Evidential section 2 – Outline of Scope

Purpose of this document

1. The Chair of the Inquiry is keen to set out his planning and thinking behind the organisation of the Inquiry's evidential sections and, by extension, its evidential hearings, in the interests of clarity, consistently with the Inquiry's trauma-informed approach and to allow those with an interest in the work of the Inquiry (in particular those who are designated as core participants) to have a broad overview of the Inquiry's direction of travel. This outline of the scope of evidential section 2 is designed to achieve these aims and to allow those who will be involved in the work of the Inquiry (including, but not limited to core participants, potential witnesses and their legal representatives) to plan accordingly.

2. In accordance with the approach to the investigation of its Terms of Reference ("ToRs") set out in its Public Hearings Protocol , the Inquiry intends to structure its investigation into 6 evidential sections. The investigations and evidential hearings in each section will be distinct. The broad outline of section 2 of the Inquiry's investigation is set out at paragraph 19(a) of the Public Hearings Protocol.

3. This document sets out the provisional outline of the scope of the investigations and hearings which will form part of section 2. The outline is provisional and may require to be updated from time to time as the Inquiry's investigations progress.

4. The Inquiry has undertaken, is undertaking or will undertake investigations into the following areas within its section 2 workflow. The extent to which these areas will require to be canvassed and examined at the section 2 evidential hearings will be determined as the evidence uncovered in the Inquiry's investigations emerges further. A more detailed list of issues which will be covered in section 2 are to be found amongst the issues listed in the Inquiry's List of Issues. The Inquiry's approach to planning for the section 2 evidential hearings will be as set out in its Public Hearings Protocol.

Provisional outline of scope of section 2

General

5. Evidence in section 2 of the Inquiry's sectional plan will be gathered and heard which focuses on the experiences of former patients of Mr Eljamel or, where appropriate, their personal representatives. It will seek to cover the broad clinical experiences of the NHS patients of Mr Eljamel, as well as their factual evidence relating to systems with which the Inquiry is concerned which could have played a part in improving or preventing those clinical experiences.

6. In seeking evidence in section 2 and undertaking planning for section 2 hearings, the Inquiry has had particular regard to explanatory note (d) to the Inquiry's Terms of Reference, which provides that:

"The Inquiry will provide an opportunity for public acknowledgement of the suffering of former patients of Mr Eljamel and a forum for public consideration of evidence of their experiences"

7. The Inquiry has also had regard to the approach to evidence and witness statements which it has set out and that it will adopt, in particular that:

(a) In the normal course, finalised ICR applicant statements will be evidence in the Inquiry, as well as used by the ICR's expert neurosurgeons in the compilation of their case reviews. As such, all applicants to the ICR who consent to their applicant statements being shared with the Inquiry will also be submitting important evidence to the Inquiry. These applicant statements will be considered as part of the evidence available to the Inquiry in discharging its Terms of Reference.[1]

(b) In accordance with its trauma-informed approach, the Inquiry wishes to minimise the number of times such individuals will have to provide written statements containing evidence of their experiences.[2]

(c) In light of the broadly systemic remit of the Inquiry's investigation, it is considered likely that for many former patients or their representatives the applicant statement to the ICR about their clinical experience is likely to provide sufficient evidence for the Inquiry's purposes. It is hoped that for certain of Mr Eljamel's patients or their relatives/ representatives, their experiences will have been adequately set out in those applicant statements and that it will not be necessary for the Inquiry to seek further statements from them, the content of their applicant statements already being evidence in the Inquiry.[3]

(d) Given the Inquiry's systemic remit, it will not be feasible or necessary for the Inquiry to examine the individual cases of all former patients of Mr Eljamel or even all of those who have suffered harm. The Inquiry will seek to draw conclusions from their collective experiences, as reflected in the applicant statements. This is not to undermine the importance of those cases or any individual's experience. It is a recognition of the Inquiry's systemic remit and the obligation the Inquiry has to discharge its Terms of Reference in an efficient manner, in the interests of the public as a whole.[4]

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[1] Protocol on Approach to Evidence and Written Statements, para 15
[2] Protocol on Approach to Evidence and Written Statements, para 19
[3] Protocol on Approach to Evidence and Written Statements, para 20
[4] Protocol on Approach to Evidence and Written Statements, para 21

8. Thus, the Inquiry will gather, assimilate and examine evidence which comes to it via the ICR (both from ICR applicants and from the neurosurgical experts whom the ICR has instructed) and additional evidence which it considers it appropriate to seek to achieve these aims within its section 2 workflow.

The aims of section 2 of the Inquiry's evidential plan

9. In section 2, the focus will be on factual evidence from patients and patient representatives about their experiences of their treatment or care, insofar as relevant to the Terms of Reference, as well as expert neurosurgical evidence which emerges from the ICR of relevance to that. References to "the relevant period" mean the period from 1995 to 2015, unless the context requires otherwise.

10. As with section 1, evidence which will be sought, gathered and investigated will be in a number of areas which are designed to provide evidential context to the hearings sections to follow. Subsequent evidential sections of the Inquiry's investigations will be designed to elicit more detailed evidence and facilitate a more detailed examination of the Inquiry's Terms of Reference, arising, in part, from evidence which has emerged from section 2 (and for that matter section 1).

11. It is important to observe that section 2 hearings will take place early in the Inquiry's planning so that evidence which emerges from them and the investigations underpinning them is given a prominent place in shaping what comes next, consistent with the Chair's commitment to making this a patient-centred Inquiry and to going where the evidence leads him. However, as evidence from the ICR will continue to become evidence in the Inquiry into the period beyond the end of the section 2 hearings, the Inquiry's section 2 workflow will continue beyond those hearings, in order to allow the Inquiry to continue to support the work of the ICR and to learn from its evidential output. Depending on what that output shows, the Inquiry would be prepared to consider gathering further evidence from patients or patient

representatives at later stages in its progress, if that proves to be desirable to the Chair, in the fulfilment of his Terms of Reference. In that sense, section 2 is allocated that number because of where its work starts, as opposed to where its work will necessarily end.

The scope of the evidence which will be gathered, examined and assimilated in section 2

Clinical experiences

12. The Inquiry will seek to examine evidence of the key clinical themes of sub-standard practice in the treatment and care of Mr Eljamel's patients or, where appropriate, their representatives, as well as their experiences of dealing with Mr Eljamel in his professional practice. As per the Inquiry's processes, it is anticipated that this evidence will emerge, in large part, from ICR applicant statements and exhibits, which will be evidence in the Inquiry, some of which the Inquiry will examine and ventilate at its section 2 public hearings.

13. In addition, it will be a part of its section 2 workflow that the Inquiry will examine evidence from ICR neurosurgical reports and exhibits which set out key findings about sub-standard clinical practice on the part of Mr Eljamel or those working under his supervision from that process.

14. In particular, the Inquiry will seek evidence about and investigate evidence from patients or their representatives and, where available, from expert witnesses instructed by the ICR, about:

(a) Mr Eljamel's commitments to private practice and the role of those commitments in contributing to adverse outcomes for his NHS patients (ToR 2(a));

(b) Mr Eljamel's supervision and training of professional colleagues within the NHS, including any bullying or intimidation of them, and the role of those matters in contributing to adverse outcomes for his NHS patients (ToR 2(b));

(c) Workload pressures within NHS Tayside and the role of those matters in contributing to adverse outcomes for his NHS patients (ToR 2(c));

(d) Mr Eljamel's employment by or appointments within the University of Dundee and the role of those commitments in contributing to adverse outcomes for his NHS patients (ToR 2(d));

(e) Research undertaken by Mr Eljamel on or involving his former patients and the role of any such research in contributing to adverse outcomes for his NHS patients (ToR 2(e)); or

(f) Experiences of lack of candour on the part of Mr Eljamel about sub-standard practice, in particular with his NHS patients or their representatives but also with former professional colleagues, NHS Tayside or relevant regulatory bodies during the period of his employment with NHS Tayside (ToR 7).

Systemic evidence

15. The Inquiry will be keen to seek to identify key individuals within organisations with a role or potential role to play in adverse events which may have occurred in the treatment and care of NHS Tayside from patients of Mr Eljamel (or their representatives) over the relevant period and subsequently, where appropriate, as well as patients' experiences of those individuals, insofar as relevant to the Inquiry's Terms of Reference.

16. The Inquiry anticipates that patients/ patient representatives will also be able to provide evidence in section 2 about systems, in particular in the following systemic

aspects of the Inquiry's Terms of Reference, in which it is anticipated that patients would have had direct factual experience, including:

(a) Complaints and feedback processes within NHS Tayside relating to the patients of Mr Eljamel, as well as the outcomes of those processes (ToR 4 and 5);
(b) Mr Eljamel's period of clinical supervision (ToR 8);
(c) Mr Eljamel's period of suspension (ToR 9);
(d) The processes and findings of the investigations to be looked at under Term of Reference 12, including campaigning and the process of the establishment of a public inquiry;
(e) Experiences of lack of candour on the part of NHS Tayside about sub-standard practice on the part of Mr Eljamel in his NHS practice, in particular with his NHS patients or their representatives but also with relevant regulatory bodies, Scottish Government or the police (ToR 13); or
(f) Document management and retention systems within NHS Tayside affecting the patients of Mr Eljamel (ToR 14).

17. The Inquiry anticipates that patients/ patient representatives may also be able to provide evidence in section 2 about systems with which the Inquiry is concerned but with which they may be expected to have had less direct contact but of which, for example, they may have uncovered evidence, including:

(a) Appointments and inductions covered by ToR 1;
(b) Clinical governance within NHS Tayside in place over the relevant period, including corporate governance, professional governance and whistleblowing as well as corporate and professional knowledge of and engagement with Mr Eljamel (ToR3);
(c) NHS Tayside's knowledge of adverse events concerning Mr Eljamel's private practice and systems designed to obtain and act on that knowledge (ToR 3);

(d) The role of any other bodies which played or could have played a role in the care provided by Mr Eljamel to his former NHS patients, including but not limited to those listed in ToR 6;

(e) The circumstances of Mr Eljamel's resignation from NHS Tayside (ToR 10); or

(f) NHS Tayside's involvement in the removal of Mr Eljamel's name from the GMC medical register (ToR 11).

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