

Omagh Bombing Inquiry - Costs Protocol

Legal Representation at Public Expense

1. This Protocol relates to:
 - a. applications made pursuant to section 40(1)(a) of the Act for expenditure incurred by way of compensation for loss of time;
 - b. applications by a person who either has been designated by the Chair as a Core Participant in the Inquiry or is an individual who not been so designated (an “applicant”) for an award to be made under section 40(1)(b) of the Inquiries Act 2005 (the “Act”) in respect of expenses to be incurred in respect of legal representation (“legal expenses”); and
 - c. following a decision to make an award, the assessment of legal expenses which become payable under it.
2. Designation of Core Participants to the Inquiry and of the recognised legal representative of Core Participants and/or any individual will be made by the Chair on written application.
3. The procedures set out in this Protocol are subject to, and should be in accordance with, the provisions in the Act, specifically but not limited to sections 17 and 40, the Notice of Determination made by the Minister under section 40(4) of the Act ('Minister's Determination') set out in the annex to this Protocol and Rules 19 to 34 of the Inquiry Rules 2006 (the “Rules”).

General Principles concerning applications for loss of time

4. Pursuant to section 40 of the Act, it will be a condition of making any such application for compensation for loss of time that it must:
 - a. be accompanied by a clear explanation as to whether the costs associated have been reasonably incurred;
 - b. explain the particular interest in the proceedings or outcome of the inquiry as to justify such an award; and
5. To make an award for loss of time the Chairman will, as far as necessary, have regard to the general criteria in Rule 21 by considering the financial resources of the applicant and whether making an award is in the public interest.

General Principles concerning applications for awards

6. A person is eligible to be considered for an award if they are:
 - a. a person attending the Inquiry to give evidence or to produce any document or other thing; or

- b. a person who, in the opinion of the Chair, has such particular interest in the proceedings or outcome of the Inquiry as to justify an award.
- 7. In exercising his power to make an award relating to legal representation at public expense the Chair will:
 - a. act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or witnesses or others); and
 - b. ensure that he complies with the qualifications and conditions set out in the Minister's Determination.
- 8. Subject to the qualifications and conditions placed on him by the Minister, the Chair will, when determining an application for an award relating to legal expenses to be incurred, take into account:
 - a. the financial resources of the applicant pursuant to a means test (except for those applicants who fall within the class of applicants described in paragraph 2.1 of the Minister's Determination); and
 - b. whether making an award is in the public interest.
- 9. Having regard to the criteria set out in paragraph 6 of this Protocol, the consideration set out in the Minister's Determination and to his powers under section 17(1) of the Act, the Chair envisages that awards will be made only in cases where he decides that:
 - a. the applicant:
 - i. played, or may have played a direct and significant role in relation to the matters set out in the Inquiry's terms of reference; and/or
 - ii. has a significant interest in an important aspect of the matters set out in those terms of reference; 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.
 - b. the applicant would be prejudiced in seeking representation if there were to be any doubt about funds becoming available and there are no other means by which such representation can be funded.
 - c. it is fair, necessary, reasonable and proportionate to make an award.
- 10. Awards will generally not be made, therefore, in respect of the legal expenses of substantial bodies, or of individuals who could reasonably expect to be met by such bodies, unless there are special circumstances which justify a call on public funds.
- 11. Any applicant for award of public funding may be required, as per Rule 21, to provide the Chairman with details of their financial circumstances. If this is an organisation, this will include providing details of their accounts for the preceding and current financial year and details of any financial reserves.

12. Where an applicant is a former employee of a Core Participant organisation or one of the bodies described above in paragraph 10, the Chairman will only consider making an award relating to legal expenses in the event that:

- a. the applicant has exhausted all potential avenues for legal representation with their former employer;
- b. has no other sources of public funding for their legal expenses and
- c. their financial circumstances justify an award at public expense.

The scope for legal representation at the Inquiry at public expense

13. Where the Chair decides to make an award, it will normally be limited to a recognised legal representative having a role in relation to some or all of the following matters:

- a. considering initial instructions;
- b. advising the client in relation to the making of a witness statement and/or otherwise providing evidence to the Inquiry, in accordance with any request made by the Inquiry under Rule 9 of the Rules;
- c. considering disclosure material and/or that contained in an Inquiry bundle (or any limited bundle in the case of an individual witness who is not a Core Participant) so far as is necessary properly to represent the client's interests;
- d. advising the client in relation to any warning letter issued by the Chair under Rule 13 of the Rules;
- e. making an opening statement, where permitted;
- f. representing the client during their oral evidence (and the evidence of others, should that be necessary);
- g. making an application to be permitted to examine any witness giving oral evidence in the circumstances specified by the Chair; and/or
- h. making final submissions, where necessary.

14. Under Rule 7(2) the Chair must direct that Core Participants shall be represented by a single recognised legal representative where he considers that:

- a. their interests in the outcome of the inquiry are similar;
- b. the facts that they are likely to rely on in the course of the inquiry are similar; and
- c. it is fair and proper for them to be jointly represented.

15. Therefore, wherever possible, and in order to minimise the expense, applicants are and will be encouraged to instruct recognised legal representatives who are already

retained by other parties.

16. Where the Solicitor to the Inquiry has reason to believe that the interests of any applicant may conflict with the interests of any other parties, he shall ensure that the fact of such potential conflict is made known to those involved and to the Chair, and that fact will be taken into account when determining whether public funding for legal assistance should be made available.

Applications for awards and the procedures for agreeing the level of funding

17. Applications for funding of legal expenses should be sent to the Solicitor to the Inquiry for the Chair to determine, setting out the following:

- a. the reason(s) why legal representation is considered necessary;
- b. the extent of the applicant's financial resources and confirmation that there are no other means by which such representation can be funded;
- c. 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);
- d. the nature and function of the legal representation for which the award is sought;
- e. the size and composition of the team that the applicant's recognised 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 paragraphs 3 and 4 of the Minister's Determination annexed to this Protocol;
- 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. Use of counsel will be funded only on the basis of payment for time spent on specific areas of work agreed in advance; it will not be acceptable to submit general claims along the lines of 'brief fee', 'refresher' or 'preparation';
- g. the estimated duration of the recognised legal representation;
- h. the number of hours each week for which it is anticipated that the recognised legal representative's team will be engaged on Inquiry work;
- i. the number of hours each week for which it is anticipated that counsel (if permitted at public expense) will be engaged on Inquiry work;
- j. the amount of time that it is anticipated will be spent in conference at the end of each day of the oral hearings; and
- k. particulars of any other foreseeable expenses relating to legal representation.

18. Subject to the cap on the maximum number of hours and the maximum hourly rates

that can be charged by an applicant's recognised legal representative, as provided by paragraphs 2.10 and 3.1-

3.4 of the Minister's Determination:

- a. the representative will agree with the Solicitor to the Inquiry in advance the hourly rates that are to apply to them and/or any other qualified lawyer who, if the Chair approves their involvement, will be appointed to assist them in the discharge of their function.
- b. Where no agreement can be reached regarding hourly rates, the Chair will determine such rates as he considers appropriate upon receipt of representations in writing on behalf of the applicant.

Determination of applications by the Chair

19. Having regard to the provisions of the Act, the Rules, the Minister's Determination and the provisions set out in this Protocol, the Chair will determine an application for an award within a reasonable time.

20. The Solicitor to the Inquiry will notify the applicant and, where applicable, their recognised legal representative, in writing of the Chair's determination and, where an award is made, the terms of the award. Such terms may include (but are not limited to) the following:

- a. the nature and scope of the work that is to be funded, as agreed in advance with the Solicitor to the Inquiry; this is likely to be in relation to some or all of the matters set out in paragraph 9 of this Protocol. Normally, an applicant's recognised legal representative will not be reimbursed for investigative work as this is the role of the Inquiry. Similarly, payment will not be made for obtaining items such as expert reports, unless previously authorised by the Solicitor to the Inquiry.
- b. 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;
- c. the hourly rates for all counsel, solicitors and paralegal to be engaged;
- d. any capping of legal fees that is to be applied whereby legal teams (including counsel) will be capped as to the maximum number of hours that can be charged for any working day or working week, even where the number of hours actually worked exceeds that maximum;
- e. that disbursements in excess of £100 (net of VAT) will not be paid unless authorised in advance by the Solicitor to the Inquiry. Disbursements under £100 will only be paid where the expenditure is reasonable and necessary and where the payment for which reimbursement is sought is evidenced by receipts / invoices;

- f. 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;
- g. the form in which bills relating to legal expenses are to be submitted; and/or
- h. the frequency with which bills are to be submitted.

21. Expenditure incurred before the making of an award will not normally be recoverable, except where it has been expressly agreed in advance by the Solicitor to the Inquiry, on behalf of the Chair, save for any reasonable and proportionate costs incurred in responding to the Inquiry's consultation on the draft Terms of Reference prior to the Inquiry being formally set up in accordance with paragraph 2.5 of the Minister's Determination (such costs not to include costs incurred by counsel unless exceptional circumstances apply).

22. It will be open to the Chair, either initially or at any time after making an award, to impose further conditions on the award. In particular, he may determine that a lower cap should be imposed in relation to legal expenses that may be incurred at public expense. This may amount to an overall financial limit on the number of hours to be spent on Inquiry business.

Billing Procedures

23. Where the Chair has made an award, the applicant to whom that award has been made must submit bills relating to the legal expenses to the Solicitor 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, with a final account to be submitted before the conclusion of the Inquiry.

24. Bills submitted in accordance with paragraph 19 above must be accompanied by a detailed narrative which contains the following information:

- a. a breakdown of the number of hours worked by each person on each day, specifying, in each case, details of the work undertaken and the time spent on it;
- b. the hourly rates charged for each person, as specified by the Chair in his award;
- c. a list of all disbursements claimed together with supporting receipts / invoices;
- d. where work has been undertaken by counsel, details of counsel's fees (supported by fee notes and signed timesheets which must specify with precision what was done, when, by which counsel and how much time was spent).

Procedure for assessment of amounts payable under an award

25. The relevant part of the United Kingdom for the purposes of the assessment shall be

England and Wales.

26. In assessing the amount that is to be awarded, the Solicitor to the Inquiry will have regard to all the circumstances, including in particular whether the expenses:
 - a. were proportionately and reasonably incurred;
 - b. proportionate and reasonable in amount;
 - c. claimed in accordance with the procedures set out in this Protocol.
27. Any work undertaken by an applicant's recognised legal representative which relates to matters outside the Inquiry's terms of reference and/or issues it identified for investigation, or which otherwise does not comply with the terms of the award notified to the applicant under paragraph 16 of this Protocol, will be disallowed.
28. 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.
29. If the applicant or their recognised legal representative disagrees with 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

30. Where there remains a disagreement 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 judge of the Senior Courts of England and Wales by referring the assessment together with all relevant evidence and documentation to that Costs Judge; or
 - b. require the Solicitor to the Inquiry to issue a final assessment of the disputed bill of costs.

Making an award

31. Where:
 - a. the Chair decides further to Rule 31(1)(b) that an award is not to be reviewed in accordance with sub-paragraph (1)(a) of that Rule; or
 - b. the Solicitor to the Inquiry and the applicant agree on the amount if the assessment at any time after the Chair's referral of the application to the Costs Judge 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).
32. Where the amount of the award has been reviewed by the Costs Judge in accordance with Rule 31, the Chair will make an award and arrange for payment of the Costs Judge's assessment in accordance with Rule 34(2).

33. The maximum hourly rates for travel and waiting time by the members of an applicant's legal team shall be half the agreed hourly rate relating to legal work, as per paragraph 3.4 of the Minister's Determination. Any travelling and/or waiting time must be included within the cap on the maximum number of hours that can be charged by an applicant's recognised legal representative and in no case will be in addition to the cap on hours.

34. All payment will be made by electronically Bankers Automated Clearing System (BACS). To enable payment to be made, bills must bear the relevant bank account details on their face.

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

Tim Suter
Solicitor to the Omagh Bombing Inquiry
Riverbank House
2 Swan Lane
London EC4R 3TT
Email: solicitors@omagh.independent-inquiry.uk.

36. Failure to comply with the procedures set out in this Protocol may result in payment being delayed or refused.

37. The Chair and Solicitor to the Inquiry may vary the application and terms of this Protocol on a case- by-case basis where necessary to the proper conduct of the Inquiry, subject to the requirements of the Minister's Determination.

ANNEX

Notice of Determination by the Secretary of State for Northern Ireland to the Chair of the Omagh Bombing Inquiry under Section 40(4) of the Inquiries Act 2005

1. The Secretary of State for Northern Ireland has determined under section 40(4) of the Inquiries Act 2005 (“the Act”) that the power of the Chair of the Omagh Bombing Inquiry (“the Inquiry”) to award amounts in respect of legal representation under section 40(1) and (2) of the Act to persons eligible for an award under section 40(3) shall be subject to the qualifications and conditions set out below.
2. The qualifications and conditions are:
 - 2.1 Given the exceptional nature and gravity of the Omagh bombing, the Secretary of State for Northern Ireland recognises that it will be in the public interest for certain applicants to be provided with funding for legal representation, without investigation as to the financial resources otherwise available to them.
 - 2.2 Accordingly, Rule 21 of the Inquiry Rules 2006 is qualified to the extent that the general criteria in Rule 21(2)(a) (financial resources) is satisfied without further enquiry as to means.
 - 2.3 The Chair shall only make an award relating to a person’s costs of legal representation (which includes the legal costs referred to at paragraph 2.5 below) where he considers it necessary, fair, reasonable and proportionate to make an award.
 - 2.4 An award shall be subject to the condition that payment will only be made for work that is properly evidenced, directly related to the work of the Inquiry as determined by any costs protocol issued by the Chair, 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.
 - 2.5 Expenditure incurred by an applicant in respect of legal representation before an award is made by a Chair shall not be recoverable except in respect of any reasonable and proportionate costs incurred responding to the Inquiry’s consultation on the terms of reference prior to the setting up date of the Inquiry, and any such prior expenditure shall be recoverable only in accordance with the rates expressed in paragraph 3 below.
 - 2.6 An award shall be made only in respect of legal work undertaken by an applicant’s legal representative whom the Chair has designated under either Rule 6 or Rule 7 of the Inquiry Rules 2006 to be that person’s recognised legal

representative in relation to the Inquiry.

2.7 The Chair shall approve the size and composition of any legal team to be engaged by an applicant's recognised legal representative including the number and seniority of counsel whose retention he agrees to be necessary.

2.8 In determining whether to make an award the Chair shall specify the broad areas of work that are to be covered by the award and the hourly rates applicable to all members of the applicant's approved legal team subject to the maximum hourly rates specified at paragraph 3 below.

2.9 Having regard to the inquisitorial nature of the Inquiry, an award shall not be made in respect of investigative work undertaken by an applicant's recognised legal representative or in relation to obtaining an expert's report, save in exceptional circumstances.

2.10 An award shall limit the maximum number of hours that can be charged by any member of a legal team in connection with Inquiry work to 40 hours per week save that exceptionally, the Solicitor to the Inquiry may authorise an increase to a maximum of 60 hours during the eight-week period immediately preceding the commencement of the oral hearings and during the oral hearings where they are satisfied that such increase is justified in all the circumstances. For the purposes of this paragraph a week shall be taken to commence on a Monday and end on the following Sunday, and no unused hours below the maximum in any one week may be set-off against any other week.

3. The maximum hourly rates for legal work by the members of an applicant's legal team shall be:

3.1 Leading Counsel

Whether a member of the Bar or a Solicitor acting in the role of advocate - £180.00 plus VAT

3.2 Junior Counsel

Whether a member of the Bar or a Solicitor acting in the role of advocate - £110.00 plus VAT

3.3 Solicitors

Solicitor Partner - £150.00 per hour plus VAT

Solicitor with over 7 years post qualification experience - £120.00 plus VAT

Solicitor with 3 to 7 years post qualification experience - £100.00 plus VAT

Solicitor with 0 to 3 years post qualification experience - £80.00 plus VAT

Trainee Solicitor or Paralegal - £60.00 per hour plus VAT

3.4. The maximum hourly rates for travel and waiting time by the members of an applicant's legal team shall be half of the applicable maximum hourly rate relating to legal work specified in paragraph 3.