

## THE ELJAMEL INQUIRY

### NOTICE TO THE CHAIR OF A DETERMINATION BY THE SCOTTISH MINISTERS UNDER SECTION 40(4) OF THE INQUIRIES ACT 2005

1. In respect of the Eljamel Inquiry established by the Scottish Ministers under the Inquiries Act 2005 (“the 2005 Act”), (“the Inquiry”), the Scottish Ministers have determined under section 40(4) of the 2005 Act that the power of the Chair to make awards under section 40 to persons eligible under section 40(3) shall be subject to the conditions and qualifications set out in this determination. This determination supersedes the determination made on 4 April 2025 which is revoked.

2. The criteria and tests set out in the 2005 Act and the Inquiries (Scotland) Rules 2007 (“the 2007 Rules”), in this determination and in any protocol issued by the Chair in respect of applications for awards for funding for legal representation remain applicable to all applications for legal expenses (except insofar as rule 18 of the 2007 Rules is qualified in this determination). In respect of legal representation (section 40(2) of the 2005 Act), the conditions and qualifications are as follows:

- (a) Awards may only be made in circumstances in which the Chair considers it necessary, fair, reasonable and proportionate for such an award to be made.
- (b) Any award must be subject to the condition that payment will only be made for work that is evidenced and can be identified as having been done in an effective and efficient manner, avoiding unnecessary duplication and making the best use of public funds.
- (c) Subject to the provisions of sub-paragraph 2(h), awards may only be made in respect of legal representation provided by one or more named legal representatives whose involvement has been approved in advance by the Chair. The Chair must approve the size and composition of any legal team to be engaged, including the seniority and number of any counsel where that is agreed by the Chair to be necessary. An award in respect of costs associated with work carried out by legal representatives who are not approved in advance of the work being carried out will not be met, subject to the provisions of sub-paragraph 2(h). Exceptional circumstances may be considered by the Chair, subject to the terms of paragraph (h).
- (d) Any award must specify the nature and scope of the work for which the award is to be made. Awards will not be made in respect of work that does not fall within the specified scope. An inquiry under the 2005 Act is inquisitorial in nature and legal representatives will not be paid for investigative work or work in relation to obtaining expert reports unless the Chair gives express permission in advance for such work to be carried out.
- (e) Where the Chair has determined that an award should be made, the legal representatives will agree in advance, with the Solicitor to the Inquiry, hourly rates for counsel and solicitors, subject to the following maximum hourly rates, which are exclusive of VAT. In respect of waiting time by legal representatives, the maximum hourly rate shall instead be half of the following rates (again exclusive of VAT):

**OFFICIAL SENSITIVE**

Leading Counsel	Junior Counsel	Solicitors (8 years)	Solicitors (4 years)	Other Solicitors	Trainee Solicitors, paralegals
<b>£200</b>	<b>£100</b>	<b>£150</b>	<b>£125</b>	<b>£100</b>	<b>£75</b>

- (f) The maximum number of hours that can be taken into account by the Chair in respect of a legal representative for the purposes of determining the level of an award shall be capped at 40 hours per week; however in exceptional circumstances the Solicitor to the Inquiry may authorise an increase in the weekly cap up to 60 hours for counsel or a solicitor during the oral hearings and for a two month period before they commence where the Solicitor to the Inquiry is satisfied that such action is justified in all the circumstances, for example, when the work involved in any week clearly needs to exceed 40 hours. Travel time may be paid subject to the limits in paragraph (e) where work is undertaken during the journey. If work cannot be undertaken during the journey, then 50% of the hourly rate limits set out in paragraph (e) may be paid. If travel time is paid, it will count towards total hours chargeable for the purposes of limits on hours to be applied by virtue of this paragraph. Awards must not be made in respect of hours worked in excess of the limits set down in this paragraph.
- (g) In respect of paragraph 3(f) of this determination:
- i. no unused hours in any week may be set off against any other week.
  - ii. a week shall be taken as commencing on Sunday and ending on Saturday.
- (h) Expenditure incurred before notification of the Chair's award of funding or expenditure in excess of the terms upon which approval is granted will not be recoverable. An exception to this general rule will be expenses incurred in respect of responding to the Inquiry's public consultation on its Terms of Reference prior to the setting up date of the Inquiry, which the Chair of the Inquiry shall be permitted to allow. Otherwise, in exceptional circumstances, and after obtaining the Scottish Ministers' agreement, the Chair may make an award in respect of expenditure incurred before notification of the Chair's award subject to the terms of paragraph (d).
- (i) Rule 18 of the Inquiries (Scotland) Rules 2007 is qualified to the extent that the Chair need not take the criterion in rule 18(2)(a) (financial resources) into account on an application for an award of funding for legal representation by former patients of Mr Eljamel or any personal representative of such a former patient.

3. In respect of awards in relation to compensation for loss of time, or expenses incurred in attending, or otherwise in relation to the Inquiry, (section 40(1) of the 2005 Act), the conditions and qualifications are as follows.

**OFFICIAL SENSITIVE**

- (a) Travel and subsistence rates, as they apply to Scottish Government employees apply to travel and subsistence within the United Kingdom. Rail travel, under an award, is reimbursable at standard class rates and air travel at economy class rates.
- (b) Awards in respect of compensation for loss of time may only be made:
  - i. in circumstances in which the Chair considers it necessary, fair, reasonable and proportionate for such an award to be made; and
  - ii. where the person to be compensated would otherwise face actual financial loss.
- (c) (not used)
- (d) Awards for travel expenses or compensation for loss of time shall only be made for persons from outside the UK where the Chair is satisfied that their travel is essential to the fulfilment of the Inquiry's terms of reference.

A handwritten signature in black ink, appearing to read 'Neil Gray', is centered on the page.

**NEIL GRAY**  
**25 June 2025**