

The Vale of Leven Hospital Inquiry

APPLICATIONS FOR LEGAL REPRESENTATION AT PUBLIC EXPENSE

25th February 2010

The chairman, in exercise of his powers under section 17(1) of the Inquiries Act 2005 to direct the procedure and conduct of the inquiry, has made the following direction in relation to applications for legal representation at public expense:

1 General principles

- 1.1 Section 40 of the Inquiries Act 2005 (“the Act”) provides that, where the chairman considers it appropriate, an award may be made to:
- (a) a person attending the inquiry to give evidence or to produce any document or other thing, or
 - (b) a person who, in the opinion of the chairman, has such a particular interest in the proceedings or outcome of the inquiry as to justify such an award.
- 1.2 Rule 17 of the Inquiries (Scotland) Rules 2007 (“the Rules”) requires that an application in respect of legal representation must state:
- (a) the nature and duration of the legal representation for which the award is sought;
 - (b) the proposed hourly rates of any legal representative providing that representation; and
 - (c) any other expenses relating to legal representation.
- 1.3 Rule 18 of the Rules requires the chairman when determining whether an award should be made, to take into account:
- (a) the financial resources of the applicant; and
 - (b) the public interest so far as relating to the making of an award.
- 1.4 The Notice of Determination made by Scottish Ministers as regards the inquiry provides that:
- “1. Awards in respect of legal representation may be made only in circumstances in which the chairman considers it necessary, fair, reasonable and proportionate for such an award to be made.”

2 Application for an award

- 2.1 Any person seeking an award must complete either the form entitled

“APPLICATION FOR DESIGNATION AS A CORE PARTICIPANT, AND FOR FUNDING FOR LEGAL REPRESENTATION IN THAT CAPACITY”

or the form entitled

“APPLICATION FOR FUNDING FOR LEGAL REPRESENTATION OTHER THAN AS A CORE PARTICIPANT”,

whichever is appropriate. These may be downloaded from the inquiry website at:
<http://www.valeoflevenhospitalinquiry.org/guidance.aspx>

2.2 Hard copies of the application forms may be obtained from, Ms Julie-Anne Jamieson, Secretary to the Inquiry, Vale of Leven Hospital Inquiry, Lothian Chambers, 59 – 63 George IV Bridge, Edinburgh EH1 1RN, and should be submitted to her at that address.

3 Criteria for an award

3.1 The chairman will only make an award if satisfied that:

- (i) it is fair, necessary, reasonable and proportionate to make an award;
- (ii) the applicant would be prejudiced in seeking adequate representation in relation to the inquiry without an award;
- (iii) there are no other means by which such representation can reasonably be funded;
- (iv) the applicant is not a substantial organisation or a person who can reasonably expect to have the cost of legal representation met by such an organisation unless there are special circumstances which justify a call upon public funds; and
- (v) the applicant and any legal representative have taken appropriate account of the fact that awards are met from public funds and of the need to make the best use of such funds by seeking to secure the most efficient use of their legal resources, including the utilisation of paralegals in the composition of legal teams; and

3.2 The chairman will not normally make an award in relation to the provision of a witness statement or documents where the applicant’s evidence primarily concerns matters of fact unless the applicant:

- (i) may be subject to criticism in the inquiry; or
- (ii) is likely to be prejudiced if not represented by a qualified lawyer; and
- (iii) has no other means of paying for that representation.

4 The nature of the work to be funded at public expense

4.1 Where the chairman determines to make an award it may be for a single piece of legal work, for a specific part or aspect of the Inquiry’s investigations or for the duration of the Inquiry, and it will normally be limited to a legal representative

having a role on behalf of the recipient of the award (“the recipient”) in relation to one or more specified matters which may include:

- (a) taking initial instructions;
- (b) providing necessary legal advice;
- (c) advising, where necessary, in relation to the making of a witness statement, and/or other provision of evidence to the Inquiry;
- (d) considering documents and other material disclosed or made available by the Inquiry including any preliminary report, productions or witness statements but only so far as is necessary properly to represent the interests of the recipient;
- (e) instructing counsel and named experts, subject always to the prior approval of the Chairman;
- (f) commenting on any preliminary report of the Inquiry and the issues for the Inquiry provisionally identified in terms of it, in so far as they relate to the interest in the Inquiry of the recipient
- (g) representing, in so far as is necessary, the interests of the recipient of the award at any preliminary hearings of the Inquiry;
- (h) representing, in so far as is necessary, the interests of the recipient of the award at any oral hearings of the Inquiry including:
 - (i) necessary preparation;
 - (ii) representing the recipient during their own oral evidence (if any) and the evidence of others in so far as it relates to their interest in the Inquiry;
 - (iii) making any appropriate application to be permitted to examine any witness giving oral evidence in the circumstances specified by the Chairman and conducting any permitted examination; and
 - (iv) making, on behalf of the recipient any opening statement or closing statement permitted under Rule 10 of the Rules; or
- (i) advising in relation to any warning letter issued to the recipient by the Chairman under Rule 12 of the Rules.

5 **Applicant’s financial resources**

5.1 Applicants will be asked to provide information about their financial resources, and may be asked to provide information about household income.

5.2 Where an applicant otherwise eligible for an award has gross household income no greater than £30,000 per year (£2,500 per month) it will be in the public interest for the Award to be made without further reference to the financial resources of the applicant. In that case there is no need to provide financial details.

5.3 Applicants with gross household income exceeding £30,000 per year (£2,500 per month) will be considered for an award provided the chairman is satisfied that, having regard to their financial circumstances and to the nature, extent and likely cost of the work to be funded, they will be likely to suffer financial hardship if an award is not made.

5.4 An applicant's gross household income is the total income from all sources that he or she and his or her partner expect to receive in the 12 months following the date the application form is received by the Inquiry. A "partner" is someone with whom the applicant normally lives as a couple whether they are:

- married or not
- of the same or different sex.

5.5 In calculating the amount of gross household income there shall be disregarded any payments received by way of payment of the following forms of benefit (which are disregarded for the assessment of disposable income for the purposes of eligibility for civil legal aid in Scotland):

- income support;
- an income-based jobseeker's allowance;
- a back to work bonus payable under the Jobseekers Act 1995;
- any payment made under the Community Care (Direct Payments) Act 1996 or under section 12B of the Social Work (Scotland) Act 1968;
- state pension credit;
- an income-related employment and support allowance;
- attendance allowance;
- disability living allowance or constant attendance allowance;
- any sums payable to a person as holder of the Victoria Cross or the George Cross; or
- any payment made out of the social fund.

5.6 Neither details of gross household income nor the provision of documents to vouch details of the financial information given will be required when submitting the application form. However the chairman reserves the right to require such details and such documents in relation to any application and in that event an Award will not be made unless the requirement is met to his satisfaction.

6 Determination of and conditions for Awards

6.1 The chairman will determine applications for awards having regard to the provisions of the Act, the Rules, the qualifications and conditions set out in the

Notice of Determination, and the terms of this Direction, and will do so as soon as is practicable.

6.2 As required under Rule 20 of the Rules, the chairman will send the determination to the applicant and, where the applicant has a legal representative, to that legal representative and, where an award is made, will specify the conditions for the award.

6.3 Those conditions may include, but are not limited to:

(a) the nature and scope of the work that is to be publicly funded, which is likely to be in relation to some or all of the matters set out in section 4 of this Direction;

(b) the size and composition of the applicant's legal team to be publicly funded, including the seniority and number of counsel where the instruction of counsel is considered to be necessary;

(c) the hourly rates to be paid for all counsel, solicitors and paralegals to be engaged;

(d) any upper limits on the sums or the maximum hours that will be paid for in terms of the award;

(e) disbursements in excess of £100 (net of VAT) or such other sum as may be specified in the award not being paid unless authorised in advance by the Solicitor to the Inquiry; disbursements of less than that amount only being paid where the expenditure is considered to have been reasonable and necessary and any disbursements only being paid where they are appropriately vouched; and

(f) the award being 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.

6.4 The chairman may, at any time after making an award, and subject always to the provisions of the Act, the Rules and the Notice of Determination, vary it as appropriate, either on his own initiative or on application by the recipient or legal representative.

7 Procedure for the assessment of amounts payable under an Award

7.1 In relation to the assessment and payment of the amount payable in terms of an Account of Expenses submitted in accordance with the preceding paragraph the procedures set out in Rules 21 and 24 to 28 of the Rules shall apply.

7.2 Any work undertaken by a legal representative or member of an approved legal team which relates to matters outside the inquiry's terms of reference and/or

the issues it identifies for investigation, or which otherwise does not comply with the terms of the award, will be disallowed.

7.3 All payments will be made by a Bankers' Automated Clearing System (BACS) transfer to the legal representative as per the details given in the application form.

7.4 It should be noted that failure to adhere to, and comply with, any of the matters or procedures set out in this Direction could result in payment being delayed or refused.

7.5 Unless otherwise indicated all correspondence about the matters referred to in this Direction should be sent to:

Nigel Orr
Solicitor to the Inquiry
Vale of Leven Hospital Inquiry
59 – 63 George IV Bridge
Edinburgh
EH1 1RN

Email: information@valeoflevenhospitalinquiry.org