

The Baha Mousa Public Inquiry

Inquiry Chairman: The Right Honourable Sir William Gage

Guidance in respect of compensation for loss of earnings and the payment of expenses incurred by attendance at the inquiry

1. Section 40(1) of the Inquiries Act 2005 (“the Act”) permits the Chairman to award reasonable amounts to a person:
 - “(a) by way of compensation for loss of time, or,
 - (b) in respect of expenses properly incurred or to be incurred, in attending or otherwise in relation to, the Inquiry.”
2. This document gives guidance on the procedure for making an application for an award and the process which will be adopted by the Chairman when making such an award.
3. Since the costs of awards of compensation and/or expenses will be met from public funds, strict adherence to this guidance will generally be expected. However, if in any individual case, its strict application will cause undue hardship, the Chairman in his discretion may make an award different from any guideline amount set out in this document.
4. The general principles which will operate in relation to making an award will be that the award will be a sum which is reasonable and proportionate and takes into account the general criteria contained in Rule 21 of the Inquiry Rules 2006¹ (“the Rules”), namely:
 - (a) the financial resources of the applicant; and
 - (b) whether making an award is in the public interest.

Eligibility for an award of loss of time and expenses

5. A person is eligible for an award of either or both compensation for loss of time and expenses only if that person is:
 - “(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” (s.40(3) of the Act).

¹ SI 2006 No. 1838

6. A person giving evidence in the context of their employment or former employment will be expected to be reimbursed in respect of loss of earnings and expenses by their employer or former employer.
7. Where a person attends the Inquiry without being required to do so by the Chairman no award will be made save in exceptional circumstances; the basis for making such an application must have been notified in writing to the Secretary of the Inquiry (“the Secretary”) not less than 28 days before that person attends.
8. If there is any doubt as to eligibility in respect of an award, generally advice should be sought from the Secretary before any expenditure is incurred.

The time for making application for an award

9. Having regard to the Chairman’s obligation to set conditions on an award, including limits on the sums which will be paid, it is recommended that application is made for an award before the applicant incurs the loss of time and/or expenses in question.

Compensation for loss of time

10. Application can be made for an award for loss arising from the applicant’s attendance at the Inquiry (Rules 20 and 23). Such applications will be determined by the Chairman in accordance with the Rules, to which applicants and their recognised legal representatives are advised to refer before submitting an application.
11. Briefly, an application for an award for compensation may be made before the loss has been incurred (Rule 23) or after it has been incurred (Rule 26). If an application is made before the loss has been incurred, it must be made in writing to the Secretary at least 28 days before the applicant attends the Inquiry. If it is made after the loss has been incurred it must be made within 14 days of the last day on which the applicant attended the Inquiry.
12. Where the application for compensation is made before the loss has been incurred, and the Chairman determines that an award should be made, he is obliged to set conditions which will include, but will not be limited to, setting upper limits or limits on the sums which will be paid, the form in which bills must be submitted, and the supply of documentary evidence necessary to support the amount sought (Rule 23). The Chairman will send his determination to the applicant and any recognised legal representative (Rule 25).
13. Where the application relates to a loss that has been incurred, the Chairman will determine whether an award should be made and, if so,

refer it to the Solicitor to the Inquiry (“the Solicitor”) to make an initial assessment (Rule 26).

14. In either event, the upper limit in respect of compensation for loss of time is likely to be £67 per day where the applicant is employed, or £86 per day where the applicant is self-employed.

Expenses incurred in attending the Inquiry

15. Awards may be made in respect of expenses which result from a person’s attendance at the Inquiry (Rules 20 and 24). Such awards will be determined by the Chairman in accordance with the Rules, to which applicants and their recognised legal representatives are advised to refer before submitting an application.
16. A person may make an application for an award in respect of expenses either before or after those expenses have been incurred (Rules 24 and 26). If an application is made before the expenses have been incurred it must be made in writing to the Secretary at least 28 days before the applicant attends the Inquiry. If it is made after the expenses have been incurred it must be made not less than 14 days after the last day on which the applicant attended the Inquiry.
17. If the application is made before the expenses are incurred, and the Chairman determines that there should be an award, he is obliged to set conditions which will include but not be limited to, the upper limit or limits on the sums which will be paid, the form in which bills must be submitted, and the supply of documentary evidence necessary to support the amount sought (Rule 24). If the application is for expenses already incurred, and the Chairman determines that an award should be made, the Chairman will refer the application to the Solicitor for an initial assessment (Rule 26).
18. The following paragraphs give guidance on how such awards will be assessed.

Travel costs

- 18.1 All travel should be undertaken in the most cost-effective manner. Generally, travel should be by public transport, making appropriate use of any discounted tickets that may be available, and not by a private car. If a private car is used on Inquiry business expenses will only be allowed in respect of its use if such use is justified as cost-effective for the journey or there is no viable public transport alternative. The cost of taxis will not normally be allowed unless full justification for the requirement of a taxi is made.
- 18.2 The cost of necessary travel will be reimbursed in full for:
 - rail fares at standard class;

- air or sea travel at economy class;
 - bus, coach or underground fares;
 - taxi fares, where justified, but excluding gratuities.
- 18.3 Where use of a private car or motorcycle for the journey or any part of it has been justified, expenditure will be assessed at the rate of 25p per mile. If any other person entitled to be reimbursed in respect of expenses by the Inquiry is carried as a passenger the applicant will be paid an additional 3p per mile for the first passenger and 2p per mile for any additional passengers. Any parking, toll and/or congestion charges necessarily incurred will also be paid.

Subsistence allowance

- 18.4. A subsistence allowance is intended to compensate for the necessary additional costs of travel and accommodation in connection with Inquiry business. To qualify for reimbursement the subsistence allowance claimed must:
- be reasonable and proportionate in nature and value and not excessive;
 - relate directly to the visit and be reasonably incidental to that visit; and
 - constitute expenditure which would not have occurred but for the visit.
- 18.5. The actual costs of meals, snacks and refreshments taken whilst attending or otherwise in relation to the Inquiry may be claimed, but only such costs as are reasonable and proportionate will be allowed.
- 18.6. If it is necessary to stay overnight the cost of hotel accommodation up to £95 per night may be claimed. An allowance of £25 per night may be claimed if an overnight stop is made with friends or relatives.

Other costs

- 18.7. Other costs necessarily incurred as a result of attendance on Inquiry business will also be considered. They may include, for example, the cost of child-care arrangements if the person is the principal carer. Advice should be sought from the Secretary to the Inquiry before incurring expenditure not expressly covered in this guidance.

Submission of applications

19. An application for an award for compensation for loss of time and/or expenses for attending the Inquiry must be sent to the Secretary in accordance with the time limits above. The Inquiry will not process

applications outside those time limits unless prior agreement for an extension of the time limit applicable has been obtained from the Secretary.

20. Applications for amounts that have been incurred should be submitted as an invoice for payment, setting out the dates and the heads of claim. Copies of receipts for expenditure should be submitted with the application, and the originals retained by the applicant for inspection if required.
21. The address to which applications should be sent is: The Baha Mousa Public Inquiry, Finlaison House, 15 -17 Furnival Street, London EC4A 1AB.

Procedure for the assessment by the Solicitor of amounts payable under an award for compensation for loss of time and/or expenses properly incurred

22. The Solicitor will assess any application referred to him by the Chairman in accordance with the Rules. The assessment will be made within 21 days of it being referred to him by the Chairman and he will notify the applicant and his recognised legal representative in writing of his determination.
23. When assessing the amount to be awarded pursuant to an application in respect of loss of earnings the Solicitor will have regard to the actual sums lost by the applicant as a result of attending the Inquiry. If no such sums can be identified the Solicitor will have regard to such other amounts as he considers proportionate and reasonable (Rule 28(1)).
24. In respect of expenses, in making his assessment the Solicitor will have regard to all the circumstances and to whether the expenses were proportionately and reasonably incurred; and are proportionate and reasonable in amount (Rule 28(2)).
25. The Solicitor will exclude from his initial assessment of any claim amounts which fail to comply with any condition imposed on the award by the Chairman (Rule 28(3)).
26. Where the Solicitor determines that the full amount of an applicant's claim should be paid, that assessment will be the final assessment (Rule 27(2)).
27. If the applicant disagrees with the initial assessment of the award, the Solicitor must be notified of this as soon as reasonably practicable, and in any event within 21 days of the date on which the initial assessment of the amount of the award is sent to the applicant (Rule 27(3)). The Solicitor will reconsider the initial assessment of the amount of the award and issue the final assessment of it to the applicant within a reasonable time (Rule 30).

Payment of awards

28. Payments will be made by bank transfer, and full details of the account to be credited should therefore be submitted with the claim.

Lee Hughes CBE
Secretary to the Inquiry

Issued under the authority of the Chairman on 23 March 2009