

Cost of legal representation protocol

Purpose:

1. The purpose of this protocol is to:-
 - explain how to apply for an award of expenses in respect of legal representation;
 - provide information on the scope of the legal representation covered by an award of expenses;
 - provide information as to the criteria to be applied by the Chair in deciding applications;
 - provide information on how the assessment of the amount of the award is to be carried out.
2. The procedures set out in this protocol are subject to, and should be read in accordance with, the Notice of Determination made by the Cabinet Secretary for Justice under section 40(4) of the Inquiries Act 2005 (“Minister’s Determination”) set out in the annex to this protocol (see Annex) and rules 17 to 28 of the Inquiries (Scotland) Rules 2007 (“the 2007 Rules”).
3. In this protocol references to “Core Participant” and to “recognised legal representative” are as defined in rule 4 and 5 of the 2007 Rules. A Core Participant includes an individual, organisation or entity that has a significant interest in the Inquiry. A link to the Core Participant protocol can be found [here](#). A recognised legal representative is a qualified lawyer acting on behalf of a Core Participant or any other person required to give evidence or documentation to the Inquiry. The Chair must regard that lawyer as the recognised legal representative in respect of the Inquiry proceedings¹.

Award of Legal Representation

4. Section 40 of the Inquiries Act 2005 (“the Act”) gives the Chair exclusive responsibility for deciding whether or not an individual or group is entitled to receive payment for the expenses of their legal representation. It is the Chair who determines who is eligible for a section 40 award. The Chair has the

¹ The Inquiries (Scotland) Rules 2007 rule 5(2).

power to make an award of a reasonable amount in respect of expenses properly incurred, or to be incurred, in relation to the Inquiry.

5. To be eligible for an award under section 40, the person seeking the award must:-

- (i) be attending the Inquiry to give evidence;
- (ii) be attending the Inquiry to produce a document or some other thing; or
- (iii) have, in the opinion of the Chair, such a particular interest in the proceedings of the Inquiry or in the outcome of it to justify such an award.

Eligibility for an award of legal expenses

6. The Chair must make decisions about procedure and conduct of the inquiry, including funding, having regard to fairness. Under Rule 6 of the 2007 Rules where there are two or more Core Participants, each of whom seeks to be legally represented, and the Chair considers that –

- (i) their interests in the outcome of the Inquiry are similar;
- (ii) the facts they are likely to rely on during the course of the Inquiry are similar; and
- (iii) it is fair and proper for them to be jointly represented,

the Chair may direct that the Core Participants be represented by a single legal representative and approve a qualified lawyer for that purpose. The approval must be agreed to by the Core Participants in question. If no agreement is reached within a reasonable period, the Chair may approve a qualified lawyer who the Chair considers has sufficient knowledge and experience to act in that capacity.

7. If the Core Participants, jointly represented, consider there has been a change of circumstances and their interests require to be separately represented, they can apply to the Chair for separate representation.

Scope of the legal representation covered by the award

8. Where the Chair determines to make an award in respect of legal representation, it will normally be limited to a recognised legal representative carrying out some or all of the following:-

- (i) taking and considering initial instructions from their client;
- (ii) considering and providing advice to their client on the documentation disclosed by the Inquiry to the Core Participants;
- (iii) advising their client 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 2007 Rules;
- (iv) attending Inquiry hearings;
- (v) making opening and closing statements, where permitted, in terms of Rule 10 of the 2007 Rules;

- (vi) examining their client during their oral evidence (and the evidence of others, should that be necessary), where permission has been given in terms of Rule 9(2) and (3) of the 2007 Rules;
- (vii) making an application for permission to examine any witness in terms of rule 9(4) of the 2007 Rules.
- (viii) advising their client in relation to any warning letters issued by the Chair under Rule 12 of the 2007 Rules;

How to apply for an award

9. The Minister's Determination makes clear that, except in exceptional circumstances, expenditure incurred prior to the Chair's award of funding will **not** be recoverable. Accordingly, parties should apply for an award in advance of expenses being incurred. The application is to be sent to the Solicitor at legal@emmacaldwellinquiry.scot.

10. The application must provide details of the following:-

- the scope and estimated duration of the legal representation for which the award is sought;
- any other expenses relating to legal representation;
- the financial resources of the applicant and confirmation that there are no other means by which such representation can be funded;
- the public interest served in the granting of the award;
- the size and composition of the team that the applicant's recognised legal representative proposes to engage. In setting out the composition of the team the application will include the seniority of the team members and the work each team member will perform (ensuring that work is appropriate for their seniority and role) and proposed hourly rates of any legal representative(s) providing that representation is subject to the following maximum hourly rates:

Senior Counsel (whether a member of the Faculty of Advocates or a solicitor advocate)	£200
Junior Counsel (whether a member of the Faculty of Advocates or a solicitor advocate)	£100
Solicitor with over 8 years' post qualification experience	£150
Solicitor with over 4 years' post qualification experience	£125
Other solicitors and fee earners of equivalent experience	£100
Trainee solicitors, paralegals and other fee earners	£75

11. 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. Any travelling time must be included within the cap on the maximum number of

hours that can be charged by an applicant's recognised legal representative and in no cases will it be in addition to cap on hours.

Criteria and conditions of award

12. The Chair, in deciding whether to make an award in respect of legal representation will consider the following criteria:
 - (a) The financial resources of the applicant; and
 - (b) Whether making the award is in the public interest.
13. Where the Chair has decided that an award should be made, in that determination the Chair must set the following conditions:
 - (i) The nature and scope of the work to be funded. Payment 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;
 - (ii) The hourly rates to be paid up to the maximum set out in the table above, as set out in the Minister's Determination annexed to this protocol;
 - (iii) Any upper limit or limits on the number of hours which will be paid, which will not exceed the maximum number of hours set out in the Minister's Determination annexed to this protocol;
 - (iv) The frequency with which bills must be submitted to the Chair; and
 - (v) The form in which bills must be so submitted.
14. 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 best use of public funds.

Assessment of the amount of the award

15. Where the Chair has determined that an award should be made and the application relates to expenses that have not yet been incurred, the Chair must send the determination to the applicant and their legal representative (if they have one).
16. If the Chair has determined an award should be made, and the amounts have already been incurred, the Chair must refer the application to the Solicitor to the Inquiry for an assessment to be made.
17. The Solicitor must make an initial assessment of the amount of the award within 21 days of the referral by the Chair. This must be in writing and sent to the applicant and their legal representative (if they have one).
18. If the Solicitor assesses the full amount should be paid, the initial assessment becomes the final assessment. If, however, the applicant disagrees with the

initial assessment the applicant must notify the Solicitor to the Inquiry of this, in writing, within 21 days of the date on which the initial assessment of the amount of the award is sent to the applicant. Where the applicant fails to respond within 21 days of the initial assessment, the Solicitor to the Inquiry must issue the final assessment of the award.

19. An initial or final assessment must be in writing and sent to the applicant and, where the applicant has a legal representative, their legal representative.

Dispute procedure regarding assessments

20. Where notification has been given by the applicant to the Solicitor that they do not agree with the award, 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. These points of dispute must:

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

21. Upon receipt of the points of dispute, the applicant must then provide a written response to the Solicitor within 21 days of the written points of dispute having been sent. The deadlines can be extended if agreed between the applicant and Solicitor.

22. Where a dispute still exists, the Chair must either:

- (i) Refer the 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
- (ii) Require the solicitor to the Inquiry to issue the final assessment.

23. Where there has been a reference to the Auditor of the Court of Session, the Auditor must hold a review hearing within a reasonable time. 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.

24. A person other than the applicant, their legal representative or the Solicitor to the Inquiry can only be heard at a review hearing with the Auditor's permission.

25. The Auditor's assessment must be sent to the applicant and the Chair. The Auditor's assessment is the final assessment of the amount of the award.

Making an award

26. The Chair must make an award and arrange for payment of the final assessment of the amount of the award. All payments will be made by payable order at the Inquiry's discretion. To enable payment to be made, a claimant will be required to complete the appropriate documentation supplied by the Inquiry and/or provide bank account details.
27. All applications for and correspondence about awards should be sent to the Solicitor to the Inquiry at legal@emmacaldwellinquiry.scot.
28. Failure to comply with the procedures set out in this protocol may result in payment being delayed or refused.
29. The Chair and Solicitor to the Inquiry may vary the application and terms of this protocol on a case-by-case basis where necessary to the proper conduct of the Inquiry, subject to the requirements of the Minister's Determination.

Issued under the authority of the Chair on 23 December 2025.

Annex

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

In respect of the Emma Caldwell Public 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.

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):

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

- (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 Chair or 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. 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 the family of Emma Caldwell.

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.

- (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.
- (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) 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.

Yours sincerely,

ANGELA CONSTANCE