**IFI: Investigation Protocol: Legal Advice At Public Expense**

**Inspector: Baroness Heather Hallett**

**Investigation Protocol: Legal Advice at Public Expense**

**Introduction**

1. This Protocol relates to awards to be made to an eligible person within the criteria set out in paragraph 4 below (“applicant”) in respect of expenses properly incurred or to be incurred in respect of obtaining legal advice or representation in connection with these Investigations (“legal expenses”).
2. This Protocol is subject to, and should be read with, the Procedures for Iraq Fatality Investigations (“the Procedures”), which govern the conduct of these Investigations.
3. Unless otherwise stated this Protocol adopts the definitions set out at paragraph 2 of the Procedures.

**Eligibility**

1. A person is eligible to be considered for an award only if he or she is:
	1. a person providing a written statement in the Investigations;
	2. a person answering written questions posed by the Inspector;
	3. a person attending to give oral evidence to the Inspector;
	4. a person attending a public hearing to give oral evidence;
	5. a person producing any documents to the Inspector; or
	6. a person who, in the opinion of the Inspector, has such a particular interest in the proceedings or outcome of the Investigations as to justify an award in respect of obtaining legal advice and/or being represented in the Investigations.
2. In exercising her discretion to make an award relating to legal expenses the Inspector must act with fairness and with regard to the need to avoid any unnecessary cost (whether to public funds or witnesses or others).
3. The Inspector will, when determining to make an award relating to legal expenses to be incurred, take into account:
	1. whether making an award is in the public interest; and
	2. the financial resources of the applicant.
4. Awards may only be made where:
	1. the applicant is an eligible person having regard to the criteria set out in paragraph 4 of this Protocol; and
	2. without an award the applicant is likely to be prejudiced and the Inspector considers it necessary, fair, reasonable and proportionate to make an award.
5. Awards 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.
6. An award of the expenses of obtaining legal advice will not include the costs of being represented or making representations to the Inspector unless the Inspector so orders. In considering whether or not to so order the Inspector will pay close regard to the interests of justice and the public interest and satisfy herself that those interests require it.
7. As set out at paragraphs 16 and 18(g) of the Procedures, where Iraqi applicants require legal advice or representation it will normally be appropriate for such legal advice or representation to be provided in Iraq by Iraqi lawyers. In such circumstances, the principles in this Protocol will apply, save that in the assessment of the amount payable the sums to be paid will be assessed in accordance with the levels set out in this Protocol, but taking into account local circumstances and paid in an appropriate foreign currency where necessary.

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

1. Where the Inspector 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:
	1. considering and relaying initial instructions from the applicant they have been instructed to represent;
	2. considering the material publicly available and/or provided by the Investigations so far as is necessary properly to represent the applicant’s interests;
	3. explaining the applicant’s rights and permitted degree of participation in the Investigations, having regard to the Procedures and the judgments and directions, and/or making representations to the Inspector in connection with the procedures for the Investigations and/or raising lines of inquiry which the Inspector should follow;
	4. where necessary, advising the applicant in relation to the making of a witness statement and/or answering written questions posed by the Inspector and/or advising in connection with the giving of evidence or the provision of documents to the Inspector.
2. Awards will generally not be made in respect of legal expenses incurred in being represented or making representations to the Inspector, unless the Inspector so orders.
3. Awards will generally not be made in respect of legal expenses incurred in making submissions, unless the Inspector so orders.

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

1. The Inspector may exercise her discretion to make an award relating to legal expenses on an application or of her own initiative.
2. An applicant who wishes to apply for an award relating to legal expenses to be incurred may submit an application to the Inspector in writing specifying the following:
	1. the reason(s) why the obtaining of legal advice or representation is considered necessary;
	2. 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;
	3. the nature of the public interest that will be served by an award being made from public funds;
	4. the nature and function of the legal advice or representation for which the award is sought;
	5. details of the lawyers to be so engaged, subject to the maximum hourly rates specified in the Schedule to this Protocol;
	6. the estimated duration of the recognised legal advice or representation;
	7. the number of hours each week for which it is anticipated that the recognised legal representative’s team will be engaged on Investigation work, having regard to the specific interests of the applicant;
	8. particulars of any other foreseeable expenses relating to legal advice or representation;
	9. 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 a maximum hourly rate specified by the Inspector (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’). It will not normally be appropriate for Counsel to be instructed.
3. Subject to the cap on the maximum number of hours that can be charged by an applicant’s recognised legal representative, as provided in the Schedule to this Protocol, the representative will agree with the Inspector in advance the hourly rates that are to apply to them and/or to any other qualified lawyer who, if the Inspector approves their involvement, will be appointed to assist them in the discharge of their function.

**Determination of applications by the Inspector**

1. Having regard to the provisions set out in this Protocol, the Inspector will determine an application for an award made under paragraph 15 within a reasonable time.
2. The Inspector will notify the applicant and, where it relates to amounts to be incurred, the applicant’s recognised legal representative, in writing of her determination and, where an award is made, the terms of the award. Such terms may include (but are not limited to) the following:
	1. 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;
	2. the nature and scope of the work that is to be funded[[1]](#footnote-1);
	3. the details of any lawyers;
	4. the hourly rates which will be paid having regard to the Schedule to this Protocol;
	5. the upper limit or limits on the sums or the number of hours which will be paid in any working day or working week;
	6. the frequency with which bills must be submitted to the Inspector;
	7. the form in which bills relating to legal expenses must be submitted to the Inspector.
3. Any award made by the Inspector 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.
4. Expenditure incurred before the making of an award will not normally be recoverable, except where it has been expressly agreed in advance by the Inspector. Any such prior agreement will be without prejudice to the Inspector’s consideration of any subsequent application made.
5. It will be open to the Inspector, either initially or at any time after making an award, to impose further conditions on the award. In particular, she 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 Investigation business.

**Billing procedures**

1. Applicants in relation to whom the Inspector has decided in accordance with this Protocol that an award should be made, should submit bills relating to their legal expenses in English to the Inspector at the address stated in paragraph 38 below at either monthly or bimonthly intervals, or at the conclusion of an Investigation.
2. Bills submitted in accordance with paragraph 22 above should contain the following information:
	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;
	2. the hourly rates charged for each person. These will be those specified by the Inspector in her original determination of the application for expenses to be incurred in relation to legal advice or representation;
	3. a list of all disbursements claimed with supporting evidence;
	4. 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**

1. Where an applicant in relation to whom the Inspector has determined that an award should be made submits a bill relating to their legal expenses, the Inspector will make an initial assessment of the award within twenty-one days of the receipt of the bill by the Inspector.
2. In assessing the amount that is to be awarded pursuant to the application, the Inspector will have regard to all the circumstances, including in particular whether the expenses –
	1. were proportionately and reasonably incurred; and
	2. are proportionate and reasonable in amount.
3. Any work undertaken by an applicant’s recognised legal representative which relates to matters outside the Investigations’ terms of reference and/or the issues the Inspector identifies from time to time for investigation, or which otherwise does not comply with the terms of the award notified to the applicant under paragraph 18 of this Protocol will be disallowed.
4. Where the Inspector determines that the full amount of an applicant’s legal expenses should be paid, that assessment is also the final assessment.
5. If the applicant or the applicant’s recognised legal representative on the applicant’s behalf disagrees with the Inspector’s initial assessment of a bill relating to their legal expenses, or part of it, the applicant must notify the Inspector as soon as reasonably practicable and in any event within twenty-one days of the date of initial assessment of the award being sent to the applicant. Where the applicant has not responded within twenty-one days the Inspector must 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.
6. Where the Inspector is notified of a dispute within the twenty-one day period the procedure set out in paragraph 30 shall be followed.

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

1. Where notification has been given under paragraph 29 the Inspector must send the applicant, in writing, the points of dispute within twenty-one days of receipt of the notification.
2. The points of dispute referred to in paragraph 30 must —
	1. identify each item to which the Inspector objects;
	2. state the nature of the objection for each item; and
	3. propose an amount to be allowed for each item in respect of which a reduction is sought.
3. The applicant must provide a written response to the points of dispute to the Inspector within twenty-one days of the points of dispute having been sent to the applicant.
4. The Inspector and the applicant may agree to extend the deadlines set out in paragraphs 30 and 32. Review of an assessment of an amount payable under an award.
5. Where there remains a disagreement following completion of the procedure set out in paragraphs 30 to 33 the Inspector must either –
	1. engage the assistance of a Costs Judge of the Supreme Court of Judicature for England and Wales by referring the assessment together with all relevant evidence and documentation to that Costs Judge; or
	2. issue a final assessment of the disputed Bill of Costs.

**Making an award**

1. Where
	1. the Inspector decides that an award is not to be reviewed in accordance with paragraph 34(a), or
	2. the Inspector and the applicant agree on the amount of the assessment at any time after the Inspector’s referral of the application to the Costs Judge and before the date of the review hearing, the Inspector will make an award and arrange for payment of the final assessment within thirty days of the final assessment being sent to the applicant.
2. Where the amount of the award has been reviewed by the Costs Judge in accordance with paragraph 34(a), the Inspector will make an award and arrange for payment of the Costs Judge’s assessment within thirty days of the final assessment being sent to the applicant.
3. 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 Inspector and/or provide bank account details.
4. When completed and signed, all invoices and supporting documentation will be sent by the Inspector to the Ministry of Defence for payment. All invoices and documentation will be subject to audit.
5. The Investigations’ contact details are as follows:

The Iraq Fatality Investigations
Email: Celine.Al-Asadi@mod.fcos.gov.uk.

Please note that arrangements for postage of material should be made by contacting the email address above.

1. It should be noted that failure to adhere to, and comply with, any of the matters or procedures set out in this Protocol could result in payment being delayed or refused.
2. The Inspector retains 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 Investigations.

**Schedule**

1. The maximum hourly rates for legal work by an applicant’s lawyers shall be:

|  | **UK** | **Iraq** |
| --- | --- | --- |
| **Solicitors** |  |  |
| Solicitors with over eight years post-qualification experience | £175 | To be confirmed |
| Solicitors and legal executives with more than four years’ experience | £150 | To be confirmed |
| Other solicitors, legal executives and fee-earners of equivalent experience | £125 | To be confirmed |
| Trainee solicitors, paralegals and other fee-earners | £100 | To be confirmed |

* the maximum hourly rates for travel and waiting by lawyers shall be half of the applicable maximum hourly rate relating to legal work specified at paragraph 1 of this Schedule.
1. This is to be agreed in advance with the Inspector and is likely to be in relation to some or all of the matters set out in paragraph 10 of this Protocol. An award will not be made in respect of investigative work unless the Inspector has given her express written permission in advance for such work to be undertaken. This may amount to an overall financial limit and/or a limit on the number of hours to be spent on Investigation business. [↑](#footnote-ref-1)