

THE UNDERCOVER POLICING INQUIRY

**PROTOCOL RELATING TO LEGAL
REPRESENTATION AT PUBLIC
EXPENSE**

Introduction

1. This Protocol relates to:
 - (a) applications by a person who claims to be eligible under section 40(3)(a) or 40(3)(b) of the Inquiries Act 2005 (“the Act”) (“applicant”) for an award to be made under section 40(1)(b) of the Act in respect of expenses to be incurred in respect of legal representation (“legal expenses”); and
 - (b) following a decision to make an award, the assessment of legal expenses which become payable under it.
2. Issues relating to the 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 and/or an individual witness, are dealt with separately to the question of funding and are not intended to be within the scope of this Protocol.
3. The procedures set out in this Protocol are subject to, and should be read in accordance with, the provisions in the Act, specifically but not limited to sections 17 and 40 and, where issued, any Notice of Determination made by the Home Secretary, under section 40(4) of the Act (“Ministers’ Determination”) and Rules 19 to 34 of the Inquiry Rules 2006 (SI 2006/1838) (“the Rules”).

General principles concerning applications for awards

4. A person is eligible to be considered for an award only if he or she is:
 - (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 Chairman, has such particular interest in the proceedings or outcome of the Inquiry as to justify such an award.

5. In exercising his power to make an award relating to legal representation at public expense:
 - (a) the Chairman will act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds to witnesses or to others); and
 - (b) will ensure that he complies with the qualifications and conditions set out in any Minister's Determination.

6. Subject to the qualifications and conditions in any Minister's Determination, the Chairman 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; and
 - (b) whether making an award is in the public interest.

7. Having regard to the criteria set out in paragraph 6 of this Protocol, the considerations set out in any Minister's Determination and to his powers under section 17(1) of the Act, the Chairman envisages that normally awards will be made only in cases where he decides that:
 - (a) the applicant–
 - (i) has a direct link to, and evidence to provide in respect of the matters to 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; and
- (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; and
- (c) it is fair, necessary, reasonable and proportionate to make an award.
8. Awards will generally not be made, therefore, in respect of the legal expenses of substantial bodies, or those of individuals who could reasonably expect those expenses to be met by such bodies, unless there are special circumstances which justify a call on public funds.

The scope for legal representation in the Inquiry at public expense

9. Where the Chairman determines to make an award, it will normally be limited to a recognised legal representative having a role in relation to some or all of only the following matters:
- (a) considering and relaying initial instructions from those they have been designated to represent ("the client");
 - (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 the material contained in the Inquiry Bundle(s) (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 Chairman 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 Chairman;
- (h) making final submissions on behalf of the client, where necessary.

10. Under rule 7(2) the Chairman 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.

11. 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.

12. 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 such the fact of such potential conflict is made known to those involved and to the Chairman, and any public funding which is made available for legal assistance will take account of this fact in determining the application..

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

13. An applicant who wishes to apply for an award relating to legal expenses to be incurred should submit an application to the Chairman in writing specifying 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, function and extent 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 rate for all solicitors and paralegals to be so engaged, subject to the following maximum hourly rates:

<u>Leading Counsel</u> (Whether a member of the Bar or a Solicitor as advocate)	£200
<u>Junior Counsel</u> (Whether a member of the Bar or a Solicitor as advocate)	£100
<u>Solicitors</u> Solicitors with over eight years post qualification experience	£150
Solicitors and legal executives with more than four years’ experience	£125
Other solicitors legal executives and fee earners of equivalent experience Trainee solicitors, paralegals and other fee-earners	£100 £75

- (f) where it is thought necessary to instruct Counsel, the reasons for so doing, the date of call of that Counsel and proposed hourly rate, subject to the maximum hourly rates specified above (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'.);

- (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, having regard to the interest of the applicant and the Modules in which they are seeking to participate;
- (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;
- (k) particulars of any other foreseeable expenses relating to legal representation.

14. Subject to the cap on the maximum number of hours that can be charged by an applicant's recognised legal representative—

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

15. 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. 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

recognized legal representative and in no cases will it be in addition to cap on hours. Travel and subsistence will be paid as detailed in the Annex to this agreement; these rates may change from time to time and will be updated accordingly.

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Determination of applications by the Chairman

16. Having regard to the provisions of the Act, the Rules and the provisions set out in this Protocol, the Chairman will determine an application for an award within a reasonable time.
17. The Solicitor to the Inquiry will notify the applicant and, where applicable, his, her or its recognised legal representative in writing of the Chairman'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 paralegals 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 though 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 adjudged to have been reasonable and necessary and where they are supported by evidence of payment;

(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;

(h) the frequency with which bills are to be submitted.

18. 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 Chairman. Any such prior agreement will be without prejudice to the Chairman's consideration of any subsequent application made.

19. It will be open to the Chairman, 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 and/or a limit on the number of hours to be spent on Inquiry business.

Billing procedures

20. An applicant, in relation to whom the Chairman has decided in accordance with this Protocol that an award should be made, should submit bills

relating to their legal expenses at monthly intervals to the Solicitor to the Inquiry at the address stated in paragraph 30 below. 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 no later than one month after final submissions are made.

21. Bills submitted in accordance with paragraph 19 above should 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 Chairman in his original determination of the application for expenses to be incurred in relation to legal representation;
- (c) a list of all disbursements claimed;
- (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

22. The relevant part of the United Kingdom for the purposes of the assessment of an award shall be England and Wales.

23. In assessing the amount that is to be awarded pursuant to the application the Solicitor to the Inquiry will have regard to all the circumstances, including in particular whether the expenses—

- (e) were proportionately and reasonably incurred; and
- (f) are proportionate and of a reasonable amount.

24. Any work undertaken by an applicant's recognised legal representative which relates to matters outside the Inquiry's terms of reference and/or the issues it identifies for investigation, or which otherwise does not comply with the terms of the award notified to the applicant under paragraph 15 of this Protocol, will be disallowed.
25. Where the Solicitor to the Inquiry determines that the full amount of an applicant's legal expenses should be paid, that assessment is also the final assessment.
26. If the applicant or his or her 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 shall be followed.

Review of an assessment of an amount payable under an award

27. Where there remains a disagreement following completion of the procedure set out in Rule 29 the Chairman must, in accordance with Rule 31, either–
- (g) 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
 - (h) require the Solicitor to the Inquiry to issue a final assessment of the disputed Bill of Costs.

Making an award

28. Where–
- (a) the Chairman 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 of the assessment at any time after the Chairman's referral of the

application to the Costs Judge and before the date of the review hearing,

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

29. Where the Costs Judge has reviewed the amount of the award in accordance with Rule 31, the Chairman will make an award and arrange for payment of the Costs Judge's assessment in accordance with Rule 34(2).

30. 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, a Claimant will be required to complete the appropriate documentation supplied by the Inquiry and/or provide bank account details. When completed and signed, the documentation should be returned to the Secretary, Dawn Eastmead to whom any queries relating to the processing of payments should also be directed.

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

The Undercover Policing Inquiry
PO BOX 71230
London NW1W 7QH

32. It should be noted that failure to adhere to, and comply with, any of the matters or procedures set out in this Protocol or its Annex could result in payment being delayed or refused.

33. The Chairman and Solicitor to the Inquiry retain the discretion to vary the application of the terms of this protocol on a case by case basis where it is considered necessary for the proper conduct of the Inquiry, subject to the constraints of any Ministers' Determination.

Issued under the authority of the Chairman on [date].

Annex

The Inquiry into Undercover Policing Travel and Subsistence Protocol.

The Inquiry into Undercover Policing is sponsored by the Home Office and expenditure is subject to appropriate restrictions and controls imposed by the Government. As part of the Government's policy of obtaining value for money and efficiency in the use of resources it is necessary that all Travel and Subsistence expenditure, directly or indirectly, incurred by the Inquiry conforms to certain protocols. For Travel and Subsistence expenditure the policy is set out below. For items not covered by the policy below please refer to the Inquiry Secretariat for additional advice and approval (if appropriate) before committing the expenditure.

Hotels

The rates payable are

- for London up to £125 per day (including breakfast)
- Elsewhere up to £90 per day (including breakfast)

Receipts are required for hotel accommodation

A **24 hour rate** of up to £26 covering lunch, evening meal, incidental, local travel and personal expenses. The 24 hour rate applies to London and elsewhere where overnight accommodation is required. Alcohol will **not** be paid for at public expense and reimbursement will not be made for any alcoholic beverages consumed. Any gratuities paid cannot be reclaimed, and are a personal expense Receipts are required - applicants must certify that costs have been incurred.

Private vehicle

Where the journey can reasonably be undertaken by public transport but is undertaken by car then the public transport rate of motor mileage, being 23.8p per mile, will apply.

Where it makes business and economic sense to travel by car and not public transport (i.e. where the use of public transport would result in greater travel time than use of the car, such that the additional mileage cost is offset by the additional travel time) then the standard rate of motor mileage, being 40p per mile, will apply.

Rail, underground and bus travel

The costs of travel by rail will be payable at the standard class rate. Where possible, advantage of any discounted travel offers should be taken. Evidence of the actual fare paid for rail, underground and/or bus shall be provided.

Taxis

For airport travel in the UK, taxis will only be paid for where there is no other cheaper way of getting to the airport. Alternative public transport, taking into account economies in terms of chargeable time, should be explored in advance. Receipts should be provided for all taxi use, including non airport and those used by witnesses. In the absence of a receipt there will no reimbursement.

Proper regard should be given to the transport of secret and secure material.

Expense claims and receipts

All claims should be fully supported by **original** receipts, failure to provide original receipts may delay the settlement of the claim.