subject of ongoing discussion. It was anticipated that the matter would be resolved at the meeting which the Chair attended with the sponsor team on 16th April 2026. It was not. Nor has it been since.
37. Both the sponsor team and the RLRs of the Scottish Government in its capacity as a Core participant/ material provider to the Inquiry are called upon to make its position in this regard clear.

Conclusions

38. The Scottish Government sponsor team (and indeed all participants in the work of the Inquiry) should take note of the following important considerations, which is the basis

upon which the Inquiry reasonably expects future dealings with them to be approached:

- a) The subject-matter of the Inquiry is historic, stretching back at over 30 years. Delays in providing administrative support to the Inquiry on the part of government not only undermine the legitimate objectives but also possibly result in important evidence being lost or memories fading.
 - b) Considerable time and effort require to be spent seeking to enlist the assistance of the Scottish Government in its sponsorship capacity. This costs public money and diverts attention away from the important substantive investigations with which the Inquiry is charged. Failings in past support mean that the Inquiry has required to move past its structural phase and into its investigative phase without proper structures. Reliable structures require to be put in place so that the work of the Inquiry can focus on the operational work involved in its investigations.
 - c) In light of this, the Inquiry reasonably expects that request which it makes of government will now be given priority and will be handled swiftly and efficiently. It is also anticipated that the sponsor team will play an active part in ensuring that other agencies of the Scottish Government whose assistance it requires to enlist understand that and act accordingly.
39. The Scottish Government is called upon to indicate its understanding and acceptance of the Inquiry's position and to commit to doing what it reasonably can to support it

3) Trauma-informed policy

40. 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. By that time, the Inquiry had had had little response in this regard though remains committed to trying to get communication right.

41. In order to seek to improve the ways that that the Inquiry engages with those with an interest in its work, including its Core participants, the Inquiry launched a public consultation on the trauma-informed policy which it intends to implement in its work. The consultation paper which contained an outline of the approach which the Inquiry intends to take in this regard. The consultation ran from 21 November 2025 to 12 January 2026. Sixty-five responses were received, mostly through the anonymous online questionnaire, enabling people to participate without barriers linked to identification or re-exposure to trauma. The Inquiry is grateful to all those who took the time to contribute to this important work, the outcomes of which have been worked on by the Inquiry team in recent months.
42. 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. It is important to emphasise that the trauma-informed policy is not considered within the Inquiry as an adjunct or separate matter from the rest of the Inquiry's important work. Though directly overseen by experienced members of the Inquiry's Secretariat staff, Senior Counsel maintains a keen interest in the trauma-informed consultation, the development of the policy and the implantation of it into the day-to-day work of our investigative work. The Chair is regularly updated on these matters, given their importance to our work. The writing of this Note and the holding of a further procedural hearing at this important stage in the work of the Inquiry is part of our commitment to active participation for all but particularly for those whose ability to participate is affected by trauma.
43. As the consultation paper made clear, the policy is and has been 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.

44. It is important to note that, though the Inquiry intends to engage courteously and constructively with all of those with whom it comes into contact that the trauma-informed policy seeks to achieve a specific purpose, for specific people. To approach this policy as if of applied to everyone would be to undermine its very purpose. The Inquiry understands and accept that those who have experienced trauma in the past continue to be affected by it in the present and will be in the future. The scars of trauma affect the traumatised individuals ability to experience the world around them. That includes their ability to experience, participate in and learn from the process of the Inquiry. Therefore, the Inquiry needs to learn about how trauma has affected those individuals and how it affects their ability to interact with our work in order to do all we reasonably can to make participation in our work as beneficial, fulfilling and productive as it can be.
45. It is also important to note that the trauma-informed policy will by its nature, require to be adaptable to circumstances and the particular issues which are faced by those who fall into this group. Defining our goals too rigidly would be self-defeating. However, as being trauma-informed also requires the Inquiry clearly to set its goals and adhere to them, as far as it reasonably can by the exercise of all due diligence, the setting of goals and the clear publication and explanation of them also requires to play a part.
46. The trauma-informed consultation report will be published in early course and will seek to be the next step in this process. In accordance with our principle of listening, the report sets out what we were told by the people who engaged with us. It sets out

to show that we have listened to, respected and understood what we have been told. It also sets out the initial steps we intend to take to seek to address way we were told. One example is our intention imminently to launch a video explaining the process of the Independent Clinical review and its importance to the work of the Inquiry. This project resulted from people telling us that they had struggled to understand the ICR and its role and that information needed to be shared in formats like video, which many people who responded find more accessible to them.

47. Our response is and be based on the four core lessons have emerged from the consultation, namely:

- (a) Complexity and unfamiliar processes can overwhelm participants who have had traumatic experiences.
- (b) Roles and responsibilities require clearer explanation.
- (c) Trauma-informed principles are interconnected. Safety relies on trust; trust relies on collaboration and choice; and all depend on independence and clarity.
- (d) Participants strongly value being heard. Former patients want the Inquiry to understand their experiences without requiring repeated retelling of traumatic events.

Support services

48. Connected to its trauma-informed policy, the Inquiry has now completed its tender process for emotional support from trained counsellors to be made available to those who are participating in the work of the Inquiry. The tender process stipulated that those who wished 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.

49. The tender was won by and will be offered 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. This was the same agency which provided emotional support in connection with our preliminary and opening statement hearings and will do so in connection with the procedural hearing and beyond – it is hoped that this will provide some consistency to those who have availed themselves of the service in the past that the same, trusted charitable service will be offered going forward. The details of this service will involve both emotional support in connection with hearings but also wider support, if required, to assist with participation in the Inquiry. The technical details as to how this support can be accessed, both now and on the future, will be published on the Inquiry’s website.
50. As a further result of the public consultation on our trauma-informed approach, we will also imminently launch on the website a dedicated support page, which will set out the various forms of support which may be available to those who have suffered trauma and indeed others, including emotional support, legal support and support direct from the Inquiry team.
51. The Inquiry’s support mechanisms are not static. The Inquiry is happy and willing to consider support services being altered or expanded upon in response to requests from those who are involved in the Inquiry’s work, which will be reasonably and sympathetically listened to.

The patient-centred approach

52. The Inquiry’s deputy Secretary, Dan Farthing, has continued to take the lead in the Inquiry’s engagement strategy and trauma-informed policy, based on his extensive experience in the charitable sector. Part of the important work of the trauma-

informed initiative has revealed the importance of clarity in our expression of what the Inquiry is but also what it is not or cannot be.

53. In particular, as part of the process of paying attention to the views and concerns of patients, it has become apparent to the Inquiry that certain of the former patients of Mr Eljamel who have a close interest in our work, including some Core participants have described the Inquiry as patient-led. The Inquiry's position on this requires to be clarified. The Chair of this Inquiry has recognised the importance of its subject matter, its investigations and its outcome to former patients of Mr Eljamel. He has committed to the process being patient-centred. It is important to understand, however, that no public inquiry set up under the Inquiries Act 2005 can be patient led. The Inquiry must be led by its Chair, which must be free to take decisions independently. He cannot be led by any party or group though he can, does and will give respect to the views, wishes, belief and aspirations of all of those who participate, in particular those with Core participant status. That golden rule must apply to patients as it does to other bodies and groups, such as the Scottish Government and NHS Tayside.
54. Some aspects of our work will involve consultation and co-operation with patients more than other groups – for example the development of emotional support mechanisms, the Inquiry's trauma-informed approach (due to the particular experiences of traumatised patients and the effect of their trauma on their ability to interact with the work of the Inquiry) and the work of the ICR (which is open to patients and patient representatives but not others to apply to). Others will be open to all, as the Inquiry required to be fair, as well as to be co-operative and inclusive.
55. In addition, the Inquiry's Chair has sought to live up to his commitment to put patients at the centre of our work in exercising his statutory discretion to determine the procedure of the Inquiry¹⁰ by allowing frequent active participation on the part of patients in key aspects of the Inquiry. Such initiatives have included the Inquiry's

¹⁰ 2005 Act, section 17

public consultation on its Terms of Reference, contributions to its provisional List of Issues, the letters of instruction issued to experts (including the ICR experts), the designation of now 161 patients or patient representatives as core participants, the generous full-time funding award made to their legal team, the invitation to the patient CP group to make an opening statement and make suggestions as to lines of inquiry and witnesses who should be called to provide evidence and its consultation on its trauma-informed approach (see above). Patients have contributed significantly to these aspects of our work. The Chair and the Inquiry team look forward to that co-operation continuing as the Inquiry progresses.

4) Progress and planning for the forthcoming hearings this year

Section 1 preparations

56. As Core participants are already aware, 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).

57. A fuller provisional scope for section 1 of the hearings has been released to Core participants and published.¹¹ 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.
58. Given that the Inquiry team, had previously been preparing for section 1 hearings to be held in April and May, significant progress in the gathering of the section 1 evidence has been achieved, though this work continues in light of (a) delays caused by the need for key members of the Inquiry team to become involved in advising on and dealing with issues connected to the public hearings which had been planned and (b) the opportunity now afforded to return to some of the materials to expand on and improve their content in light of the inevitable enforced delay which the postponement of the hearings has caused (explored in more detail below).
59. 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 were issued by the

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

time of the opening statement hearings in November. These included reference to matters relevant to the section 1 scope which arose from the consultation with core participants on the Inquiry's List of Issues. The recipients of these section 1 rule 8 request and the current state of their preparation are as follows:

- 1) NHS Tayside - the requested statement has been worked on by several contributors on behalf of the Board and is lengthy. Some final matters are being completed at the request of the Inquiry and will be ready for signature in early course. The requested documents have been produced. The statement will be analysed by the Inquiry team in preparation for the section 1 hearings and the produced documents are being processed for disclosure to Core participants. The Board also received a draft request for full production of documents beyond the section 1 ambit, relating to the Inquiry's full List of Issues. The terms of that will be discussed, to allow progress to be made with production of that next set of documents for analysis and disclosure in connection with future hearings sections. Such requests are also routinely accompanied by a statement request seeking an explanation of the documents held, the searches undertaken, the reasons for any documents once held not being (including destruction or loss, where applicable) and the location of any requested documents beyond the reach of the recipient.
- 2) The Scottish Ministers – the requested statement has now been completed and signed and requested and section 1 documents produced. The statement is currently being analysed by the Inquiry team in preparation for the section 1 hearings and the produced documents are being processed for disclosure to Core participants. The Scottish Government also received a request for full production of documents beyond section 1 ambit, relating to the Inquiry's full List of Issues. It has been indicated that work on the production of those (currently around 16,000 in number) is being undertaken, for consideration and disclosure in due course.
- 3) University of Dundee – the University has elected to produce two statements from separate individuals in response to the Inquiry's request. Drafts of these statements and produced documents were reviewed by the Inquiry team. It is anticipated it will be completed and signed in short order based on discussions with those involved with

the statement. At previous hearings, the patient group expressed concerns about the lack of engagement by the University in its capacity as a Core participant. It should be noted that this approach to its involvement in that capacity has developed. It is understood that the University has now instructed lawyers and Counsel and that it will be in a position to play a more active role in the Inquiry's work. In any event, the Inquiry has expected full co-operation in its capacity as a material provider, resulting in the progress with the two statements and the production of section 1 documents which are being processed. As with the Scottish Ministers, the University also received a request for full production of documents beyond section 1 ambit, relating to the Inquiry's full List of Issues. It has been indicated that work on the production of those (currently around 3,000 in number) is being undertaken, for consideration and disclosure in due course.

- 4) Healthcare Improvement Scotland – the requested statement has now been completed and signed and requested and section 1 documents produced. The statement is currently being analysed by the Inquiry team in preparation for the section 1 hearings and the produced documents are being processed for disclosure to Core participants. The section 1 rule 8 request sought full production of documents beyond section 1 ambit, relating to the Inquiry's full List of Issues. The produced documents will be analysed for comprehensiveness and a decision will be taken as to whether any further documents need to be produced for later sections.
- 5) NHS Education for Scotland - the requested statement has now been completed and signed and the requested section 1 documents produced. The statement is currently being analysed by the Inquiry team in preparation for the section 1 hearings and the produced documents are being processed for disclosure to Core participants. The section 1 rule 8 request sought full production of documents beyond section 1 ambit, relating to the Inquiry's full List of Issues. The produced documents will be analysed for comprehensiveness and a decision will be taken as to whether any further documents need to be produced for later sections.
- 6) Royal College of Surgeons (England) - the requested statement has now been completed and signed and requested and section 1 documents produced. The statement is currently being analysed by the Inquiry team in preparation for the section 1 hearings and the produced documents are being processed for disclosure to

Core participants. The section 1 rule 8 request sought full production of documents beyond section 1 ambit, relating to the Inquiry's full List of Issues. The produced documents will be analysed for comprehensiveness and a decision will be taken as to whether any further documents need to be produced for later sections.

- 7) Royal College of Surgeons (Edinburgh) - the requested statement has now been completed and signed and requested and section 1 documents produced. The statement is currently being analysed by the Inquiry team in preparation for the section 1 hearings and the produced documents are being processed for disclosure to Core participants. The section 1 rule 8 request sought full production of documents beyond section 1 ambit, relating to the Inquiry's full List of Issues. The produced documents will be analysed for comprehensiveness and a decision will be taken as to whether any further documents need to be produced for later sections.
- 8) NHS Lothian - the requested statement has now been completed and signed and requested and section 1 documents produced. The statement is currently being analysed by the Inquiry team in preparation for the section 1 hearings and the produced documents are being processed for disclosure to Core participants. The section 1 rule 8 request sought full production of documents beyond section 1 ambit, relating to the Inquiry's full List of Issues. The produced documents will be analysed for comprehensiveness and a decision will be taken as to whether any further documents need to be produced for later sections.
- 9) General Medical Council - a first draft of this statement and produced documents were reviewed by the Inquiry team. It is anticipated it will be completed and signed in short order based on discussions with those involved with the statement. The produced documents are being processed for disclosure to Core participants.
- 10) British Medical Association - the requested statement has now been completed and signed and requested and section 1 documents produced. The statement is currently being analysed by the Inquiry team in preparation for the section 1 hearings and the produced documents are being processed for disclosure to Core participants. The section 1 rule 8 request sought full production of documents beyond section 1 ambit, relating to the Inquiry's full List of Issues. The produced documents will be analysed for comprehensiveness and a decision will be taken as to whether any further documents need to be produced for later sections.

- 11) Health and Safety Executive - the requested statement has now been completed and signed and requested and section 1 documents produced. The statement is currently being analysed by the Inquiry team in preparation for the section 1 hearings and the produced documents are being processed for disclosure to Core participants. The section 1 rule 8 request sought full production of documents beyond section 1 ambit, relating to the Inquiry's full List of Issues. The produced documents will be analysed for comprehensiveness and a decision will be taken as to whether any further documents need to be produced for later sections.
- 12) Circle Healthcare - a first draft of this statement and produced documents were reviewed by the Inquiry team. It is anticipated it will be completed and signed in short order based on discussions with those involved with the statement. The produced documents are being processed for disclosure to Core participants.
- 13) Police Scotland - a draft of this statement and produced documents were reviewed by the Inquiry team. It will be returned to those involved in the production of the statement in early course. The documents produced so far are being processed for disclosure to Core participants.
- 14) BBC - a first draft of this statement and produced documents were reviewed by the Inquiry team. It is anticipated it will be completed and signed in short order based on discussions with those involved with the statement. The produced documents are being processed for disclosure to Core participants.
- 15) Liz Smith MSP – a first draft of this statement was reviewed by the Inquiry team. Documents which have been produced include references to numerous patients with whom Liz Smith has spoken over the years and multiple references to personal data. Those mentioned will require to be contacted as interested parties if references to them remain to allow them to apply for anonymity and/ or restriction orders relating to the material. Given these complexities, the draft has been returned to Counsel for further review in order to ascertain how much of the material is strictly necessary and needs to be processed in that way. Further comments will be returned to the witness in early course and the necessary processing will take place thereafter.
- 16) Michael Marra MSP – a first draft of this statement and produced documents were reviewed by the Inquiry team. It is anticipated it will be completed and signed in short

order based on discussions with the witness. The produced documents are being processed for disclosure to Core participants.

17) Willie Rennie MSP – as with the entry above.

60. In addition, further rule 8 requests for statements and documents were sent to the following recipients, in connection with the section 1 workflow:

- 1) The Patient Safety Commissioner for Scotland – a first draft of this statement with a first round of documents are with Inquiry Counsel for review, in accordance with the normal processes of the Inquiry. It will be returned for review with comments on the draft, after which it will be finalised for signature and disclosed to core participants after the documents have been processed by the Inquiry team.
- 2) National Records of Scotland – a first draft of a witness statement and documents are expected to be received in early course.

61. The Inquiry would like to point out that the process which it follows for the completion of witness statements, the production of documents, as well as the arduous process of preparing them for disclosure to Core participants are set out in its various protocols. Many of the requirements in them are imposed by the statutory regime which underpin the Inquiry's work and are not optional, including the way in which documents need to be analysed for restriction purposes. Others are the making of the Inquiry, such as its auditing and cataloguing systems which are all designed to maximise efficiency and consistency and avoid delay, in particular in the later stages of the Inquiry's work. Though the Protocols and the Inquiry's General Restriction Order set out processes which handle these necessary processes as efficiently as possible, it is hoped, those involved in our work should understand that they take time and require care and skill on the part of the Inquiry team to be carried out properly. Material providers and witnesses and their RLRs will be expected to comply with reasonable requests to assist with this process. The Inquiry seeks to set out below

some lessons learned and advance information which is designed to make the process work as well as possible for all concerned.

Experts

62. As set out previously, the Inquiry has issued instructions to qualified experts in particular fields of expertise as experts to the Inquiry. These letters of instruction were finalised late in 2025. The Chair has decided to authorise the instruction of groups of such experts in order that the information and opinions expressed can benefit from a wide range of experience. Those groups have been kept small deliberately, in order to avoid the possibility of their work becoming less efficient and the evidence they produce less useful to the Chair in reaching his conclusions. The Inquiry team has spent a considerable amount of time since the opening statement hearing in November seeking to locate and instruct appropriate experts to perform this important function, as part of the section 1 workflow.
63. The Inquiry's view is that these experts have the appropriate expertise and experience for their particular instruction. They are independent and objective and subject to an overriding duty to assist the Inquiry on matters within their expertise. As was previously planned, the groups will provide written reports and opinions and will give oral evidence at a public hearing. Their work will benefit from the helpful contributions to their instructions suggested by Core participants early in 2026 and from contributions they will be able to make to oral hearings at which the experts will be examined on their evidence by Counsel to the Inquiry.
64. The work of the experts has been in areas which the Inquiry has chosen to take time to review in light of the postponement of the section 1 hearings, as well as the breadth of areas which the expert groups have been asked to address and, in certain areas (as indicated below) the amount of helpful material which they have produced for the Inquiry's consideration and analysis. Progress as at the time of writing is as follows:

65. In order to supplement the significant body of expert neurosurgical evidence which the Inquiry will have available to it from the ICR, the Inquiry has instructed an expert report to be prepared by an expert group of neurosurgeons 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) and training of junior staff (Term of Reference 2). The neurosurgery expert group is formed by the following experts:

- Professor Peter C Whitfield BM (Distinction) PhD FRCS Eng FRCS (SN) FAcadMed FHEA, Honorary Professor and Consultant Neurosurgeon (group lead)
- Mr Robert M Redfern MB BS FRCS Eng, retired Consultant Neurosurgeon
- Mr Crispin Wigfield BSc MB ChB MD MSt PGCert FRCS Eng FRCS (SN) FFMLM, Consultant Neurological and Spinal Surgeon

66. A lengthy draft of their report with exhibits are with Inquiry Counsel for review, in accordance with the normal processes of the Inquiry. The exhibits which have been produced are going through the inquiry's document processing systems. It will be returned for review with comments on the draft, after which it will be finalised for signature and disclosed to core participants after the documents have been processed by the Inquiry team.

67. In addition, the Inquiry has instructed an expert report in the field of medical ethics to be prepared by an expert group on matters 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). The neurosurgery expert group is formed by the following experts:

- Professor Richard Huxtable LLB (Hons), MA, PhD, Professor of Medical Ethics and Law, University of Bristol (group lead)
- Dr Catriona McMillan LLB (Hons), LLM, PhD, Reader in Medical Law and Ethics at the University of Edinburgh, and Deputy Director of the Mason Institute for Medicine, Life Sciences, and the Law
- Professor Angus McNair MB ChB, PhD, FRCS, SFHEA, Professor of Colorectal Surgery, University of Bristol and Honorary Consultant Colorectal Surgeon, North Bristol NHS Trust

68. A lengthy draft of their report with a large number of exhibits are with Inquiry Counsel for review, in accordance with the normal processes of the Inquiry. the exhibits which have been produced are going through the inquiry's document processing systems. It will be returned for review with comments on the draft, after which it will be finalised for signature and disclosed to core participants after the documents have been processed by the Inquiry team.

69. The Inquiry team has prepared a letter of instruction to a healthcare administration group, which covers matters 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 (T 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).

70. The work of that group is less advanced, given that it was not intended that it be led at the hearings slot planned for April and May. A group, including two leading academics in the field have been asked to consider preparatory work for the production of an expert report in response to the instruction.

Lessons

71. The Inquiry seeks to listen to those with whom it engages and learn lessons its experiences. The following are lessons which have been learned from the process to date, in particular the process of preparing for the postponed section 1 hearings, which the Inquiry would ask material providers, witnesses and core participants to bear in mind, going forward:
- a) The Inquiry has produced a large volume of protocols explaining in detail its processes and why they are the way they are. Rule 8 requests also set out a good deal of technical and other information which the recipients of will require to bear in mind and adhere to in the production of their responses. Material providers, witnesses and their RLRs will be expected to have read and understood these documents and to check before submitting materials that they have been compiled with. This will avoid considerable delay and revision.
 - b) If there are issues with the requests which have been issued or the Inquiry's processes the Inquiry has staff available to assist, either in the document management team or the wider legal team or the Secretariat, all of whose contact details are available to respondents. It is better to speak up early in the process of responding if an issue is anticipated so that things can be set on the correct course. Where that has happened, later issues have been avoided. Where it has not, unnecessary delay has been experienced.
 - c) It should be borne in mind by all those who reply (for for that matter the ICR) that the Inquiry's systems provide for the Inquiry being involved in one substantive review of draft statements. Timescales which are allocated provide for that to

happen at a point when it can be of most value to the provision of the best evidence to the Inquiry. The Inquiry therefore expects the first draft of a statement to be a proper draft, for review by the Inquiry legal team. Comments are added for points of clarification and focus and the Inquiry will not tolerate drafts being produced of such a quality that the purpose of the one substantive review is negated.

- d) Referencing using the Inquiry's reference numbers is important for clarity and consistency. Respondents are asked to adhere to the Inquiry's numbering systems or to seek help from the Inquiry team to do so.
- e) The technical systems provided to the Inquiry by the Scottish Government are more cumbersome than the Inquiry would ideally have liked. Respondents and their RLRs should acquaint themselves with them in advance of receiving rule 8 requests/ section 21 notices and ask for technical help from the Inquiry to minimise any resultant delay.
- f) Those producing sensitive information within documents should take care to comply with their data protection obligations to avoid data breaches and the time necessary for the Inquiry to discover them and avoid them occurring again.
- g) As per its Protocols and the relevant law on the matter, the Inquiry expects documents provided to it without redactions. The Inquiry will invite the material provider to propose redactions at the material provider review stage. The Inquiry must be able to decide on what redactions to its materials it sees fit to impose, in order to be able to comply with its obligations under the 2005 Act. If this rule is not observed the fact of it will be disclosed to core participants and will be explored, as necessary, in the Inquiry's hearings. It will be clear when redactions have been imposed other than by the Inquiry. If large material providers would like to ask the Chair to make a blanket restriction order, they are encouraged to do so as early as possible in the process, to avoid this having to be dealt with at the MOP review stage, if possible.
- h) Timescales have been variably adhered to. They will be expected to be in future. Though at times they may seem tight, but they are all assessed for reasonableness in advance and are necessary for the completion of the various stages of review and processing which the Inquiry requires to go through to achieve suitable disclosure and publication. In future the Inquiry will endeavour to provide MPs,

witnesses and their RLRs with better advance notice of when they are likely to receive requests and the likely timescales in order to allow recipients to organise themselves to respond within the allocated timescales. Respondents will be expected to arrange themselves administratively in advance of receiving a request or notice to be able to do so. Equally, the Solicitor to the Inquiry is keen to meet with the RLRs of major material providers to discuss their experiences and to improve ways of doing things going forward. This has not always proven possible due to pressure of business and recruitment issues in the past and needs to be worked on by the Inquiry.

- i) Material providers should be aware that they will be expected to identify documents they may be asked to produce and which relate to the Inquiry's List of Issues in advance. They will, in all requests, be asked to explain in sworn statements the methods used to find them. They will be expected to complete inventories to inform the Inquiry of how that was done and to identify which documents relate to which part of the request/ the Inquiry's work. This is done as the provider is best placed to explain how they found what they have produced and why it is being produced.

- 72. These lessons and the expectations which have been spelt out above resulting from them have been and continue to be fed into the Inquiry's planning for its future evidential hearings.

Future hearings dates

- 73. 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. As far as the planning of future hearings is concerned, the position remains subject to the requests made of the Scottish Government and set out in detail above about the availability of the hearings suite at Waverley Gate in Edinburgh for the time slots which

we have reserved as part of our venue sharing arrangements with the Scottish Covid-19 Inquiry or considered proposals about suitable alternatives being made to the Inquiry Chair.

74. The windows available to this Inquiry for its hearings this year are in 4 weeks from 7th September 2026 and 3 weeks from 30th November 2026. Significant preparation is required to make these hearings work. Detailed hearings preparations timetables have been created by Senior Counsel to the Inquiry. They require targets dates for hearings to work towards. The Inquiry is working towards delivering hearings for (a) the evidential hearings in section 1 in the September window and (b) section 2 hearings in the December 2026 window (see below).
75. The Inquiry's investigations have given rise to a good deal of material being recovered for the purposes of its section 1 hearings. Though interlocutory in nature the statements and materials received from material providers constitute a complex body of evidence for analysis and considerations at the section 1 hearings. Though the Inquiry would have preferred not to have been put in this position and to have proceeded with the section 1 hearings as planned, the Inquiry team has taken the opportunity to take advantage of the extra time afforded to them. The team is taking more time to go over the statements and materials to try to improve their quality and comprehensiveness. That is an ongoing process. The section 1 timetable has been carefully reviewed in light of the evidence which has been received. This has given rise to the opportunity to re-assess of the number of days which could usefully be used for the section 1 hearings, which are now planned to take place in the 4-week slot booked from 7th September 2026 (subject to resolution by the Scottish Government of the hearings space issues).
76. In order further to try to derive some benefit from the enforced delay, the Inquiry has assessed the experience of preparing for the section 1, as set out above. The Inquiry will, therefore, attempt to provide disclosure of section 1 materials to core participants (a) on a rolling basis and (b) further in advance of the section 1 hearings

than would have been possible, had they proceeded in the April/ May slot. It is hoped that this will improve the ability of our Core participants to participate meaningfully, in the ways set out in the Inquiry's Public hearings Protocol.

77. The hearing preparation timetable for section 1 hearings in September involves the following significant target of 22 June 2026 as a date by which it is hoped that the bulk of the section 1 statements and materials will be disclosed to Core participants. Core participants are reminded that disclosure of the materials is subject to strict obligations of confidentiality and the provisions of the First order. Neither the fact of their disclosure nor their content can be revealed beyond those who have signed confidentiality undertakings. RLRs will be expected to remind their clients of these important restrictions and the consequences of any non-compliance.
78. 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.¹² It is intended to send a draft witness list/ timetable indicating those witnesses whom the Inquiry intend to call to Core participants in the week commencing 6th July 2026 with a two week deadline to provide observations and to send final witness list to in the week commencing 27 July 2026.

Section 2

79. 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.

¹² Public hearings Protocol, from paras 14 et seq

80. 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).
81. 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).
82. It had been the Chair's intention to seek to preserve the September diet for section 2 evidence, as it had previously been our intention to do. However, the Inquiry received no representations about the possibility of any change to the timing of section 2 evidence being led. 3 weeks has thus been allocated for section 2 evidence in the December slot. There will be no bar to more section 2 evidence being recovered or led, if necessary. This will be assessed in light of the evidence which is gathered and explored and the Inquiry's publicised approach to statements and patient evidence, including that provided to or by the ICR, which will all still be assisted in, processed, analysed, considered in Chair's final reckoning.
83. The Inquiry has also drawn up a detailed timetable for the production to it of evidence relevant to section 2, details of which will be revealed to those concerned in due course. It also has a dedicated legal team working on section 2 (including the ICR).

84. At both the preliminary hearing in September 2025 and the opening statements hearing in November, the Inquiry intimated its position 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 Inquiry has clearly stated that it expects that work to have been underway over that period, in order that Core participants groups can properly articulate their positions, both evidentially and procedurally when called upon to do so. Where funding has been deemed appropriate, generous funding awards have been made available for that work to be undertaken.
85. The Inquiry relies on its participants to participate meaningfully. When it calls upon them to do it, it expects that work will have been done to allow them to be responded to within the inquiry's reasonable timetables. Understanding the positions and priorities in connection with the matters listed in the Inquiry's List of Issues ought to have been achieved by now.
86. In light of the need to press on with the Inquiry's own investigation of matter falling within its section 2 remit (including the drafting of rule 8 requests for patients the production of section 2 statements in accordance with internal plans set out by Senior Counsel to the Inquiry), the Inquiry has sought representations from the Levy & McRae group as to witnesses who should receive such requests and why to supplement the Inquiry's own investigations in that regard. The Inquiry looks forward to receiving and considering those submissions in early course.

Funding for the evidential phases of the Inquiry's work

87. The Solicitor to the Inquiry will invite core participants who wish to receive funding for their legal representation to support their participation in the work of the Inquiry to apply for a further funding award for the Inquiry's evidential phase. This has not proven necessary before this point due to the postponement of the section 1 hearings. It is likely that this funding award will cover the work associated with sections 1 and 2 of the Inquiry's evidential plan.
88. Requests for written statements from individuals (including patients) will be part of the next phase of the Inquiry's work. Some of those who are invited to provide written statements will be called upon to give oral evidence at the Inquiry's hearings in section 2. 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.

5) The Independent Clinical Review ("ICR")

89. 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.
90. 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 this procedural hearing.
91. The two processes have continued to work together to achieve their mutual aims in the period since the opening statements hearing. At that time, Senior Counsel to the Inquiry set out the intention that the finalised reports in the 50 priority cases which

the Inquiry should be with the Inquiry by mid-March 2026 and set out a timetable for that aim to be achieved. No party demurred from that proposition as a realistic goal.

92. The following is an indication of the progress that has been made. It is less than both the Inquiry and the ICR had anticipated by this stage and will need to be rectified:

(a) The ICR has engaged the services of a large number of neurosurgical experts. Their CVs and guidance materials made available to them by the ICR have been recovered by the Inquiry and will be disclosed and published in due course. Training in the ICR process and its expectations of its experts has been provided by Professor Wigmore and in which the Inquiry team participated.

(b) The progress of the applicant statements has not achieved the targets set, either in terms of timing or quality. The support mechanisms in place were designed to assist applicant and avoid this outcome. Some from the top 50 cases (many of which are in the Levy & McRae group) remain outstanding in draft. Almost all of the cases which have received the review stage have been referral cases. It has become apparent that the legal support being provided by Levy & McRae appears to have been a source of delay which their representatives are called upon to explain. 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. That said, many statements which have been reviewed by the Inquiry have been detailed and of considerable evidential interest.

(c) Applicants and their RLRs are reminded (i) that review by the Inquiry occurs only once, and for it to be of value first drafts need to be in a proposed final form as multiple reviews will not occur, and (ii) medical records are not necessary for the completion of applicant statement though they can be referred to or extracts produced, if they are available due to earlier recovery of them.

(d) A number of issues have been encountered by the Inquiry in its review of the initial batch of draft neurosurgical reviews. Helpful discussions with the ICR team have resulted in steps being put in place to seek to rectify these and avoid them in future

reviews, including the production of a standard form template for the reports, as is produced for the applicant statements. It is anticipated that these steps will now assist in allowing matters to progress more smoothly.

(e) The Inquiry has sent an additional list of priority cases to the ICR to enable its work to progress. A total of 111 cases are now being processed. It is hoped and expected that these will be reviewed in time for the evidence associated with them (including an interim report by Professor Wigmore) will be processed and made available for the section 2 hearings in December. The Inquiry have broadly agreed with the ICR that the following targets will be set:

- Instruction to completion of first draft of applicant statement – 4 weeks. During this period, the Inquiry can also be recovering medical records, paginating them, bundling them and assessing them for data breaches, if needed.
- Period for Inquiry input and completion of applicant statement – 2 weeks. The medical records process above can continue for this period.
- Instruction to completion of first draft of neurosurgical review – 4 weeks – by which time the records need to be available. It may be that this could be done more quickly in some cases.
- Period for Inquiry input and completion of applicant statement – 2 weeks
- Total time from issue of applicant statement to completion of neurosurgical report – 3 months
- 23 weeks before hearing - w/c 22 June 2026 – date for top 50 ICR case reports to be completed
- 14 weeks before section 2 hearings - w/c 24 August 2026 - date for batch 2 (circa 71) ICR case reports to be completed
- Section 2 hearings – 3 weeks from 30th November 2026

6) Inquiry staffing update

93. At the time of the opening statements hearing in November, the position was that the Inquiry continued to engage in active recruitment processes for a number of other positions in its team. As has been explained, 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 recruitment processes, which do not work at speed. However, Core participants should be aware that processes have been directed by the Secretary of the Inquiry for the recruitment of further staff to important Inquiry positions, as the Inquiry has moved from its preliminary to its evidential phase. The control which she has been able to exercise over recruitment has been more satisfactory, though the Inquiry reasonably expects its sponsor team to ensure that government agencies accord priority to the Inquiry's recruitment. There are still spaces in key positions which need to be filled with the full co-operation of the government as soon as possible.
94. The recruitment which has been successfully achieved, though not without considerable and, in the Inquiry's view, avoidable delay, includes the following:
- (a) Arlene Speirs has been appointed as the deputy Solicitor to the Inquiry. Arlene has lengthy experience as a solicitor in private practice, including having represented core participant groups in another public inquiry. Arlene has been and continued to be heavily involved in the preparation for our section 1 hearings. Her deputy Solicitor duties in due course will involve the legal side of our engagement strategy, including tracing and engaging with potential inquiry witnesses for our later sections.
 - (b) Two assistant solicitors have also joined the team, namely Alexander Heeps and Linda McClymont. Both come with extensive experience of working as solicitors in the private sector. They will be undertaking the roles of sectional solicitor on sections 1 and 2 respectively, which will mean they have responsibility for the gathering and completion of Inquiry statements and documents for those hearings.

- (c) A team of paralegals who undertake the complex document processing has been gradually engaged by the Inquiry. that team is led by Ayesha Abassi, an experienced lead paralegal with extensive UK public inquiry experience, including, most recently, working on the complex UK Covid Inquiry.
- (d) Tracy Millar has been appointed as the Inquiry’s witness liaison manager. Like Dan Farthing, her experience is in the charitable sector. She will be responsible for the organisation of and liaison with Inquiry witnesses at our hearings. She has been engaged in the trauma-informed consultation and reporting in recent weeks, an area in which she has considerable experience.
- (e) The Counsel team has been joined by first junior Counsel Heather Arlidge of the English Bar and Ross Crawford of the Scottish Bar. Heather is an experienced English barrister with a long track record in clinical negligence and UK public inquiry work, involving acting both for CPs (Infected Blood inquiry) and as part of the Inquiry team (UK Covid Inquiry and the Undercover Policing Inquiry). Ross too has experience of acting for CPs at a Scottish public inquiry and of personal injury and clinical negligence litigation work, as a solicitor and as an advocate.

- 95. All of these new arrivals are already contributing positively and effectively to our work are very welcome additions to the team.

7) Warning letter protocol

- 96. The Inquiry’s Terms of Reference include the provision at Explanatory Note (c) that:

“The Inquiry is empowered to make findings about matters falling within its Terms of Reference, including (where appropriate) the identification of things which fell below

a reasonable standard, why they did as well as who or what organisations were responsible”

This will inevitably include the requirement to consider criticisms being made of individuals and organisations about what they did or did not do in connection with matters falling within the Inquiry’s remit.

97. The rules associated with public inquiries require notice to be given to those whom the Inquiry intends to criticise in its report(s) or where criticism can be inferred evidence which has been received by an Inquiry. These provisions have proven cumbersome and cause delay in previous public inquiries, though considerations of fairness require that they be followed, albeit a degree of flexibility is accorded to the Chair of a public inquiry as to how he goes about doing the practical implementation of the rules.
98. In order that there is clarity for all concerned about the Chair of this Inquiry intends to go about this important part of the work of a public inquiry, the Chair has set out his proposed approach in a new Warning Letter protocol which has been or will immensely be uploaded to the inquiry’s website for consideration of interested parties, including Core participants. The approach which has been adopted involved intimation of potential criticisms as much as possible as the Inquiry goes along, to seek to allow fair response to it/ them and to avoid delay at the end of the process. Thus, a flexible approach to the sue of warning letter, oral hearings and rule 8 requests/ section 21 notices is advocated so that a tailored approach to any given circumstances can be adopted as we go along. Such an approach will also allow regard to be given to appropriate publication of responses to potential criticism, in the interests of transparency, and insofar as permitted by the Rules.
99. The attention of Core participants is drawn, in particular, to the strict rules of confidentiality which are imposed by the rules on the recipients of warning letters

which apply in addition to the other confidentiality provisions incorporated into the Inquiry's procedures. Recipients of warning letters and their RLRs are expected to understand and comply strictly with these provisions.

8) NHST legal support issue

100. 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.
101. As was the Inquiry's stated intention at the preliminary hearing, the Inquiry followed this matter up with the representatives of NHS Tayside. They have clarified and updated NHS Tayside's position in a written submission, which was sent to core participants along with the CTI Note circulated in advance of the opening statements hearing.
102. The Note produced in advance of the November hearing clarified 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 Inquiry raised a number of outstanding issues which the RLRs of NHS Tayside undertook to address. This was partly done in NHS Tayside's response to the CTI Note (which had not been seen by other RLRs of Core participants at the time of the opening statements hearing) and a further Note dated 3rd December 2025, a copy of which is circulated with this Note. The Inquiry team's view is that the position in this regard remains confused. Counsel to the Inquiry and for the Board have exchanged correspondence on the subject, about which advice has been tendered to the Chair.

The Inquiry has been made aware of understandable concerns amongst NHS staff as to what is to be provided. The RLRs of NHS Tayside are asked to address the points below in their written submission for the hearing and at it, if so advised. Other Core participants may also wish to express their views. Some concern about the proposals was expressed by senior Counsel for the patient group at previous hearings, though it is accepted that when doing so, she did not have all relevant information available to her, including the information contained in the Board's response to the CTI Note in November, which is now available on the Inquiry's website.

103. The current position and the issues to be addressed appear to the Inquiry team to be as follows:

- (a) The Inquiry's interpretation of the written materials is that it wishes to make an application to the Chair for its endorsement of their plans. The Board is requested to clarify that that is indeed their position.
- (b) NHS Tayside's legal team for this Inquiry are instructed by and represent NHS Tayside. In this Inquiry, NHS Tayside does not represent individual former or current employees (para 3 of the NHST Note dated 4 September 2025). The Board is called upon to explain why, when NHS Tayside is not a lawyer, any question as to its representation of the current and former employees arises. They are also called upon to explain why, in cases where individual witnesses who are current or former employees of the Board and where there is no conflict of interest, the NHS Tayside legal team is not instructed to represent the interests of those current or former employees.
- (c) NHS Tayside and its legal team will provide assistance in the preparation of corporate witness statements (para 4 of the NHST Note dated 4 September 2025). The Board is called upon to explain how the support and representation provided for in this regard differs from the representation which they say will not be provided, when that assistance also involves assisting employees of the Board, who are the agent by whom it interacts with the rest of the world.
- (d) The Inquiry understands that the nature of the legal support which will be provided will be limited to administrative support provided by a lawyer. It is the

Inquiry's position that any solicitor providing such a service would require to define with care not only what services are being provided but which would normally be provided by a solicitor, and which will not be, as a matter of professional obligation. The Board is called upon to define what services will be provided and which of that nature will not be, as part of the legal support provision.

- (e) The Inquiry is unclear for whom the senior solicitor whom they have now identified will provide the legal support will be acting. It has been clarified that the services of that individual will be funded by the Board (which, we understand, will remain separate from the senior solicitor and his/her work, to maintain an appropriate separation) but interprets the position as being one where the senior solicitor must be acting for the individuals, though in a limited way. It is unclear how, if the senior solicitor acts for the Board how the proposals achieve the independence which is sought to be achieved.
- (f) The Board is asked to clarify the role, services and affiliation of the individual or team who will undertake the conflict check and explain why this is necessary, given the separation between the senior solicitor and the Board/ its legal team.
- (g) The Board is asked to confirm the Inquiry's understanding that the RLRs of the Board will have no role in providing any support to current or former employees who require support.
- (h) The Inquiry seeks clarity from the Board on what services will be provided and by whom as part of the proposed support provisions with regard to:

- The identification of the location of potential witnesses who are current or former employees of the Board
- The identification of what interests of individuals the Board represents and what it does not
- Service of documents on the Board or any representative of it which are for current or former employees
- The maintenance of confidentiality from the Board of matters discussed within the support mechanisms

- How the practical or legal support will be provided without breaching the Inquiry's rules about the use of documents for the purposes for which they were shared by the Inquiry
- Support which is being offered in relation to warning letters

(i) The written materials make various references to the possibility that alternative sources of legal representation may be available to the individuals concerned where a conflict is identified. The Board is asked to clarify:

- What it knows of medical defence organisations' position in this regard in connection with this Inquiry;
- What broad provision it expects to recommend to individuals who are not doctors, including nurses, executives and other administrative staff of the Board; and
- How funding for this service will be provided.

104. The Inquiry is keen that this matter should be resolved as soon as possible. This is also the position of NHS Tayside, as the Inquiry understands it. Those attending the procedural hearing are urged to seek to use this opportunity to do so.

9) Next steps relating to the procedural hearing

105. Core participants and other recipients of this Note (or parts of it) 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 Tuesday 12th May 2026. Any such written submission should be sent through recognised legal representatives to legal@eljamelinquiry.scot.

106. The nature of the matters raised in this Note means that the Inquiry team considers it necessary for core participants to have sight of any submissions made by other core participants in advance of the hearing, to allow consideration to be given to responding to matter raised by others orally at the hearing. Therefore, 12 noon on that day, the Inquiry will circulate copies of the written submissions 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 procedural hearing.
107. Any written submissions submitted by 10 am on Tuesday 10th May 2026 and any oral submission delivered at the hearing 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 written and oral submissions, the Inquiry would urge Core participants and their Recognised Legal Representatives to focus on matters of immediate concern/ importance to their clients, in particular matter specifically address to them in this Note.
108. In advance of the hearing, the Inquiry will intimate a formal agenda (which will be published on the Inquiry's website) setting out the matters to be covered at the 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.
109. 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.

110. As was set out in the CTI Note for the preliminary and opening statements hearings, 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.¹³ The Inquiry expects those involved in the work associated with the hearing to interact with others with courtesy and respect, as they would expect to be treated themselves. The Inquiry is confident that those who are involved in the work of the procedural hearing will respect this approach.

Counsel to the Inquiry

Jamie Dawson KC

7th May 2026

¹³ See Inquiry Statement on Protocols and Principles, para 14(c)