

COVID INQUIRY - SECTION 40 DETERMINATION

Notice of Determination by the Prime Minister to the Chair of the Covid-19 Inquiry under section 40(4) of the Inquiries Act 2005

1. The Prime Minister has determined under section 40(4) of the Inquiries Act 2005 (“the Act”) that the power of the Chair of the Covid-19 Inquiry (“the Inquiry”) to award amounts under section 40(1) and (2) of the Act to persons eligible for an award under section 40(3) shall be subject to the qualifications and conditions set out below.

No financial resources test for certain applicants

2. Given the exceptional nature and gravity of the Covid-19 pandemic, the Prime Minister recognises that it will be in the public interest for certain applicants to be provided with funding for legal representation without investigation as to the financial resources otherwise available to them.
3. The Prime Minister has therefore determined that Rule 21(2)(a) of the Inquiry Rules 2006 (financial resources) may be satisfied without enquiry as to means on an application for an award for legal expenses by families of people who were infected with Covid-19 and who died (including people who not unreasonably believe that they or their family member were so infected).
4. Other criteria and tests set out in the Inquiries Act 2005, the Inquiries Rules 2006, this Determination and any costs protocol issued by the Chair all remain applicable to every applicant for legal expenses.

Conditions and qualifications

5. The Chair shall only make an award relating to a person’s costs of legal representation where she considers it necessary, fair, reasonable and proportionate to make an award.
6. As in all decisions as to the procedure or conduct of the Inquiry, the Chair must act in accordance with the obligations under Section 17 of the Inquiries Act to act with fairness and with regard to the need to avoid any unnecessary cost.
7. Awards should not be made in respect of the legal expenses of substantial bodies, or of individuals who could reasonably expect their expenses to be met by such bodies, unless there are special circumstances which justify a call on public funds.
8. Expenditure incurred by an applicant in respect of legal representation before an award is made by the Chair shall not be recoverable, other than - with the written prior agreement of the Solicitor to the Inquiry - where that expenditure is for the purpose of responding to the consultation on the inquiry’s terms of reference and is within a maximum cap at a level to be set by the Chair. Responding to the consultation will not normally require legal representation and such agreement will be given on an exceptional basis only.
9. An award shall be subject to the condition that payment will only be made for work that is properly evidenced, directly related to the work of the Inquiry as determined by any costs protocol issued by the Chair, 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.

10. An award shall be made only in respect of legal work undertaken by an applicant's legal representative whom the Chair has designated under either Rule 6 or Rule 7 of the Inquiry Rules 2006 to be that person's recognised legal representative in relation to the Inquiry.
11. Where, as set out in Rule 7 of the Inquiry Rules, there are two or more core participants, each of whom seeks to be legally represented, and the Chair considers that their interests in the outcome of the inquiry are similar; the facts they are likely to rely on in the course of the inquiry are similar; and it is fair and proper for them to be jointly represented, an award shall only be made where the Chair has directed that those core participants shall be represented by a single recognised legal representative or legal team.
12. The Chair shall approve the size and composition of any legal team to be engaged by an applicant's recognised legal representative including the number and seniority of counsel whose retention she agrees to be necessary.
13. In determining whether to make an award the Chair shall specify the broad areas of work that are to be covered by the award and the hourly rates applicable to all members of the applicant's approved legal team subject to the maximum hourly rates specified below.
14. Having regard to the inquisitorial nature of the Inquiry, an award shall not be made in respect of investigative work undertaken by an applicant's recognised legal representative or in relation to obtaining an expert's report, save in exceptional circumstances.
15. An award shall limit the maximum number of hours that can be charged by any member of a legal team in connection with Inquiry work to 40 hours per week save that exceptionally, the Solicitor to the Inquiry may authorise an increase to a maximum of 60 hours during the eight-week period immediately preceding the commencement of the oral hearings and during the oral hearings where she is satisfied that such increase is justified in all the circumstances. For the purposes of this paragraph a week shall be taken to commence on a Monday and end on the following Sunday, and no unused hours below the maximum in any one week may be set-off against any other week.

Maximum hourly rates

16. The maximum hourly rates for legal work by the members of an applicant's legal team shall be:
17. Leading Counsel:
 - Whether a member of the Bar or a Solicitor acting in the role of advocate - £220.00
18. Junior Counsel:
 - Whether a member of the Bar or a Solicitor acting in the role of advocate - £120.00
19. Solicitors
 - Solicitors with over eight years post qualification experience - £175.00
 - Solicitors and legal executives with more than four years experience - £150.00
 - Other solicitors and legal executives - £125.00

- Trainee solicitors, paralegals and other fee-earners - £100.00
20. The maximum hourly rates for travel and waiting time by the members of an applicant's legal team shall be half of the applicable maximum hourly rates relating to legal work specified above.
 21. The Chair shall only make an award relating to compensation for loss of time where the person to be compensated would otherwise face actual financial loss, for example (but not limited to) receipt of monies related to that person's employment.