

# Scottish Child Abuse Inquiry

PO Box 24085; Edinburgh EH7 9EA

e-mail: [information@childabuseinquiry.scot](mailto:information@childabuseinquiry.scot)

## Cost of legal representation for witnesses – protocol and application form

### Introduction

1. This protocol explains how the Inquiry may be able to help with the cost of legal representation. By “legal representation” we mean a lawyer who acts for you on your instructions in relation to your role in the Inquiry.
2. You may be in contact with us for various reasons. Most of them do not require you to instruct a lawyer. For example, you can ask for the Chair of the inquiry to order that your identity be kept private. This is called a “restriction order”. You don’t need a lawyer for that.
3. But some people wish to be represented by a lawyer. You may wish to have assistance from a lawyer if, for example, we want to ask you about allegations which relate to you. You can choose, at any stage of the Inquiry, to instruct a lawyer if you want to do so. If you can’t afford your lawyer’s fees, we may be able to help with the cost. This is not the same as legal aid – legal aid is not available in Scotland for public inquiries. Different rules apply to inquiries, and these are explained in this protocol.

### Lawyers’ fees are expensive – can I get help with them?

4. The law allows us to pay reasonable amounts of money towards your lawyer’s fees, if you qualify under rules that apply to the Inquiry. To get help with the fees, you have to apply to us.
5. You can apply for an award to cover your lawyer’s fees if you have been asked to provide evidence to the Inquiry.
6. The Chair decides all applications. The Chair’s decision is final.

## **How to apply for an award**

7. You must apply in writing using the application form at the end of this protocol.
8. You must apply to us *before* you instruct the lawyer that you want us to pay for.
9. We ask in the form for information about who your lawyer is. If your application is granted, we will normally pay their fees subject to the terms on which your application is granted. Fees will not normally be paid beyond any maximum level that is set.

## **How are applications decided?**

10. The Chair will look carefully at your application and decide whether we should, in principle, pay your lawyer's fees. She decides what types of legal work we will pay for.
11. When the Chair makes her decision she takes account of:
  - your financial resources;
  - whether you have been asked to attend to give evidence; and
  - whether it is in the public interest that we should pay your lawyer's fees.
12. When considering your financial resources, the Chair has to take account of any sources of help that are available to you. These might be organisations which might be able to assist with the fees, for example a trade union or insurer. We may ask you to provide information to help the Chair make her decision.
13. The Chair will check whether the person you want to instruct as your lawyer is a qualified solicitor and is currently registered with their professional body.
14. If the Chair needs more information before she makes a decision, we will let you know.

## **The Chair's decision**

15. If the Chair decides that we should pay the cost of your legal representation, we will send you her decision in writing. This is called an "award".

16. In the award she will describe all the work we will pay for your lawyer to do. The award will also set out details of any upper limit on fees that we will pay. The award will also set out how your lawyer should send bills for payment to us and what information has to be provided in them.

### **The fees covered by the award**

17. The Solicitor to the Inquiry decides how much we should pay your lawyer. She does so by considering the terms of the award and your lawyer's invoice. She checks that the invoice relates to work of the sort that is covered by the Chair's award and that it does not seek fees in excess of any cap that applies..

### **Things you, or your lawyer, need to tell us about**

18. If you change your lawyer, you need to tell us as soon as possible. You can do this by contacting the Solicitor to the Inquiry. The Chair will check whether the person you want as your new lawyer is a qualified solicitor and is currently registered with their professional body.

19. If your lawyer stops representing you, s(h)e needs to tell us as soon as possible. Your lawyer can contact the Solicitor to the Inquiry to do this.

### **Things we won't pay for**

20. The Chair's award will state what fees are covered; that may not include everything that your lawyer does for you. For example, it will not include time that your lawyer spends travelling to meet you, or travelling to represent you at Inquiry hearings.

21. We cannot pay the cost of you or your lawyer instructing an expert report, or you or your lawyer instructing, or carrying out, investigations.

### **What's the process for paying my costs?**

22. Usually the Solicitor to the Inquiry discusses bills for payment direct with lawyers. But your lawyer will take your instructions about what you want to do.

23. The law requires us to follow a detailed process. We describe that process as simply as we can below. If you have any questions about it, please ask your lawyer.

#### Your lawyer's bill

24. Your lawyer will send us a bill for payment. The Solicitor assesses the bill, by applying the Chair's award.

25. The law also requires her to check if:

- the work done was necessary, fair, reasonable and proportionate;
- the work was done in a cost-effective and efficient way, without duplication.

The fees which we detail in this protocol have been calculated to take account of these issues.

26. The Solicitor decides whether we can pay your lawyer's bill, and she will let you and your lawyer know her decision in writing.

27. If the Solicitor decides that we can't pay your lawyer's bill because it does not meet the terms of the award or exceeds the maximum level of fees, she will explain in her letter what happens next.

## **Legal representation – the award and fees**

### Witnesses who are to be interviewed by the Inquiry

Where a witness qualifies for assistance with legal fees, the Chair will authorise payment of fees for a solicitor to give necessary legal advice to that witness in advance of an Inquiry interview and also for a solicitor to attend the interview in order to provide necessary legal advice during it. The Chair will only authorise payment of fees for advice relating to provision of evidence to the Inquiry not for general advice on criminal or civil liability, or on any other matter.

After the interview, the Chair will authorise payment of fees for a solicitor to give necessary legal advice to a witness on the terms of their draft witness statement to be provided to the Inquiry.

The fees payable to a solicitor for this work will normally be capped at £500 plus VAT (inclusive of outlays). Travelling time and/or travelling expenses, including mileage, cannot be claimed.

### Witnesses who have been asked to provide their own witness statement

Where a witness qualifies for assistance with legal fees, the Chair will authorise payment of fees for a solicitor to give necessary legal advice to that witness in order for the witness to respond to a request for a witness statement, for the solicitor's time drafting the witness statement, and for taking the witness's instructions on the draft statement. The Chair will only authorise payment of fees for advice relating to provision of evidence to the Inquiry not for general advice on criminal or civil liability, or on any other matter.

The fees payable to a solicitor for this work will normally be capped at £750 plus VAT (inclusive of outlays). Travelling time and/or travelling expenses, including mileage, cannot be claimed.

### Witnesses who have been asked to attend an Inquiry hearing to give evidence in person

Where a witness qualifies for assistance with legal fees, the Chair will authorise payment of fees for a solicitor to attend an Inquiry hearing to represent a witness, but only where that witness has been granted leave to appear. More information about applying for leave to appear can be found in our [protocol on pre-hearing-procedures](#)

The Chair will authorise payment for a maximum of one hour of a solicitor's time to peruse any documents provided to the witness in advance of their attendance. Time spent perusing documents will normally be capped at one hour; the Chair will consider applications for additional time, which must be made in advance of the work being undertaken.

The Chair will authorise payment of fees for a maximum of one hour of a solicitor's time to advise a witness in advance of their attendance to give evidence in person at an Inquiry hearing. The Chair will only authorise payment of fees for advice relating to provision of evidence to the Inquiry not for general advice on criminal or civil liability, or on any other matter.

The Chair will also authorise payment of fees for a solicitor's attendance during the Inquiry hearing while the witness is appearing. Time spent in attendance at the Inquiry venue will not generally be capped but charges will be assessed by the Solicitor in accordance with the terms of this award, the determination, the 2005 Act and the 2007 Rules. Travelling time and/or travelling expenses, including mileage, cannot be claimed.

The following maximum hourly rates will be paid:

- i. Solicitor with over 8 years' post-qualification experience **£150**
- ii. Solicitor with over 4 years' post-qualification experience **£125**
- iii. Other solicitors and fee earners of equivalent experience **£100**

## **Notes for filling in the form**

See the protocol above for information about the process of applying for the cost of your legal representation to be paid by us.

There is more information in our [Factsheet on legal representation](#) about whether you need a lawyer.

### **Paragraph 1 – your name**

Please give your full name.

### **Paragraph 2 – your contact details**

We will use your contact details if we need to discuss your application with you.

If the Chair decides we should pay the costs of your legal representation we will usually contact your lawyer direct.

If you have a preferred way for us to contact you (for example, by post), let us know.

### **Paragraph 3 – your lawyer**

We need to know the name and contact details for your lawyer. We will use these to stay in touch with them.

### **Paragraph 4 – whether you face allegations**

Please confirm whether or not you face allegations. The Inquiry will tell you whether or not this is the case. If you don't face allegations, please explain why you need legal advice.

### **Paragraph 5 – what you have been asked to do**

Please tell us whether you have been asked to attend an interview, provide your own statement or attend to give evidence at an Inquiry hearing.

### **Paragraph 6 – your financial resources**

We are required by law to know about your financial resources when you apply. This is why paragraph 6 asks you to provide information about your employment position and income.

### **Paragraph 7 – other sources of funding**

We need to know if there are other ways for you to get help with funding. For example, you might be a member of a trade union or have insurance. You might work for an organisation which can arrange legal representation for you.

**Paragraph 8 – details of the legal representation**

By law we need to know the details of how your lawyer will represent you. For more information about the types of work we will pay for see the protocol above.



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## Application for costs of legal representation

Fill in this form to ask the Inquiry to pay the costs of your legal representation.

There are notes above about how to fill in the form.

<b>1. Your name:</b>
<b>2. Your contact details:</b> <b>Address:</b>  <b>Email:</b>  <b>Phone:</b>  <b>Your preferred way for the Inquiry to contact you:</b>
<b>3. Contact details of your lawyer:</b> <b>Name:</b>  <b>Address:</b>  <b>Email:</b>  <b>Phone:</b>
<b>4. Have you been asked to provide evidence about allegations which the Inquiry has received which relate to you?</b>

**If not, why do you need legal advice?**

**5. Have you been asked to (please tick one option only):**

**(a) attend an Inquiry interview?**

**(b) provide your own statement to the Inquiry?**

**(c) attend to give evidence at an Inquiry hearing?**

**6. Your financial resources**

**Are you (please tick):**

**(a) employed**

**(b) self-employed**

**(c) not employed / retired?**

**Is your take home pay each month more than £2000?**

**7. Are there other ways you could get help with funding to pay your lawyer's fees?**

**8. Details of legal representation**

**Please provide your lawyer's name and their years' of post-qualification experience.**

## DECLARATION

I confirm that the information I have given in this application form (and any other documents I provide with it) is true and correct to the best of my belief and knowledge.

Your signature:

Date:

### Send completed forms:

- by email to: [information@childabuseinquiry.scot](mailto:information@childabuseinquiry.scot)
- by post to: SCAI, PO Box 24085, Edinburgh, EH7 9EA

### For more information you can:

- phone the witness support team on: 0800 0929 300
- write to us at: SCAI, PO Box 24085, Edinburgh, EH7 9EA
- email the witness support team at: [talktous@childabuseinquiry.scot](mailto:talktous@childabuseinquiry.scot)
- look at our website at: [www.childabuseinquiry.scot](http://www.childabuseinquiry.scot)

### For general inquiries:

- email us at: [information@childabuseinquiry.scot](mailto:information@childabuseinquiry.scot)

### To ask for a review of a decision by the Solicitor:

- write to: The Solicitor, SCAI, PO Box 24085, Edinburgh, EH7 9EA
- email: [solicitors@childabuseinquiry.scot](mailto:solicitors@childabuseinquiry.scot)