

Scottish Child Abuse Inquiry

PO Box 24085; Edinburgh EH7 9EA

e-mail: information@childabuseinquiry.scot

Cost of legal representation – protocol and application form

Introduction

1. This protocol explains how the Inquiry can 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 have a lawyer. For example, you can contact us direct to give evidence. You don’t need a lawyer to do that. You can ask us direct for the Chair of the inquiry to order that your identity be kept private. This is called a “restriction order”. You don’t need to have a lawyer to ask for that.
3. The Chair has already made a restriction order which protects the identities of everyone who tells us they were abused. That order means their identities can’t be made public or published by anyone.
4. But some people wish to be represented by a lawyer. You can choose, at any stage of the inquiry, to instruct one 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. Special rules apply for inquiries, and these are set out in this protocol.

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

5. 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.
6. The Chair decides all applications. The Chair’s decision is final.
7. You can apply to ask us to consider paying your lawyer’s fees if:
 - you have been asked to give evidence or hand over documents to the Inquiry, or
 - you have a particular interest in the Inquiry.

8. You can apply on your own behalf or as a representative of a group, body or organisation.

How to apply for an award

9. You must apply in writing using the application form at the end of this protocol.
10. It is really important that you apply to us *before* you instruct the lawyer that you want us to pay for.
11. We ask in the form for detailed information about who your lawyer is and their fees. You may find it easiest to ask the lawyer you want to use to help you fill in the application form.

How are applications decided?

12. 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. She does not, at that stage, decide exactly how much your lawyer will be paid.
13. The Solicitor to the Inquiry will decide how much we should pay your lawyer. She does so by considering each invoice that your lawyer sends us and deciding how much of the invoice should be paid by us.
14. When the Chair makes her decision she takes account of:
 - your financial resources;
 - whether you have been asked to attend to give evidence or produce documents;
 - whether you have a particular interest in the Inquiry that justifies us paying your lawyer's fees, and
 - whether it is in the public interest that we should pay your lawyer's fees.
15. When considering your financial resources, the Chair will 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.

16. 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.

17. If the Chair needs more information before she makes a decision, we will let you know.

The Chair's decision

18. 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".

19. In the award she will describe all the work we will pay for your lawyer to do. Examples of the type of work we will pay for are:

- taking and considering your instructions;
- keeping you informed of developments in the Inquiry's work;
- responding to correspondence from us and you;
- advising you about the Inquiry process (for example, about giving a witness statement);
- applying to us on your behalf (for example, to keep your identity private);
- advising you whether you also need a solicitor advocate or advocate;
- necessary consideration of any information provided by us;
- advising you about any warning letter you receive;
- representing you at public hearings in which you have an interest;
- if you are a core participant, asking witnesses questions (with the permission of the Chair) or asking Counsel to the Inquiry to ask questions;
- If you are a core participant, making opening and closing statements and submissions (with the permission of the Chair).

20. The award will also set out details of the hourly rates and number of hours that we will pay for. There will normally be an upper limit on the rates and/or number of hours for which we will pay. The award will also set out how often your lawyer has to send bills for payment to us and what information has to be provided in them.

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

21. 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.

22. If you change lawyer more than once the Chair may decide it is not appropriate for the Inquiry to continue helping you with the cost of your legal representation.

23. If your lawyer decides to stop acting for you, they need to tell us as soon as possible. They can contact the Solicitor to do this.

24. If your lawyer thinks you also need a solicitor advocate or advocate to represent you, your lawyer must contact us for permission to pay for this *in advance*.

25. We will need to know the name of the solicitor advocate or advocate that your lawyer wants to use. The Chair will check whether the person is qualified and currently registered with their professional body.

Things we won't pay for

26. We will not pay the cost of the following things:

- your lawyer attending a private session where you are giving evidence (if you are a person who tells us you were abused);
- you or your lawyer instructing an expert report;
- you or your lawyer instructing, or carrying out, investigations.

What's the process for paying my costs?

27. 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.

28. The law requires us to follow a complicated 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

29. Your lawyer will send us a bill for payment. The Solicitor decides how much of it we should pay. She does this by applying the Chair's award.

30. 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 bill complies with this protocol.
31. The Solicitor decides how much of the bill we should pay. She will let you and your lawyer know her decision in writing.
32. If the Solicitor decides that the full amount of the bill should be paid, her decision is called a “final assessment”. Your lawyer needs then to give us an invoice for that amount. We can then pay the invoice by bank transfer direct to your lawyer. If your lawyer doesn’t do this we can’t arrange for payment.
33. If the Solicitor decides that less than the full amount of the bill should be paid, it is called an “initial assessment”.
34. If you are content with the Solicitor’s decision to pay only part of the bill, you need to let us know that you are content. Your lawyer then needs to give us an invoice for that amount. We can then pay the invoice by bank transfer direct to your lawyer. If your lawyer doesn’t do this we can’t arrange for payment.
35. If you are not content with the Solicitor’s decision to pay only part of the bill, you need to let us know within 21 days. You must do this in writing. If you need more time, you must contact us to see if we can agree a different deadline.
36. The Solicitor to the Inquiry will respond to you in writing. She will explain how much of each item on the bill she thinks should be paid and why. She may continue with her initial assessment of the bill, or she can suggest a new assessment.
37. You need to reply to the Solicitor in writing. You must do this within 21 days. If you need more time, you must contact her to see if you can both agree a different deadline.
38. If you are now content with the Solicitor’s assessment she will then make what is called a “final assessment” for the agreed amount. She will send you the final assessment in writing. Your lawyer then needs to give us an invoice for the agreed amount. We can then pay the invoice by bank transfer direct to your lawyer. If your lawyer doesn’t do this we can’t arrange for payment.
39. If you continue to be unhappy with the Solicitor’s assessment of your lawyer’s bill, the Chair decides what happens next. She has two options.

40. One option is for the Chair to ask the Auditor of the Court of Session to decide what is a reasonable amount for us to pay. He will do that by considering the bill, the initial assessment, any new assessment and the correspondence with your lawyer.
41. The Auditor will hold a review hearing. He will tell you and the Solicitor when that hearing will be and what you have to do. You and your lawyer can speak to the Auditor at that hearing. The Auditor then decides how much of the bill we should pay. His decision is called a “final assessment”.
42. The other option is for the Chair to decide what is a reasonable amount for us to pay and to tell the Solicitor to issue a final assessment for that amount. The amount may be the same as the Solicitor proposed in one of her earlier assessments, or it may be a different amount.
43. If you or your lawyer don't reply by a deadline at any stage the Solicitor will make what is called a “final assessment” for the amount she has suggested in payment of the bill.
44. Your lawyer then needs to give us an invoice for that amount. We can then pay the invoice by bank transfer direct to your lawyer. If your lawyer doesn't do this we can't arrange for payment.
45. When a final assessment is made your lawyer must give us an invoice for that amount. We can then pay the invoice by bank transfer direct to your lawyer. If your lawyer doesn't do this we can't arrange for payment.

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.

The form asks you to provide information about your lawyer. You might find it easiest to ask the lawyer you want to use to complete the form for you.

Paragraph 1 – your name

Please give your full name if you are applying on your own behalf.

If you are applying on behalf of an organisation, group or body, please give its full name and any registered number. This could be a charity or company number.

Paragraph 2 – your status

Use this box to tell us if you are applying on your own behalf or as a representative of an organisation, group or body.

Paragraph 3 – 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 4 – 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 5 – your interest in the Inquiry

This box helps us to understand why you feel you need legal representation, and why we should pay for it. Please provide as much information as you can.

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.

If you are applying on behalf of an organisation or body you need to provide information in this box about the financial resources of the organisation or body. If you are applying as a representative of a group, we need to know about the group's resources.

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.

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|---|
| 1. Your name: |
| 2. Your status (are you applying on your own behalf, or for an organisation or body, or as a representative of a group?) |
| 3. Your contact details: Address: Email: Phone: Your preferred way for the Inquiry to contact you: |
| 4. Contact details of your lawyer: Name: Address: Email: Phone: |

5. Why are you involved in the Inquiry (for example, are you a core participant or a witness)?

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?

If you are applying on behalf of an organisation or body, or as a representative of a group, please give as much information as you can about the financial resources of that organisation, body or group.

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

8. Details of legal representation

Please provide information about

(a) the type of work your legal team will do:

(b) the names of anyone else in your legal team and their years' of post-qualification experience:

(c) your lawyer's hourly rates:

(d) the estimated time to be spent monthly by your lawyer on Inquiry work:

(e) any other expenses relating to legal representation (for example travel expenses and photocopying):

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
- 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
- look at our website at: www.childabuseinquiry.scot

For general inquiries:

- email us at: 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