

Legal Expenses Protocol

Purpose of the Protocol

1. The purpose of this Protocol is to:

- A) explain who is eligible to apply for their legal expenses to be paid by the Inquiry;
- B) explain circumstances in which the Chair may order that core participants may be allowed joint representation in the work of the Inquiry;
- C) offer information on how changes to legal representation are to be initiated and will be handled;
- D) outline how an application for funding for legal representation is assessed;
- E) outline the scope of awards for legal expenses;
- F) explain the application process for funding for legal representation;
- G) provide information about the Chair's decisions on such awards;
- H) explain how bills for payment of legal expenses are to be submitted;
- I) provide information on how sums payable under an award are assessed by the Solicitor to the Inquiry;
- J) explain how these sums are paid; and
- K) provide relevant further information relating to queries.

2. The procedures set out in this Protocol are subject to, and should be read in conjunction with, the [Notice of Determination](#) made by the Cabinet Secretary for Health and Social care under section 40(4) of the Inquiries Act 2005 ("the Act") dated 25 June 2025 (the "Minister's Determination") and rules 17 to 28 of the Inquiries (Scotland) Rules 2007 ("the Rules").
3. 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
4. Further, this Protocol and the procedures and policies set out in it should be read in the context of the Inquiry's [Core Participant Protocol](#).
5. References to "core participant" and to "recognised legal representative" are as defined in rules 2, 4, 5 and 6 of the Rules.

A) Eligibility for an award of legal expenses

6. The designation of an individual or organisation as a core participant is separate from (a) the decision to recognise a core participant's legal representative and (b) their eligibility to claim reasonable legal expenses from the Inquiry.
7. 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 proceedings¹, subject to the provisions of rule 6 of the Rules which are explained at paragraphs 10 et seq below.

¹ Rule 5(2) of the Rules

8. You do not require to be a core participant to apply for legal funding, though you can make an application for funding for reasonable legal representation to assist you with carrying out your responsibilities as a core participant.² In addition, if you are a witness to the Inquiry³ or you have relevant evidence in the form of documentation or other physical evidence to provide the Inquiry⁴ and you require legal advice on those matters you can ask the Inquiry to pay your legal expenses reasonably associated with that. For the avoidance of doubt, the Chair is willing to consider applications for legal funding to be provided to those who may be subject to explicit or significant criticism during the Inquiry's proceedings and/ or in any report(s).

B) Joint representation

9. Where two or more core participants each seek to be legally represented, the Chair may direct that they be represented by a single recognised legal representative and approve a qualified lawyer for that purpose if he considers that:
- a) Their interests in the outcome of the Inquiry are similar;
 - b) The facts they are likely to rely on during the course of the Inquiry are similar, and
 - c) It is fair and proper for them to be jointly represented.⁵
10. Where the Chair has approved a qualified lawyer to act as a single legal representative for a group of core participants, the core participants in the group must agree to the designation of the single legal representative. If they fail to do so within a reasonable period, the Chair may designate an appropriate lawyer who, in the opinion of the Chair, has sufficient knowledge and experience to act on their behalf.⁶

² Section 40(3)(b) of the Act enables people who, in the opinion of the Chair have a particular interest in the proceedings or outcome of the Inquiry to make such an application

³ Section 40(3)(a) of the Act

⁴ Section 40(3)(a) of the Act

⁵ Rule 6(1) to (2) of the Rules

⁶ Rule 6(3) to (4) of the Rules

11. If the conditions set out in paragraph 10 above no longer apply, a core participant who has been accorded and agreed to joint representation in the Inquiry may apply to the Chair and seek to be permitted to have separate representation recognised 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.⁷

C) Changes to legal representation

12. A change in legal representation can result in a delay to Inquiry proceedings. If an individual or organisation wishes to change their legal representation the Solicitor to the Inquiry should be notified as soon as possible.

13. If there is more than one change of legal representation, the Chair may determine that it is no longer appropriate for the Inquiry to fund the legal representation.

D) How an application for funding for legal expenses will be decided

14. The Chair has the power to decide whether or not it is appropriate for an individual or group to receive payment for the reasonable expenses of their legal representation in relation to the Inquiry.⁸ His power to do so is limited by the provisions of the Minister's Determination.

15. For those meeting the eligibility criteria set out in paragraphs 7 and 8 above, the Chair must balance the various obligations and considerations incumbent upon him. These include his statutory duty to act with fairness to avoid unnecessary cost (whether to public funds, to witnesses or to others).⁹

16. The Chair, in deciding whether to make an award of reasonable legal expenses for legal representation, will apply the following factors:

⁷ Rule 18(2)(b) of the Rules

⁸ Section 40(1) of the Act

⁹ Section 17(3) of the Act

- (i) His statutory duty to act with fairness to avoid unnecessary cost (whether to public funds, to witnesses or to others)¹⁰;
- (ii) The financial resources of the applicant¹¹ (subject to the qualifications at set out at paragraph 17 below);
- (iii) Whether making the award is in the public interest¹²; and
- (iv) Whether the Chair considers it necessary, fair, reasonable and proportionate for such an award to be made.¹³

17. As regards the financial resources of an application for a reasonable award for expenses for legal representation, the Chair will not require to take account of the financial resources of the applicant in the case of former patients of Mr Eljamel or their personal representatives, in accordance with the provisions of the Minister's Determination.¹⁴ In other cases, the Chair will be bound to take account of the financial resources of the applicant for an award of expenses for legal representation. In such cases, the applicant will require to produce relevant and sufficient evidence to satisfy the Chair that it would be appropriate for such an award to be made.

18. As a generality, awards will not normally be made in respect of the legal expenses of organisations which could reasonably be expected to meet such expenses from their own funds, except in special circumstances which justify a call on public funds.

E) Scope of award of legal expenses

19. Where the Chair decides to make an award of legal expenses, it will only be made in respect of reasonable legal work undertaken by an applicant's legal representative(s), designated by the Chair under rules 5 or 6 of the Rules.¹⁵

¹⁰ Section 17(3) of the Act

¹¹ Rule 18(2)(a) of the Rules

¹² Rule 18(2)(b) of the Rules

¹³ As per paragraph 2(a) of the Minister's Determination

¹⁴ As per paragraph 2(i) of the Minister's Determination

¹⁵ As per paragraph 2(c) of the Minister's Determination

20. Such an award will normally be limited to a recognised legal representative or (where appropriate) group of legal representatives carrying out some or all of the following:

- a) Taking and considering necessary initial instructions from their client(s) in connection with the Inquiry's public consultation on its terms of reference and making reasonable submissions in connection with the same¹⁶;
- b) Taking and considering necessary initial instructions from their client(s);
- c) Taking and considering necessary instructions from and advising their client(s) on the list of issues issued by the Inquiry for the consideration of core participants;
- d) Taking and considering necessary instructions from and advising their client(s) on any draft letter(s) of instruction of expert witnesses issued by the Inquiry for the consideration of core participants;
- e) Taking and considering necessary instructions from and advising their client(s) on as well as appearance at interim hearings of the Inquiry;
- f) Taking and considering necessary instructions from and providing advice to their client(s) on documentation disclosed by the Inquiry to the core participants relevant to the interests of the client(s) in the work of the Inquiry, as well as any other materials such as Notes by the Inquiry team;
- g) Taking and considering necessary instructions from and advising their client(s) in relation to the making of a witness statement and/or otherwise providing evidence to the Inquiry, in accordance with any request made by the Inquiry under Rule 8 of the Rules or notice issued under section 21 of the Act;
- h) Taking and considering necessary instructions from their client(s) in connection with and making opening and closing statements, where permitted, in terms of Rule 10 of the Rules;
- i) Representing their client(s) during their oral evidence (where called as a witness) and the evidence of other witnesses, at times and circumstances specified by the Chair;

¹⁶ See paragraphs 30 et seq below

- j) Taking and considering necessary instructions from their client(s) on and making an application for permission in terms of Rule 9(2) of the Rules to examine any witness giving oral evidence in the circumstances specified by the Chair;
- k) Taking and considering necessary instructions from their client(s) and advising their client(s) in relation to any warning letters issued by the Chair under Rule 12 of the Rules; and
- l) Taking and considering necessary instructions from and making written submissions on behalf of their client(s), where permitted by the Chair.

21. In particular, the Inquiry itself is inquisitorial and investigative in nature and any award made for legal representation will not include (a) investigative work or (b) work in relation to obtaining expert reports (save as permitted in connection with the instruction of the Inquiry's expert(s) as per paragraph 20(d) above), unless the Chair gives express permission in advance for such work to be carried out, which permission will only be granted in exceptional circumstances.¹⁷

22. The expenses of any work undertaken by an applicant's legal representative which is not in accordance with the terms of an award notified to an applicant or their legal representative will be disallowed.

23. Even in cases where an application is made in respect of legal expenses for all work carried out in relation to the Inquiry, the Chair may determine that they should only be paid in respect of certain specific categories of work, or in relation to a particular phase of the Inquiry. This will be made clear in the notification of the Chair's determination. However, if the award is restricted in this way, that does not preclude a further application being made later in respect of other categories of work or phases of the Inquiry.

F) The application process for awards of funding for legal expenses

¹⁷ In accordance with paragraph 2(d) of the Minister's Determination

Applications for future legal expenses

24. Applicants for the award of legal expenses must be made in writing by completing the application form which can be downloaded from the Inquiry's website [here](#). The form can be completed by the applicant or by the applicant's legal representative on the applicant's behalf.
25. The Inquiry will call upon core participants and others to make applications for awards to be made for specific areas of work, the details of which will be notified to core participants and/ or others in writing at appropriate times during the course of the Inquiry.
26. Where an applicant is jointly represented along with others, the Inquiry may call upon them to make joint applications for an award.
27. An application must be submitted before any substantial legal work is carried out by the legal representative. As a general rule, awards will cover only legal expenses for work carried out after the date of the award. In accordance with paragraph 2(h) of the Minister's Determination, an award in respect of expenditure incurred prior to the date of the Chair's award cannot be made other than in respect of an application for reasonable legal expenses incurred in respect of replying with the Inquiry's public consultation on its terms of reference prior to the setting up-date of the Inquiry.
28. The applicant must provide a signed and dated confirmation of the instruction of the legal representative and specify the following:
- a) The grounds upon which the application is made, under reference to the factors listed at paragraph 16 above;
 - b) The estimated duration of the legal representation;

- c) The size and composition of the recognised legal representative's legal team to be engaged, including the seniority and number of solicitors, paralegals and Counsel it is proposed to engage;
- d) The maximum number of hours each week which it is anticipated each member of the legal team (including Counsel) be engaged on Inquiry work, having regard to the interest of the applicant in its work and, where applicable, the part of the Inquiry in which the applicant is seeking to participate as well as the maximum hourly rate specified in paragraph 2(e) of the Minister's Determination; and
- e) Particulars of any other foreseeable expenses relating to legal representation, including disbursements.

29. The application should also include details of (a) any communication or other difficulties which the applicant has in giving instructions, and (b) any exceptional reasons why the application for an award should be expedited.

Applications for legal expenses connected to the Inquiry's public consultation on its terms of reference

30. An application for an award of legal expenses incurred in responding to the Inquiry's public consultation on its terms of reference should be made in writing (together with a bill prepared in accordance with paragraphs 39-42 below) and should specify:

- (a) The grounds upon which the application is made, under reference to the factors listed at paragraph 16 above including (i) the reason(s) why legal representation was considered necessary (including for the instruction of Counsel, if applicable) and (ii) the nature of the public

interest that would be served by an award being made from public funds¹⁸;

- (b) The size and composition of the recognised legal representative's legal team engaged, including the seniority and number solicitors, paralegals and Counsel engaged (if any), and their hourly rate subject to maximum hourly rates in paragraph 2(e) of the Minister's Determination;
- (c) Particulars of any disbursements incurred in relation to legal representation;
- (d) Any communication or other difficulties which the client had in giving instructions; and
- (e) Any exceptional reasons which the application for an award should be expedited.

31. Where such an application is made, the Chair must refer the application to the Solicitor for an initial assessment in terms of paragraph 45 below as soon as practicable.¹⁹

G) The Chair's decision on an application for an award of expenses for legal representation

32. Within the processes of the Inquiry, the Chair's decision in respect of any application for an award is final. The Chair will determine applications for an award of legal expenses within a reasonable time.

33. The Solicitor to the Inquiry will notify the applicant and their legal representative in writing of the Chair's determination.²⁰

¹⁸ As per rule 18(2)(b) of the Rules

¹⁹ As per rule 20(3) of the Rules

²⁰ As per rule 20(2) of the Rules

34. Where an award is made, the notification of the Chair's determination will specify the terms of the award which may include the following:

- a) The nature and scope of the work that will be funded, by reference to the matters listed at paragraph 20 above²¹;
- b) The size and composition, and the hourly rates to be paid,²² in respect of each member of the legal team, up to the maximum rates specified in paragraph 2(e) of the Minister's Determination;
- c) The upper limits on the number of hours which will be paid²³;
- d) The duration of the period for which an award is made;
- e) The amount and nature of any disbursements which can be incurred by the legal representatives;
- f) The frequency with which bills must be submitted to the Chair²⁴; and
- g) The form in which bills must be submitted.²⁵

35. Any award made by the Chair will be subject to the condition that payment will only be made for work that is properly evidenced and can be identified as having been done in an efficient and effective manner, avoiding unnecessary duplication and making the best use of public funds.²⁶

36. It will be open to the Chair to impose further conditions on an award at the time it is made or at any time thereafter.

Further awards of legal expenses

²¹ As per rule 19(2)(a) of the Rules

²² As per rule 19(2)(b) of the Rules

²³ As per rule 19(2)(c) of the Rules

²⁴ As per rule 19(2)(d) of the Rules

²⁵ As per rule 19(2)(e) of the Rules

²⁶ As per paragraph 2(b) of the Minister's Determination

37. In the event that an applicant considers that they are likely to incur legal expenses in excess of an award already made by the Chair, the applicant may make an application for a further award, which will follow the process set out above, subject to the requirement that the applicant must also specify the reason why a further application is being made for an award in excess of the award already made.
38. The Chair will only grant such an award for a further award if he is satisfied that reasonable grounds have been made out as to why the applicant has exceeded the original award.

H) Billing

39. Where the Chair has made an award for legal expenses, the applicant to whom that award has been made (or their legal representative) must submit bills to the Inquiry setting out the legal expenses that are being claimed in accordance with the provisions of the award on a monthly basis. Such bills must be received not later than 21 days after the end of the month to which they relate.
40. Bills should be submitted in an electronic form which is or will be available on the Inquiry's website.
41. Bills submitted to the Inquiry must contain the following information:
- (a) Identification of the funding award to which the bill relates;
 - (b) Details of the work for which payment is claimed, including any time spent travelling (in connection with which see paragraph 42 below);
 - (c) The hourly rates charged for each person;
 - (d) Disbursements claimed with supporting invoices/ receipts;
 - (e) Where expenses are claims in respect of work done by Counsel, details of the work undertaken by Counsel, including fee notes with details of the work done, the dates of the work done and how much time was spent on each item of work;

- (f) Any additional information reasonably required for an assessment of the amounts claimed to be made;
- (g) Certification by the recognised legal representative that:

- The bill is accurate;
- The work for which legal expenses are claimed has been incurred in respect of the applicant(s) to which the relevant award relates;
- The work claimed is referable to the Inquiry's terms of reference (or the Inquiry's consultation on them); and
- The work for which legal expenses are claimed falls within the terms of the relevant award made by the Chair.

42. The maximum hourly rates for travel time by the members of an applicant's legal team shall be half the agreed hourly rate relating to legal work as per paragraph 2(f) of the Minister's Determination, unless work is done during the journey, for which application can be made for payment at the full applicable rate.²⁷ Any travelling time must be included within the cap on the maximum number of hours that can be charged by an applicant's legal representative and in no cases will it be in addition to the cap on hours.²⁸

l) Assessment of the amounts payable under an award

43. Where an application is made to the Chair for payment following an award of legal expenses, he will refer the application to the Solicitor to the Inquiry ("the Solicitor") for an assessment of how much of the amount applied for is to be paid. The procedure for assessing the amount to be paid is specified in detail in Rules 21 – 28 of the Rules, to which reference should also be made.

²⁷ As per paragraph 2(f) of the Minister's Determination

²⁸ As per paragraph 2(f) of the Minister's Determination

44. In assessing the amount to be paid, the Solicitor will consider:

- a) whether the legal representative in respect of whom legal expenses are claimed was approved by the Chair before the work was carried out;
- b) whether the claim has been made in accordance with the procedure set out in this Protocol and the Rules;
- c) whether the work falls within the scope of the award;
- d) whether any conditions set in the decision by the Chair have been satisfied²⁹;
- e) whether the work done was necessary, fair, reasonable and proportionate³⁰;
- f) whether it was done in a cost-effective and efficient way, and without duplication; and
- g) whether the amounts claimed for the work are fair, reasonable and proportionate.³¹

45. The Solicitor must make an initial assessment of the amount of the award within 21 days of the referral to them by the Chair.³² This must be in writing and sent to the applicant and their legal representative.³³

46. If the Solicitor assesses that the full amount should be paid, the initial assessment becomes the final assessment.³⁴ If, however, the applicant disagrees with the initial assessment, the applicant must notify the Solicitor to the Inquiry of this, in writing, as soon as reasonably practicable and, in any event, within 21 days of the date on which the initial assessment of the amount of the award was sent to the applicant.³⁵ Where the applicant fails to respond within 21 days of the initial assessment the Solicitor to the Inquiry must make and issue the final assessment of the award.³⁶

²⁹ As per rule 22(3) of the Rules

³⁰ As per rule 22(2)(a) of the Rules

³¹ As per rule 22(2)(b) of the Rules

³² As per rule 21(1) of the Rules

³³ As per rule 21(5) of the Rules

³⁴ As per rule 21(2) of the Rules

³⁵ As per rule 21(3) of the Rules

³⁶ As per rule 21(4) of the Rules

47. Where notification has been given by the applicant to the Solicitor that they do not agree with the Solicitor's initial assessment of the amount of the award³⁷, the Solicitor must send the applicant a response. That response must be in writing and set out details of the points of dispute within 21 days of receipt of the notification.³⁸ These points of dispute must:

- a) Identify each item to which the Solicitor to the Inquiry objects;
- b) State the nature of each objection; and
- c) Propose an amount to be allowed for each item in respect of the reduction is sought.³⁹

48. Upon receipt of the points of dispute, the applicant must then provide a written response to the Solicitor within 21 days.⁴⁰ The deadline can be extended if agreed by the Solicitor to the Inquiry.⁴¹

49. Where a dispute still exists after the written response has been sent by an applicant under paragraph 48, the Chair must either:

- a) Refer the initial assessment to the Auditor of the Court of Session together with all relevant evidence, including the application and any correspondence between the Solicitor to the Inquiry and the applicant; or
- b) Require the Solicitor to the Inquiry to issue a final assessment.⁴²

³⁷ As per rule 21(3) of the Rules

³⁸ As per rule 24(1) and (2) of the Rules; The solicitor may agree to extent that period in terms of rule 24(6) of the Rules

³⁹ As per rule 24(3) of the Rules

⁴⁰ As per rule 24(4) and (5) of the Rules

⁴¹ As per rule 24(6) of the Rules

⁴² As per rule 25(1) of the Rules

50. Where there has been a reference to the Auditor of the Court of Session (“the Auditor”), the Auditor must hold a review hearing within a reasonable time.⁴³ The Auditor must notify the Solicitor to the Inquiry and the applicant of the date and location of the review hearing in writing as soon as practicable but not later than 14 days before the date of the hearing.⁴⁴

51. The Auditor’s assessment must be sent to the applicant and the Chair as soon as reasonably practicable after the review hearing.⁴⁵ Where no agreement is reached on the amount of the initial assessment before the date of the review hearing (in which case the agreed amount will be the final assessment of the amount of the award⁴⁶), the Auditor’s assessment is the final assessment of the amount of the award.⁴⁷

52. If the time limits mentioned in paragraphs 46 and 48 above are not met and no agreement is reached by the Solicitor to the Inquiry to extend time limits, a final assessment will be made by the Solicitor to the Inquiry which is no longer open to challenge. The legal representative must then submit an invoice for the final assessment to the Inquiry and payment will be made.

J) Payment of award

53. The Chair must make an award and arrange for payment of the final assessment.⁴⁸

54. All payments will usually be made by Bankers’ Automated Clearing System (BACS).

⁴³ As per rule 25(2) of the Rules

⁴⁴ As per rule 25(3) of the Rules

⁴⁵ As per rule 26(1) of the Rules

⁴⁶ As per rule 27(2) of the Rules; in such a case the Solicitor will issue the final assessment as soon as reasonably practicable after an agreement is reached, as per rule 27(3) of the Rules

⁴⁷ As per rule 26(2) of the Rules

⁴⁸ As per rule 28(1) of the Rules

55. To enable payment to be made, an applicant or their legal representative requires to complete the appropriate documentation supplied by the Inquiry regarding bank details of their legal representative.

56. Failure to comply with procedures set out in this Protocol may result in payments being delayed or refused.

57. The Chair and the Solicitor to the Inquiry reserve the discretion to vary the application of the terms of this Protocol on a case by case basis where they consider it necessary to do so for the proper conduct of the Inquiry, subject to the requirements of the Act, the Rules and the Minister's Determination.

K) Further information

58. All queries about any matter related to the funding of legal representation should be sent to the Solicitor to the Inquiry, as follows:

- (i) By email to: legal@eljamelinquiry.scot
- (ii) By post to: The Eljamel Inquiry, Area 2J North, Victoria Quay, Edinburgh EH6 6QQ.

Issued under the authority of the Chair on 26 June 2025.