

## THE SCOTTISH CHILD ABUSE INQUIRY

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

#### Public Inquiry to investigate the nature and extent of abuse of children in care

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

1. In respect of the Scottish Child Abuse Inquiry chaired by Lady Anne Smith QC in terms of the Instrument of Appointment in her favour dated 1 August 2016 ("the Inquiry"), the Scottish Ministers have determined under section 40(4) of the Inquiries Act 2005 ("the 2005 Act") that the power of the Chair to make awards under section 40 of the 2005 Act to persons eligible under section 40(3) of that Act shall be subject to the following conditions and qualifications.
  
2. In respect of legal representation (section 40(2)), the conditions and qualifications are-
  - (a) Awards in respect of legal representation 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) 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.
  
  - (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 in respect of legal representation 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:

- i. Senior Counsel (whether a member of the Faculty of Advocates or a solicitor advocate) **£200**
- ii. Junior Counsel (whether a member of the Faculty of Advocates or a solicitor advocate) **£100**
- iii. Solicitor with over 8 years' post-qualification experience **£150**
- iv. Solicitor with over 4 years' post-qualification experience **£125**
- v. Other solicitors and fee earners of equivalent experience **£100**
- vi. Trainee solicitors, paralegals and other fee earners **£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 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 she 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 (f) of this notice:

- 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).

3. 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)), the conditions and qualifications are:

- (a) Travel and subsistence rates as they apply to Scottish Government employees apply within the United Kingdom. Rail travel would be reimbursed at standard class rate and air travel at economy class rate.
- (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) The maximum hourly rates for waiting time by legal representatives shall be half of their hourly rate agreed in advance with the Solicitor to the Inquiry per paragraph 2(e) above.
- (d) 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.

**JOHN SWINNEY**