



24 November 2022

Dear Darren,

Section 40 Prime Minister determination changes

As you know, the Inquiry has now opened its first six investigatory modules, looking into the UK's resilience and preparedness for the pandemic; initial decision-making across the UK; and the initial healthcare response. In the course of doing so, Baroness Hallett has received 215 applications for Core Participant status, of which she has granted 93. Of those 93, a number have further made applications for funding for legal representation, under section 40 of the Inquiries Act 2005.

The Prime Minister made his determination under section 40(4) some time before the Inquiry's setting up date and at a time when the Inquiry was undertaking its Terms of Reference consultation. The wording used by other Ministers to make clear that expenditure incurred before an award is made cannot usually be recovered was therefore amended to allow such funding, exceptionally, in relation to the consultation process.

The Inquiry is undertaking its work at pace, having opened six modules and held four preliminary hearings. The time rightly being taken to consider core participant applications, and any renewed applications, before a first preliminary hearing is already short, and it is not possible also to process applications for section 40 funding prior to such preliminary hearings taking place. Applications for section 40 awards are therefore invited following a module's first preliminary hearing, and will usually be considered and determined within a month of that hearing taking place. Work undertaken in attending that hearing and in the first few weeks following it cannot be recovered pending an award being made, unless there is provision in the section 40(4) determination to allow the Solicitor to the Inquiry to pre-authorise that work.

As currently drafted, paragraph 8 of the [Prime Minister's determination](#) under section 40(4) of the Inquiries Act 2005 only permits the Solicitor to the Inquiry to pre-authorise work in relation to the Terms of Reference consultation. The reference to that consultation appears inadvertently to prohibit the more usual pre-authorisation which most section 40(4) determinations allow. The result is that there is currently no mechanism to allow Core Participants who are likely to receive a section 40 award to have their legal expenses pre-authorised to cover their submissions at preliminary hearings and immediate follow up work while their application is being processed by the Inquiry. It is important for the Inquiry to take appropriate time to consider applications carefully, and follow up questions are asked, to ensure that funding is granted appropriately.

As you know, Baroness Hallett is obliged by section 17 of the Act to act with fairness and with regard to the need to avoid unnecessary cost. As the Inquiry's accounting officer, I have responsibilities to ensure value for the public money the Inquiry is spending, or committing to be spent. We have robust processes in place for assessing section 40 applications, led by the Solicitor to the Inquiry and supported by my secretariat. I am confident, therefore, that the safeguards and controls are in place to give the Prime Minister assurance that such applications will be considered and determined robustly, ensuring that those Core Participants who meet the statutory criteria and require funding are able to participate meaningfully in the opening stages of their module, and ensuring that public money is spent appropriately. Given these safeguards, Baroness Hallett considers that the wording of paragraph 8 of the Prime Minister's determination requires amendment as it is not conducive to her ability to conduct the Inquiry as she sees fit; making awards prior to preliminary hearings taking place would inevitably hold up the Inquiry's work. She therefore requests that the paragraph in question is amended. Doing so would bring the Inquiry's section 40(4) determination into line with those of the majority of other extant statutory inquiries (save the provision on the ToRs consultation, which won't apply to all inquiries).

I have taken the liberty of drafting the below form of words, as a suggestion of how paragraph 8 might be amended.

Expenditure incurred by an applicant in respect of legal representation before an award is made by the Chair shall not be recoverable except where (and to the extent that) it has been incurred with the prior agreement of the Solicitor to the Inquiry. The Solicitor to the Inquiry may so authorise any expenditure that would otherwise be recoverable under such an award. This includes in respect of the consultation on the inquiry's Terms of Reference, but that only on an exceptional basis and subject to a maximum cap at a level to be set by the Chair.

I would be grateful if you could urgently consider this change, and am happy to discuss further.

Yours sincerely,



Ben Connah
Inquiry Secretary

Background - other inquiries' determinations:

Post Office Horizon (Minister for Small Business, Consumers and Labour Markets)

“6. Expenditure incurred by an applicant in respect of legal representation before an award is made by the Chair shall not be recoverable except where (and to the extent that) it has been incurred with the prior agreement of the Solicitor to the Inquiry.”

Undercover Policing Inquiry (Secretary of State for the Home Department)

“5. Expenditure incurred by an applicant in respect of legal representation before an award is made by the Chairman shall not be recoverable, except where (and to the extent that) it has been incurred with the prior agreement of the Solicitor to the Inquiry.”

Infected Blood Inquiry (Chancellor of the Duchy of Lancaster)

“2.5 Expenditure incurred by an applicant in respect of legal representation before an award is made by a Chairman shall not be recoverable except in respect of responding to the Inquiry’s consultation on the terms of reference prior to the setting up date of the Inquiry.”

Grenfell Tower Inquiry (Prime Minister)

“5. Expenditure incurred by an applicant in respect of legal representation before an award is made by a Chairman shall not be recoverable except where (and to the extent that) it has been incurred with the prior agreement of the Solicitor to the Inquiry or where it is expenditure incurred in respect of responding to the consultation on the terms of reference prior to the setting up date.”

