

# **Scottish Covid-19 Inquiry**

## **Statement of Intent on Funding by the Inquiry – June 2022**

### **Introduction**

1. People who become involved with the Scottish Covid-19 Inquiry, who can't afford a lawyer, may be able to ask the Inquiry to make payments towards legal representation. The Inquiry can also sometimes make payments towards expenses of attending the Inquiry and compensation for loss of time.
2. This statement of intent explains the background to awards for funding, and how and when the Inquiry proposes to deal with applications to it for help with funding.

### **Background - inquiries are inquisitorial**

3. In public inquiries like the Scottish Covid-19 Inquiry, the Inquiry investigates on behalf of the public. The Inquiry has legal powers to compel people to produce documents, and attend the Inquiry to give evidence. Public funds pay for the cost of the Inquiry.
4. To keep the cost to the public within reasonable limits, it is for the Inquiry to investigate on behalf of the public, rather than people affected all carrying out separate investigations at public expense. This is important in the context of the Scottish Covid-19 Inquiry, because it is investigating the response to a pandemic which affected over five million people in Scotland. Public inquiries are different from court proceedings – they are not adversarial but inquisitorial. The Inquiry itself will instruct experts, obtain documents, and tell witnesses if they have to come and give evidence. The Inquiry will carry out a fair and thorough investigation.
5. During the course of its investigation, the Inquiry will hear from a range of people. This includes people affected by the pandemic response. The Inquiry has explained the plans it has

to do this on its website (<https://www.covid19inquiry.scot>). The Inquiry recognises that some people participating in its proceedings will wish to instruct a legal representative.

### **How does the Inquiry propose to deal with applications for funding?**

6. The law sets out tests which have to be passed for people to be eligible for funding from the Inquiry (in particular in Sections 17 and 40 of the Inquiries Act 2005 and Rules 17 to 28 of the Inquiries (Scotland) Rules 2007). Among other things, the Inquiry's power to make a funding award is subject to conditions or qualifications determined by the Scottish Ministers. These are usually set out in a letter called a "Section 40 Determination". They may include a prohibition on the Inquiry awarding funding for people to carry out their own 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 - because the Inquiry is inquisitorial. The Inquiry will apply the legal tests, and any conditions set out in a Section 40 Determination, when it decides funding applications made to it.

7. The Inquiry will in due course publish a funding Protocol. The Protocol will set out the Inquiry's procedures, which should be followed if people wish to apply for funding from the Inquiry.

### **When will the Inquiry deal with applications for funding?**

8. The Inquiry will not be in a position to deal with any applications for funding until the Scottish Ministers have issued the Section 40 Determination referred to in paragraph 6 above. After it is issued, the Inquiry will take its contents into account in its funding Protocol. Both the Section 40 Determination and the funding Protocol will be published on the Inquiry's website.

9. As a general rule, after the Section 40 determination has been issued, the Inquiry will not determine funding applications until after it has decided applications to it for designation as a Core Participant, and addressed issues of joint representation under Rule 6 of the Inquiries (Scotland) Rules 2007. The Inquiry aims to invite applications for designation as a Core Participant

by early autumn. The Inquiry will defer determination of funding applications until after that. It will then be in a better position to decide whether people have particular interests justifying an award of funding. The Inquiry will offer support for participation in its listening project (information on which is available on its website), and it will determine funding applications in advance of making structured calls for formal evidence and submissions. It is not generally necessary, proportionate, or in the public interest to award funding at this stage, when it is for the Inquiry to carry out the investigation, and consideration will be given to funding applications further down the line.

10. There are limited exceptions to that general rule. In situations where the Inquiry has already invited people to engage with it, or other exceptional circumstances, and after the Scottish Ministers have issued the Section 40 Determination, the Inquiry will consider applications for funding which comply with its Protocol. For example, where a legal representative has been instructed for meetings that people have been invited by the Inquiry to attend, the Inquiry will consider applications for funding to cover the taking of instructions and attendance. The Inquiry will apply the usual legal tests and any conditions in a Section 40 Determination to any such application.

Lady Poole  
Chair of the Scottish Covid-19 Inquiry  
14 June 2022

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