

**PUBLIC INQUIRY INTO THE OUTBREAK OF
CLOSTRIDIUM DIFFICILE AT CERTAIN HOSPITALS
BETWEEN 16TH JUNE 2007 AND 31ST AUGUST 2008.**

CHAIR TO THE INQUIRY: DAME DEIRDRE HINE

**Inquiry Protocol: Legal Representation at
Public Expense**

1. This Protocol relates to:
 - (a) applications by a Core Participant or an individual witness (“a Costs Claimant”) for an award to be made under section 40(1)(b) of the Inquiries Act 2005 (“the Act”) in respect of expenses to be incurred in respect of legal representation (“legal costs”); and
 - (b) following a decision to make an award, the assessment of legal costs which become payable under it.

2. The Chair to the Inquiry has decided that the Inquiry’s procedures relating to such awards should reflect the general spirit of those set out in Rules 20 to 34 of the Inquiry Rules (No. 1838 of 2006), which apply to inquiries for which a United Kingdom Minister is responsible. The Protocol is divided into the following sections:

**Section 1: The scope for legal representation in the Inquiry
at public expense**

This section outlines the broad areas of work for which an application for an award in respect of legal costs to be incurred will be considered.

Section 2: Applications for awards and the procedures for agreeing the level of funding

This section explains the action to be taken by a Costs Claimant who wishes to make an application for an award relating to legal costs to be incurred to be made. It also sets out information which must be provided to enable the Chair to the Inquiry, Dame Deirdre Hine, to consider whether or not to make such an award.

Section 3: General principles concerning applications for awards

This section sets out the general principles that the Chair to the Inquiry will apply when determining an application made in accordance with Section 2.

Section 4: Billing procedures

This section informs a Costs Claimant, in relation to whom the Chair to the Inquiry has decided to make an award, as to the action to be taken once such a decision has been made.

Section 5: Procedure for the assessment of amounts payable under an award

This section describes the process by which, following the decision to make an award, a Costs Claimant's legal costs will be assessed.

Section 6: Provision for review of an assessment of an amount payable under an award

This section describes the process by which a disputed assessment of a Costs Claimant's legal costs may be the subject of taxation.

Section 7: Payment of an award

This section stipulates the period within which amounts payable under an award are to be paid following final assessment by the Solicitor or, as the case may be, following taxation.

3. 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.

Section 1: The scope for legal representation in the Inquiry at public expense

4. 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, will be dealt with separately to the question of funding, in accordance with the procedures set out in paragraphs 29 to 36 of the Inquiry's Procedures document. The document can be accessed on the following page of the Inquiry's web site:

<http://www.cdifinquiry.org>

5. An award will normally be limited to a recognised legal representative having a role in relation to some or all of only the following matters:
- consideration of initial instructions;
 - advising the client in relation to the making of a witness statement, and/or providing evidence to the Inquiry;
 - consideration of 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 their client's interests;
 - making an opening statement, where necessary;
 - representing the client during their oral evidence (and the evidence of others, should that be necessary);
 - making final submissions, where necessary.

Section 2: Applications for awards and the procedures for agreeing the level of funding

6. (i) At written statement stage

The Chair is not empowered to award costs in respect of a witness engaging a legal representative for the purpose of that legal representative drafting a witness statement to submit to the Inquiry.

However, she may, in appropriate cases, make an award for legal costs incurred by a witness in consulting a solicitor before signing a statement that has been made following an attendance at the Inquiry to provide a statement of evidence to the Inquiry solicitor.

A costs claimant who wishes to apply for such an award should do so by submitting the form entitled “**APPLICATION FOR LEGAL COSTS AT STATEMENT TAKING STAGE**”.

(ii) At oral hearing stage

A Costs Claimant who wishes to apply for an award relating to legal costs to be incurred at oral hearing should submit an application to the Inquiry in writing specifying the following:

- (a) The reason(s) why legal representation is considered necessary, and confirmation that there are no other means by which such representation can be funded.
- (b) The size and composition of the team to be engaged by a Costs Claimant’s recognised legal representative, including the seniority and proposed hourly charging rate for all solicitors and paralegals to be so engaged.
- (c) Where it is thought necessary to instruct counsel, the reasons for so doing, the date of call, and that counsel’s proposed hourly rate. (Note that 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’.)
- (d) The number of hours each week for which it is anticipated that the recognised legal representative’s team will be engaged on Inquiry work.
- (e) The number of hours each week for which it is anticipated that counsel will be engaged on Inquiry work.
- (f) Particulars of any other foreseeable expenses.

It is anticipated that an Application Form will be placed on the Inquiry website.

7. The Chair to the Inquiry will determine an application for an award within a reasonable time and notify the Costs Claimant in writing as to whether an award is to be made, and the terms of any such award. Such terms may include (but are not limited to) the following:
 - (a) 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.
 - (b) The hourly rates for all counsel, solicitors and paralegals to be engaged.
 - (c) That capping of legal fees will 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.
 - (d) That the extent and nature of the work to which the award relates is to be agreed in advance with the Solicitor. This is likely to be in relation to some or all of the matters set out in Section 1 of this Protocol. Normally, a Cost Claimant'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.
 - (e) That disbursements in excess of £100 will not be paid unless authorised in advance by the Solicitor to the Inquiry. Disbursements under £100 will only be paid

where the expenditure was reasonable and necessary and where they are supported by evidence of payment.

8. Expenditure incurred before the making of an award will not normally be recoverable.
9. It will be open to the Chair to the Inquiry, either initially or at any time after making an award, to impose further conditions on the award. In particular, she may determine that a cap should be imposed in relation to legal costs 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.

Section 3: General principles concerning applications for awards

10. The Inquiry Chairman will, when determining an application for an award relating to legal costs to be incurred, take into account:
 - (a) the financial resources of the applicant; and
 - (b) the public interest in the applicant's legal costs being paid.
11. The above assessment criteria derive from the statement of the Attorney General made on 29 January 1990, in answer to a Parliamentary Question, as follows:

“So far as the costs of legal representation of parties to any inquiry are concerned, where the Government have a discretion they always take careful account of the recommendation on costs of the tribunal or inquiry concerned. In general, the Government accept the need to pay out of public funds the reasonable costs of any necessary party to the inquiry who would be prejudiced in seeking representation were he in any doubt about funds becoming available. The Government does not accept that the costs of substantial bodies should be met from public funds unless there are special circumstances.”

12. Having regard to the assessment criteria in paragraph 10, it is envisaged that awards will only be made in cases where it is decided that representation is necessary and there are no other means by which such representation can be funded. Awards will not generally be made, therefore, in respect of public bodies, trades union or other institutions with substantial resources, unless there are special circumstances which justify a call on public funds. It is not expected that witnesses giving evidence in the context of their employment or former employment will require public funding from the Inquiry for any legal assistance as it is anticipated that witnesses in this category will seek legal assistance from solicitor to the Northern Trust or via their professional body.

Section 4: Billing procedures

13. A Costs Claimant, in relation to whom the Chairman has decided that an award should be made in accordance with Section 2 of this Protocol regarding oral hearings, should submit Bills of Costs at monthly intervals to the Chairman at the address stated in paragraph 38. 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, and 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).

Section 5: Procedure for the assessment of amounts payable under an award

14. The relevant part of the United Kingdom for the purposes of the assessment of an award shall be Northern Ireland.
15. A Bill of Costs submitted by a Costs Claimant in accordance with Section 4 of this Protocol will be referred by the Chairman to the Solicitor as soon as reasonably practicable for an assessment of the amount to be awarded.
16. The Solicitor will, within 21 days of a referral made under paragraph 15, make an initial assessment of the amount to be awarded and notify the Costs Claimant of that assessment.
17. Any work undertaken by a Costs Claimant's recognised legal representative which relates to matters outside the Inquiry's terms of reference and/or the issues it identifies for investigation will be disallowed.
18. Save in exceptional circumstances, legal costs will be assessed in accordance with the standard basis, having regard to whether those costs:
 - (a) were proportionately and reasonably incurred; and
 - (b) are proportionate and reasonable in amount.
19. Where the Solicitor determines that the full amount of a Costs Claimant's Bill of Costs should be paid, that assessment is also the final assessment.

20. If the Costs Claimant disagrees with the initial assessment of the Bill of Costs, or any part of it, the Solicitor should be notified of this as soon as reasonably practicable, and in any event within 21 days of the date on which the initial assessment was sent to the Costs Claimant.
21. Where the Costs Claimant has not responded within 21 days of the date when the initial assessment of the Bill of Costs was sent, the Solicitor will issue a final assessment.
22. Where notification has been given under paragraph 20, the Solicitor will set out in writing the outstanding points of dispute and issue the Costs Claimant with a final assessment of the Bill of Costs within 21 days of receipt of the notification.
23. The points of dispute referred to in paragraph 22 will:
 - (a) identify each item to which the Solicitor objects;
 - (b) state the nature of the objection for each item; and
 - (c) propose an amount to be allowed for each item in respect of which a reduction is sought.
24. The Costs Claimant should provide the Solicitor with a written response to the points of dispute within 21 days of their having been sent to the Costs Claimant.
25. The Solicitor and the Costs Claimant may agree to extend the deadlines set out in paragraphs 22 and 24.

Section 6: Provision for review of an assessment of an amount payable under an award

26. Where a Costs Claimant has provided a response under paragraph 24 and there remains a disagreement, the Chairman will require the

Solicitor to issue a final assessment of the disputed Bill of Costs and may thereafter refer the matter for taxation of those costs.

Section 7: Payment of an award

27. Where the amount of an award is not subject to taxation, the Chairman will arrange for payment in the amount of the final assessment to be made within 28 days of that assessment being sent to the Costs Claimant.
28. Where the amount of an award has been the subject of taxation, the Chair to the Inquiry will arrange for payment of the amount assessed within 28 days of the assessment being complete.
29. All payments will be made by a Bankers' Automated Clearing System (BACS) transfer. To enable payment to be made, a Costs Claimant will be required to complete the appropriate documentation which will be provided by the Inquiry. When completed and signed, the documentation should be returned to Kate McClements, Secretary to the Inquiry, to whom any queries relating to the processing of payments should also be directed. Her direct line is 02890 517125 .
30. The Inquiry's contact details are as follows:
Clostridium Difficile Public Inquiry
Premier Business Centre
20 Adelaide Street
Belfast
BT2 8GB

Telephone Number: 02890 517124 ; 02890 517250
Fax Number 02890 517247
E mail address: inquiry@cdiffinquiry.org
Website: www.cdiffinquiry.org

Issued under the authority of the Chair to the Inquiry on the 9th February 2010