

## PUBLIC INQUIRY MUCKAMORE ABBEY HOSPITAL

### MAHI PROTOCOL No. 3

#### PROTOCOL ON FUNDING OF LEGAL REPRESENTATION

##### Introduction

1. This Protocol governs an application by a person, who either has been designated by the Chair as a Core Participant in the Inquiry or is an individual witness who has not been so designated (“the applicant”), for an award for expenses to be incurred in respect of legal representation (“legal expenses award”). Such awards are made under section 40(1)(b) and 40(2) of the Inquiries Act 2005.
2. Designation of a person as a Core Participant in the Inquiry, and of a qualified lawyer as the recognised legal representative of a Core Participant, are governed by a separate [Protocol](#).
3. The Chair has also issued a [statement of approach to Core Participant status, joint representation and funding of legal representation](#). Applicants for a legal expenses award should read that statement before making any application for legal expenses funding.
4. The Protocol will not necessarily cover every eventuality that may arise. The Inquiry may need to depart from the Protocol where necessary in the interests of fairness or in order to discharge its statutory functions.
5. The Protocol may also need to be amended in the course of the Inquiry’s work, in which case the amended version will be published at the earliest opportunity on the Inquiry’s website.

##### Statutory provisions

6. The Protocol should be read in conjunction with the Inquiries Act 2005 (“the Act”) and the Inquiry Rules 2006 (“the Rules”).<sup>1</sup>

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<sup>1</sup> The Chair intends to follow the Inquiry Rules 2006 (separate rules have not been made to govern inquiries established by Northern Ireland ministers) unless in his view exceptional circumstances require a departure.

7. Section 17 of the Act provides that the procedure and conduct of an Inquiry are to be such as the Chair may direct. In making any decision as to the procedure or conduct of the Inquiry, the Chair must act with fairness and with regard to the need to avoid any unnecessary cost.
8. Section 40(1) of the Act gives the Chair a discretionary power to award reasonable amounts to a person by way of compensation for loss of time or in respect of expenses properly incurred, or to be incurred, in attending, or otherwise in relation to the Inquiry. Section 40(2) provides that this includes the power, where the Chair considers it appropriate, to award amounts in respect of legal representation.
9. Section 40(3) of the Act provides that an applicant is eligible to be considered for an award *only* if they are:
  - a. a person attending the Inquiry to give evidence or to produce any document or thing; or
  - b. a person 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.
10. Rules 19 to 34 of the Inquiry Rules govern applications for awards under section 40(1) of the Act and set out procedures for the assessment of and the making of such awards. Requirements imposed by the Rules are reflected in the paragraphs below.

### **Principles governing applications for awards**

11. Awards are at the discretion of the Chair.
12. In determining whether to make an award, the Chair will take into account:
  - a. the financial resources of the applicant;
  - b. whether making an award is in the public interest; and
  - c. the Chair's statement of approach.
13. In exercising the power to make an award the Chair will act with fairness and with regard to the need to avoid any unnecessary cost as required by section 17 of the Act.
14. The designation of Core Participant status does not automatically confer a right to receive an award. Core Participants who seek an award must demonstrate how they meet the criteria set out in this Protocol.
15. Awards will not normally be made in respect of the expenses of public authorities or other substantial organisations, or of individuals whose expenses could reasonably be expected to be met by such authorities or organisations.

16. The Chair envisages that awards for legal expenses will normally 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;
    - ii. has been designated as a Core Participant; and/or
    - iii. is a Witness; and/or
    - iv. has a significant interest in an important aspect of the matters set out in the Terms of Reference; and/or
    - v. may be subject to explicit or significant criticism during the Inquiry's proceedings or in the report, or in any interim report; and
  - b. there are no other means by which an applicant's legal representation can be funded; and
  - c. it is fair, necessary, reasonable, proportionate and in the public interest to make an award, having particular regard to the Chair's statement of approach.
  
17. Where the Chair decides to make an award, it will only be made in respect of legal work undertaken by an applicant's designated legal representative and will normally be limited to legal expenses in relation to the following matters:
  - a. considering initial instructions;
  - b. advising a client in relation to the making of witness statements and/or otherwise providing evidence, documents or any other thing to the Inquiry, in accordance with any requests made by the Inquiry;
  - c. considering material disclosed by the Inquiry so far as it is necessary to properly represent a client's interests;
  - d. advising a client in relation to any warning letter issued by the Chair;
  - e. making an opening statement, where permitted;
  - f. representing a client during their oral evidence and the evidence of others where necessary;
  - g. suggesting questions that might be asked by counsel to the Inquiry;
  - h. making an application to the Chair to ask questions of witnesses during a hearing;
  - i. making a closing statement, where permitted.

18. Awards will not normally be made for obtaining expert reports or investigative work, as this is the role of the Inquiry.
19. The costs of any work undertaken by an applicant's legal representative which is not in accordance with the terms of the award notified to the applicant under this Protocol, will not be paid.

### **Requirements for applications**

20. An applicant who wishes to apply for a legal expenses award must submit an application to the Chair in writing using the electronic template which is available on request.
21. The applicant must provide a signed and dated confirmation of the instruction of the legal representative and specify the following:

#### *Purpose of representation*

- a. the reasons 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;
- c. with reference to the Terms of Reference, the issues in respect of which legal representation is sought;
- d. the nature and scope of the work to be undertaken, bearing in mind in particular paragraphs 16 to 18 of this Protocol;

#### *Cost of Representation*

- e. the estimated duration of the legal representation;
- f. 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 the Appendix;
- g. where it is proposed to instruct counsel, the reasons why it is thought necessary for so doing, the level of seniority of that counsel, the proposed hourly rate, subject to the maximum hourly rate specified in the Appendix (it will not be acceptable to submit general claims with reference to "brief fee", "refresher" or "preparation");
- h. the number of hours each week for which it is anticipated that the legal representative's team (including any instructed counsel) will be engaged on Inquiry work, having regard to the interest of the applicant;

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

*Other information*

- j. any known communication or other difficulties the applicant has in giving instructions to their legal representative;
- k. the applicant's financial resources and confirmation that there are no other means by which such representation can be funded.

**Determination of applications by the Chair**

- 22. The Chair will endeavour to determine an application for an award for legal expenses within 21 days of receipt of the application.
- 23. 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 designation of a recognised legal representative;
  - b. the nature and scope of the work that is to be funded;
  - 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 the Appendix;
  - e. an upper limit on the total number of hours that can be charged in any working day or working week by any counsel, solicitors and paralegals to be engaged;
  - f. the nature and amount 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 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.
- 24. It will be open to the Chair, either initially or at any time after the making of an award, to impose further conditions on the award. This may include the

imposition of an overall financial limit on the costs incurred, or a limit on the number of hours spent on specific areas of work.

25. Any legal expenses incurred as a result of work which exceed the terms and conditions of the award made by the Chair will not be paid.
26. In the event that an applicant considers that they are likely to incur expenses in excess of the award made by the Chair, the applicant should make an application for an award for the further expenses that it is anticipated will be incurred, following the requirements set out above. 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 expense in excess of the award made by the Chair. In determining any such application, the Chair will only grant a further award if there is good reason for the applicant to exceed the amount already awarded for the legal work in issue.

### **Billing procedures**

27. Where the Chair has made an award, the legal representative for 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. Bills must be submitted to the Solicitor to the Inquiry and must be received no later than 21 days immediately following the end of the month to which they relate.
28. Where a legal representative represents a group of Core Participants, one composite bill must be submitted.
29. Bills must be in the form of the electronic template which is available on request.
30. Bills submitted must contain the following information:
  - a. identification of the award to which the bill relates;
  - b. the details of the specific work done, the date of the work and how much time was spent on it;
  - c. the identity of the person who carried out the work claimed and hourly rates charged for each person;
  - d. a list of any disbursements claimed, together with appropriately evidenced receipts and invoices;
  - e. where work has been undertaken by counsel, the identity of counsel, their hourly rate, and details of counsel's fees (supported by fee notes and signed timesheets which must specify the work done, the date of the work, and how much time was spent on it).

31. Each bill must be signed by the legal representative who must certify:
- a. the accuracy of the bill;
  - b. that the work claimed in the bill has been incurred in respect of the applicant(s) to which the award relates;
  - c. that the work claimed in the bill is all referable to the Terms of Reference;
  - d. where a legal representative represents a number of individuals, that work has not been duplicated;
  - e. that the work claimed is in accordance with any award made by the Chair.
32. Failure to comply with the procedures set out in this Protocol may result in payment being delayed, reduced or refused.

### **Assessment of amounts payable under an award and disputes**

33. The procedures for assessment of amounts payable under an award, and for the resolution of disputes, are set out at paragraphs 27 - 34 of the Rules. The relevant part of the United Kingdom for the purposes of any costs assessment is Northern Ireland.

### **Point of contact**

34. Any issue arising from or query relating to this Protocol should be addressed to the Solicitor to the Inquiry using the following email address: [solicitor@mahinquiry.org.uk](mailto:solicitor@mahinquiry.org.uk)

**Issued under the authority of the Chair of the Inquiry on 10 November 2021**

## PROTOCOL ON FUNDING OF LEGAL REPRESENTATION

### APPENDIX: MAXIMUM HOURLY RATES

Where the Chair has determined that an award in respect of legal representation should be made under this Protocol, the hourly rates to be paid will not exceed:

Senior Counsel	£180 plus VAT
Junior Counsel	£110 plus VAT
Solicitor with over 7 years post qualification experience	£120 plus VAT
Solicitor with 3 to 7 years post qualification experience	£100 plus VAT
Solicitor with 0 to 3 years post qualification experience	£80 plus VAT
Trainee Solicitor	£40 plus VAT
Paralegals	£30 plus VAT