

Witness Name: Caroline Lamb

Statement No: SG-00217

Dated: 05 March 2026

**ELJAMEL INQUIRY WRITTEN STATEMENT OF CAROLINE LAMB, DIRECTOR GENERAL
FOR HEALTH AND SOCIAL CARE, SCOTTISH GOVERNMENT**

I, Caroline Lamb, will say as follows: -

- 1. Please set out your qualifications. If there is more than one contributor to the statement, please set out the qualifications of each, with a description of which part(s) of the statement each one contributed and why.**
- 1.1. The Inquiry Chair has asked that the Scottish Ministers provide a “corporate” statement in relation to the matters relevant to “section 1” of the Inquiry’s investigations. This statement addresses that request. The statement is prepared on the basis that “section 1” will be “introductory” in nature. The Scottish Ministers understand that the Inquiry will explore matters that are covered in this statement in further detail in due course and are committed to assisting the Inquiry in whatever way it can. The Scottish Ministers hope that this “introductory” statement assists the Inquiry in fulfilling its task in relation to “section 1” of its investigations.
 - 1.2. The Scottish Ministers hold ultimate responsibility for the fourteen territorial and seven special health boards that collectively form “NHS Scotland”. Their responsibility is discharged through the Scottish Government’s Health and Social Care Directorates. Directors-General are responsible for families of directorates within the Scottish Government. The Director General, Health and Social Care is also the Chief Executive of NHS Scotland and has overall responsibility for the work of the Health and Social Care Directorates, with Directors and senior clinical advisers (such as the Chief Medical Officer and Chief Nursing Officer) taking responsibility for particular Directorates. The Director General delegates, through a Scheme of Delegation, financial responsibility for particular budgets, and expenditure incurred against these budgets, to individual Directors.

1.3. The Director General for Health and Social Care is responsible for maintaining a high standard of care for the people of Scotland and for providing support to Scotland's health and social care professionals. The Director General Health and Social Care is a member of the Scottish Government's Corporate Governance Board. The Chief Executive of NHS Scotland provides strategic direction to the NHS in Scotland, driving performance, efficiency and value for money; ensuring the delivery of sustainable, safe, effective and person-centred care. In these dual roles I have overall responsibility to ensure that a high standard of care for the people of Scotland is maintained and that appropriate support is provided to Scotland's health and social care professionals.

1.4. While I may not have “direct” knowledge of much of what is contained in this statement (particularly given that much of the content of the statement pre-dates my time in office), I have been supported by my policy colleagues across the Scottish Government's Health and Social Care Directorates with relevant portfolio responsibilities when preparing my responses in relation to the Inquiry's questions. In particular, contributions have been made by the following directorates under supervision by the relevant Directors:

- Health Workforce Directorate, Director – Gillian Russell;
- The Chief Operating Officer's Directorate, Director – Christine McLaughlin;
- The Chief Nursing Officer's Directorate – Chief Nursing Officer – Aisha Holloway;
- The Chief Medical Officer's Directorate – Chief Medical Officer – Gregor Smith; and
- The Scottish Government's Eljamel Inquiry Response Team (Part of health Work Force Directorate), acting as a central point of coordination of the information provided by wider directorates,

2. Please explain your professional/ occupational background, in particular focusing on roles and the responsibilities which you held/ hold relevant to or potentially relevant the neurosurgical department of Ninewells Hospital or Mr Eljamel. If you wish, you may exhibit a CV/ CVs with your statement.

2.1 I originally qualified as a chartered accountant in England and later moved to Scotland, where I worked as the Director of Finance and Corporate Resources in NHS Education

for Scotland (“NES”) from 2004 to 2014. I then became Acting Chief Executive for NES, before being appointed into the role on a permanent basis in 2015.

2.2. In December 2019, I joined the Scottish Government as Director for Digital Health and Care. During the Covid-19 pandemic, I also took on other roles, including:

- leading on the COVID-19-related intensive care unit surge requirements from March 2020;
- acting as Portfolio Director for Test and Protect from May 2020; and
- becoming Delivery Director for the Extended Seasonal Flu and COVID-19 vaccination programmes from August 2020.

2.3. Since January 2021, I have been Director General for Health and Social Care in the Scottish Government and Chief Executive of NHS Scotland. As I set out above, as Director General for Health and Social Care I have responsibility for, amongst other things, maintaining high standards of patient care for the people of Scotland. It is in this capacity that I can assist the Inquiry by provision of this statement.

Part B – Structures and key individuals

Pre-devolution

3. Please set out the ongoing responsibilities of the SG for the role and actions of the UK Government, insofar as it related to powers subsequently devolved of the Scottish Parliament under the Scotland Act 1998, as statutory successor to the UK Government in relation to devolved matters.

3.1 The Scottish Parliament and the Scottish Executive (later known as the Scottish Government) were created by the Scotland Act 1998 (“the 1998 Act”).

3.2 Under the 1998 Act, functions previously exercisable by Ministers of the Crown were devolved to the Scottish Ministers for all subject areas in respect of which the Scottish Parliament was given legislative competence. “Health” was devolved to the Scottish Parliament on 1 July 1999 (the date upon which the Scottish Parliament assumed its

legislative powers). Prior to this date, functions under the National Health Service (Scotland) Act 1978 (“the 1978 Act”), including responsibility for the NHS in Scotland, rested with the Government of the United Kingdom.

- 3.3 Following devolution, the Scottish Ministers assumed the ongoing responsibilities, duties and functions previously exercised by UK Ministers in areas of devolved competence. This included the continued operation, implementation and development of devolved policy frameworks, the fulfilment of any statutory or administrative obligations attached to those functions and the stewardship of public bodies and services operating within devolved areas. While the UK Government retains responsibility for reserved matters, the Scottish Ministers are accountable for all devolved powers and must discharge them in accordance with the 1998 Act and any other related statutory or intergovernmental arrangements.
- 3.4 The 1978 Act imposes a duty on the Scottish Ministers to promote a comprehensive and integrated health service, designed to improve the physical and mental health and wellbeing of people as well as prevention, diagnosis and treatment of illness. To ensure performance of the duty, NHS Health Boards are delegated responsibilities by the Scottish Ministers to plan, commission and deliver healthcare services and take overall responsibility for the health and wellbeing of persons residing in their Health Board area. Special Health Boards are also established to deliver specific services to support geographical Health Boards. The overarching responsibility to secure the provision of health services for Scotland remains with the Scottish Ministers. As operational delivery is undertaken by Health Boards and Special Health Boards, the responsibilities of Ministers focus on setting strategic direction, holding executives to account for delivery, managing risk, engaging with stakeholders and influencing organisational culture.
- 3.5 Scotland currently has fourteen geographical Health Boards and seven non-geographical Special Health Boards, supported by the Common Services Agency and Healthcare Improvement Scotland (HIS).
- 3.6 NHS Boards, Special Health Boards, the Common Services Agency (often referred to as “National Services Scotland” or “NSS”) and Healthcare Improvement Scotland are legal entities established under the 1978 Act. Each are distinct entities from each other and the Scottish Government/ Ministers. They are corporately responsible and accountable in law for how they carry out their functions, services and associated

activities. The Scottish Government does not deliver any health services directly.

- 3.7 The Scottish Ministers have power to issue regulations and directions (section 2 (5) of the 1978 Act) and Health Boards are obliged to follow them. Ministers also have the power to intervene in the case of service failures (sections 77 – 78B of the 1978 Act).

4. Please explain the extent to which SG retains access to documents held by or on behalf of the UK Government from the period prior to devolution in 1999, with relevance or potential relevance to the matters covered by the Inquiry's Terms of Reference and List of Issues. If possible, please explain (a) whether any other bodies have access to or are likely to have access to any such documents (b) to the extent that such documents are not retained, any reasons why they have not been.

- 4.1 Departmental records created before devolution (1 July 1999) are “owned” by the UK Government — in practice the Scotland Office via the Secretary of State for Scotland. Pre-1999 records that “are held or used wholly or mainly for or in connection with the exercise of functions transferred to Scottish Ministers” may, however, be in the possession of the Scottish Government (or the relevant successor body).

- 4.2 In practice some pre-devolution records from the former Scottish Office have been deposited at the National Records of Scotland (“NRS”) and are accessible to researchers. For example, recent “annual file releases” include some “Departments of the pre-Devolution Scottish Office” files. In accordance with the Scottish Government’s records-management policy, historical records identified as having enduring value are transferred to NRS for preservation, subject to security, data-protection or sensitivity assessments.

- 4.3 As pre-devolution documents remain the property of the UK Government, they are subject to an additional “handling regime”: if a requested record contains information “supplied by a UK Minister or UK Government Department”, even if the file is otherwise a “devolved functions” file, it may remain “UK Government material.” Under that arrangement, access requests may need to be directed to the UK Government (e.g. Scotland Office), not the Scottish Government.

- 4.4 Where a file spans across the date of devolution (contains papers from before and after 1 July 1999), formal arrangements require the splitting of such files so that pre-

devolution papers remain under UK ownership/control, particularly if they include sensitive material.

- 4.5 Some records may never have been preserved or may have been destroyed — archival selection, records-management plans and periodic review/disposal apply. The fact that only a “selection” of records of “enduring value” are transferred to NRS means not everything is preserved.
- 4.6 I understand that the Scottish Government’s Eljamel Response Team have undertaken searches with NRS for documents relevant to the Inquiry’s terms of reference and none have been identified. The Eljamel Response Team provided NRS with the Terms of Reference and through discussion and analysis agreed the widest search terms possible to establish whether relevant information was held in the National Record. NRS used the search term ‘Eljamel’; ‘El Jamel’; ‘El-Jamel’; and ‘Jamel’ individually and in unison. No search results were returned. A total of five separate searches were undertaken.

Period post devolution (1999)

5. **Please set out the legal, regulatory or operational responsibility of the Scottish Executive/ Scottish Government for the matters covered by the Inquiry’s Terms of Reference and List of Issues over the relevant period and subsequently, including but not limited to the following:**
- (a) Appointments of consultants over the relevant period, including but not limited to the process by which consultants’ professional qualifications and competence are verified (ToR 1);**
- (b) Broad systems of clinical governance, in place over the relevant period and how they evolved, including corporate governance, professional governance and whistleblowing (ToR 3);**
- (c) Broad systems and rules about work patterns within the NHS, balancing work between the NHS and the private sector (ToR 2/ 3) and about supervision/ training of junior colleagues (ToR 2);**

- (d) Complaints and feedback systems within the NHS (ToRs 4 and 5);**
- (e) Internal and external information sharing systems, candour, including with the GMC (ToRs 7 and 13);**
- (f) Rules and practices relating to clinical supervision, suspension, dismissal and removal of the name of a neurosurgeon from the GMC medical register (ToRs 8 to 11);**
- (g) Investigations undertaken into the professional practice of consultants in the NHS in Scotland over the relevant period, such as those covered by ToR 12;**
- (h) The creation and maintenance of effective document management systems within health boards such as NHS Tayside over the relevant period and subsequently, including but not limited to accuracy of records, retention of records, data protection or subject access requests (ToR 14); or**
- (i) Any other matters falling within the ambit of the Inquiry's Terms of Reference or provisional List of Issues.**

5.1 The Scottish Executive (now known as the Scottish Government) is established as the devolved government of Scotland in terms of s. 44 of the 1998 Act. The members of the Scottish Executive/Government are referred to collectively as the Scottish Ministers. As set out above, health and, in particular, the operation and administration of the National Health Service in Scotland, are matters devolved to the Scottish Ministers.

5.2 In terms of s. 1 of the 1978 Act, the Scottish Ministers are subject to a statutory duty to promote in Scotland a comprehensive and integrated health service designed to secure: (a) the improvement in the physical and mental health of the people of Scotland; and (b) the prevention, diagnosis and treatment of illness and, for that purpose, to provide or secure the effective provision of services. Whilst the 1978 Act provides for the establishment of individual geographical (and thematic) health boards for the delivery of health services to patients across Scotland, the Scottish Ministers retain ultimate responsibility for the NHS in Scotland. The Scottish Minister with

portfolio responsibility for the NHS in Scotland is the Cabinet Secretary for Health and Social Care.

5.3 Section 2 of the 1978 Act permits the Scottish Ministers to delegate some of their functions under the 1978 Act to health boards. The delivery of patient care is delegated to Scotland's 14 territorial health boards, including NHS Tayside. In accordance with section 2C of the 1978 Act, it is the responsibility of a health board to secure the provision of primary medical services to, in so far as the health board considers necessary, meet the reasonable requirements of their area.

5.4 In relation to the matters specifically raised in the Inquiry's question, the Scottish Ministers' responsibilities are:

(a) Appointments of consultants over the relevant period, including but not limited to the process by which consultants' professional qualifications and competence are verified (ToR 1);

5.5 Health boards are responsible for the appointment of consultant medical practitioners, including the processes adopted by a board to verify the competence and qualifications of a consultant. The recruitment/appointment of the majority of consultants by health boards has, since July 2009, been regulated by the National Health Service (Appointment of Consultants) (Scotland) Regulations 2009. The regulations require boards to appoint an external adviser to sit on the assessment panel that determines the appointment of a consultant. The Scottish Government funds the Academy of Medical Royal Colleges to maintain a register of external advisers for these purposes. The Scottish Government has also provided guidance in relation to the operation of the regulations [SG-00038].

(b) Broad systems of clinical governance, in place over the relevant period and how they evolved, including corporate governance, professional governance and whistleblowing (ToR 3);

5.6 I have set out the Scottish Ministers responsibilities in relation to "governance" in answer 9(b) below. Effective governance is an essential part of safe patient care. The Scottish Government provides strategic direction to health boards in this regard.

(c) Broad systems and rules about work patterns within the NHS, balancing work between the NHS and the private sector (ToR 2/3) and about supervision/ training of junior colleagues (ToR 2);

- 5.7 Arrangements related to working patterns are detailed in a consultant's relevant terms and conditions of service with their NHS employer. Consultants work agreed job plans which detail their commitment to the NHS, and outside these commitments may undertake private practice. The Scottish Government does not have a role in determining or approving a consultant's individual job plan. The agreement of a consultant's job plan is an employment matter between the health board as employer and the consultant as employee.

(d) Complaints and feedback systems within the NHS (ToRs 4 and 5);

- 5.8 NHS complaints procedures have been in place in Scotland since 1985 and have evolved over the last 40 years. The most significant changes arise from the introduction of the Patient Rights (Scotland) Act 2011 ("the 2011 Act").
- 5.9 Prior to 2011, the Hospital Complaints Procedure Act 1985 placed a duty on the Scottish Ministers (by operation of section 53 of the Scotland Act 1998) to issue Directions as regards complaints procedure. This Act related only to complaints about hospitals.
- 5.10 The NHS complaints procedure in Scotland from April 2005 was set out in Directions contained in HDL (2005) 15 [SG-00037]. These Directions were made under the 1978 Act and the Hospital Complaints Procedure Act 1985 and set out the responsibilities of Health Boards for complaints made about NHS treatment by hospital doctors and general practitioners. These Directions applied to both hospital complaints and complaints made to community health service practitioners and superseded directions made, prior to devolution, in NHS MELs (1996) 32, NHS MEL (1996) 31 and NHS MEL (1996) 35 [SG-00034; SG-00035; and SG-00036].
- 5.11 The consultation on proposals for a Patient Rights Bill in Scotland was launched in September 2008 following recommendations from the "Making It Better: Complaints and Feedback from Patients and Carers about NHS services in Scotland" [SG-00039]. The 2011 Act created a patient's legal right to give feedback and comments and raise concerns and complaints about NHS services. The 2011 Act placed a duty on the

NHS to actively encourage, monitor, take action and share learning from the views they receive [SG-00039].

- 5.12 The Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Regulations 2012 and The Patient Rights (Feedback, Comments, Concerns and Complaints) (Scotland) Directions 2012 came into force on 1 April 2012. The regulations make provision for delivery of Health Boards' duty to make arrangements for handling and responding to patient feedback, including creating a requirement for all Health Boards to have a complaints and feedback officer. Revised good practice guidance for handling and learning from feedback, comments, concerns or complaints was circulated to Boards in March 2012, as part of CEL 8 (2012) [SG-00033].
- 5.13 The Scottish Health Council's "Listening and Learning" report [SG-00032] on how feedback, comments, concerns and complaints can improve NHS services in Scotland was published in April 2014. It found that, while all Boards could demonstrate clear progress in terms of responding to the requirements of the 2011 Act, there were significant learning points for NHS Scotland in terms of welcoming feedback, removing the 'fear factor' and demonstrating improvement.
- 5.14 In 2017, following the Listening and Learning report [SG-00032] feedback from NHS Boards on the complaints system in place and detailed discussion with partner organisations and practitioners, the Scottish Government agreed the Complaints Standards Authority (CSA) should work with NHS Boards to develop a revised NHS model complaints handling procedure and associated information materials for all NHS boards and primary care service providers.
- 5.15 The revised NHS model Complaints Handling Procedure (CHP) [SG-00031] was subsequently developed and introduced across Scotland from April 2017.
- 5.16 The revised CHP is intended to support a more consistently person-centred approach to complaints handling across NHS Scotland. It brings a much sharper focus to the early local resolution of complaints, wherever appropriate, and brought the NHS into line with other public service sectors by introducing a distinct, five working day stage for early, local resolution, ahead of the 20-working day stage for complaint investigations.

5.17 The revised CHP reflects the broader ambition for the NHS in Scotland to be an open, learning organisation that listens and acts on feedback when unintended harm arises. The CHP complements the Duty of Candour provisions of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, and the development of a national approach to reviewing and learning from adverse events. It is also complemented by the Apologies (Scotland) Act 2016, which is intended to encourage the making of apologies, by making it clear that apologising is not the same as admitting liability.

5.18 The CHP introduced nine key performance indicators by which NHS Boards and their service providers should measure and report performance. These indicators, together with reports on actions taken to improve services as a result of feedback, comments and concerns, provide valuable information about the effectiveness of the process, the quality of decision-making, learning opportunities and continuous improvement. The key performance indicators, for ease of reference, are:

- one: learning from complaints;
- two: complaint process experience;
- three: staff awareness and training;
- four: total number of complaints received;
- five: complaints closed at each stage [of the complaints process];
- six: complaints upheld, partially upheld and not upheld;
- seven: average [complaint] times;
- eight: complaints closed in full within timescales: and
- nine: number of cases where an extension is authorised.

5.19 The Patient Rights (Feedback, Comments, Concerns, and Complaints) (Scotland) Directions 2017 require NHS Boards to prepare an annual report at the end of each year summarising actions taken as a result of feedback, comments and concerns received in that year. NHS Boards are required to submit their own and their service providers' complaints reports annually, within six months of the year end to which the details relate, in an appropriate format to allow collation and publication of national complaints statistics.

(e) Internal and external information sharing systems, candour, including with the GMC (ToRs 7 and 13);

- 5.20 Health Boards should align their information sharing systems with the National Adverse Event Framework developed by Healthcare Improvement Scotland (HIS), in collaboration with Health Boards [SG-00029]. The framework was first published in September 2013. HIS reviewed and published an updated version of a national framework for reviewing and learning from adverse events in NHS Scotland in February 2025. This provides updated templates to support NHS Health Boards to consistently report and learn from Significant Adverse Event Reviews (SAER).
- 5.21 As part of the work to revise the National Adverse Events Framework, Healthcare Improvement Scotland is developing a mechanism to capture the learning from significant adverse event reviews to share nationally with Health Boards. This will define common themes and categories, apply a uniform review process to learning summaries, identify patterns and trends, support a consistent classification and facilitate the identification of opportunities for national learning.
- 5.22 The duty of candour provisions of the Health (Tobacco, Nicotine etc. & Care) (Scotland) Act 2016 and The Duty of Candour Procedure (Scotland) Regulations 2018 came into force on 1 April 2018.
- 5.23 This legislation imposes a duty upon all health and care providers, including Health Boards, to review certain types of adverse events, meet personally with those affected, offer an apology and consider how the learning can be applied.
- 5.24 The General Medical Council (“GMC”) is independent of the Scottish Government. The GMC has a statutory duty, per s35B of the Medical Act 1983, to notify the Scottish Ministers that it is investigating a registrant’s fitness to practise. It is for the GMC, as the independent statutory regulator of the medical profession in the UK, to determine how it meets its obligations in exercise of these powers.
- 5.25 There is no reciprocal operational duty placed upon the Scottish Ministers to share clinical information with the GMC, albeit, the GMC does have power to require “any person” to provide it with information to assist with their investigations.

(f) Rules and practices relating to clinical supervision, suspension, dismissal and removal of the name of a neurosurgeon from the GMC medical register (ToRs 8 to 11);

- 5.26 The Scottish Government is not responsible for the clinical supervision, suspension, dismissal and removal of the name of a neurosurgeon from the GMC's medical register.

(g) Investigations undertaken into the professional practice of consultants in the NHS in Scotland over the relevant period, such as those covered by ToR 12;

- 5.27 The Scottish Ministers are not responsible for investigating the professional practice of consultants in the NHS in Scotland. The management and supervision of consultants rests with territorial Health Boards, as employers.

(h) The creation and maintenance of effective document management systems within health boards such as NHS Tayside over the relevant period and subsequently, including but not limited to accuracy of records, retention of records, data protection or subject access requests (ToR 14); or

- 5.28 The Scottish Government has, since 2008, published health and social care records management codes of practice and other guidance related to document management by Health Boards. Health Boards are encouraged to adhere to the code and guidance. The current iteration of the code of practice is produced [SG-00095]. However, Health Boards act as independent **Data Controllers**, responsible for ensuring compliance with all legal, regulatory and operational requirements related to the creation and maintenance of effective document management systems. This includes, but is not limited to, the accuracy and retention of records, data protection and handling subject access requests. Health Boards must also align themselves with relevant legislative requirements, including those under the **Public Records (Scotland) Act 2011**, **UK GDPR** and the **Data Protection Act 2018**.

(i) Any other matters falling within the ambit of the Inquiry's Terms of Reference or provisional List of Issues.

- 5.29 The Scottish Ministers have nothing further to add at this time, however, as set out in the opening section of this statement, are committed to assisting the Inquiry as its investigations continue, including by, but not limited to, providing additional witness statement evidence.

6. Please provide an explanation of the areas related to the care of Mr Eljamel's neurosurgical patients in which SG (a) had exclusive responsibility; and (b) had shared competence with other agencies, public or private bodies over the relevant period for systems relating to the provision of neurosurgical care at Ninewells Hospital, Dundee and in other hospitals under the control of NHS Tayside providing neurosurgical services. As regards (b) please set out how SG's responsibilities overlapped or interacted with the responsibilities of those other bodies in that regard.

6.1 The care of Mr Eljamel's patients, including the systems relating to the provision of neurosurgical treatment, was the exclusive responsibility of NHS Tayside and/or any relevant private healthcare providers. The Scottish Ministers do not have operational functions in relation to the care of Mr Eljamel's patients beyond their overarching duties discussed above in respect of the promotion and provision of healthcare to the people of Scotland as a whole.

7. Please provide a high-level overview of the structure of SG and a list of key individuals and their roles within SG over the relevant period, insofar as relevant to the neurosurgical services provided to patients in the Tayside area over the relevant period and the matters covered by the Inquiry's Terms of Reference and List of Issues by way of organogram, if necessary.

7.1 The Inquiry's request for this statement preceded the hearing on opening statements on 26 and 27 November. In the hope that it was of assistance to the Inquiry, the Scottish Ministers provided the Inquiry with the information requested in this question in its opening statement. For ease of the reader, I copy below the relevant parts of the Scottish Ministers' opening statement.

"THE REMIT AND RESPONSIBILITIES OF THE SCOTTISH MINISTERS

5. The Scottish Ministers are established as the devolved government of Scotland in terms of s. 44 of the Scotland Act 1998. Health and, in particular, the operation and administration of the National Health Service in Scotland, are matters devolved to the Scottish Ministers.

6. *In terms of s.1 of the National Health Service (Scotland) Act 1978, the Scottish Ministers are subject to a statutory duty to promote in Scotland a comprehensive and integrated health service designed to secure: (a) the improvement in the physical and mental health of the people of Scotland; and (b) the prevention, diagnosis and treatment of illness and, for that purpose, to provide or secure the effective provision of services. S. 1A imposes an obligation on the Scottish Ministers to promote the improvement of the physical and mental health of the people of Scotland. Whilst the 1978 Act provides for the establishment of individual geographical (and thematic) health boards for the delivery of health services to patients across Scotland, the Scottish Ministers retain ultimate responsibility for the NHS in Scotland. The Scottish Minister with portfolio responsibility for the NHS in Scotland is the Cabinet Secretary for Health and Social Care. During the period since it appears concerns were first reported by NHS Tayside to the Scottish Ministers regarding the practice of Mr Eljamel in December 2013, there have been six Cabinet Secretaries: (i) Alex Neil MSP (2012 to 2014); (ii) Shona Robison MSP (2014 to 2018); (iii) Jeane Freeman MSP (2018 to 2021); (iv) Humza Yousaf MSP (2021 to 2023); (v) Michael Matheson MSP (2023 to 2024); and (vi) Neil Gray MSP (2024 to date).*

7. *The Scottish Ministers hold ultimate responsibility for the 14 territorial and seven special health boards that collectively form “NHS Scotland”. Their responsibility is discharged through the Scottish Government’s Health and Social Care Directorates. Directors-General are responsible for families of directorates within the Scottish Government. The Director General, Health and Social Care is also the Chief Executive of NHS Scotland and has overall responsibility for the work of the Health and Social Care Directorates, with Directors and senior clinical advisers (such as the Chief Medical Officer and Chief Nursing Officer) taking responsibility for particular Directorates. The Director General delegates, through a Scheme of Delegation, financial responsibility for particular budgets, and expenditure incurred against these budgets, to individual Directors.*

8. *The Health and Social Care Directorates that sit within the portfolio of the Director General and contribute to the delivery of policy for health and*

social care, as well as the administration of the NHS in Scotland, include (as at today's date):

- I. The Directorate of the Chief Medical Officer*
- II. The Directorate of the Chief Nursing Officer*
- III. The Directorate of the Chief Operating Officer, NHS Scotland*
- IV. The Directorate for Health and Social Care Finance*
- V. The Directorate for Health Workforce*
- VI. The Directorate for Mental Health*
- VII. The Directorate for Primary Care*
- VIII. The Directorate for Population Health*
- IX. The Directorate for Social Care and National Care Service*

- 9. The Scottish Cabinet is the Scottish Ministers' main decision-making body. It comprises the First Minister and all Cabinet Secretaries, all of whom are bound by the Scottish Ministerial Code and the doctrine of collective responsibility. The primary role of the Health and Social Care Directorates in relation to Cabinet is to provide advice to the Cabinet Secretary and to draft and advise on papers going to Cabinet in the Cabinet Secretary's name.*
- 10. The Scottish Government's Health and Social Care Management Board is the main decision-making body of the Health and Social Care Directorates. The Board is accountable for the strategy and performance of the NHS and Health and Social Care Directorates, ensuring that resources are best used to respond to the priorities set by Ministers and deliver the best services possible for the people of Scotland. The Permanent Secretary holds the Director General to account – with the Board being used as the vehicle by which the Director General discharges their functions.*
- 11. The Scottish Ministers are also assisted in relation to matters of medical policy and clinical standards by the Chief Medical Officer. The holders of the office during the relevant period have been: (i) Sir Harry Burns (2005 to 2014); (ii) Aileen Keel (2014 to 2015); (iii) Catherine Calderwood (2015 to 2020); and Professor Sir Gregor Smith (2020 to present day).*

A BRIEF CHRONOLOGY OF THE SCOTTISH MINISTERS' INVOLVEMENT

12. *On 7 September 2023, the then Cabinet Secretary, Michael Matheson MSP, announced an Independent Clinical Review into the clinical care provided to Mr Eljamel's patients and that a Public Inquiry would be held in respect of the actions of Mr Eljamel and the previous steps taken to investigate his conduct and clinical governance issues arising.*

13. *The Scottish Ministers anticipate that detailed chronologies, which set out the Scottish Ministers' and Scottish Government officials' engagement with the issues under investigation by this Inquiry, will be of assistance. They will be pleased to provide detailed chronologies and associated documentation under the Inquiry's direction, in due course. A high-level chronology of the Scottish Government's involvement is set out below:*
 - **19 December 2013** – *The Scottish Government received formal notification from NHS Tayside that it had suspended Mr Eljamel from practice, following concerns raised by 55 separate patients [SG-00013]. This followed a report provided by the Royal College of Surgeons to NHS Tayside, consequent to its Invited Review in September 2013.*

 - **24 April 2014** – *The Scottish Government was informed that Mr Eljamel had indicated his intention to retire on 31 May 2014. He also resigned as a member of the General Medical Council (GMC) at the end of May 2014. [SG-00050], [SG-00155 – SG-00159]*

 - **2014-2017** – *The Scottish Government received substantial correspondence from a former patient of Mr Eljamel, Patrick Kelly, setting out concerns he had raised with NHS Tayside, regarding the treatment and care he had received from Mr Eljamel.*

 - **1 December 2016** – *The then Chief Medical Officer (Dr Catherine Calderwood) met with the General Medical Council to discuss the frustrations felt by former patients that Mr Eljamel had been able to voluntarily remove himself from the register prior to the conclusion of a fitness to practise investigation. [SG-00050, SG-00157 - SG-000159]*

- **5 September 2018** – *The then Cabinet Secretary (Jeane Freeman MSP) wrote to all NHS Health Boards in Scotland seeking confirmation from each health board as to the steps they were taking, as a matter of clinical governance, to properly handle complaints regarding clinicians.*[SG-00128]
- **19 November 2018** – *The then Cabinet Secretary (Jeane Freeman MSP) wrote to Health Boards setting out the requirement to share good practice to ensure that Boards learn from each other and an event was being set up to facilitate and progress this.* [SG-00129]
- **4 December 2018** – *A meeting was held, attended by senior representatives of the territorial health boards and facilitated by Professor Craig White, then Divisional Clinical Lead, Directorate of Healthcare Quality and Improvement, (now Associate Director of the Directorate) to share good practice and take forward work on what would become the Openness and Learning Commission* [SG-00057 and SG-00058]. *The Directorate of Healthcare Quality and Improvement now sits with the Directorate of the Chief Operating Officer, NHS Scotland.*
- **18 December 2020** – *The then Cabinet Secretary (Jeane Freeman MSP) met with Patrick Kelly and Jules Rose (another former patient of Mr Eljamel) to discuss their concerns regarding the treatment and care provided by Mr Eljamel, together with NHS Tayside's response to those concerns.*
- **11 March 2021** – *The Cabinet Secretary commissioned a Review of Unresolved and Outstanding Concerns* [SG-00008] *regarding Mr Eljamel, to be led by Professor Craig White. Clinical reviews of the treatment and care provided to Mr Kelly* [SG-00200] *and Ms Rose* [SG-00201] *were also commissioned.*
- **10 May 2022** – *The Report on the Review of Unresolved and Outstanding Concerns was published* [SG-00098]. *That included*

consideration of the views of the independent consultant neurosurgeons commissioned to review the care provided to Mr Kelly and Ms Rose. It made a series of recommendations to NHS Tayside, including in respect of complaint-handling and measuring the effectiveness of actions taken following previous reviews. Certain recommendations were also made to NHS Scotland in respect of developing national guidelines for Consultant supervision and the National Neurosurgical Audit Programme.

- **9 February 2023** – *The then Cabinet Secretary (Humza Yousaf MSP) met with a number of MSPs to discuss their constituents’ concerns regarding prior investigations into the actions of Mr Eljamel and the calls which had been made for a public inquiry [SG-00120; SG-00118; SG-00202]*
- **20 April 2023** – *The then Cabinet Secretary (Michael Matheson MSP) directed that an independent commission, led by an independent legal expert, be established to review: (i) individual cases in which patients considered they had suffered at the hands of Mr Eljamel; and (ii) learning systems and governance within NHS Tayside [SG-00121, SG-00073, SG-00117, SG-00115, SG-00080, SG-00083 and SG-00084]*
- **31 August 2023** – *NHS Tayside published its Due Diligence Review Report, identifying various failings in NHS Tayside’s handling of the concerns regarding Mr Eljamel [SG-00086].*
- **7 September 2023** – *In light of the findings in the Due Diligence Review Report, the Scottish Government announced the establishment of this Public Inquiry and the Independent Clinical Review, replacements for the previously planned independent commission.” [SG-00147]*

7.2 The Inquiry has sought clarification of a number of additional matters arising from the relevant sections of the Scottish Ministers’ opening statement quoted above. In particular, the Inquiry has asked for details of the various Cabinet Secretaries for Health during the relevant period, who held the offices of Director General for Health and Social Care and Chief Medical Officer during the relevant period and the names

of the Directors of the relevant health and social care directorates identified above.

7.3 As I explain earlier in the statement, prior to devolution, responsibility for Scotland's Health Policy and the NHS rested with the UK Government. Post devolution, the Scottish Cabinet Secretaries with portfolio responsibility for health (not listed in the Scottish Ministers' opening statement) were:

- Susan Deacon (1999-2001)
- Malcom Chisholm (2001-2004)
- Andy Kerr (2004-2007); and
- Nicola Sturgeon (2007-2012)

7.4 I have produced the additional details requested by the Inquiry as regards Scottish Government office holders as an appendix to this statement [SG-00216]. It should be noted that during 1999, as there wasn't a permanent Chief Medical Officer in post, the role was covered by senior public health officials in an acting capacity. Details of post holders can be found in the appendix.

7.5 The Inquiry has asked whether there are any notes from the meetings of 4 and 18 December 2020 (noted above). My policy colleagues from the Chief Operating Officer Directorate have been unable to source any meeting notes from these meetings but have provided the Inquiry with a briefing which was prepared for the then Cabinet Secretary, Jeane Freeman [SG-00059].

8. Please explain how the role of SG over the relevant period fitted with the role/ remit of the following key organisations which did or could have had a role in the oversight of aspects of the professional practice of Mr Eljamel:

- (a) NHS Tayside or its predecessor organisations;**
- (b) Insofar as relevant to the provision of healthcare over the relevant period, the UK Government;**
- (c) Healthcare Improvement Scotland and its predecessor organisations;**
- (d) NHS Education for Scotland and its predecessor organisations;**
- (e) The Department for Medical Education;**
- (f) The University of Dundee;**
- (g) The Royal College of Surgeons (Edinburgh);**

- (h) The Royal College of Surgeons;**
- (i) The General Medical Council;**
- (j) The British Medical Association;**
- (k) The Health and Safety Executive; and**
- (l) Any other bodies which held a remit relevant to matters falling with the Inquiry's Terms of Reference.**

8.1 I have set out below the Scottish Ministers' relationship with the bodies referenced in the question:

(a) NHS Tayside or its predecessor organisations;

8.2 The Scottish Ministers' role/relationship in relation to NHS Tayside is set out in my answer to question 5 above.

(b) Insofar as relevant to the provision of healthcare over the relevant period, the UK Government;

8.3 I set out the transitional arrangements in respect of devolution of healthcare responsibilities to the Scottish Ministers and Parliament in answer to question 4. The Scottish Ministers assumed responsibility for the provision of healthcare under the National Health Service (Scotland) Act 1978 in July 1999. Prior to that date those responsibilities rested with the UK Government.

(c) Healthcare Improvement Scotland and its predecessor organisations;

8.4 HIS is a statutory body created under the 1978 Act. It provides a range of functions related to the safe delivery of healthcare in Scotland. HIS is operationally independent of the Scottish Ministers but is accountable to them. In accordance with its statutory framework, HIS may be asked by the Scottish Ministers to provide advice or to carry out inspections or reviews within its remit. For completeness, I confirm that HIS was not asked by the Scottish Government to undertake an inspection in relation to Mr Eljamel or of the Neurological Unit at Ninewells Hospital during the relevant period.

HIS' Predecessors:

- 8.5 The Clinical Standards Board for Scotland ("**CSBS**") was a Special Health Board created under the 1978 Act and the Clinical Standards Board for Scotland Order 1999. As a Special Health Board, CSBS exercised certain of the Scottish Ministers' functions under the 1978 Act delegated to it.
- 8.6 NHS Quality Improvement Scotland was a Special Health Board established under the 1978 Act and the NHS Quality Improvement Scotland Order 2002 exercising functions delegated to it.
- 8.7 The Scottish Ministers role in relation to and responsibilities for Health Boards is set out in my answer to question 5 above.

(d) NHS Education for Scotland and its predecessor organisations;

- 8.8 NHS Education for Scotland is a Special Health Board created under the 1978 Act and The NHS Education for Scotland Order 2002. As a Special Health Board, NHS Education Scotland exercises certain of the Scottish Ministers functions under the 1978 Act which have been delegated to it.

(e) The Department for Medical Education;

- 8.9 The Scottish Government has no formal relationship with the Department of Medical Education, which is part of the University of Dundee, in so far as is relevant to the Inquiry's terms of reference.

(f) The University of Dundee;

- 8.10 The Scottish Government has no formal relationship with the University of Dundee, in so far as is relevant to the Inquiry's terms of reference.

(g) The Royal College of Surgeons (Edinburgh);

- 8.11 The Scottish Ministers' engagement with the Royal College of Surgeons of Edinburgh is primarily strategic, conducted through the Scottish Academy of Medical Royal

Colleges, focusing on national policy and training standards rather than individual cases. The Scottish Government does not hold any documents relating to its strategic engagement with the Royal College of Surgeons of Edinburgh. Engagement with the College takes place on an ad hoc basis on strategic issues, for example through discussions with a range of stakeholders.

(h) The Royal College of Surgeons;

- 8.12 Scottish Health Boards may commission the Royal College of Surgeons to undertake an Invited Review. An Invited Review is an independent case note review of patient care. The Royal College of Surgeons' Invited Review Handbook confirms that these confidential reviews may be requested by a Board's Medical Director.

8.12.1 As far as I am aware, the Scottish Ministers did not ask the Royal College of Surgeons to undertake an inspection in relation to Mr Eljamel or the neurosurgical unit at Ninewells Hospital. Such a request, if made, would have come from the CMO. Through searches of the Scottish Government's corporate records using keywords such as "RCS," "Royal College," and "Eljamel" it has been confirmed that no direct, primary correspondence exists between the CMO and the Royal College of Surgeons regarding Mr Eljamel's individual practice. All available documentation confirms that the CMO's knowledge of the Royal College of Surgeons' involvement was provided via NHS Tayside.

(i) The General Medical Council;

- 8.13 The General Medical Council ("GMC") is independent of the Scottish Government. As set out above, the GMC is under a statutory duty, per s35B of the Medical Act 1983 to notify the Scottish Ministers that it is investigating a regulated practitioner's fitness practice. The precise nature of the duty, which has existed since 2000, has changed over time but not substantively. It should be noted that notification does not confer any power of intervention.
- 8.14 In practice, the GMC notifies the CMO of any significant regulatory action regarding a medical practitioner's Fitness to Practise. Upon receipt of such notification, the CMO (or Directorate officials on the CMO's behalf) seeks immediate assurance from the relevant Health Board. The Board must confirm they are aware of the regulatory action and that appropriate local safety measures, such as suspension, are in place. The CMO does not re-investigate clinical facts or intervene in independent regulatory, local

HR, or individual clinical governance processes. For completeness, I note that the regulation of health professionals is a matter reserved to the UK Parliament under Head G of Schedule 5 to the Scotland Act 1998.

8.14.1 Following exhaustive searches of the Scottish Government's corporate record, the Scottish Government has been unable to identify any record of the GMC providing notification of an investigation into Mr. Eljamel.

(j) The British Medical Association;

8.15 The British Medical Association ("BMA") is a trade union that engages with the Scottish Government on matters relevant to its members, principally, pay and working conditions. The Scottish Government does not hold information showing that it engaged with the BMA specifically on matters relating to working conditions within the neurosurgical department at Ninewells Hospital during the relevant period. If any discussions on such matters took place, these would normally have been handled locally between the BMA and NHS Tayside rather than at a national level.

(k) The Health and Safety Executive; and

8.16 The Health and Safety Executive (HSE) is a Non-Departmental Public Body of the Department of Work and Pensions of the UK Government and is the main regulator for health and safety offences. The administration of HSE is reserved to the UK Government.

(l) Any other bodies which held a remit relevant to matters falling with the Inquiry's Terms of Reference.

8.17 The Scottish Ministers have nothing further to add at this time, however, as set out in the opening section of this statement, are committed to assisting the Inquiry as its investigations continue, including by but not limited to, providing additional witness statement evidence.

9. Please explain the main principles of any policies or operational guidance issued by the SG, including how and these evolved over the relevant period, insofar as they were relevant or potentially relevant to the practice of Mr Eljamel, relating to:

- (a) Appointments of consultants over the relevant period, including but not limited to the process by which consultants' professional qualifications and competence are verified (ToR 1);**
- (b) Broad systems of clinical governance, in place over the relevant period and how they evolved, including corporate governance, professional governance and whistleblowing (ToR 3);**
- (c) Broad systems and rules about work patterns within the NHS, balancing work between the NHS and the private sector (ToR 2/ 3) and about supervision/ training of junior colleagues (ToR 2);**
- (d) Complaints and feedback systems within the NHS (ToRs 4 and 5);**
- (e) Internal and external information sharing systems, candour, including with the GMC (ToRs 7 and 13);**
- (f) Rules and practices relating to clinical supervision, suspension, dismissal and removal of the name of a neurosurgeon from the GMC medical register (ToRs 8 to 11);**
- (g) Investigations undertaken into the professional practice of consultants in the NHS in Scotland over the relevant period, such as those covered by ToR 12;**
- (h) The creation and maintenance of effective document management systems within health boards such as NHS Tayside over the relevant period and subsequently, including but not limited to accuracy of records, retention of records, data protection or subject access requests (ToR 14); or**
- (i) Any other matters falling within the ambit of the Inquiry's Terms of Reference or provisional List of Issues.**

Where policies or guidance which are named have predecessor policies or guidance which performed an equivalent function over the relevant period, please include these within your answer.

9.1 The Scottish Government Health and Social Care Directorates issue guidance and Instruction to Health Boards through a variety of materials published on the NHS Scotland - Publications website [SG-00100 and SG-00101] This is issued in accordance with the established delegation of functions set out above and the established framework governing the relationship between the Scottish Government Directorates, acting on behalf of Scottish Ministers, and Health Boards

9.2 The Scottish Government has issued the following policy guidance in relation to subjects posed in the question.

(a) Appointments of consultants over the relevant period, including but not limited to the process by which consultants' professional qualifications and competence are verified (ToR 1);

9.3 The Scottish Government has issued guidance on the operation of the National Health Service (Appointment of Consultants) (Scotland) Regulations 2009 [SG-00038], which regulate aspects of the consultant appointment process. The guidance is designed to support Boards in interpreting the relevant Regulations when taking forward recruitment.

(b) Broad systems of clinical governance, in place over the relevant period and how they evolved, including corporate governance, professional governance and whistleblowing (ToR 3);

9.4 The Scottish Government has not issued guidance expressly concerning clinical governance, albeit the requirements of good clinical governance are interwoven with the requirements of good corporate governance.

9.5 In respect of corporate governance, NHS Scotland Boards are expected to have regard to *The Blueprint for Good Governance in NHS Scotland*. The first edition of this guidance was issued in January 2019 [SG-00012]. An updated version was issued in November 2022 [SG-00011].

- 9.6 Governance arrangements in the NHS should include service delivery, change management, workforce, finance, information and asset management. These arrangements must have a clear focus on clinical and care governance, including the governance of clinical research. Particular attention should also be given to educational governance and the governance of the professional standards expected of the clinicians employed by the organisation. All these categories of governance should be considered when NHS Boards determine their arrangements and systems for delivering good governance [SG-00011] and [SG-00012].
- 9.7 A Health Board's framework of standing committees must include an Audit and Risk Committee, a Remuneration Committee and a Staff Governance Committee. Territorial Health Boards (and some Special Health Boards) are also required to have a Clinical Governance Committee and a Research Ethics Committee. Territorial Boards must also have a Pharmacy Practices Committee responsible for governance in relation to pharmaceutical premises and services. In addition to these mandatory committees, Boards may decide to set up additional standing committees to oversee other aspects of the organisation's operations, e.g. Acute Services, Finance and Performance and Population Health and Wellbeing Committees. The responsibility for the administration of these committees sits with the relevant Health Board.
- 9.8 In order to harness the knowledge, skills and commitment of the clinical community across NHS Scotland and ensure that appropriate professional advice is available to NHS Boards and encourage clinicians to contribute to the planning and delivery of services, Territorial Boards must also have in place an Area Clinical Forum. The Area Clinical Forum should be supported by a range of clinical professional advisory committees, i.e. an area medical committee, dental committee, nursing and midwifery committee, pharmaceutical committee and optical committee. The Special Health Boards, HIS and NHS National Services Scotland ("NHSNSS") should develop appropriate arrangements for clinical engagement in accordance with the circumstances of their organisation. In order that the NHS Board is provided with appropriate advice on issues affecting clinical practice and employee relations, the role of the advisory committees should include:
- i. engaging with the Executive Leadership Team to provide insight, support and advice on the delivery of services and the implementation of change;
 - ii. supporting and advising the NHS Board in their governance of the organisation,

including advice on the impact of any proposed changes that affect the employment of staff; and

- iii. identifying opportunities for the improvement of services and the wellbeing of the workforce.

9.9 The Scottish Ministers are clear that when a whistleblower raises a concern, this must be treated with the utmost seriousness and thoroughly investigated. Health Boards are expected to investigate concerns fairly and appropriately and ensure that the individual raising the concern does not suffer adverse repercussions for doing so. In 2011 the Scottish Government and NHS Scotland produced a 'Partnership Information Network' (PIN) policy entitled 'Implementing & Reviewing Whistleblowing Arrangements in NHS Scotland' [SG-00133]. This Policy defines a minimum standard of best employment practice and is designed to achieve a consistent approach across NHS Scotland. It contains a 'model policy', which sets out the minimum standards that must be adhered to and is designed for use by any worker looking to make a qualifying disclosure. The model policy includes an assurance that a whistleblower may contact the Scottish Government Health Directorate directly.

9.10 The NHS Scotland Whistleblowing Policy outlines different avenues by which concerns may be raised both internally and externally. Internally, concerns can be raised with line managers or team leaders; or with a more senior manager if circumstances mean this is more appropriate. Externally, concerns can be raised directly with HIS, NHS Counter Fraud Services, the HSE or Audit Scotland. It should be noted that external bodies may receive concerns within their own statutory remits, and not on behalf of the Scottish Government. [SG-00133]

(c) Broad systems and rules about work patterns within the NHS, balancing work between the NHS and the private sector (ToR 2/ 3) and about supervision/ training of junior colleagues (ToR 2);

9.11 The Scottish Ministers have not issued policy guidance in relation to work patterns and supervision of junior colleagues. This topic is primarily one of clinical governance, the responsibility for which rests with Health Boards.

(d) Complaints and feedback systems within the NHS (ToRs 4 and 5);

9.12 I set out the Scottish Ministers' engagement in relation to complaints and feedback in response to question 5(d) above.

(e) Internal and external information sharing systems, candour, including with the GMC (ToRs 7 and 13);

9.13 I refer the reader to my response to question 5(e) above, which sets out how information is shared between the Scottish Government and the GMC.

(f) Rules and practices relating to clinical supervision, suspension, dismissal and removal of the name of a neurosurgeon from the GMC medical register (ToRs 8 to 11);

9.14 The NHS Scotland Conduct Policy provides that concerns relating to breaches of professional practice/standards are to be determined by the relevant regulator. [SG-00134]

9.15 The following circulars also relates to the responsibilities of Boards when concerns are raised about the professional conduct or competence of medical or some dental staff - 1990 (PCS) 8 [PDF] amended by 1990 (PCS) 32 [PDF], PCS (DD) 1994/11 [PDF], PCS (DD) 1999/7, [PDF] PCS (DD) 2001/9 [PDF], SGHD/CMO (2013) 22 [PDF] [SG-00002; SG-00003; SG-00004; SG-00005 and SG-00006]

9.16 The rules and practices regarding the removal of a practitioner's name from the medical register, including the Specialist Register, are determined by the GMC's Council, within the statutory powers provided to it by the Medical Act 1983.

9.17 The power of erasure under the Medical Act 1983 is detailed in several sections of the Act, primarily within Part V (Fitness to Practise and Health) and related sections concerning registration, including:

- Section 24: allows the erasure of a person with limited registration if they do not possess the appropriate knowledge and skill required for their employment.
- Section 30(5): provides for administrative erasure by the Registrar, for example where a doctor fails to respond to inquiries about their address.

- Section 31A: enables the GMC to create regulations for the voluntary erasure of a doctor's name from the register upon their own application.
- Section 35D: empowers a Medical Practitioners Tribunal (MPT) to direct the erasure of a doctor from the register if their fitness to practise is found to be impaired (except in specific health or language cases).
- Section 36: (and related Schedule 4 provisions) outlines the powers of the Professional Conduct Committee (now largely Medical Practitioners Tribunal) to direct erasure for reasons of serious professional misconduct or on conviction of a criminal offence.

9.18 In September 2019 the GMC published guidance for case examiners considering applications for voluntary erasure [SG-00030].

(g) Investigations undertaken into the professional practice of consultants in the NHS in Scotland over the relevant period, such as those covered by ToR 12;

9.19 The Scottish Government does not conduct investigations into the professional practice of individual consultants; this is the operational responsibility of the Health Board (as the employer) and the General Medical Council (as the regulator).

9.20 Policy mandates that Boards investigate concerns locally or commission external independent reviews (such as the Invited Review Mechanism from the Royal Colleges). The Scottish Government seeks assurance that the Board has followed due process where appropriate.

(h) The creation and maintenance of effective document management systems within health boards such as NHS Tayside over the relevant period and subsequently, including but not limited to accuracy of records, retention of records, data protection or subject access requests (ToR 14); or

9.21 I address the Scottish Ministers' responsibilities in relation to document management in answer to question 5(h) above.

- (i) **Any other matters falling within the ambit of the Inquiry's Terms of Reference or provisional List of Issues.**

9.22 The Scottish Ministers have nothing further to add at this time but, as set out above, are committed to assisting the work of the Inquiry as its investigations continue.

Involvement with the operation of the neurosurgical service within NHS Tayside over the relevant period

10. What role, if any, did SG have over the relevant period with the operation of the neurosurgical service within NHS Tayside? Please identify what other bodies controlled the operation of that service over that period. Please have regard to the following aspects of neurosurgical practice in your answer:

- (a) Professional privileges granted to neurosurgeons;
- (b) The use of products or devices in neurosurgery NHS patients, including licensing;
- (c) The organisation of theatre lists and organisation of neurosurgical patient care;
- (d) Neurosurgical patient referral to private care;
- (e) Qualifications and technical expertise of neurosurgeons such as Mr Eljamel;
- (f) Patient safety and care;
- (g) Communication with neurosurgical patients;
- (h) The monitoring of performance data within neurosurgical practice such as re-admission data and rates, return to theatre data, patient fatality data or waiting times; or
- (i) Any other aspects of neurosurgical practice relevant to the Inquiry's Terms of Reference or provisional List of Issues.

10.1 The responsibility for NHS Tayside's neurological services rests with NHS Tayside in accordance with the relationship between the Scottish Ministers and Health Boards, as I described in answer to question 5.

10.2 The Scottish Government's role, if any, in relation to subjects posed in the question is set out below.

(a) Professional privileges granted to neurosurgeons;

- 10.3 The Scottish Government has no role in the granting of, or restricting, professional privileges (the right to perform specific procedures) for individual clinicians. This is a clinical governance decision taken by the Health Board's Medical Director.

(b) The use of products or devices in neurosurgery NHS patients, including licensing;

- 10.4 Legislative competence for licensing medical products and devices is reserved to the UK Parliament.

(c) The organisation of theatre lists and organisation of neurosurgical patient care;

- 10.5 The Scottish Government has no role in the organisation of theatre lists and neurosurgical patient care. Responsibility for the organisation of theatre lists and patient care lies with NHS Tayside.

(d) Neurosurgical patient referral to private care;

- 10.6 The Scottish Government had no role in relation to this operational matter, which rests with NHS Tayside.

(e) Qualifications and technical expertise of neurosurgeons such as Mr Eljamel;

- 10.7 I set out the Scottish Government's functions in relation to the recruitment of consultants in response to question 5(a) above. The Scottish Government has no role beyond this.

(f) Patient safety and care;

- 10.8 Patient safety is of paramount importance to the Scottish Ministers. Patient safety is achieved through the provision of quality care. The Scottish Government sets the strategic direction for quality care, which encompasses patient safety.

10.9 In 2008, the Scottish Government launched the Scottish Patient Safety Programme [SG-00148 – SG-00150]. The Scottish Patient Safety Programme is a national quality improvement programme. It aims to improve the safety and reliability of care and reduce harm across the NHS. The programme is presently coordinated by HIS.

10.10 In respect of neurological services, the Scottish Government has published the Clinical Standards for Neurosurgical Services in Scotland. These Clinical Standards were first published in September 2010 [SG-00045]. Updated standards were published in 2023 [SG-00047]. The standards provide a set of generic service standards for neurosurgical units in Scotland. They are not designed so as to set standards for the treatment of individual conditions. Before the publication of the Clinical Standards for Neurosurgical Services in Scotland in September 2010, neurological services were governed by a series of broader clinical and corporate standards, alongside specific strategic reviews that defined the service's structure. A note of these standards and reviews is contained in the following two paragraphs. The Clinical Standards Board for Scotland (CSBS), established in 1999, was the primary body responsible for developing and monitoring generic clinical standards across the NHS in Scotland. In 2002, CSBS was superseded by NHS Quality Improvement Scotland (NHS QIS) which continued to oversee the implementation of national standards and clinical effectiveness.

10.10.1 The clinical and corporate standards referenced in paragraph 10.10 are:

- Safe Neurosurgery 2000 [SG-00173] provides the professional clinical benchmarks used by the surgical community before the 2010 standards.
- The suite of clinical standards set, and overseen, by CSBS and NHS QIS (the detail in respect of which NHS Education Scotland may be best placed to assist the Inquiry).

10.10.2 The strategic reviews referenced in paragraphs 10.10 are:

- Acute Services Review (1998) [SG-00212]: Led by Sir David Carter, this review introduced the concept of Managed Clinical Networks (MCNs) as the primary mechanism for delivering specialised care across Scotland.

- Clinical Standards Board for Scotland (CSBS) (1999): Established as the first statutory body responsible for developing and monitoring national clinical standards across the NHS in Scotland.
- Review of Neurosurgical Services in Scotland (2000): Often referred to as the "Carter Report," it recommended rationalising services by differentiating between "core services" delivered at four sites and "sub-specialist services" concentrated at fewer sites to maintain clinical expertise. Extensive enquiries have been made by Scottish Government librarians, National Records of Scotland and National Libraries of Scotland the British Libraries Catalogue, however it has not been possible to locate a copy of this report.
- Safe Neurosurgery 2000 [SG-00173]: These standards, published by the Society of British Neurological Surgeons (SBNS), provided the professional benchmark for staffing, facilities, and operative volumes.
- NHS Quality Improvement Scotland (NHS QIS) (2002): This body superseded the CSBS, taking over the implementation of national standards and clinical effectiveness monitoring.
- Securing Future Practice / The Temple Report (2004) [SG-00211]: Chaired by Sir John Temple, this review focused on medical workforce reform, advocating for a shift toward a consultant-delivered service and addressing the impact of the European Working Time Directive.
- The Kerr Report / National Framework for Service Change (2005) [SG-00153; SG-00154]: Chaired by Professor David Kerr, it recommended a "hub and spoke" model for a national neurosurgery service, with highly specialised services centralised while others remained local.
- Delivering for Health (2005) [SG-00195]: This Scottish Executive policy document formally adopted a three-tier service model, aiming for a single national management structure for neurosurgical intervention.

- National Neurosurgery Needs Assessment (2007) [SG-00174]: Conducted by the Scottish Public Health Network (ScotPHN), this assessment reviewed the impact of an ageing population and supported the establishment of a single national management structure through clinical networking.

(g) Communication with neurosurgical patients;

10.11 The Scottish Government would not ordinarily expect to have direct communication with NHS Tayside's neurosurgical patients. The delivery of healthcare services being a matter for NHS Tayside. However, complaints may be made directly to the Scottish Government by or on behalf of patients which may prompt a direct response from Scottish Government. I expand upon the processes adopted by the Scottish Government in such situations in answer to questions 17 and 18 below.

(h) The monitoring of performance data within neurosurgical practice such as re-admission data and rates, return to theatre data, patient fatality data or waiting times; or

- 10.12 Neurosurgery audits are undertaken by the Managed Service Network for Neurosurgery (MSN) [SG-00137 and SG-00102]. Established in 2009 and constituted by colleagues from across the NHS in Scotland, the MSN supports the delivery and audit of services in the four Neurosurgical Units nationally: Aberdeen, Dundee, Glasgow, and Edinburgh. The MSN is accountable to the Scottish Ministers and reports to the CMO annually.
- 10.13 The Annual Review of Consultant Outcomes (ARCO) is a yearly audit into patient mortality, supported by Public Health Scotland. Following the recommendation made in the *Report on the Review of Unresolved and Outstanding Concerns (10 May 2022)* [SG-00008], the Scottish Government asked the MSN Network to expand the data they collect and audit [SG-00137 and SG-00102]. The MSN is now working with Public Health Scotland to develop a national system that will ensure consistency of clinical data collection between the centres to provide more accurate measures of activity. It will also provide data and outcome measures for clinical audit and allow bench marking of centres.

(i) Any other aspects of neurosurgical practice relevant to the Inquiry's Terms of Reference or provisional List of Issues.

10.14 The Scottish Ministers have nothing further to add at this time.

11. What questions, if any, were raised with SG or were SG aware of about the viability of maintaining a neurosurgical unit within NHS Tayside in the context of a re-structuring of neurosurgical services in Scotland over the relevant period? Please indicate how these issues were handled and by whom.

11.1 In relation to 're-structuring' and 'viability', the Inquiry may *find earlier national strategic reviews conducted between 2005 and 2009 to be of assistance to its investigations, including the National Framework for Service Change in NHS Scotland (2005) [SG-00198]; National Neurosurgery Needs Assessment for Scotland (2007) [SG-00174] and, Neurological Health Services (2009) [SG-00199] (following the Kerr Report) [SG-00153; SG-00154]. During this period, the viability of retaining four neurosurgical centres in Scotland was challenged. Following these reviews, the Scottish Ministers determined to retain NHS Tayside's unit and establish the Managed Service Network for Neurosurgery (MSN) in 2009 [SG-00197; SG-00198]. The MSN was set up to ensure patients have equal access to high quality Neurosurgical care in Scotland. The Network supports the delivery and audit of services in the four Neurosurgical Units nationally: Aberdeen, Dundee, Glasgow, and Edinburgh. The MSN is constituted by relevant persons from across the NHS in Scotland and reports to the Chief Medical Officer annually.*

11.2 Based on a review of records held by the Scottish Government and undertaken by my policy colleagues from the Directorate of the Chief Medical Officer, I do not consider that questions were raised with the Scottish Government about the viability of maintaining a neurosurgical unit within NHS Tayside during the period of Mr Eljamel's supervision and suspension (2013–2014). The searches conducted by colleagues used the following search criteria: 'Staffing approvals'; 'NHS Tayside', 'Tayside'; 'Neurosurgical'; 'Neurosurgeon'; 'Ninewells'; 'Dundee'; 'Neurosurgery'.

11.3 On the contrary, there is evidence to indicate that the Board was actively seeking to reinforce the service during this time and made the Scottish Government aware of this. On 27 January 2014, NHS Tayside wrote to the RCS in relation to the

recommendations it had made. This correspondence advised that approval for a Locum Consultant Neurosurgeon had been granted and a bid placed for a fifth permanent Neurosurgery Consultant, demonstrating a commitment to service continuity following the suspension of Mr Eljamel.

Part C – Involvement of SG with the professional practice of Mr Eljamel

12. How might concerns or issues regarding Mr Eljamel’s professional practice have been brought to the attention of SG? In particular, under reference to Term of Reference 13, please have regard to the timing and circumstances in which SG would have expected matters to have been brought to its attention:

- a. Relating to allegations of sub-standard professional practice on the part of a consultant neurosurgeon such as Mr Eljamel by NHS Tayside;**
- b. When a referral to the General Medical Council relating to sub-standard professional practice on the part of a consultant neurosurgeon such as Mr Eljamel by NHS Tayside was being contemplated or made; or**
- c. When a report to the police relating to sub-standard professional practice on the part of a consultant neurosurgeon such as Mr Eljamel by NHS Tayside was being contemplated or made.**

12.1 Concerns could have been raised with the Scottish Government by patients and others contacting the Scottish Government directly, or through their constituency MSP, albeit, as I set out above in response to question 5(d), concerns about health care professionals should ordinarily be raised locally with the relevant health care provider who is obliged to have complaints procedures in place.

12.2 NHS Tayside could have brought any concerns they had to the attention of the Scottish Government and sought guidance in relation thereto. NHS Tayside did so in 2013 [SG-00056; SG-00052; and SG-00099], following receipt of the Royal College of Surgeons invited review report [SG-00013].

12.3 As I have set out above, whistleblowing procedures could have been followed where appropriate. If a whistleblow was made to the Scottish Government, an appropriate referral would have been made to the relevant body responsible for dealing with that.

- 12.4 Had concerns been raised with the Scottish Government in relation to Mr Eljamel's professional practice, beyond those raised in 2013, these would most likely have been directed to the CMO Directorate and assurance would have been sought that the Board had taken appropriate action and put control measures in place to ensure the delivery of safe patient care.
- 12.5 If a Board identifies a serious risk to patient safety involving a clinician, the Scottish Government's expectation is that the Board's Medical Director would alert the Chief Medical Officer (CMO) to provide assurance that risks are managed. The Scottish Government ordinarily expect Health Boards to make them aware of referral of any clinician to the GMC in respect of the clinician's fitness to practice.
- 12.6 The Scottish Government expects to be made aware of a Board's decision, whether contemplated or made, to report a clinician to the police in respect of alleged offending behaviour. A Board's Chief Executive should bring such information to the attention of the Director General in post at the relevant time.
- 13. If any such intimation were made to SG, what processes would/ could have been followed with SG, and in particular:**
- a. Who would/ could have been involved in handling such an escalation?**
 - b. What involvement would/ could the health directorate have had?**
 - c. What involvement would/ could the Chief Medical Officer or the CMO directorate have had?**
- 13.1 As I set out in relation to the previous question, in the event of any such intimation being made to the Scottish Government, concerns would likely have been referred to the Chief Medical Officer. The Chief Medical Officer (or colleagues in the CMO Directorate) would seek assurance from the Board that the Board was responding to the concerns in an appropriate way. In this regard, the CMO, or colleagues on the CMO's behalf, would be likely to liaise, principally, with a Board's Medical Director. Depending on the nature of the concern raised, the CMO may also take advice from specialist services provided by NHS National Services Scotland.

- 13.2 Ultimately, if the CMO could not be satisfied that the Board was responding in an appropriate way, escalation could be made to the Director General of Health and Social Care who may liaise with the Board's Chair and Chief Executive. The relationship between Health Boards and the Scottish Ministers is one of collaboration subject to direction. If the Scottish Ministers were not satisfied the Board was taking appropriate action, it may be directed to do so. The Scottish Ministers' power of direction is not exercised as part of routine operational oversight or clinical decision-making by Health Boards. Under Section 2(5) of the National Health Service (Scotland) Act 1978, Scottish Ministers have the power to issue regulations and directions that Health Boards are legally obliged to follow. These directions are typically issued to specify the manner in which functions are to be exercised (consistent with primary and secondary legislation) or to intervene in cases of service failure. Whilst not required by the legislation, directions are normally issued as formal documents prepared following a similar process to regulations and signed by a senior Scottish Government official.
- 13.3 In relation to Mr Eljamel, formal escalation to the CMO did not occur until 19 December 2013, after the Board had already received the RCS report and suspended Mr. Eljamel. [SG-00013]. Consequently, the CMO's involvement was limited to seeking retrospective assurance, confirming that the Board had engaged with the GMC and was managing the patient recall process, rather than involvement in the decision-making itself [SG-00060].
- 14. Please set out a broad chronology of the involvement of SG with or their knowledge of the professional practice of Mr Eljamel, including:**
- a. The nature and timing of any intimation to them of matters relating to the professional practice of Mr Eljamel or any other matter falling within the ambit of the Inquiry's Terms of Reference or provisional List of Issues;**
 - b. The nature and timing of any meetings attended by or correspondence involving any representatives of SG relating to the professional practice of Mr Eljamel or any other matters falling within the ambit of the Inquiry's Terms of Reference or provisional List of Issues;**
 - c. The clinical supervision, suspension or resignation of Mr Eljamel (ToRs 8 to 10);**

- d. **The voluntary removal of Mr Eljamnel's name from the medical register (ToR 11);**
- e. **The document management systems within NHS Tayside relating to the professional practice of Mr Eljamel over the relevant period or subsequently (as covered by ToR 14); or**
- f. **Any action or decisions taken by or involving SG relating to the professional practice of Mr Eljamel or any other matter falling within the ambit of the Inquiry's Terms of Reference or provisional List of Issues, including the reasons for any such action or decisions.**

In setting out the chronology requested under question 14 above, please identify any key individuals within SG involved in any of the listed matters and the nature of their involvement.

14.1 A broad chronology, taken from the Scottish Minister's opening statement is set out in an answer to question 7 above. I can provide the following additional details covering the period up to Mr Eljamel's voluntary removal from the GMC's register on 7 March 2015.

- i) I understand that in December 2012, a complaint was raised with NHS Tayside in relation to a spinal procedure undertaken by Mr Eljamel [SG-00178], which provoked NHS Tayside to commission a Significant Clinical Event Analysis (SCEA) review dated 13 May 2013. The Scottish Ministers became aware of the SCEA as part of the commission from the then Cabinet Secretary for Health and Social Care Jeane Freeman into the Unresolved and Outstanding Concerns regarding Professor Eljamel, Former Consultant Neurosurgeon at NHS Tayside. Further information in relation to the SCEA was requested from NHS Tayside on 6 July 2021 [SG-00068];
- ii) Following on from the SCEA, it is understood that Mr Philip McLoughlin (NHS Tayside Clinical Director for Specialist Services) and Mrs Audrey Warden (NHS Tayside General Manager for Specialist Services) met with Mr Eljamel on the 20th of June 2013 to discuss patient complaints. This meeting resulted in Mr Eljamel's practice being restricted and

supervision imposed, insofar as it continued (to be conducted by David Mowle, Consultant Neurosurgeon). Additionally, NHS Tayside commissioned a review of Mr Eljamel's practice by the Royal College of Surgeons (RCS) of England. The Scottish Ministers became aware of this meeting as part of the commission from the then Cabinet Secretary for Health and Social Care Jeane Freeman into the Unresolved and Outstanding Concerns regarding Professor Eljamel, Former Consultant Neurosurgeon at NHS Tayside. Further associated documentation in relation to this meeting was requested from NHS Tayside on 6 July 2021 [SG-00068];

- iii) On 4 October 2013, the RCS issued its 'interim report' to NHS Tayside, raising significant concerns over Mr Eljamel's clinical practice: for example, that he had carried out a number of wrong site or wrong level surgeries. The Scottish Government was not advised of this at the time but subsequently became aware the RCS reports had been prepared when they were advised of Mr Eljamel's suspension on 19 December 2013;
- iv) On 6 December 2013, the RCS issued its full report to NHS Tayside, which examined fourteen complaints related to Mr Eljamel. The dates of these complaints varied between 2011 (3), 2012 (4) and 2013 (8). The Scottish Government was not advised of this at the time but subsequently became aware the RCS reports had been prepared when they were advised of Mr Eljamel's suspension on 19 December 2013.

At a meeting held on 10 December 2013, NHS Tayside's Clinical Director and Associate HR Business Lead discussed the findings of the RCS report with Mr Eljamel, who was suspended pending the outcome of ongoing investigations by the General Medical Council and NHS Tayside. The Scottish Government were notified of this meeting on 19 December 2013;

- v) In early 2014, it is understood that NHS Tayside and Mr Eljamel corresponded in relation to Mr Eljamel's proposal to retire from the employment of the Board on 31 May 2014. NHS Tayside accepted that proposal and extended Mr Eljamel's suspension to the relevant date.

Additionally, NHS Tayside confirmed to Mr Eljamel that their internal investigation would not proceed. In March 2014, a report was published in relation to NHS Tayside's adherence to clinical governance throughout the investigation into Mr Eljamel. The Health Workforce Directorate was made aware of Mr Eljamel's intention to retire via suspension forms submitted by NHS Tayside on 6 March 2014 [SG-00157].

15. To what extent could SG have become involved in matters relating to the professional practice of Mr Eljamel beyond their actual involvement? What actions could SG have taken in terms of their legal and regulatory responsibilities?

15.1 As noted above, had concerns been raised with the Scottish Government relating to the professional practice of Mr Eljamel then these would have been brought to the attention of the CMO and their Directorate. The CMO would have taken such steps as were necessary to gain assurance from NHS Tayside that they were doing all that was required to ensure patient safety and care, including by referring matters to the GMC. As noted above, the relationship between Health Boards and the Scottish Ministers is one of collaboration, subject to direction by the Scottish Ministers.

16. What advisory role (if any) did Mr Eljamel hold with the SG? What were Mr Eljamel's responsibilities in that regard? What assessment was done as to his professional competency to hold such a position?

16.1 I have no personal knowledge of Mr Eljamel holding an advisory role with the Scottish Government/Ministers. In answering this question my policy colleagues have reviewed relevant documents and sought to ascertain whether relevant "corporate knowledge" is held within the Scottish Government that might assist the Inquiry. My policy colleagues from the Chief Operating Officer and Mental Health Directorate have identified the following as possibly relevant to the Inquiry's question.

16.2 In 2005 the then Scottish Executive published "Delivering for Health" [SG-00170] a strategic, long-term programme of action and a framework for service change across NHS Scotland, including changes to the delivery of neurological care and treatment. From a review of relevant documents, it appears that Mr Eljamel was one of a number of colleagues from across the NHS in Scotland who provided advice to

the Scottish Executive as part of the "*neuroscience implementation group - business case sub-group*", which advised upon proposed changes to the delivery of neurological services in Scotland arising from "Delivering for Health" [SG-00166; SG-00169; SG-00165; and SG-00162].

- 16.3 I also understand that between 2003 and 2010 Mr Eljamel contributed to the National Neurosurgery Needs Assessment for Scotland dated November 2007, by Dr Graham Foster, Consultant in Public Health Medicine at NHS Forth Valley as Lead Author and Sarah Gibson from NHS Health Scotland as Lead Researcher, and a report of the Standing Advisory Committee on Neurosurgery for Mental Disorder dated January 2004 [SG-00161 and SG-00164]
- 16.4 My policy colleagues have been unable to identify precisely what role Mr Eljamel undertook in respect of each of the matters referenced in the preceding two paragraphs and are not aware of Mr Eljamel acting in any stand-alone advisory capacity.

Complaints and concerns

17. **To what extent, on what grounds and by whom could complaints or concerns about the professional practice of a consultant neurosurgeon, such as Mr Eljamel, have been raised with SG over the relevant period or subsequently? In particular:**
- a. **What action or censure was SG empowered to take with regard to such issues?**
 - b. **Were any such systems of raising complaints or concerns available to members of the public, including patients?**
 - c. **What whistleblowing opportunities/ mechanisms did SG provide for other surgeons regarding the performance or conduct of neurosurgical consultants, like Mr Eljamel?**
- 17.1 The Scottish Government does not have a role in sanctioning or censuring individual clinicians. This is the responsibility of NHS Tayside as the employer of Mr Eljamel and the General Medical Council as his professional regulator.

- 17.2 Members of the public, including patients, the general public and those acting on behalf of patients and others may raise issues with relevant NHS bodies or their health service providers through the NHS Complaints Handling Procedures (full details are covered in Q9).
- 17.3 However, not all issues may be for NHS bodies to resolve. In cases where there are concerns about the standards of conduct, ethics, or performance of an individual health professional, it may be for their professional body/regulator to investigate. These include, for example, the Nursing and Midwifery Council, the General Medical Council, the General Dental Council, the Royal Pharmaceutical Society and the General Optical Society.
- 17.4 Members of the public, including patients, the general public and those acting on behalf of patients and others could also raise issues with the Scottish Government either directly or through their elected representative. Such issues would be addressed by officials or Ministers through the Scottish Government correspondence system.
- 17.5 I address whistleblowing procedures in answer to question 9(b) above.

18. Were any such complaints or concerns raised? If so,

- a. **By whom?**
- b. **When?**
- c. **What was the nature of the complaint or concern?**
- d. **What process or investigation took place?**
- e. **What was the outcome/ how were the complaints or concerns resolved?**

Please set out the identity of key individuals within SG who had such involvement and the broad role they played.

- 18.1 Various directorates within the Scottish Government have had contact with former patients of Mr Eljamel. From the interrogation of records to date, the Government has had direct engagement with:

- Ms Jules Rose
- Mr Patrick Kelly

- CAT D
- CAT D
- CAT D
- CAT D

Correspondence has also been received from MPs and MSPs acting on behalf of their constituents, including:

- Bill Bowman MSP
- Miles Briggs MSP
- Wendy Chamberlain MP
- Graeme Dey MSP
- Jim Fairlie MSP
- Stephen Gethins MP
- Jenny Gilruth MSP
- Mairi Gougeon MSP
- Alex Johnstone MSP
- Alison McInnes MSP
- Michael Marra MSP
- Carol Mochan MSP
- Willie Rennie MSP
- Shona Robison MSP
- Douglas Ross MP
- Mike Rumbles MSP
- Liz Smith MSP
- John Swinney MSP
- Jeane Freeman MSP (constituency office)
- Nicola Sturgeon MSP (constituency office)

18.2 The Scottish Government is not aware of any complaints raised regarding neurosurgeons other than Mr Eljamel. The nature of the complaints received focus on:

- practice issues;
- harms caused;
- unsafe or inappropriate surgeries; and
- misrepresentation of his professional credentials.

- 18.3 The usual practice within the Healthcare Quality and Improvement Directorate would be to advise correspondents on how to complain to the relevant Board (who are responsible for service delivery and patient treatment); to provide information on the Patient Rights (Scotland) Act 2011 and supporting legislation, making clear the duty on health boards to investigate and respond to any concerns raised; to share information on the role of the Scottish Public Services Ombudsman; and to provide details of the free, confidential and independent support available to patients through the Patient Advice and Support Service. As is explained more fully in answer to questions 27 to 40 below, additional action was taken in relation to complaints made by Ms Rose and Mr Kelly.
- 18.4 Outcomes of complaints are not routinely reported to the Scottish Government by NHS Boards.

Part D – previous investigations

Under Term of Reference 12, the Inquiry is charged with investigating previous investigations into Mr Eljamel. The Inquiry is keen, in section 1 of its evidential investigations to understand the broad ambit, aims and findings of the investigations. It is intended that further, more detailed evidence about these investigations will be sought at a later stage in the work of the Inquiry.

Responsibilities

- 19. Please explain SG's legal, regulatory and any other responsibilities for launching or becoming involved in investigating concerns about the practice of individual surgeons in the positions held by Mr Eljamel over the relevant period, such as those listed in ToR 12.**
- 19.1 I set out the Scottish Government's legal and regulatory functions in relation to the investigation of concerns about the practice of individual surgeons throughout this statement. The Scottish Ministers have wide ranging powers to deliver their duties under the 1978 Act. It is, for the most part, a matter for the Scottish Ministers how those powers are exercised. If it is thought that it is necessary, in furtherance of their duties under the 1978 Act, to investigate (by whatever means is considered appropriate by the Ministers) concerns related to the practice of individual surgeons

they will do so. As the Inquiry is of course aware, the Ministers may convene Public Inquiries under the Inquiries Act 2005 if that is thought appropriate. It should be noted, however, that Ministers are only likely to exercise additional oversight under the 1978 Act where they are satisfied that existing processes and controls have not, or are unlikely to, result in a satisfactory outcome. Ministers would not ordinarily become involved in concerns related to an individual clinician and would expect those concerns to be dealt with locally by a Health Board, in conjunction with the GMC if appropriate.

20. Please explain the systems which were in place within SG over the relevant period which governed such investigations, including explaining how and why any such systems evolved.

20.1 I refer to my response at 9(g) of this statement and to my answer to question 19 above.

21. What involvement would the SG have in (a) a significant clinical event analysis (“SCEA”) or (b) adverse event analysis over the relevant period?

21.1. The Scottish Government would not expect to have any direct involvement in a SCEA or adverse event analysis, including identifying, reviewing or decisions related to, an adverse event. These are local processes determined by the Health Board within which the care is being delivered. The Scottish Government sets the strategic direction of the policy and issues guidance but has no operational involvement in the management of adverse event reviews.

21.2 National oversight of adverse events is led by Healthcare Improvement Scotland. The National Adverse Event Framework developed by HIS [SG-00027 and SG-00029], in collaboration with Health Boards, is the framework to which Health Boards should be aligning their SCEA processes. The Framework was first published in September 2013. The Adverse Events Framework sets out the requirements of NHS Boards for reporting to external agencies. Prior to 2013, all Health Boards had in place a reporting system designed to capture incidents and near-misses and each Health Board had in place an individual policy for the management of adverse events. These were developed at Board level or were specialty-specific, therefore, not nationally aligned. The majority of Health Boards used some form of commercially available risk management software, however, not all used the same system. The Adverse Event programme in Healthcare Improvement Scotland was created to build upon the 2012 report [SG-00213] into the

management of adverse events at NHS Ayrshire and Arran.

21.2.1 Certain events must be reported to external regulators at a national or UK level.

These include:

- *reporting to the Health and Safety Executive as set out in the Reporting of injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR);*
- *reporting all adverse events involving health, social care, estates and facilities, equipment to the Incident Reporting and Investigation Centre (IRIC) within Health Facilities Scotland as set out in CEL 43 (2009);*
- *reporting of serious adverse events relating to blood transfusion to the Medicines and Healthcare Products Regulatory Agency (MHRA) as required by the UK Blood Safety and Quality Regulations 2005 and the EU Blood Safety Directive;*
- *reporting suicides of individuals in contact with mental health services to Healthcare Improvement Scotland;*
- *reporting of deaths associated with medical or dental care to the Procurator Fiscal;*
- *reporting to the UK wide national audits and enquiries;*
- *reporting information governance incidents to the Information Commissioners Office;*
- *reporting of Adverse Drug Reactions via the Yellow Card Scheme to the MHRA. This system has been expanded since July 2012 to include medication errors due to a change in the European Transposition of Pharmacovigilance legislation, and*
- *reporting of Ionising Radiation adverse events to the Warranted Inspector for Ionising Radiation (Medical Exposure) Regulations (IR(ME)R).*

22. Please explain the involvement of SG in (a) any SCEA or any (b) adverse event analysis into any cases involving former patients of Mr Eljamel, as well as the outcome of any such involvement?

22.1 The Scottish Government was not involved in clinical adverse event reviews in relation to Mr Eljamel. It did, however, commission two independent neurosurgeons, Miss Catherine Gilkes and Mr Christo Tolia, to conduct individual case note reviews in

relation to two of Mr Eljamel's patients: Mr Pat Kelly and Ms Jules Rose [SG-00010 and SG-00009] as well as the Review of Unresolved and Outstanding Concerns regarding Mr Eljamel, led by Professor Craig White, in March 2021 [SG-00008], discussed more fully later in the statement.

Previous investigations into Mr Eljamel

As regards the following investigations into the professional practice of Mr Eljamel and the systems relating to that practice:

- a. Royal College of Surgeons report relating to Mr Eljamel commissioned by NHS Tayside dated 2013 (reported on 6th December 2013)**
- b. Interim report of NHS Tayside relating to Mr Eljamel dated October 2013**
- c. Final report of NHS Tayside relating to Mr Eljamel from December 2013**
- d. The NHS Tayside review of spinal cases from 2010 to 2013, a direct recommendation from the RCS review**
- e. The NHS Tayside review of complainant cases relating to Mr Eljamel 2014/15**
- f. The External Review by the Executive Medical Director of NHS Lothian to review the process and decision-making regarding the management of Mr Eljamel 2018/2019**

23. What intimation was made to SG about these investigations being commissioned by NHS Tayside and why they were commissioned when they were? When was any such intimation made?

23.1 I understand that the Scottish Government was not made aware of these investigations being commissioned by NHS Tayside. Internal investigations of this nature by Health Boards are not something that the Scottish Government would routinely be made aware of. If notification was made it would most likely have been made to the Health Workforce Directorate and I confirm that, other than receipt suspension forms discussed in paragraph 14.1 above, the Health Workforce Directorate were not made

aware of these investigations being commissioned.

24. What involvement did SG have in any of these investigations, including any role in fixing their scope, the identity of the party carrying them out or their process? Please set out the identity of key individuals within SG who had such involvement and the broad role they played.

24.1 As presently advised by my policy colleagues within the Health and Social Care Directorates identified at paragraph 1.4 above, I am not aware of the Scottish Government playing any role in these investigations by, for example, fixing their scope, identifying the person to undertake the investigation or regulating process. I understand the investigations referenced in this question were all initiated and undertaken by NHS Tayside. Document searches undertaken by those Directorates have not yielded any relevant results indicating Scottish Government involvement.

25. What intimation was made to SG of the outcomes, findings or reports of these investigations? When was any such intimation made? What, if any, action was taken by SG or was SG aware of being taken by NHS Tayside as a result of these investigations?

25.1 The Scottish Ministers were advised by NHS Tayside of the outcome of the Report prepared by the Royal College of Surgeons England in relation to the professional practices of Mr Eljamel and the subsequent suspension of Mr Eljamel on 19 December 2013 [SG-00013].

25.2 Scottish Government records indicate the Board received the Report on 9 December 2013 [SG-00042] and acted locally to suspend on 10 December 2013, prior to notifying the Scottish Government on 19 December 2013.

25.3 As presently advised by my policy colleagues, I cannot confirm whether NHS Tayside provided the Scottish Ministers with the other reports referenced in this question. Colleagues from the Health Workforce Directorate have undertaken a search of the Scottish Government's corporate record and no documents have been recovered which match the scope of this question.

26. What involvement in these investigations would SG have expected to have had which it did not and why?

26.1. The Scottish Government would not expect to have direct involvement with these investigations, as these are local matters administered by NHS Tayside.

26.2 More generally, the CMO maintains regular engagement with Health Board Medical Directors through monthly meetings held under the Scottish Association of Medical Directors (SAMD). These sessions facilitate discussion of clinical care delivery and allow the CMO to reinforce the Scottish Government's expectations regarding Board performance and governance, although investigations would not generally be covered as an agenda item. Meetings would have taken place on a monthly basis throughout the relevant period (after 1999). I would have expected the outcome of the reviews referenced in this question to have been raised by NHS Tayside's Medical Director during routine engagement. I cannot, at this time, confirm whether that was or was not done as the relevant CMOs in post at the time (Harry Burns, Aileen Keil and Catherine Calderwood) no longer work with the Scottish Government and have not been contacted by the Scottish Government when this statement was prepared. The Scottish Ministers will, however, use its best endeavours to facilitate access to any and all persons of interest to the Inquiry as its detailed work advances. For completeness, I can confirm that searches have been undertaken to identify any relevant minutes of meetings between the CMO and NHS Tayside's medical director in relation to the matters raised in this question and no relevant records have been recovered.

The Scottish Government Review of Unresolved and Outstanding Concerns regarding Mr Eljamel, Former Consultant Neurosurgeon at NHS Tayside 2022

27. Why was the Scottish Government review commissioned when it was?

27.1. On 11 March 2021 a meeting was held involving, amongst others, the then Cabinet Secretary for Health, Jeane Freeman, Mr Kelly and Ms Rose [SG-00018]. Having listened to the concerns of Mr Kelly and Ms Rose, Ms Freeman considered that it was appropriate that a review should be commissioned to investigate those concerns. In particular, it was observed that the concerns raised by Mr Kelly and Ms Rose at the meeting had not been directly addressed in earlier reviews. That these concerns remained outstanding was a cause of frustration and concern to Mr Kelly and Ms Rose.

27.2 It was thought appropriate that such a review should be conducted by the Scottish Government not NHS Tayside.

28. By whom was the review commissioned?

28.1 The review was commissioned by the Scottish Ministers under the direction of the then Cabinet Secretary for Health and Sport, Jeane Freeman.

29. What were the outstanding questions and unresolved concerns of two patients which was shared with NHS Tayside in August 2022?

29.1 The questions and unresolved concerns shared with NHS Tayside related to the patients' treatment by Mr Eljamel, failures in oversight and legal accountability, and broader issues of systemic governance. While these concerns were shared with NHS Tayside [SG-00070], my policy colleagues from the Eljamel Inquiry Response Team have been unable, thus far, to identify precisely when that sharing occurred.

29.2 Both Mr. Kelly and Ms. Rose sought access to all documentation related to their cases, including NHS Tayside's internal findings, decision timelines and evidence of prior warnings about Mr Eljamel. They also questioned why external regulators like Police Scotland and the HSE had not conducted thorough investigations, pressed for clarity about the responsibilities of authorities in ensuring patient safety and where accountability therefore lay. Their concerns spanned personal clinical matters, handling of their complaints and whether NHS Tayside and regulators properly fulfilled their duty to protect patients. They also questioned the methodology and findings of the Case Note Reviews undertaken in relation to their care, and whether those reviews were sufficient in investigating NHS Tayside.

30. Who were the two patients?

30.1 Mr Pat Kelly and Ms Jules Rose.

31. Why was it thought appropriate/ necessary for the Scottish Government to undertake such a review?

31.1 It was considered appropriate to undertake the review because Mr Kelly and Ms Rose's serious concerns about both clinical care and systemic governance failures remained

unresolved despite multiple attempts to address them through existing mechanisms, including complaints to NHS Tayside, the police and other regulatory bodies. The failure to address these concerns had resulted in a Ms Rose and Mr Kelly experiencing a loss of trust and confidence in the adequacy and impartiality of previous investigations. The review aimed to ensure that all outstanding issues were addressed by offering a perspective which was independent of NHS Tayside.

32. What was the remit of the review which was commissioned and why was the remit set as it was?

32.1 The remit of the review focused on the care provided to Mr Kelly and Ms Rose by Mr Eljamel, as well as an examination of how NHS Tayside managed Mr Kelly and Ms Rose's treatment in terms of patient care, communication and follow-up [SG-00061]. The review explicitly excluded questions of legal liability, aiming instead to provide expert medical evaluation of the treatment provided and facilitate the identification of governance lessons. This approach allowed for specialised scrutiny of clinical care and a factual understanding of what occurred, while also addressing governance concerns by assessing NHS Tayside's actions/inaction and identifying any necessary improvements to their processes.

33. What materials were made available to the Scottish Government when the review was commissioned? Why were those materials considered to be what would be needed for the remit of the review to be fulfilled?

33.1 To support the independent review, the Scottish Government gathered a comprehensive set of documentary material [SG-00068; SG-00064; SG-00063; SG-00065; SG-00062] from Ms Rose, Mr Kelly and NHS Tayside, which are listed below:

- Significant Clinical Event Analysis (2012, case 33) [SG-00189];
- Details of the adverse events of 18 July 2011 and 29 July 2013 contained within the Datix system printed in October 2018 [SG-00190];
- Letter from Philip McLaughlin to Mr Eljamel dated 21 June 2013 [SG-00185];
- Letters from Dr Andrew Russell, Medical Director, NHS Tayside to the GMC dated 20 December 2013 [SG-00184];
- Letter from Dr Andrew Russell, Medical Director, NHS Tayside to Professor John Connell, Professor of Endocrinology, Ninewells Hospital and Medical School dated 17 February 2014 [SG-00191];

- Letter from Dr. Lee Jordan, Associate Medical Director, Patient Access and Assurance, NHS Tayside dated 26 October 2018 [SG-00188];
- SBAR Briefing Neurosurgery Consultant Fitness to Practice dated 1 August 2018 provided to the Chief Executive and Chairman [SG-00182];
- Recommendations from Tracey Gilles Report – Review of NHS Tayside’s Investigation of Mr Eljamel [SG-0175];
- The External Review by Tracey Gillies, Executive Medical Director of NHS Lothian Review of NHS Tayside’s Investigation of Mr Eljamel dated 8 April 2019 [SG-00192];
- Tabular Timeline of SE employment [SG-00180];
- Timeline Staffing list [SG-00179];
- Updated S Eljamel Complaint List [SG-00178];
- Copy of Claims Data [SG-00186];
- Incident Report Form regarding incident of 18 July 2011, dated 25 January 2013 [SG-00187];
- Email Alert Notification for Registration Change of Employee from the GMC dated 28 February 2014 [SG-00183];
- Initial Observations Relating to the Collated Timeline(s) and update on progress regarding Mr Eljamel dated 26 October 2018 (with comments from Tracey Passway) [SG-00177].

33.2 These documents consisted of internal complaint reviews, timelines of events, prior external review findings and reports of investigations relating to the patients’ adverse outcomes. Additionally, chronologies of significant events in both patients’ care and NHS Tayside’s management of Mr Eljamel were collected, along with outcomes of previous reviews or inquiries. At the suggestion of Ms Rose, the review also included some additional relevant information held by NHS Tayside related to Mr Eljamel, such as the results of his appraisals. These materials were essential to enable an independent clinical assessment of the care provided and to facilitate evaluation of NHS Tayside’s governance arrangements.

33.3 Objective Connect (a cloud-based document sharing platform) folders were set up and made accessible to NHS Tayside, Mr Tolias, Ms Gilkes, Mr Kelly and Ms Rose. Scottish Government officials were responsible for setting up the folders, in conjunction with the Scottish Government’s Information and Technology Services Division, but did not access the material stored within the folders. Mr Kelly also personally provided some of his own medical records direct to officials.

33.4 The materials provided were considered sufficient for the review as they directly addressed the scope of the review by offering detailed evidence of the patients' treatment and NHS Tayside's actions in relation thereto. Complete medical records enabled independent neurosurgeons to thoroughly assess the quality of care, while internal documentation from NHS Tayside allowed for evaluation of the organisation's governance and decision-making processes. Together, these records ensured the reviewers could determine whether the patients were harmed by substandard care and whether the Health Board responded appropriately, without extending beyond the agreed focus of the review.

34. To what extent were materials missing at that time, which would otherwise have been relevant to the remit of the review?

34.1 At the time of the review, the Scottish Government was not aware of any significant missing material. It was believed that all pertinent records held by NHS Tayside had been obtained, with the review relying on the documents provided by the Board.

35. What role were patients or their representatives permitted to play in the review and why?

35.1 The patients and their MSP representative played an active role in the Scottish Government's review. They contributed questions and concerns at the outset, helped shape the review's scope and Terms of Reference, reviewed and commented on draft documents, including the approach and questions for NHS Tayside and provided feedback on draft findings. This consultative and collaborative process ensured that the patients' experiences influenced the review, promoted transparency and trust and addressed previous concerns about being ignored or excluded.

36. What methodology did the review follow? Please set out the identity of key individuals within SG who had involvement in the review and the broad role they played.

36.1 The review adopted a two-pronged methodology: first, two independent external neurosurgeons reviewed each patient's care; and second, Scottish Government officials conducted a document-based analysis of NHS Tayside's governance and communications. The Scottish Government team, led by Professor Craig White, with

Anncris Roberts managing operations and Kay Nichols coordinating with external experts, gathered information, compared clinical findings with NHS Tayside's actions and measured these against expected standards. This approach ensured both clinical and organisational issues were examined.

37. What were the main conclusions/ recommendations of the review and what was the reasoning behind these conclusions/ recommendations, for NHS Tayside, the Board of NHS Tayside and SG?

37.1 A copy of the review's findings is produced [SG-00042].

37.2 In summary, the review found that, although NHS Tayside had commissioned external clinical reviews of two specific cases related to Mr Eljamel, it had failed to address broader systemic issues. The main recommendation was for NHS Tayside to conduct a thorough review of all of Mr Eljamel's activities, especially regarding the insufficient supervision he received in 2013. The review concluded that the indirect supervision arrangement in place from June to December 2013 was inadequate and involved limited oversight. The review advised the Board to strengthen governance and communication with patients. The rationale for these recommendations was as follows:

- i) the review had identified that prior reviews had not been developed with accompanying action plans associated with measures of implementation and effectiveness
- ii) two former patients had not received responses to their requests or offers of support.

The review also advised the Scottish Government to monitor these actions and consider additional measures to resolve any outstanding concerns on the basis that NHS Tayside has not developed action plans and associated measures of implementation and effectiveness following previous reviews.

38. What action was taken by SG as a result of the review being completed and why?

38.1 After the review [SG-00008], the Scottish Government submitted its findings to the Cabinet Secretary for Health and Sport. Following receipt of the report in August 2022, NHS Tayside committed to implementing the review's recommendations, including conducting a comprehensive due diligence review of Mr Eljamel's activities. NHS Tayside also agreed to make arrangements for further communication, engagement and support with Mr Kelly and Ms Rose. The Scottish Government asked the Board to report back with an action plan and provided a suggested template. The Scottish Government maintained communication with affected patients, MSPs, Ms Rose and

Mr Kelly to ensure transparency and accountability [SG-00214; SG-00206; SG-00207; SG-00208; SG-00209]. To address issues beyond the initial review's scope, the Scottish Government initiated work on an independent legal commission, reflecting a commitment to resolving all concerns. The Scottish Government also provided ongoing oversight [SG-00091; SG-00203; SG-00112; SG-00094], monitoring NHS Tayside's progress [SG-00089] and evaluating the outcomes of the Board's due diligence review to guarantee meaningful improvements were made [SG-00092; SG-00093; SG-00204; SG-000094; SG-00110; SG-00111; SG-00096; SG-00104; SG-00097; SG-00105; SG-00205].

39. What consideration was given during or shortly after the 2022 review to holding a public inquiry? What was the reason for not announcing one?

39.1 The discussions taking place at the time were centred on there being timely, robust responses to the recommendations and rigorous oversight of NHS Tayside to ensure the concerns recorded in the review were addressed. The two former patients (through their elected representatives) and Ministers were content with this proposal at that time and that this would deliver what was needed in way that was quicker and more effective than a public inquiry. At this time, the holding of a public inquiry was not being actively considered by the Scottish Ministers.

40. What action did the SG understand would be taken by NHS Tayside in the aftermath of the SG review being completed? What checks were undertaken by the SG that these actions were followed through?

40.1 The Scottish Government expected NHS Tayside to implement the review's recommendations in full by conducting a comprehensive follow-up review of Mr Eljamel's activities and all related records, addressing any outstanding concerns and producing an action plan and documented outcomes. This included examining issues beyond Mr Kelly and Ms Rose's treatment, reaching out and apologising to all affected patients (particularly those treated between June and December 2013), strengthening governance and internal procedures to prevent future failures, and maintaining open and regular communication with both the patients and the Scottish Government to improve for transparency and accountability.

40.2 To ensure that NHS Tayside acted on the review's recommendations, the Scottish Government put in place oversight measures. The Scottish Government required NHS

Tayside to submit a detailed report and action plan [SG-00091; SG-00203] on its follow-up review, monitored progress through regular meetings and maintained open communication for ongoing progress updates [SG00092; SG-00093; SG-00204; SG-00094; SG-00110; SG-00111; SG-00096; SG-00104; SG-00097; SG-00105; SG-00205]. Scottish Government officials verified that actions, such as sending letters to patients and adopting new protocols for patient liaison, were completed by reviewing progress reports and supporting documentation provided by NHS Tayside.

Further investigations

As regards the following investigations:

- a. The NHS Tayside Executive Medical Director Response to Patient A on undertaking a detailed review of surgery carried out and matters arising in theatre 2023;**
- b. The NHS Tayside look back at operative cases during the period of Mr Eljamel's supervision (21 June 2013 to 10 December 2013) 2023; and**
- c. The NHS Tayside due diligence review of documentation held relating to Mr Eljamel dated 25 August 2023 and the NHS Tayside Executive medical director report relating to Mr Eljamel dated 25 August 2023**

41. What intimation was made to SG about these investigations being commissioned by NHS Tayside and why they were commissioned when they were? When was any such intimation made?

41.1 At a meeting on 23 March 2023 (where no formal minutes were taken) [SG-00107; SG-00193], NHS Tayside's Executive Medical Director, Dr Pamela Johnson, advised Professor Craig White that she had been leading work to consider the concerns being raised about Mr Eljamel's practice, including to understand commissioning of the reviews noted in this question, to inform decisions about responses to individual patients who have been in touch with NHS Tayside and the potential future contact of others with concerns. This work would consider Mr Eljamel's practice in NHS Tayside in three phases:

- *phase 1 – commencement of employment in 1995 to the point concerns emerged in 2013;*
- *phase 2 – May 2013 to the point of suspension and then retiral in 2014; and*
- *phase 3 – 2014 to the [then] present day.*

41.2 Dr Johnson and NHS Tayside's Chief Executive, Mr Grant Archibald, attended a meeting with the Cabinet Secretary for NHS Recovery, Health and Social Care (at that time Michael Matheson MSP), NHS Tayside and MSPs on 20 April 2023 [SG-00007]. At that meeting Dr Johnson referred to work she had commissioned following receipt of the 2022 Overview Report (the outputs from which were later referred to as the Due Diligence Review).

42. What involvement did SG have in any of these investigations, including any role in fixing their scope, the identity of the party carrying them out or their process?

42.1 Beyond the assurance work arising from the Review of Unresolved Concerns discussed in response to question 40 above, the Scottish Government was not involved in NHS Tayside's decision to conduct these reviews.

43. *What intimation was made to SG of the outcomes, findings or reports of these investigations? When was any such intimation made? What, if any, action was taken by SG or was SG aware of being taken by NHS Tayside as a result of these investigations?*

43.1 The Scottish Government received a copy of the NHS Tayside Due Diligence Review on 28 August 2023 [SG-00086]. The Due Diligence Review revisited a number of previous reviews undertaken, noting that both the exercises referred to at (a) and (b) formed part of this process. The Due Diligence Review itself notes actions undertaken and outcomes and this was the means by which the Scottish Government was made aware. A meeting was held with NHS Tayside on the same date [SG-00085] to discuss the review and a draft letter NHS Tayside planned to issue to 111 of Mr Eljamel's former patients.

43.2 On 29 August 2023 NHS Tayside briefed [SG-00122; SG-00215] the then Cabinet Secretary for NHS Recovery, Health and Social Care, Michael Matheon MSP, ahead of his meeting with MSPs scheduled for 30 August 2023.

43.3 On 30 August 2023 the Cabinet Secretary met with MSPs to, amongst other things, hear from them about a range of aspects related to their constituents' concerns [SG-00087]. A range of options for independent scrutiny of NHS Tayside were discussed, including an independent commission and public inquiry.

43.4 On 1 September 2023, officials briefed the Cabinet Secretary on potential further steps that might be taken to scrutinise NHS Tayside. A copy of that briefing is produced [SG-00017].

44. What involvement in these investigations would SG have expected to have had which it did not and why?

44.1 As these were internal NHS Tayside investigations, the Scottish Government would not have expected to have any direct involvement in these investigations but would have expected to be advised of their findings.

Outcome leading to a public inquiry

45. At a meeting held with MSPs representing constituents affected by the professional practice of Mr Eljamel, the Inquiry understand that the Cabinet Secretary announced at a meeting on 20 April 2023 that:

“he intended to pursue a course of action which would require individual engagements with each patient by an independent person (that is not someone directly employed by NHS Tayside nor Scottish Government.”

In this regard:

- a. How was it intended that the individual reviews would work/ what would their ambit be? How many former patients was it anticipated would be involved?**
- b. What was the new patient portal and how was it intended that it would be used in the individual review process?**
- c. What consideration was given to announcing a public inquiry?**

d. Why was the individual review course preferred?

e. What consultation took place with former patients about that course?

f. What was the estimated cost of the individual reviews? How was it planned that it would be funded?

a. How was it intended that the individual reviews would work/ what would their ambit be? How many former patients was it anticipated would be involved?

45.1 My understanding is that the Cabinet Secretary envisaged that every former patient of Mr Eljamel would be contacted and offered the opportunity to instruct an independent assessment of their treatment at no personal cost. To fulfil this aim, an independent individual with relevant expertise would be appointed by the Scottish Government to lead a series of 'case note reviews'. The number of reviews undertaken would be determined by a consultation phase in which all former patients would be contacted and offered a review. The case notes of instructing patients would be provided to an independent expert (or experts), who would undertake a review of the notes and prepare a report that detailed their findings. This exercise would be guided by Terms of Reference set by the Scottish Government, which would facilitate thorough independent scrutiny of the adequacy of the procedures undertaken by Mr Eljamel; identifying errors or irregularities in clinical practice or oversight.

45.2 A submission [SG-00075; SG-00194] was made to the Cabinet Secretary by Scottish Government officials on 25 May 2023 in which two models were proposed:

45.2.1 A retired clinical professional such as a CMO or a neurosurgical specialist would be appointed to lead the review. This option would involve engagement with HIS, former CMO's and the Royal College of Neurosurgeons to identify whether there were any appropriate individuals who were willing to undertake the instruction. Scottish Government officials met with the then in-post CMO on 5 June 2023 to consult on this option and engaged with HIS; or

45.2.2 A retired judge, KC, or Sheriff would be appointed to lead the review. This option would involve the Cabinet Secretary writing to the Lord Advocate to

request advice and assistance in identifying a suitable person and thereafter meeting with the Lord President. It was estimated that this would be more expensive than option 1.

b. What was the new patient portal and how was it intended that it would be used in the individual review process?

45.3 A Patient Liaison Response Team was established by NHS Tayside and an online form was prepared to enable relevant experiences and concerns to be reported to the Health Board directly. As presently advised by my policy colleagues from the Directorate of the Chief Operating Officer, I am unaware of the extent to which the use of this portal was considered in relation to the independent review process. I am, however, aware that it was the intention of Scottish Government officials for NHS Tayside to make initial contact with the affected patients to notify them of the opportunity to instruct an independent review.

c. What consideration was given to announcing a public inquiry?

45.4 At this time a public inquiry was considered; however, the Scottish Government was focused on addressing the concerns of individual patients and, in the context of the questions that required to be answered in individual cases, it was not thought that a public inquiry would be the most effective way of doing so.

d. Why was the individual review course preferred?

45.5 Public inquiries tend to consider systemic issues rather than individual cases. I understand that the Cabinet Secretary was alive to the fact that there needed to be individual case note reviews to give the former patients the answers that were outstanding. The Cabinet Secretary took the view that the individual review course was more individually responsive and would be quicker in getting answers for patients [SG-00016; SG-00109; SG-00135; SG-00078; SG-00079; SG-00136; SG-00116; SG-00114; SG-00123; and SG-00122].

e. What consultation took place with former patients about that course?

45.6 While there was no formal consultation in relation to the investigative process that would be pursued, officials received feedback from Ms Rose, who represented the

interests of 95 former patients. The Cabinet Secretary met with Ms Rose in June 2023 to discuss the proposal for the independent review [SG-00023 and SG-00040].

f. What was the estimated cost of the individual reviews? How was it planned that it would be funded?

- 45.7 It was estimated that the review would cost approximately £225,000. That estimate was based on the costs of previous similar reviews (such as that related to Mortonhall Crematorium). The funding was to be allocated from the Scottish Government's Health and Social Care core budgets.

Announcement of the public inquiry

46. ***On 7 September 2023, the Cabinet Secretary for NHS Recovery, Health and Social Care, Mr Matheson stated in the Scottish Parliament that:***

“However—as I have already touched on—after considering the findings of the due diligence review, my view has significantly changed. I will offer some detail on the due diligence review process and what specifically it has found that informed my thinking. Earlier this year, NHS Tayside began to examine its handling of those concerns. Last Thursday, its board considered the report. It outlines a number of failings that I believe can only be examined thoroughly by a full public inquiry. It also raises significant information that was not previously known to the Scottish Government, and given the length of time since the first concerns were raised about Mr Eljamel, that raises real concerns.”¹

What was it about the contents of the NHS Tayside due diligence and medical director's reports that led to the decision to announce a public inquiry at that time?

- 46.1. The Due Diligence Review by NHS Tayside highlighted issues of concern to the Scottish Government of which it had not, previously, been aware. Most notably, the review confirmed a key finding of the SG Review of Unresolved and Outstanding Concerns regarding Professor Eljamel, Former Consultant Neurosurgeon at NHS Tayside, that the supervised practice arrangements put in place for Mr Eljamel

were inadequate and that 111 patients had been placed at potential risk of harm between 21 June 2013 and 10 December 2013. It further identified that NHS Tayside did not respond to the General Medical Council regarding Mr Eljamel's request for voluntary erasure from the medical register, and revealed multiple examples of reviews and investigations where no follow up action was recorded and scrutiny, assurance or supporting governance was either absent or inadequate. The review also found cases where, despite complaints, adverse event reports and legal claims, no formal review of cases had been documented or retained and that documents of relevance had been destroyed even when legal claims were active. Additional concerns included adverse events for which no investigation could be identified and instances where reports of incidents were not recorded until 536 and 791 days after they occurred. The Review also identified several weaknesses in corporate governance relating to assurance of the completion of actions undertaken prior to the Scottish Government review in 2022, and outlined analysis of other historical information concerning patterns of complaints and the handling of whistleblowing investigations.

- 46.2. Officials briefed the Cabinet Secretary on 1 September 2023 [SG-00017]. The briefing outlined potential "next steps" that might be taken in light of the contents of the Due Diligence Review. These included establishing an independent commission (a review of individuals' cases and a review of learning and governance systems at NHS Tayside), a public inquiry or a concurrent independent commission and inquiry. The submission also set out some of the findings from the Due Diligence Review. This submission did not recommend a preferred course of action to the Cabinet Secretary and sought his views on how he wished to proceed.
- 46.3. Officials from the Directorate of Chief Operating Officer provided analysis of all three options [SG-00141; SG-00145; SG-00090; SG-00082; SG-00079; SG-00088; SG-00144; and SG-00143]:

46.3.1 **Option 1** - Independent Commission

- 46.3.1.1 An independent legal expert would oversee a review of patient treatment and review the learning and governance systems within NHS Tayside. At this point (September 2023), the independent commission has already been discussed and agreed with the Cabinet Secretary.

46.3.2 **Option 2** - Public Inquiry

46.3.2.1 A statutory public inquiry would be established under the Inquiries Act 2005.

46.3.2.2 The establishment of a public inquiry would have come at a time when Health Boards were under pressure from Covid recovery and winter demands and it required significant planning and resources. A dedicated sponsorship team within the Scottish Government would be required to support the inquiry chair, alongside a taskforce to analyse and implement recommendations once the inquiry reported. Legal support was also essential, with the inquiry requiring its own legal team. Costs were likely to be substantial, and inquiries typically lasted around four years, depending on scope and complexity. Consideration was also given to overlap with recent inquiries and reviews, particularly on clinical governance and patient safety, and whether there was a risk of duplication or conflicting recommendations, making a coordinated approach critical.

46.3.3 **Option 3** – Public Inquiry and Concurrent Independent Commission

46.3.3.1 A statutory public inquiry would be established concurrent to an independent commission.

46.3.3.2 This option was not preferred. It was thought the approach carried a risk of creating confusion and conflict amongst interested parties.

46.4. In the meantime, officials considered there would be benefit in making an interim arrangement to offer those people directly affected the option of a patient centred, trauma informed review of their individual cases. This review would not replace a public inquiry, but could be instigated ahead of it.

47. What was it considered that the terms of reference of the public inquiry would include? Why?

- 47.1 In his statement to Parliament on 07 September 2023, the Cabinet Secretary outlined that, in light of NHS Tayside’s ‘Due Diligence’ report, it was evident that *“the Board’s governance obligations were repeatedly not implemented in respect of concerns about Mr. Eljamel”* and that a public inquiry was therefore necessary in order to *“get to the bottom of who knew what and when, and what contributed to the failures”* [SG-00147].
- 47.2 At the point at which the Inquiry was announced, the intended scope of the Terms of Reference should be viewed through the lens of the Cabinet Secretary’s comments on the Due Diligence Review and the objectives of the Inquiry, which demonstrate what the Cabinet Secretary and Scottish Ministers aimed to achieve through the Inquiry and, therefore, what the Terms of Reference would be designed to facilitate.
- 47.3 In that context, it was envisaged that the Terms of Reference would facilitate a thorough investigation into the conduct of the NHS Tayside Board and its governance arrangements: robustly interrogating and considering the appointment, management, oversight and investigation of relevant clinical staff; reporting/whistleblowing processes; complaints handling; and other areas of governance policy that could have enabled Mr Eljamel’s practice within NHS Tayside to continue unchecked and prevented effective interventions from being made at different points. Additionally, the Terms of Reference would be framed so as to enable the Inquiry to establish what relevant bodies (including NHS Tayside and the Scottish Government) knew, when they knew it and what action was taken in light of that knowledge.
- 47.4 The Inquiry was set up concurrently with the Independent Review process. Accordingly, the Inquiry’s Terms of Reference for the Inquiry were not intended to require the Inquiry to review case notes from a clinical perspective.

48. What consultation took place with key stakeholders, including former patients of Mr Eljamel relating to the remit of the public inquiry at that or any time?

- 48.1 A public consultation on the draft Terms of Reference, led by the Inquiry, ran until 25 October 2024. This included two engagement events where interested parties could pose questions and provide feedback, alongside the opportunity to submit views in writing.
- 48.2 The Chair and Counsel to the Inquiry carefully reviewed all responses and shared a summary of the feedback with the Cabinet Secretary. Following this, the Cabinet

Secretary agreed the final Terms of Reference in consultation with Lord Weir [SG-00014 and SG-00015].

- 48.3 Former patients were central to this process, and their contributions were treated as vitally important. Both Lord Weir and the Cabinet Secretary confirmed that the Terms of Reference are robust and sufficiently flexible to enable a comprehensive investigation of the facts.

Part E – Mr Eljamel’s appointments

Under Term of Reference 1, the Inquiry is charged with the investigation of the processes leading to the appointment of Mr Eljamel to key positions he held in his professional capacity in Scotland, including (a) Consultant Neurosurgeon, Ninewells Hospital, Dundee on around 9 October 1995 (b) Head of Department /Section for Surgical Neurology, University of Dundee in around 1996 and (c) Lead Clinician for Neurosurgery and Pain, Ninewells Hospital, Dundee in around 1998, including any induction he may or may not have received upon assuming such roles and the adequacy of the systems in place in that regard within NHS Tayside and the University of Dundee.

With regard to the following roles, held by Mr Eljamel over the relevant period:

- a. Consultant Neurosurgeon, Ninewells Hospital, Dundee from around 9 October 1995;**
 - b. Head of Department /Section for Surgical Neurology, University of Dundee from around 1996;**
 - c. Lead Clinician for Neurosurgery and Pain, Ninewells Hospital, Dundee from around 1998;**
 - d. The clinical lead for the neurosurgical department in Ninewells Hospital; and**
 - e. The position of “Honorary Professor” at the University of Dundee, to which position he was appointed on 22 September 2009.**
- 49. What involvement did SG have in the process leading to Mr Eljamel being appointed to these positions/ the practising privileges being granted to them**

which were associated with them?

49.1 The Scottish Government did not have any involvement in the process leading to Mr Eljamel's appointment to these roles.

50. What investigation was undertaken by NHS Tayside or SG of the material presented in support of his applications for these positions including, in particular, any concerns which had been raised about his professional practice before his time in Tayside?

50.1 The Scottish Government did not have any involvement in these processes and is unaware of what was done by NHS Tayside in relation to the matters raised in the question.

2018 review

51. What involvement did SG have in a review into Mr Eljamel's appointment to Consultant Neurosurgeon conducted in August 2018 by the General Manager for Specialist Services within NHST Tayside after a website created by Mr Eljamel claimed that he undertook a fellowship at Hartford Hospital in Connecticut, USA, prior to his appointment as a Consultant Neurosurgeon in NHS Tayside?

51.1 The Scottish Government was not involved in this review.

Part E – documents

52. Please set out the broad locations of where documents thought to be relevant to the requests made in this rule 8 request were stored, including hard copy or electronic systems, and the identity of the party who or which controls or administers such systems.

52.1 All documents that have been identified as relevant to the Inquiry's Terms of Reference and associated 'List of Issues' were stored within the Scottish Government's corporate and non-corporate systems. These systems are controlled and administered by the Scottish Government's Information Technology Team. These systems are all electronic and include:

- The main records repository system, Objective eRDM:
- Objective Connect;
- Microsoft Outlook folders held by individual staff members (including former staff whose information has been archived and also including all electronically archived material for current staff);
- Locally managed OneDrive and C Drive folders;
- Historic G Drive records – the system that pre-dates eRDM as the recognised corporate repository; and
- WhatsApp records.

52.2 In terms of paper files and records, searches were also undertaken of those legacy paper files that are held by Scottish Government as well as records held by the National Records of Scotland (NRS). No relevant records were identified through those searches. The Scottish Government's paper and legacy files are managed and controlled by the Scottish Government's Knowledge and Information Management team. NRS' records are controlled and managed by NRS.

53. As far as the searches for documents undertaken by SG as per the request made in Appendix C below are concerned, as regards of the categories of documents which has been requested:

- a. **Please indicate what searches for documents have been undertaken for each category, including where such searches were undertaken and why these searches were thought to be comprehensive as regards the documents sought in each category, including details of search terms used on electronic systems of document storage;**
- b. **If there are significant classes of documents which were thought to have existed at some point relevant to a search category which no longer exist or are no longer held by, on behalf of or under the control of SG, please identify what these are;**
- c. **If there are significant classes of documents which were thought to have existed at some point relevant to a search category which no longer exist or are no longer held by, on behalf of or under the control of SG, please identify broadly what has happened to them (including whether they have**

been lost or destroyed and, if so, when and why); and

- d. If there are significant classes of documents which were thought to have existed at some point relevant to a search category which no longer exist or are no longer held by, on behalf of or under the control of SG and SG is aware of these being held by or on behalf of another party, please indicate the nature of these documents and by whom SG believes them to be held.**

53.1 Several large scale searches were undertaken of those locations outlined at question 52 above. With support from the Scottish Government's Knowledge and Information Management (KIM) team, the Inquiry Response Team developed a range of search criteria from the Inquiry's Terms of Reference and associated List of Issues.

53.1.1 Those search terms included

- NHSQIS OR "Health Improvement Scotland") AND ("Clinical Governance" OR Complaint OR Complaints OR Investigation OR "Supervision Process" OR "Lessons Learned");
- Documents where name or content contains the terms ("NHS Quality Improvement Scotland" OR "NHS QIS" OR NHSQIS OR "Health Improvement Scotland") AND ("Clinical Governance" OR Complaint OR Complaints OR Investigation OR "Supervision Process" OR "Lessons Learned");
- Documents where name or content contains the terms ("NHS Quality Improvement Scotland" OR "NHS QIS" OR NHSQIS OR "Health Improvement Scotland") AND ("Clinical Governance" OR Complaint OR Complaints OR Investigation OR "Supervision Process" OR "Lessons Learned");
- Documents where name or content contains the terms ("NHS Quality Improvement Scotland" OR "NHS QIS" OR NHSQIS OR "Health Improvement Scotland") AND ("Clinical Governance" OR Complaint OR Complaints OR Investigation OR "Supervision Process" OR "Lessons Learned");
- Documents where name or content contains the terms ("NHS Quality Improvement Scotland" OR "NHS QIS" OR NHSQIS OR "Health Improvement Scotland") AND ("Clinical Governance" OR Complaint OR Complaints OR Investigation OR "Supervision Process" OR "Lessons Learned");
- Documents where name or content contains the terms ("NHS Tayside" OR "NHS Tay" OR NHST) AND ("Clinical Governance" OR Complaint OR

Complaints OR Investigation OR "Supervision Process" OR "Lessons Learned");

- Documents where name or content contains the terms ("NHS Tayside" OR "NHS Tay" OR NHST) AND ("Clinical Governance" OR Complaint OR Complaints OR Investigation OR "Supervision Process" OR "Lessons Learned");
- Documents where name or content contains the terms ("NHS Tayside" OR "NHS Tay" OR NHST) AND ("Clinical Governance" OR Complaint OR Complaints OR Investigation OR "Supervision Process" OR "Lessons Learned");
- Documents where name or content contains the terms ("NHS Tayside" OR "NHS Tay" OR NHST) AND ("Clinical Governance" OR Complaint OR Complaints OR Investigation OR "Supervision Process" OR "Lessons Learned");
- Documents where name or content contains the terms ("NHS Tayside" OR "NHS Tay" OR NHST) AND ("Clinical Governance" OR Complaint OR Complaints OR Investigation OR "Supervision Process" OR "Lessons Learned");
- Documents where name or content contains the terms ("Tayside Health Board" OR "Eastern Regional Hospital Board") AND ("Clinical Governance" OR Complaint OR Complaints OR Investigation OR "Supervision Process" OR "Lessons Learned");
- Documents where name or content contains the terms ("El Jamel" OR "El Jamel" OR "El-jamel" OR Eljamel OR Muftah OR Mufta OR Salem);
- Documents where name or content contains the terms ("El Jamel" OR "El Jamel" OR "El-jamel" OR Eljamel OR Muftah OR Mufta OR Salem) AND ("ICR" OR "Clinical Review");
- Documents where name or content contains the terms ("El Jamel" OR "El Jamel" OR "El-jamel" OR Eljamel OR Muftah OR Mufta OR Salem) AND (Inquiry OR Inquiries);
- Files where name contains the terms ("El Jamel" OR "El Jamel" OR "El-jamel" OR Eljamel OR Muftah OR Mufta OR Salem);
- Files where name contains the terms ("El Jamel" OR "El Jamel" OR "El-jamel" OR Eljamel OR Muftah OR Mufta OR Salem) AND ("ICR" OR "Clinical Review"); and

- Files where name contains the terms ("El Jamel" OR "El Jamel" OR "El-jamel" OR Eljamel OR Muftah OR Mufta OR Salem) AND (Inquiry OR Inquiries).

53.1.2 These search terms were selected so as to capture all relevant documentation held on Scottish Government systems relevant to the Inquiry's Terms of Reference and List of Issues. The variations and boolean operators utilised in each of the searches, on the advice of the Knowledge and Management Team, offered the widest possible criteria for this purpose. This meant, however, that irrelevant and duplicate documentation was captured by the searches as well as relevant documentation. The initial results of the searches were subject to refinement and filtering so as to exclude the irrelevant. A final review for relevance is being undertaken manually.

53.2 In addition to the deep systems searches being undertaken by the Scottish Government's Knowledge and Information team, the Inquiry Response Team commissioned parallel document identification and retrieval exercises with the network of Health and Social Care Directors and their Deputy Directors [SG-00103; SG-00124; SG-00127; SG-00130; SG-00131; SG-00132; SG-00139; and SG-00140] – all of whom are designated Information Asset Owners (IAO), in line with the organisation's Records Management Plan [SG-00043]. Individual assurances were sought from Directors that the required comprehensive searches were fully undertaken and any documents discovered through that process were shared with the Inquiry Response Team. The search terms for these purposes were the same as those listed in paragraph 53.1.3 above. All documents held by the directorates ought to have been recovered via the searches discussed in the preceding paragraph. These searches were an addition check to ensure comprehensive document recovery. Thus, it was not thought necessary to have such broad search terms for these searches as those undertaken by the Knowledge and Information Team.

53.3 The searches of corporate and non-corporate electronic systems produced circa 400,000 individual documents. Search results were further refined for relevance in line with the Inquiry terms of reference and list of issues. The refinement included identification of duplicate files and lengthy email chains (each email in the chain presenting as an individual document). Following refinement, the Scottish Government considers it holds circa 20,000 documents relevant to the Inquiry's terms of reference. The documents produced with this statement have been identified as the key documents relevant to assisting the Inquiry with its section 1 hearings.

- a. **If there are significant classes of documents which were thought to have existed at some point relevant to a search category which no longer exist or are no longer held by, on behalf of or under the control of SG, please identify what these are**

53.4 There are no significant classes of documents that were thought to have existed at some point relevant to a search category that no longer exist or are no longer held by, on behalf, or under the control of SG.

- b. **If there are significant classes of documents which were thought to have existed at some point relevant to a search category which no longer exist or are no longer held by, on behalf of or under the control of SG, please identify broadly what has happened to them (including whether they have been lost or destroyed and, if so, when and why); and**

53.5 There are no significant classes of documents that were thought to have existed at some point relevant to a search category that no longer exist or are no longer held by, on behalf, or under the control of SG.

- c. **If there are significant classes of documents which were thought to have existed at some point relevant to a search category which no longer exist or are no longer held by, on behalf of or under the control of SG and SG is aware of these being held by or on behalf of another party, please indicate the nature of these documents and by whom SG believes them to be held.**

53.6 There are no significant classes of documents that were thought to have existed at some point relevant to a search category that no longer exist or are no longer held by, on behalf, or under the control of SG.

54. Please certify that the documents which have been produced in response to this rule 8 request are, to the best of SG's knowledge and belief, all documents held by SG, on its behalf or under its control.

54.1 It is certified that the documents that have been produced in response to this rule 8 request are, to the best of SG's knowledge and belief, key documents held by SG, on its behalf or under its control, relative to the Inquiry's request for a draft statement, the key documents associated with this statement and the documents relevant to the key documents.

Statement of Truth

I believe that the facts stated in this written statement are true and accurate.

Signed

A black rectangular box containing the text "CAT C" in blue, serif, all-caps font.

C Lamb

Date: 09 March 2026

Appendix A