

**The Independent Jersey Care Inquiry (the “Inquiry”)**

**Inquiry Protocol: Legal Representation**

**Scope**

1. This protocol relates to:
  - 1.1 The designation of Accredited Lawyers;
  - 1.2 Applications by an Interested Party (the “applicant”) for an award in respect of expenses properly incurred, or to be incurred, in respect of legal representation (“legal fees and expenses”); and
  - 1.3 The Inquiry’s discretion to make an award for legal fees and expenses, and the assessment of the amount that is payable under that award.
2. Applications for an award in respect of legal fees and expenses for someone who is not an Interested Party will only be considered in exceptional circumstances.

**Legal Representation - Accreditation**

3. In accordance with Standing Order 149, a committee of inquiry may, if it considers it desirable, give permission to any person appearing before it to be represented by an advocate or solicitor.
4. The Solicitors to the Inquiry will seek to assist anyone asked to give evidence or produce documents to the Inquiry to ensure they are able to do so promptly and efficiently.
5. Where:
  - 5.1 An Interested Party; or
  - 5.2 Any other person required or permitted to give evidence or produce documents during the Inquiry,has appointed a qualified lawyer to act on their behalf, the Inquiry will invite applications to have that person’s lawyer designated as an Accredited Lawyer before the Inquiry.
6. No accreditation will be given unless it is necessary to do so in the interests of fairness and justice.

7. Where there are two or more Interested Parties, each of whom seeks to be legally represented, and the Inquiry considers that:
  - 7.1 Their interests in the outcome of the Inquiry are similar; and/or
  - 7.2 The facts or issues being examined during the course of the Inquiry, and relating to them, are similar or related; and
  - 7.3 It is fair and proper for them to be jointly represented

the Inquiry may direct that the Interested Parties be represented by a single Accredited Lawyer. The Inquiry may designate an Accredited Lawyer for this purpose if there is no agreement between the parties as to who that lawyer should be.

#### Confidentiality obligations of Accredited Lawyers

8. Any solicitor or advocate who is awarded Accredited Lawyer status is automatically bound by the following confidentiality provisions.
  - 8.1 All material provided to the Accredited Lawyer (and any team members), by the Inquiry is confidential and, in consideration of the provision of that material, the Accredited Lawyer agrees to take all necessary steps to preserve that confidentiality. The material is provided solely for the purpose of assisting the Accredited Lawyer (and any team) in representing its client in assisting the Inquiry and for no other purpose.
  - 8.2 All Accredited Lawyers undertake to the Inquiry not to disclose or pass on to any third party, other than to their client(s), any document, witness statement, or other material supplied to it by the Inquiry, or any of the information contained within that material, save with written permission of the Inquiry.
  - 8.3 All material supplied to an Accredited Lawyer by the Inquiry must be stored in a secure place in order to prevent access to it by any person not authorised by the Inquiry.
  - 8.4 All material and information supplied to an Accredited Lawyer by the Inquiry is used solely for the purpose of the Inquiry and, at the direction of the Inquiry, any and all material, and any copies, must be returned to the Inquiry or destroyed.
  - 8.5 Before disclosing any material to any members of a legal team, including any administrative staff, the Accredited Lawyer will ensure that such personnel are aware of the confidentiality obligations set out in the protocol and are bound by them.

- 8.6 Any Accredited Lawyer provided with material must ensure that only their client(s) are provided with such material and that their client(s) are bound by the confidentiality obligations.
9. The above confidentiality obligations will continue even when the Inquiry's work has finished and/or when a person ceases to be an Accredited Lawyer.

### **Applications for legal costs at the Inquiry's expense**

10. Only lawyers of Interested Parties accredited pursuant to this protocol may seek that the representation be at the cost of the Inquiry (subject to the eligibility set out below). No reimbursement will be made for legal fees and disbursements that have not been agreed by the Inquiry in advance following the provisions of proposed work plans (see below). The Inquiry has discretion to agree the scope of such works based on what the Inquiry considers is necessary in the interests of fairness and the public interest.
11. The Inquiry will impose maximum hourly rates and conditions which each applicant will be subject to if being funded at the Inquiry's expense. Details of those rates will be provided to an applicant if/when its application is successful.

### Eligibility

12. A person is eligible for an award only to the extent that representation is required in the interests of fairness and justice and if he/she is:
- 12.1 A person attending the Inquiry to give evidence or to produce any document or exhibit/article; or
- 12.2 A person who, in the opinion of the Inquiry, has a particular interest in the proceedings or outcome of the Inquiry so as to justify an award.
13. In exercising its power to make an award relating to an applicant's legal representation the Inquiry must act with fairness and with regard to the need to avoid any unnecessary cost (whether to public funds or witnesses or others).
14. Awards will not be made in respect of the legal fees and expenses of public authorities or organisations, or other bodies with substantial financial resources at their disposal, or in respect of witnesses who could reasonably expect their legal fees and expenses to be met by such a public authority, organisation or body, or some other source.
15. The Inquiry will, when determining whether an award relating to an applicant's legal fees and expenses should be made, take into account:

- 15.1 The financial resources of the applicant. Any payments paid out under the Historical Redress Scheme will not be taken into account when assessing the financial resources of the applicant;
- 15.2 Whether the applicant is likely to be prejudiced if not legally represented at the Inquiry's expense;
- 15.3 Whether making an award is in the public interest; and
- 15.4 The Inquiry's duty to act with fairness and with regard to the need to avoid any unnecessary cost.

#### The scope of work that may be covered by an award

16. Awards for fees and expenses in respect of legal representation will only be for work that is eligible in accordance with the criteria above and which is:
  - 16.1 Within the Inquiry's Terms of Reference;
  - 16.2 Necessary, fair, reasonable and proportionate in all the circumstances;
  - 16.3 Conducted in a cost effective and efficient manner, and without duplication; and
  - 16.4 The full scope of which has been agreed in advance with the Inquiry.
17. Applicants should bear in mind that the Inquiry will usually not consider it necessary or proportionate for Accredited Lawyers to be present in the hearing room unless the evidence being heard significantly affects their client(s) interests. The Inquiry will make provision for relevant evidence to be available to Interested Parties in advance of the hearings, and transcripts of the day's public hearings will be published on the Inquiry's website.

#### Applications for awards

18. An applicant who wishes to apply for an award relating to legal fees and expenses to be incurred must submit an application to the Inquiry in writing specifying the following:
  - 18.1 The reason(s) why legal representation is considered necessary;
  - 18.2 The extent of the applicant's financial resources including other sources of funding which are or may be available. Any payments paid out under the Historical Redress Scheme will not be taken into account when considering the extent of the applicant's financial resources;
  - 18.3 The nature of the public interest that will be served by an award being made from public funds;

- 18.4 The extent to which the applicant will be prejudiced if not represented at the Inquiry's expense;
- 18.5 The nature and function of the legal representation for which the award is sought;
- 18.6 The size and composition of the legal team that the applicant proposes to engage. Where it is thought necessary to instruct counsel, the reasons for so doing, and the date of the call of that counsel;
- 18.7 The estimated duration and periods of the representation and the anticipated number of hours for the legal team per week ('the work plan'); and
- 18.8 Particulars of any other foreseeable and allowable expenses relating to legal representation.

#### Determination of applications by the Inquiry

19. Having regard to the provisions set out in this protocol, the Inquiry will determine an application for an award within a reasonable time.
20. The Inquiry will notify the applicant in writing of its determination and the terms on which any award is made.
21. An award shall not be made in respect of work undertaken unless the Inquiry agrees a work plan in advance for such work to be undertaken.
22. 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. It will be for the applicant to show that their presence in the hearing room is necessary and proportionate, rather than reading transcripts after the hearing.
23. Expenditure incurred before the Inquiry makes an award, including expenditure incurred in applying for an award, will not be recoverable unless it has been expressly agreed in writing in advance by the Inquiry.
24. The Inquiry may, either at the time of making the award or at any time after making an award, impose further conditions. In particular, the Inquiry may determine that previously agreed elements of the award be disallowed when submitted for payment if the circumstances of the Inquiry's work mean that the work, or the extent of the work, was no longer necessary, fair, reasonable and proportionate.

### Billing Procedures

25. Those in receipt of an award for legal fees and expenses should submit bills to the Inquiry at monthly intervals. Such bills must be received by the Inquiry no later than 7 business days after the end of the month to which they relate.
26. Bills should contain the following information:
  - 26.1 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 identifying the work with reference to the agreed work plan;
  - 26.2 The hourly rates charged for each person and that person's level of qualification;
  - 26.3 A list of all disbursements claimed with supporting evidence;
  - 26.4 Where work has been undertaken by counsel, details of counsel's fees (supported by fee notes which must specify precisely what work was done and how much time was spent); and
  - 26.5 Confirmation that the bill accords with the agreed work plan. Any differences must be highlighted. For example, work being undertaken by a different team member than originally agreed. Any divergence from the work plan may not be reimbursed by the Inquiry.

### Procedure for the assessment of amounts payment under an award

27. Upon receipt of a bill relating to legal fees and expenses, the Inquiry will make an initial assessment of the award within 28 days. The initial assessment must be in writing and sent to the applicant and his/her Accredited Lawyer.
28. In assessing the amount that is to be paid, the Inquiry will have regard to all the circumstances and to whether the legal fees and expenses:
  - 28.1 Were proportionately and reasonably incurred;
  - 28.2 Are proportionate and reasonable in amount; and
  - 28.3 Are consistent with the agreed work plan.
29. In undertaking this assessment the Inquiry will have regard to, among other things, the degree of familiarity which an applicant's Accredited Lawyer may reasonably be assumed to have in relation to material supplied to him/her by the Inquiry and in relation to the applicant's case.

30. Any claim for work undertaken by an applicant's Accredited Lawyer that relates to matters outside the Inquiry's Terms of Reference, or which otherwise does not comply with the terms of the award notified to the applicant, will be disallowed.
31. Where the Inquiry determines that the full amount of an applicant's legal fees and expenses should be paid, that initial assessment of the amount of the award shall be the final assessment.
32. If the applicant or the applicant's Accredited Lawyer disagrees with the initial assessment of all or part of the amount of the award, the Inquiry must be notified within 21 days of the date of the initial assessment. Where the applicant has not responded within 21 days of the date of the initial assessment, the initial assessment automatically becomes the final assessment.
33. Once the final assessment has been issued, payment will be made within 30 days. To enable payment to be made, appropriate documentation may need to be completed.
34. Where the Inquiry is notified by the applicant of a challenge the procedure is as follows:
  - 34.1 Within the 21 day period referred to at paragraph 32 above, the Applicant must send the Inquiry points of dispute on the initial assessment;
  - 34.2 The Inquiry will provide a written response to the points of dispute within 21 days of them having been received by the Inquiry. The Inquiry will thereafter issue a final assessment of the amount of the award, taking into account of the points of dispute raised.

Other

35. Failure to adhere to and/or comply with any of the matters or procedures set out in this protocol may result in the payment of legal fees and expenses being delayed or refused, in whole or in part.