



STATEMENT OF APPROACH: LEGAL REPRESENTATION AT PUBLIC EXPENSE

Introduction

1. This statement relates to:
 - a. applications by a person or organisation ('applicant') for an award to be made under section 40(1)(b) of the Inquiries Act 2005 ('the Act') in respect of legal representation expenses ('legal expenses'); and
 - b. the assessment of legal expenses payable following a decision to make an award.
2. The procedures set out in this statement are subject to, and should be read with, the provisions contained in sections 17 and 40 of the Act, Rules 19 to 34 of the Inquiry Rules 2006 ('the Rules'), and the Notice of Determination made by the Chancellor of the Duchy of Lancaster under section 40(4) of the Act ('the Minister's Determination').

General Principles concerning applications for awards

3. An applicant is eligible to be considered for an award only if they are:
 - a. a person or organisation attending the Inquiry to give evidence or to produce any document or other thing; or
 - b. a person or organisation who, in the opinion of the Chair, has such a particular interest in the proceedings or outcome of the Inquiry as to justify such an award.

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4. In exercising his power to make an award relating to legal representation at public expense the Chair will:
 - a. act with fairness, taking account of whether making an award is in the public interest and with regard also to the need to avoid any unnecessary cost (whether to public funds, witnesses or others);
 - b. ensure that he complies with the qualifications and conditions set out in the Minister's Determination.
5. Having regard to the criteria set out in paragraph 3 of this statement and to the powers under section 17(1) of the Act, the Chair envisages that awards for legal expenses will be made only in cases where he decides that:
 - a. the applicant:
 - i. has relevant evidence to provide in respect of matters set out in the Inquiry's Terms of Reference; and/or
 - ii. has been designated as a core participant; and/or
 - iii. may be subject to explicit or significant criticism during the Inquiry's proceedings or in the report, or in any interim report; and
 - b. it is fair, necessary, reasonable and proportionate, and in the public interest to make an award.
6. Awards will generally not be made in respect of the legal expenses of substantial bodies, or the legal expenses of individuals which could reasonably be expected to be met by such bodies, unless there are special circumstances which justify a call on public funds.

7. It should not be assumed that being granted core participant status automatically confers a right to receive funding for legal representation. The Chair will apply the criteria set out at paragraphs 3 and 5 of this statement to all applications for legal expenses.

The scope for legal representation at the Inquiry at public expense

8. Where the Chair decides to make an award, it will only be made in respect of legal work undertaken by an applicant's legal representative whom the Chair has designated under Rule 6 or 7 of the Rules (in accordance with paragraph 2.6 of the Minister's Determination) or in respect of responding to the Inquiry's consultation on the Terms of Reference prior to the setting up date of the Inquiry (in accordance with paragraph 2.5 of the Minister's Determination), and will normally be limited to legal expenses in relation to some or all of the following matters:
 - a. advising the client in relation to the making of witness statements and/or otherwise providing evidence to the Inquiry, in accordance with any requests made by the Inquiry under Rule 9 of the Rules;
 - b. considering material disclosed by the Inquiry so far as is necessary properly to represent the client's interests;
 - c. advising the client in relation to any warning letter issued by the Chair under Rule 13;
 - d. making an opening statement, where permitted;
 - e. representing the client during their oral evidence and the evidence of others, at times and circumstances specified by the Chair;

- f. making applications through their recognised legal representatives to the Chair to ask questions of witnesses during a hearing;
 - g. making closing statements, where permitted.
- 9. Where the Chair decides to make an award, in accordance with paragraph 2.9 of the Minister's Determination, this will not include:
 - a. investigative work as this is the role of the Inquiry;
 - b. obtaining expert reports,save in exceptional circumstances.
- 10. The costs of any work undertaken by an applicant's recognised legal representative which is not in accordance with the terms of the award notified to the applicant under paragraph 18 of this statement, will be disallowed.

Applications for awards for legal expenses to be incurred

- 11. An applicant who wishes to apply for an award relating to legal expenses to be incurred should submit an application to the Chair in writing using the electronic template which will be available on the Inquiry website.
- 12. The applicant must provide a signed and dated confirmation of the instruction of the legal representative, and specify the following:

Purpose of representation

- a. if not a core participant, the reason(s) why legal representation is considered necessary;

- b. the nature of the public interest that will be served by an award being made from public funds (see Rule 21(2)(b) of the Rules);
- c. with reference to the Terms of Reference, the issues in respect of which legal representation is sought and the nature and the scope of the work to be undertaken;

Cost of Representation

- d. the estimated duration of the legal representation;
- e. the size and composition of the team that the applicant's legal representative proposes to engage, including the seniority and proposed hourly charging rates for all solicitors and paralegals to be engaged, subject to the maximum hourly rates specified in paragraph 3 of the Minister's Determination;
- f. where it is thought necessary to instruct counsel, the reasons for so doing, the date of call of that counsel and the proposed hourly rate, subject to the maximum hourly rate specified in paragraph 3 of the Minister's Determination. It will not be acceptable to submit general claims along the lines of 'brief fee', 'refresher' or 'preparation';
- g. the number of hours each week for which it is anticipated that the legal representative's team will be engaged on Inquiry work having regard to the interest of the applicant and the part of the Inquiry in which they are seeking to participate;
- h. the number of hours each week for which it is anticipated that counsel will be engaged on Inquiry work;
- i. the amount of time that it is anticipated will be spent in conference at the end of each day of the oral hearings;

- j. particulars of any other foreseeable expenses relating to legal representation, including any disbursements.

Other information

- k. any communication or other difficulties the applicant has in giving instructions to his/her legal representative;
 - l. the applicant's financial resources (see Rule 21(2)(a)) except where this requirement is waived by paragraph 2.2 of the Ministerial Determination; and
 - m. any reasons why the application for an award should be expedited.
13. Applicants who are core participants will be invited to make applications for specific areas of work. The first area will be applications in respect of paragraph 14 (a) and (e) below. The Inquiry will call for applications in respect of other areas of work as required.
14. The specific areas of work will include but not be limited to:
- a. Provision of the applicant's written statement providing their account of how they have been infected or affected.
 - b. Consideration of relevant evidence provided by the Inquiry to the core participant/applicant via the Inquiry's online disclosure platform. This will include consideration of the documentary disclosure, expert reports and witness statements relevant to the core participant/applicant.

- c. Provision of any further written statements to be provided by the core participant/applicant as requested by the Inquiry, to address any issues or information disclosed as above.
 - d. Preparation and representation at any oral hearings. This will encompass any written opening or closing statements.
 - e. Interim hearings in respect of which the core participant/applicant requires representation.
15. Where that applicant is one of a number of core participants represented by the same recognised legal representative, the Inquiry may call for joint applications.
16. Applicants who are not core participants are invited to make one application for an award to cover all their anticipated legal expenses for the duration of the Inquiry.

Determination of an application by the Chair for legal expenses to be incurred

17. Having regard to the provisions of the Act, the Rules, the Minister's Determination and the provisions set out in this statement, the Chair will determine an application for an award within a reasonable time.
18. The Solicitor to the Inquiry will notify the applicant and, where applicable, their legal representative, in writing of the Chair's determination and, where an award is made, the terms of the award. Such terms will include (but are not limited to) the following:
- a. the nature and scope of the work that is to be funded;
 - b. designation of a recognised legal representative (where not already designated);

- c. the size and composition of the recognised legal representative's legal team to be engaged, including the seniority and number of counsel where that is agreed to be necessary;
 - d. the hourly rates for all counsel, solicitors and paralegals to be engaged, up to the maximum hourly rates as set out in paragraph 3 of the Minister's Determination;
 - e. the maximum number of hours that can be charged by any member of the recognised legal representative's legal team in connection with Inquiry work in a working week, in accordance with paragraph 2.10 of the Minister's Determination;
 - f. the amount and nature of any disbursements allowed;
 - g. that the award is subject to the condition that payment will only be made for work that is properly evidenced 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;
 - h. the form in which bills relating to legal expenses are to be submitted;
 - i. the frequency with which bills are to be submitted.
19. It will be open to the Chair, either initially or at any time after making an award, to impose further conditions on the award. This may amount to an overall financial limit on the costs to be incurred, or a limit on the number of hours to be spent on specific areas of work of Inquiry business.

Applications for further awards in respect of legal expenses to be incurred

20. In the event that an applicant considers that he/she is likely to incur legal expenses in excess of the award made by the Chair the applicant should make an application for a further award for the further legal expenses that it is anticipated will be incurred, following the process set out at paragraphs 11-16 above.
21. In any such application, the applicant must also include the reason why a further application is being made and why the applicant expects to incur legal expenses in excess of the award made by the Chair.
22. In determining any such application, the Chair will only grant a further award if there is a good reason for the applicant having exceeded the amount already awarded for the legal work in issue.

Application for legal expenses already incurred

23. Legal expenses incurred prior to an award having been made will be disallowed save in respect of responding to the Inquiry's consultation on the Terms of Reference prior to the setting up date of the Inquiry (see paragraph 2.5 of the Minister's Determination).
24. An applicant who wishes to apply for an award relating to legal expenses incurred in responding to the Inquiry's consultation on the Terms of Reference should submit an application to the Chair in writing together with a bill in the form set out at paragraphs 29 and 30 below, and a signed and dated confirmation of the instruction of the relevant firm, specifying the following:

Purpose of representation

- a. the reason(s) why legal representation was considered necessary;
- b. the nature of the public interest that will be served by an award being made from public funds (see Rule 21(2)(b) of the Rules);

Cost of Representation

- c. the size and composition of the team engaged by the applicant's legal representative, including the seniority and the hourly charging rates for all solicitors and paralegals engaged, subject to the maximum hourly rates specified in paragraph 3 of the Minister's Determination;
- d. where counsel was instructed, the reasons for so doing, the date of call of that counsel and the hourly rate, subject to the maximum hourly rate specified in paragraph 3 of the Minister's Determination. It will not be acceptable to submit general claims along the lines of 'brief fee', 'refresher' or 'preparation';
- e. where costs were incurred on behalf of more than one applicant, those costs are to be scheduled separately to costs incurred that are specific to an individual applicant;

Other information

- f. any communication or other difficulties the applicant had in giving instructions to his/her legal representative; and
- g. any reasons why the application for an award should be expedited.

Determination of applications for awards of legal expenses already incurred

25. Having regard to the provisions of the Act, the Rules, the Minister's Determination and the provisions set out in this statement, the Chair will determine within a reasonable time whether to grant an application for an award.
26. The Solicitor to the Inquiry will notify the applicant and their legal representative, in writing, of the Chair's determination.
27. Where the Chair has determined that an award should be made, the Chair will refer the application to the Solicitor to the Inquiry for an assessment of the award. The procedure for the assessment of the incurred legal expenses is that set out at paragraphs 29 - 36 below.

Billing Procedures

28. Where the Chair has made an award for legal expenses to be incurred, the applicant to whom that award has been made must submit bills setting out the legal expenses that have been incurred pursuant to that award, to the Inquiry at monthly intervals. Such bills are to be received no later than 7 days immediately following the end of the month to which they relate.
29. The bills shall be in the form of an electronic template which will be available on the Inquiry website.
30. Bills submitted must contain the following information:
 - a. identification of the award to which the bill relates (save in respect of bills relating to legal expenses incurred in responding to the Inquiry's consultation on the Terms of Reference);

- b. the details of the specific area of work claimed;
- c. the hourly rates charged for each person;
- d. a list of all disbursements claimed together with appropriately evidenced receipts and invoices in support;
- e. where work has been undertaken by counsel, details of counsel's fees (supported by fee notes and signed timesheets which must specify what work was done, the date of work, and how much time was spent on it);
- f. any additional information required to properly assess the amounts claimed, as specified by the Chair;
- g. Each bill must be signed by the legal representative (the recognised legal representative where designated), who must certify:
 - i. the accuracy of the bill;
 - ii. the work claimed in the bill has been incurred in respect of the applicant(s) to which the award relates;
 - iii. in respect of each fee earner in the applicant's legal team, confirmation that the maximum number of hours in any given week in respect of all Inquiry work has not been exceeded, in accordance with paragraph 2.10 of the Minister's Determination;
 - iv. that the work claimed in the bill is all referable to the Terms of Reference or (where applicable) the Inquiry's consultation on the Terms of Reference;

- v. that the work claimed is in accordance with any award made by the Chair.

Procedure for assessment of amounts payable under an award

- 31. In assessing the quantum of the award, the Solicitor to the Inquiry will have regard to all circumstances, including in particular whether the legal expenses:
 - a. were proportionately and reasonably incurred;
 - b. proportionate and reasonable in amount;
 - c. claimed in accordance with the procedures set out in this statement; and
 - d. claimed in accordance with the terms of the award made by the Chair.
- 32. Where the Solicitor to the Inquiry determines that the full amount of an applicant's claim for legal expenses should be paid, that assessment is also the final assessment.
- 33. If the applicant or their legal representative disputes the Solicitor to the Inquiry's initial assessment of a bill relating to their legal expenses, the procedure set out in Rule 29 of the Rules shall be followed.

Review of an assessment of an amount payable under an award

- 34. Where a dispute remains following completion of the procedure set out in Rule 29, the Chair must, in accordance with Rule 31 either:

- a. engage the assistance of a costs assessor by referring the assessment together with all relevant evidence and documentation to that costs assessor; or
- b. require the Solicitor to the Inquiry to issue a final assessment of the disputed bill of costs.

Payment

35. Where:-

- a. the Chair, pursuant to Rule 31(1)(b) of the Rules, requires the Solicitor to the Inquiry to issue a final assessment of the amount of the award; or
- b. the Solicitor to the Inquiry and the applicant agree on the amount of the assessment at any time after the Chair's referral of the application to the costs assessor and before the date of the review hearing,

the Chair will make an award and arrange for payment of the final assessment in accordance with Rule 34(1).

36. Where the amount of the award has been reviewed by the costs assessor in accordance with Rule 31(1)(a), the Chair will make an award and arrange for payment of the cost assessor's assessment in accordance with Rule 34(2).
37. All payments will be made either by Bankers' Automated Clearing System (BACS) or payable order at the Inquiry's discretion. To enable payment to be made, an applicant or legal representative will be required to complete the appropriate documentation supplied by the Inquiry and/or provide bank account details.

38. All applications for and correspondence about awards should be sent to the Solicitor to the Inquiry whose details are set out below:

Solicitor to the Inquiry
Infected Blood Inquiry
Fleetbank House
1st Floor, 2-6 Salisbury Square
London EC4Y 8AE
Email: solicitor@infectedbloodinquiry.org.uk

39. Failure to comply with the procedures set out in this statement may result in payment being delayed or refused.
40. The Chair and Solicitor to the Inquiry retain the discretion to vary the application of the terms of this statement on a case by case basis where necessary to do so for the proper conduct of the Inquiry, subject to the requirements of the Minister's Determination.

Issued by the Chair on 2 July 2018