

Core Participant Protocol

Purpose of the Protocol

1. The purpose of this protocol is to:
 - A) explain what a core participant is and how a core participant can participate in the Inquiry;
 - B) provide the criteria for becoming a core participant;
 - C) provide information as to how a person, group or organisation can apply for core participant status;
 - D) outline the approach the Inquiry intends to take to the designation of core participants (i.e. deciding who should become one) and working with them to fulfil the Inquiry's Terms of Reference in a co-operative way;
 - E) explain invitations to become a core participant;
 - F) set out some information about legal representation for core participants and associated costs; and
 - G) highlight the importance of confidentiality.
2. As with all of the work of the Inquiry, this Protocol and the procedures and policies set out in it should be read in the context of the Inquiry's Statement on Protocols and Principles. In particular, the Chair may deem it appropriate to change or update the contents of this protocol in accordance with the provisions of that Statement.
3. Further, this protocol and the procedures and policies set out in it should be read in the context of the Inquiry's Legal Expenses protocol.

A) What is a core participant and how can they participate in the Inquiry?

4. Core participants include individuals, organisations or entities who or which have a **significant interest** in the work of the Inquiry who wish to participate in its work in that capacity. Core participants will be an integral part of how the Eljamel Inquiry will work. The Inquiry intends to give them the opportunity to participate meaningfully in the work of the Inquiry and will expect them (and their recognised legal representatives) to do so.
5. As with all of the work of the Inquiry, the designation of core participants and engagement with them will be conducted in accordance with the Inquiry's Principles.¹
6. Core participants are not the only people or organisations who or which play a role in the work of the Inquiry but they do have special rights and responsibilities. These rights come, in part, from the statutory framework which underpins the Inquiry and in part from an additional set of rights which the Inquiry Chair intends to extend to them. A core participant or their legal representative will:
 - Receive disclosure of evidence (normally by electronic means) subject to any restrictions made under section 19 of the Inquiries Act 2005 ("the Act").²
 - Be invited to contribute suggestions in relation to:
 - a) the list of issues to be considered by the Inquiry (which will be a living document);
 - b) the selection of witnesses who will give oral evidence to the Inquiry; and
 - c) matters to be put to expert witnesses instructed to provide evidence to the Inquiry.

¹ As set out in the Inquiry's Statement on Protocols and Principles

² The Inquiry will set out more detailed guidance for how it intends to disclose documents to core participants and their recognised legal representatives in other protocols, in particular on its approach to restrictions on disclosure under sections 19 and 20 of the Act.

- Generally through their recognised legal representative,³ make opening⁴ and/ or closing statements⁵;
 - Suggest lines of questioning to Counsel to the Inquiry to ask of a witness giving evidence at a hearing and make applications to the Chair to ask questions of such witnesses⁶; and
 - Receive a copy of the Inquiry report and any interim report before it is published.⁷
7. It is not necessary to be a core participant to engage meaningfully with the Inquiry. Persons, organisations and entities not designated as core participants can provide evidence to the Inquiry by way of a written statement, documents or other material if called upon to do so. Individuals who are not core participants (as well as those who are) may also be selected to give evidence as an oral witness in the Inquiry and be entitled to claim expenses for attending as a witness, as well as an award for legal representation (if the relevant criteria are met⁸). They may apply to attend public hearings⁹, watch the proceedings of the Inquiry online¹⁰, read published transcripts of hearings, witness statements and other documents that are published by the Inquiry.
8. Not all witnesses who provide evidence to the Inquiry will be designated as core participants. Indeed, being a core participant does not mean that a person's evidence is any more important or given any greater weight than the evidence of a witness who is not a core participant. In this regard, all evidence is treated equally and weighed in the Inquiry's assessment of its value accordingly.

³ In terms of rules 10(1) and 10(2) of the Rules, the Chair will consider the possibility of unrepresented core participants making opening and closing statements, though core participants are encouraged to seek legal representation and, in the event of an unrepresented core participant wishing to make an opening or closing statement, the Chair will consider what conditions are appropriate in the interests of progressing the Inquiry's work, as he will do with all opening and closing statements

⁴ In terms of rule 10(1)(a) of the Rules, this will happen at the commencement of the first of the Inquiry's hearings; The Inquiry will set out more detailed guidance for the making of opening and closing statements.

⁵ Rule 10(1)(b) of the Rules

⁶ Rule 9(4) and 9(5) of the Rules. The Inquiry will set out in more detail the process for making contributions to the questioning of witnesses at oral hearings in a separate Public Hearings Protocol.

⁷ Rule 10(1)(b) of the Rules

⁸ The Inquiry will set out more detailed guidance for how it intends to deal with the expenses of witnesses in its Witness Expenses Protocol

⁹ It is possible that the Chair may, in certain circumstances, decide to hold certain hearings in private

¹⁰ It is intended that the proceedings of the Inquiry's hearings will be live streamed to enable those who do not attend them in person to watch them remotely, whether core participants or not

9. The Inquiry team will engage with core participants and their legal representatives on the progress of the Inquiry, which they will be asked to help to shape. Indeed, the Inquiry team will expect core participants and their legal representatives to further the work of the Inquiry on an ongoing basis in ways that go beyond what it will ask of those who are not core participants.
10. Core participants cease to be core participants on the date specified by the Chair in writing or at the end of the Inquiry.

B) What are the criteria for becoming a core participant?

11. Rule 4 of the Inquiries (Scotland) Rules 2007 (“the Rules”) provides the criteria by which the Chair will decide whether to designate an individual or organisation as a core participant. In making that decision the Chair must have particular regard to the desirability of including as core participants, persons who –

(a) played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;

(b) have a significant interest in an important aspect of the matters to which the inquiry relates; or

(c) may be subject to significant or explicit criticism –

(i) during the proceedings at the inquiry; or

(ii) in the report or any interim report.¹¹

12. Thus, for a person or organisation to be designated as a core participant, as opposed to a participant, their connection to the work of the Inquiry must be **significant**. The Chair may also take any other relevant factors into account.

¹¹ Rule 4(2) of the Rules

Those subject to potential significant or explicit criticism

13. Applications from those who apply based on the assertion that they may be subject to criticism in the Inquiry's proceedings or in the Inquiry's report(s) will be considered¹², though it must not be assumed that core participant status for such applicants will be granted.

14. In considering such applications, the Inquiry will have regard to all relevant circumstances including:

- (a) the number and nature of criticisms likely to be made;
- (b) the opportunities to answer them available through the Inquiry process, which may not require the person to be a core participant;
- (c) whether the person criticised has a commonality of interest with others; and
- (d) the fact that a broad assessment of the issues may be of much greater assistance to the Inquiry in fulfilling its Terms of Reference than the determination of individual criticisms.

15. Where groups of individuals who share a particular position in relation to the Inquiry's Terms of Reference or aspects of them and have grouped together to provide evidence about it the Inquiry will be more inclined to award such status on this basis. If granted, it cannot be assumed that funding for representation will follow.

Other applicants with a significant interest in an important aspect of the Inquiry

¹² Rule 4(2) of the Rules

16. Applications on this basis will also be considered.¹³ In particular, the Inquiry will consider the extent to which the award of core participant status to an applicant on this basis would add further to achieving the aims of the Inquiry. The Inquiry will consider applications from those with an interest in the work of the Inquiry, including but not limited to the recommendations which it might make, based on their own professional or occupational experience in healthcare or associated professions/occupations more generally. However, if granted, it cannot be assumed that funding for representation will follow.

C) How can a person or organisation apply for core participant status?

17. Applications for core participant status must be made in writing to the Solicitor to the Inquiry using the form which can be found here. Please provide as much detail as possible and ensure that all information you wish to provide is contained within the form, subject to the word limits suggested. Applications should be submitted by email to Legal@eljamelinquiry.scot or by post to The Eljamel Inquiry, Area G-D Bridge, Victoria Quay, Edinburgh EH6 6QQ. Applications for core participant status should be submitted to the Inquiry by 2 May 2025.

18. Applications submitted after the date specified above will be considered. However, as the Chair will consider the timing of the application as a factor in its determination, any such application should include a reason or reasons as to why the application is submitted at that time and not prior to the date required above.

19. The Solicitor to the Inquiry will write to the applicants with the Chair's decision and his reasoning for that decision.

20. A list of those with core participant status will be published on the Inquiry website. Any such publication will give due consideration to confidentiality.

¹³ Rule 4(2)(b) of the Rules

D) How does the Chair determine applications for core participant status?

21. When the Chair is determining applications for core participant status, matters he will consider include:

- a. Whether the applicant satisfies one or more of the criteria set out in paragraph 11 above¹⁴; and
- b. Whether it is fair in all the circumstances to designate the applicant as a core participant, having regard to the requirement imposed upon him by statute to avoid any unnecessary cost.¹⁵

22. The Chair is not obliged to designate every person or organisation meeting the requirements of Rule 4(2) (and set out in paragraph 11 above) as a core participant. The Chair will take into account all relevant factors. The Chair will exercise his discretion whether to designate an applicant as a core participant fairly, consistently and with an open mind.

23. For the Chair to grant an application, he must be satisfied that the designation of an applicant as a core participant would facilitate the better management of the Inquiry and actively assist it in fulfilling its Terms of Reference.

24. Where a legal representative represents a number of potential Core Participants with similar interests, the Inquiry may consider the application of those applicants in a single application. This should be discussed with the Solicitor to the Inquiry prior to submission. The Chair recognises that where groups of individuals who have openly campaigned for a public inquiry, have instructed solicitors and/ or have formed associations with others relating to the subject-matter of the Inquiry, they may have demonstrated by those actions that they have a significant interest in the workings of the Inquiry. The Chair would be willing to consider the designation of such a group of legally represented individuals as individual core participants, should they wish to be

¹⁴ Rule 4(2) of the Rules

¹⁵ Section 17(3) of the Act

so designated where their legal representative is able to demonstrate that they represent clients who fall into this category in sufficient numbers to satisfy him that collectively they can be taken to have a significant interest in the subject-matter of the Inquiry to merit designation as core participants. Consideration of the size of the group will be a relevant factor in such a determination, due to the advantages to the effective management the Inquiry of such individuals being grouped together where they have similar interests in the Inquiry's work. These include (a) the practical advantages to the legal representative in having its full, qualifying client base designated as core participants (b) the reduction in the need for the Inquiry to consider multiple separate applications and (c) the likely benefits of economies of scale in having a large group designated in this way.

25. In such circumstances, the Chair would be minded to limit the granting of core participants status within such a group to (a) former patients or Mr Eljamel or (b) one representative of a former patient of Mr Eljamel. Such an approach, if merited in certain cases, would not preclude the Chair from considering applications from other such individuals not so represented, in accordance with the process and principles set out above.
26. If the Chair needs more information to make a decision, he may ask the applicant to provide further information in support of the application. Applicants should endeavour to provide all relevant information with the application at the outset to improve efficiency in determining the application.
27. The Chair may designate an individual or organisation as a core participant, but with limitations. For example, a core participant's designation may be limited to a particular part of the Inquiry. It may entitle the designated core participant to be represented at public hearings only with leave from the Chair in advance or it may be limited a particular feature of designation only, such as only covering the right to receive a copy of any report prior to publication. As with all decisions on designation of core participants, the Chair will consider whether it would be appropriate to grant only

partial designation based on the merits of any application and in accordance with the principles and objectives of the Inquiry, as well as the criteria set out above.

E) Invitation to be a core participant

28. In addition to the application process, if at any stage during the course of the Inquiry the Chair considers it appropriate to do so, he may invite a person or organisation to become a core participant. They will only be designated as a core participant if they consent. The Chair will do so if he considers that designation of the person or organisation would materially assist the Inquiry in the fulfilment of its Terms of Reference.

F) Legal Representation¹⁶

29. The designation of a core participant's legal representative as a recognised legal representative to act on the core participant's behalf in the Inquiry and any expenses which the Inquiry may pay to a recognised legal representative to perform that role are **separate** from the decision to designate a person or organisation as a core participant.

30. A core participant does not have to have a lawyer to be a core participant in the Inquiry. However, the Inquiry encourages core participants (or those contemplating an application to become one) to consider seeking legal representation to assist, support and advise them in their participation in the work of the Inquiry as well as to represent them or arrange representation.

31. Where a core participant has appointed a qualified lawyer to act on their behalf, the Chair must regard that lawyer as that person's recognised legal representative in respect of the Inquiry proceedings, subject to the provisions of rule 6 of the Rules.¹⁷ A

¹⁶ The Inquiry will set out more detailed guidance for how it intends to deal with the designation of recognised legal representatives and their role in its Legal Expenses Protocol

¹⁷ The implications of rule 6 of the Rules will also be set out in the Inquiry's Legal Expenses Protocol

change in legal representation can result in a delay in the Inquiry proceedings. If you propose to change legal representatives, you should notify the Solicitor to the Inquiry as soon as possible.

Cost of legal representation

32. If a core participant cannot afford to pay their legal fees¹⁸ they can apply to the Chair for an award to be made for the cost of legal representation.¹⁹ More information about that process can be found in the Inquiry's Legal Expenses Protocol.
33. Those considering applying for core participant status should be aware that being accorded that status and having their legal representative recognised by the Inquiry will not automatically result in their legal expenses being paid by the Inquiry. The Chair is obliged in determining applications for legal expenses to be met by the Inquiry to consider whether it would be in the public interest for them to be.²⁰

G) Confidentiality

34. All core participants and their legal representatives (and Counsel) must agree to treat information they receive from the Inquiry as confidential. Material received by core participants must not be used for any purpose other than taking part in the Inquiry; it must not be published or disclosed to third parties. Material obtained cannot be shared with or used by others for any purpose, other than in their capacity as and subject to the obligations of core participants in the Inquiry. All core participants and their legal representatives will be required to sign an undertaking to this effect. The undertaking will continue to apply even after the Inquiry has ended.
35. Where organisations are designated by the Inquiry as a core participant, the Inquiry intends to restrict access to documents disclosed by the Inquiry to nominated key

¹⁸ Rule 18(2)(a) of the Rules

¹⁹ Rule 17 of the Rules

²⁰ Rule 18(2)(b) of the Rules

individuals within them. Those individuals will require to sign confidentiality undertakings and must not share documents disclosed by the Inquiry with anyone else unless that other person has also signed a confidentiality undertaking.

36. The precise order of the Chair in relation to the restrictions on the disclosure or publication of any evidence or documents given, produced or provided to the Inquiry will be set out by him in the General Restriction Order and any other restriction orders made by him from time to time.²¹ Breach of the confidentiality undertaking is a serious matter with potentially serious consequences. Disclosure of personal data without the consent of the Inquiry constitutes a criminal offence under Section 170 of the Data Protection Act 2018. A breach of confidentiality could also result in the Chair restricting the extent to which a core participant can take part in the work of the Inquiry or withdrawing a person or organisation's core participant status in its entirety.²²

Issued under the authority of the Chair on 3 April 2025.

²¹ In terms of section 19(2)(b) of the Act

²² Rule 4(3) of the Rules