

Scottish COVID-19 Inquiry – STANDARD OPERATING PROCEDURE: Instruction of expert reports and witnesses

Introduction

This standard operating procedure sets out how the Scottish COVID-19 Inquiry (“the Inquiry”) will undertake the instruction of expert witnesses for the provision of evidence and expert opinion about matters within their expertise that may assist the Chair in fulfilling the Inquiry’s Terms of Reference (ToR).

Overview

The Chair may determine that the Inquiry needs to consult an expert opinion to provide technical analysis and expertise on a particular theme that is relevant to the Inquiry’s terms of reference (TOR). This might be in addition to academic or other research which the Inquiry has already conducted.

The terms of Section 40 of the Inquiries Act 2005 provide that the Chair can award expert witnesses compensation for loss of time as a result of engaging with the Inquiry. Section 17-22 of the Inquiries (Scotland) Rules 2007, provide detailed rules on the subject of expenses. They require that the hourly rates of remuneration, and the nature and estimated duration of the work, must be agreed in advance.

Given the need to ensure (a) value for money and (b) a consistent approach in the treatment and payment of expert opinion, the Inquiry has developed a protocol to assist.

Identification of experts

Once the requirement for an expert has been identified by the Chair, the research team, in consultation with Inquiry counsel and legal team, will have responsibility for the production of a list of potential expert witnesses.

The research team will conduct desk based research and liaise with relevant research institutes to identify suitable subject matter experts.

The communications team will be responsible for conducting relevant due diligence on the experts identified. This will include consideration of the following matters:

- a) Subject Matter Expertise: Details of any relevant academic publications.
- b) Professional standing: Assessment of professional standing of academic.

- c) Conflicts of interest: Involvement in decision making by government and other bodies being investigated under the ToR, connections to core participants, lobbying activity etc.
- d) Consideration of their public profile.

Introductory meetings will be arranged between possible experts and Inquiry counsel and solicitors to assess their appropriateness. This will take the form of an informal interview where experts will be asked to outline their expertise on a particular theme.

Instruction

The Solicitor to the Inquiry is responsible for drafting a letter of instruction setting out the instructions for the work of the expert that reflect the understanding of the Inquiry of topics and questions for investigation.

However, experts will be invited to comment on the proposed topics or questions and suggest alternative approaches to meet the aims of the work within the available budget and timescales. The Chair will consider any additional points raised.

Individuals are instructed as expert witnesses to the Inquiry and are required to exercise reasonable skill and care in carrying out their instructions accordingly. They should also comply with any relevant professional codes of practice (which the expert follows as part of their professional responsibility). An expert's overriding duty is to assist the Inquiry and to provide an unbiased and factual opinion as an independent witness in relation to those matters which are within their expertise.

It is possible that during the course of the investigation, an expert may be asked to undertake further work to assist the Inquiry, and this should be reflected within the letter of instruction.

This may include answering questions raised by the Inquiry, Core Participants or the media, preparing further reports, conducting discussions with or providing opinions to other experts instructed by the Inquiry, giving oral evidence at the Inquiry's public hearings, and carrying out other duties appropriate to the role of an expert to the Inquiry as directed by the Chair.

Provision of material

The Inquiry will provide any potentially relevant documentary evidence as is available to the expert to support the production of the report.

In so far as the Inquiry does not have evidence that an expert considers it necessary to enable them to reach a conclusion on the topic under investigation, then the Inquiry will attempt to obtain it on their behalf and, where practicable, may use its statutory powers to do so.

Any material provided to an expert by the Inquiry is subject to the terms of the Inquiry's [General Restriction Order](#). This prohibits the use of material provided by the Inquiry for any purpose unrelated to the Inquiry, including publication of any material received from the Inquiry, without the express consent of the Inquiry unless or until that material is published by the Inquiry itself (though the prohibition does not apply in respect of material that is otherwise in the public domain).

Accordingly, experts should not use any material provided by the Inquiry for any purpose other than the provision of the report to the Inquiry without the Inquiry's prior written consent.

This restriction does not apply in relation to any expert referencing their appointment in any publicly accessible material (including social media). However, this should not be done until the Inquiry has published its own notice of an appointment and should not include any specifics of the Inquiry's instruction.

Report Formatting

In order to avoid excessive reporting and publication costs, the Inquiry will normally set a policy of capping all expert-led written reports at 10,000 words.

Without being prescriptive, expert reports should cover:

- a. The purpose in presenting the report, and description of matter investigated including the instructions and information provided by the commissioning body.
- b. History of the matter.
- c. The methodology used in investigation.
- d. Details of any documents referred to.
- e. Facts ascertained.
- f. Inferences drawn from the facts, with reasoning.
- g. A summary of qualifications and experience.

Remuneration

For expert opinions, which may also include presenting findings and being subject to questioning on those findings in a public session of the Inquiry, we will normally offer a day rate of £550. This daily rate is based on the assumption of an 8-hour working day. Experts would be expected to charge in

minimum increments of 0.5 of a working day (i.e. £275), rather than an hourly rate.

However, if the preferred expert is not content with this level of remuneration, a case can be made to increase it, setting out a clear rationale to the Solicitor and Secretary who will make a recommendation to the Chair.

Prior to contracting an expert, Inquiry officials must agree a maximum number of days for any work to be delivered, which may include preparing for and giving evidence to a public hearing of the Inquiry. The maximum number of days must also take into account any individual research and reporting writing by the expert.

Experts will normally be paid direct into their personal bank accounts and will be responsible for any personal taxation or National Insurance payments.

Travel and Subsistence

The Inquiry will pay for reasonable travel expenses to enable experts to attend hearings, as required. Public transport, where available, should be used. Any train and air travel will be in economy class.

Where an overnight stay in Edinburgh is required (for example, to enable an expert to attend a public hearing), the Inquiry will cover reasonable hotel costs. The maximum allowed for hotel accommodation will be capped at £200 per night. The Inquiry will pay for meals, drinks or any other ancillary costs up to set limits as set out in the Inquiry's [protocol for witness expenses](#).

Experts must provide receipts for all expenditure, including public transport or car park barriers. The receipt must clearly identify the costs incurred. Credit or debit card receipts are not accepted as proof of expenditure. Any personal items on the receipt should not be included in the claim.

Reimbursements for mileage are set by reference to [HMRC rules on Approved Mileage Allowance Payments](#). Any insurance claim will made by the expert on their own vehicle insurance, and they will not be reimbursed for costs incurred as a result of a claim. Hire car costs will not be refunded.

Publication

The Inquiry will provide a copy of expert reports to the Core Participants to the Inquiry, and it will be published on the Inquiry's website on a date and in a format to be determined by the Inquiry, provided it meets the quality assurance criteria set out by the Inquiry.

The Chair may ask an expert to speak to the content of their report at a public hearing of the Inquiry at a later date.

Questions and Comments from CPs

As is provided by Rule 9 of the Inquiries (Scotland) Rules 2007, Core Participants are permitted to propose lines of questioning of expert witnesses that they may wish.

To aid this process, the Inquiry will provide a copy of expert reports to the Core Participants to the Inquiry in advance of any public hearing at which the expert will give oral evidence.

The additional process by which Core Participants (CPs) propose lines of questioning that they may wish Counsel to the Inquiry to ask of an expert about their reports will be set out in a separate protocol.