

DETERMINATION BY MINISTERS UNDER SECTION 40(4) OF THE INQUIRIES ACT 2005

Public Inquiry into C Difficile infection and mortality at the Vale of Leven Hospital

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

The Scottish Ministers have determined, under section 40(4) of the Inquiries Act 2005 ("the 2005 Act"), that as regards the Inquiry into c difficile infection and mortality at the Vale of Leven Hospital, the power of the Chairman of the Inquiry to award amounts in respect of legal representation under section 40(1) and (2) of that Act shall be subject to the qualifications and conditions set out below.

The qualifications and conditions are:

1. Awards in respect of legal representation may be made only in circumstances in which the Chairman considers it is necessary, fair, reasonable and proportionate for such an award to be made.
2. Any award must be subject to the condition that payment will be made only 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.
3. Awards may be made only in respect of legal representation provided by one or more named legal representatives whose involvement has been approved in advance by the Chairman. The Chairman must approve the size and composition of any legal team to be engaged, including the seniority and number of any counsel. Costs associated with work carried out by legal representatives who are not approved in advance of the work being carried out shall not be met from public funds.
4. Any award must specify the nature and scope of the work that is to be publicly funded. Legal representatives must not be publicly funded for work that does not fall within the agreed scope. An inquiry under the 2005 Act is inquisitorial in nature and legal representatives will not be paid for investigative work or for work in relation to obtaining expert reports, unless the Chairman gives express permission in advance for this work to be carried out.
5. 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:

Senior Counsel – £200

Junior Counsel – £100

Solicitors – £150.

6. The maximum number of hours that can be charged by a legal representative in receipt of an award made by the Chairman shall be 40 hours per week, save that exceptionally 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 (e.g. when the work involved in any week clearly needs to exceed 40 hours).
7. In respect of paragraph 6 of this notice:
 - (a) No unused hours in any week may be set off against any other week;
 - (b) A week shall be taken as commencing on Sunday and ending on Saturday;
8. Expenditure incurred before notification of the Chairman's award, or expenditure in excess of the terms upon which approval is granted, will not be recoverable.
9. Travel and subsistence rates as they apply to Scottish Government employees would apply for witnesses and legal representatives within the United Kingdom. Rail travel would be reimbursed at standard class rate and air travel at economy class rate. Awards for travel expenses or compensation for loss of time shall only be made for witnesses from outside the UK where the Chairman is satisfied that their travel is necessary to the fulfilment of the Inquiry's terms of reference.