

# **Cranston Inquiry- Legal Advice At Public Expense Protocol**

## **Introduction**

1. This Protocol relates to awards to be made to an eligible person within the criteria set out below in respect of expenses properly incurred or to be incurred in respect of obtaining legal advice or representation in connection with the Inquiry ('an award').
2. This Protocol is subject to, and should be read with, all other protocols which govern the conduct of the Inquiry.

## **Eligibility**

3. A person is eligible to be considered for an award only if he or she is:
  - a. producing documents as requested by the Inquiry; or
  - b. providing a written statement as requested by the Inquiry;
  - c. answering written questions put by the Inquiry;
  - d. attending a hearing to give oral evidence;
  - e. 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 an award in respect of obtaining legal advice and/or being represented in the Inquiry.
4. In exercising his discretion to make an award the Chair must act with fairness and with regard to the need to avoid any unnecessary cost (whether to public funds or witnesses or others).
5. The Chair will, when determining to make an award, take into account:
  - a. whether making an award is in the public interest; and
  - b. the financial resources of the applicant.
6. An award may only be made where:

- a. the applicant is an eligible person having regard to the criteria set out in paragraph 3 above; and
  - b. without an award the applicant is likely to be prejudiced and the Chair considers it necessary, fair, reasonable and proportionate to make an award.
7. An award will generally not be made in respect of the legal expenses of substantial bodies, or those of witnesses who could reasonably expect those expenses to be met by such bodies, or where there is an umbrella group which could adequately represent their interests unless there are special circumstances which justify a call on public funds.

**The scope for legal expenses in the Inquiry at public expense**

8. Where the Chair determines to make an award, save for incidental expenses assessed as payable in accordance with paragraph 9 below it will normally be limited to a recognised legal representative having a role in relation to some or all of the following matters only:
- a. considering and relaying initial instructions from the eligible person(s) they have been instructed to represent;
  - b. considering the material publicly available and/or provided by the Inquiry so far as is necessary properly to represent the eligible person's interests;
  - c. explaining the eligible person's rights and permitted degree of participation in the Inquiry having regard to the Inquiry protocols and/or making representations to the Chair in connection with the protocols and/or raising proposed lines of inquiry for the Chair;
  - d. where necessary, advising the eligible person(s) in relation to the making of a witness statement and/or answering written questions posed by the Chair and/or advising in connection with the giving of evidence or the provision of documents to the Inquiry

### **Incidental expenses**

9. Where an eligible person does not have a recognised legal representative the Chair has discretion to award incidental expenses where in the opinion of the Chair it is reasonable and proportionate for the expenses to be incurred in order that the eligible person may participate in the Inquiry. Expenses to be claimed under this paragraph must be approved in advance by the Inquiry in writing and may include (but are not limited to) travel and accommodation.

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

10. The Chair may exercise his discretion to make an award on an application or of his own initiative.
11. An eligible person who wishes to apply for an award must submit an application to the Chair in writing specifying the following:
  - a. the reason(s) why the obtaining of legal advice or representation is considered necessary;
  - b. the extent of the applicant's financial resources and confirmation that there are no other means by which such legal advice or representation can be funded;
  - c. the nature of the public interest that will be served by an award being made from public funds;
  - d. the nature and function of the legal advice or representation for which the award is sought;
  - e. details of the lawyer(s) to be so engaged, subject to the maximum hourly rates specified in the Schedule to this Protocol;
  - f. the estimated duration of the recognised legal advice or representation;
  - g. the number of hours each week for which it is anticipated that the recognised legal representative's team will be engaged, having regard to the specific interests of the applicant;
  - h. particulars of any other foreseeable expenses relating to legal advice or representation;
  - i. where it is thought necessary to instruct Counsel, the reason for so doing, the date of call of that Counsel and proposed hourly rate, subject

to the maximum hourly rates specified in the Schedule to this protocol. (Note that the employment of Counsel will be funded only on the basis of payment for time spent. It will not be acceptable to submit general claims along the lines of a 'brief fee', 'refresher' or 'preparation').

12. Subject to any cap on the maximum number of hours that can be charged by an applicant's recognised legal representative, as set out in the award, the representative will agree with the Chair in advance the hourly rates that are to apply to them and/or to any other qualified lawyer who, if the Chair approves their involvement, will be appointed to assist them in the discharge of their function.

#### **Determination of applications by the Chair**

13. Having regard to the provisions of this Protocol, the Chair will determine an application for an award within a reasonable time.

14. The Chair will notify the applicant and, where it relates to amounts to be incurred, the applicant's recognised legal representative, in writing of the determination and, where an award is made, the terms of the award. Such terms may include (but are not limited to) the following:

- a. 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;
- b. the nature and scope of the work that is to be funded;
- c. the details of any lawyers;
- d. the hourly rates which will be paid having regard to the Schedule to this Protocol;
- e. the upper limit or limits on the sums or the number of hours which will be paid in any working day or working week;
- f. the frequency with which bills must be submitted to the Inquiry;
- g. the form in which bills relating to legal expenses must be submitted to the Inquiry.

15. Expenditure incurred before the making of an award will not normally be recoverable, except where it has been expressly agreed in advance by the Chair. Any such prior agreement will be without prejudice to the Chair's consideration of any subsequent application made.
16. It will be open to the Chair, either initially or at any time after making an award, to impose further conditions on the award that he considers fair and reasonable. In particular, he may determine that a lower limit be imposed in relation to legal expenses that may be incurred at public expense. This may amount to an overall financial limit and/or a limit on the number of hours to be spent on Inquiry business.

### **Billing procedures**

17. Where the Chair has decided in accordance with this Protocol that an award should be made, Recognised Legal representatives for the relevant eligible persons should submit bills relating to their legal expenses to the Inquiry at the address stated in paragraph 30 below at monthly intervals.
18. Bills submitted in accordance with this protocol shall contain 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. These will be those specified by the Chair in his original determination of the award;
  - c. a list of all disbursements claimed with supporting evidence;
  - d. where work has been undertaken by Counsel, details of Counsel's fees (supported by fee notes which must specify precisely which work was done and how much time was spent on it).

### **Procedure for the assessment of amounts payable under an award**

19. Where a bill is submitted in accordance with paragraph 18 the Solicitor to the Inquiry (STI) will make an initial assessment of the award within fourteen days of the receipt of the bill.
20. In assessing the amount that is to be awarded pursuant to the application, the STI will have regard to all the circumstances, including in particular whether the expenses –
- a. were proportionately and reasonably incurred; and
  - b. are proportionate and reasonable in amount
  - c. are claimed in accordance with the procedures set out in this protocol
21. Any work undertaken by an applicant's recognised legal representative which relates to matters outside the Inquiry's terms of reference and/or the scope of the award will not be paid.
22. Where the STI determines that the full amount of an applicant's legal expenses should be paid, that assessment is also the final assessment.

**Procedure where initial assessment is not agreed in relation to an award**

23. If the applicant or the applicant's recognised legal representative on the applicant's behalf disagrees with the initial assessment of a bill relating to their legal expenses, or part of it, the applicant must notify the Inquiry as soon as reasonably practicable and in any event within fourteen days of the date of initial assessment of the award being sent to the applicant. Where the applicant has not responded within fourteen days the STI will issue the final assessment. An initial or final assessment will be in writing and be sent to the applicant and the applicant's recognised legal representative.
24. Where notification has been given under paragraph 23 above the STI must send the applicant, in writing, points of dispute within fourteen days of receipt of the notification.

25. The points of dispute must —

- a. identify each item to which the STI objects;
- b. state the nature of the objection for each item; and
- c. propose an amount to be allowed for each item in respect of which a reduction is sought.

26. The applicant must provide a written response to the points of dispute to the STI within fourteen days of the points of dispute having been sent to the applicant. The STI will then review the written response and issue a final assessment within fourteen days.

27. The Inquiry and the applicant may agree to extend the deadlines set out in paragraphs 19-26 above.

## **Payment**

28. All payments will be made by a Bankers' Automated Clearing System (BACS) transfer. To enable payment to be made, an applicant will be required to complete the appropriate documentation which will be provided by the Inquiry and/or provide bank account details.

29. When completed and signed, all invoices and supporting documentation will be sent by the Inquiry to the Department for Transport for payment.

30. The Inquiry's contact details are as follows:

info@cranston.independent-inquiry.uk

31. Failure to comply with this Protocol could result in payment being delayed or refused.

## **Schedule**

The maximum hourly rates for legal work by an applicant's lawyers shall be:

| <b>Solicitors</b>   | <b>£</b>   |
|---|------------|
| Solicitors with over eight years post-qualification experience              | <b>175</b> |
| Solicitors and legal executives with more than four years' experience       | <b>150</b> |
| Other solicitors, legal executives and fee-earners of equivalent experience | <b>125</b> |
| Trainee solicitors, paralegals and other fee-earners                        | <b>100</b> |

**Counsel (where instruction is approved – see paragraph 11(i) £  
above**

|                    |            |
|--------------------|------------|
| Kings Counsel      | <b>200</b> |
| 10 years + call    | <b>120</b> |
| 5-10 years call    | <b>100</b> |
| Up to 5 years call | <b>80</b>  |