

PROTOCOL No.5

COSTS PROTOCOL – September 2011

1. This protocol applies to those who are to participate in the Inquiry into Hyponatraemia Related Deaths in Northern Ireland, as witnesses or as interested parties, and who are to be legally assisted at public expense. It does not apply to witnesses or interested parties who are supported and /or funded by Government Departments or other public bodies. It does not apply to those who are or could be supported and/or funded from other sources, for example, insurance companies or defence associations. It is subject to any specific terms and conditions placed on such funding in any individual case.

Overriding principles

2. Subject to the provisions of paragraph 3, all work falling outside the terms of reference will be disallowed. Those terms are:

“an Inquiry into the events surrounding and following the deaths of Adam Strain and Raychel Ferguson, with particular reference to:

- (1) The care and treatment of Adam Strain and Raychel Ferguson, especially in relation to the management of fluid balance and the choice and administration of intravenous fluids in each case.
- (2) The actions of the statutory authorities, other organisations and responsible individuals concerned in the procedures, investigations and events which followed the deaths of Adam Strain and Raychel Ferguson.
- (3) The communications with and explanations given to the respective families and others by the relevant authorities. “

3. Following on from the exercise by the Chairman of his discretion and his subsequent statement at a public meeting on 30 May 2008, the Inquiry will also allow for payment of work in relation to the Inquiry’s investigation of;

- (1) The death of Claire Roberts. Work relating to Claire's care, treatment, and death is to be in accordance with the Terms of Reference, as if Claire was explicitly named therein.
 - (2) The death of Conor Mitchell, only insofar as it relates to hyponatraemia, fluid management issues and the extent to which the DHSSPS(NI) Guidelines on the Prevention of Hyponatraemia in Children were being followed at the time of Conor's treatment and subsequent death.
4. Payments will be made only for legal work undertaken which is necessary, fair, reasonable, and proportionate in all the circumstances.
 5. All work must be conducted in a cost effective and efficient manner with no duplication and making best use of the public funds provided.

Granting of Representation

6. The right to be legally represented before the Inquiry has been recognised by the Inquiry in the cases of individuals (including families) and organisations who have a genuine and direct interest in the business of the Inquiry which is such that the Chairman considers representation to be necessary. (This is separate from the question of funding of that legal representation which is dealt with below). Any further requests for legal representation will be considered against the same criteria. Representation for one phase or stage of the work of the Inquiry will not necessarily lead to representation for other phases or stages. Explicitly, representation by families at the oral hearing of evidence relating to deaths which occurred after their own child's death will not automatically be available. Representation at the seminars following the oral hearings phase of the Inquiry will not be available.
7. An Inquiry bundle of evidence will be prepared once the Inquiry has gathered in all documentation and witness statements and, subject to their giving a suitable confidentiality undertaking, the legal representatives of witnesses or parties will receive a copy of that bundle for use in preparation for, and during the Inquiry hearings.

Public funding for legal representation

8. In those cases where public funding of legal representation is recommended by the Chairman, certain conditions will apply. Applications for funding have to be made to the Inquiry Solicitor and will only be considered in accordance with the following:

(1) As agreed by the Inquiry Solicitor and the interested parties, the maximum hourly rates for counsel and solicitors shall be:

Senior Counsel	£200.00
Junior Counsel	£100.00
Solicitor (Partner)	£146.25
Solicitor (Assistant)	£130.00
Paralegal or Trainee Solicitor	£65.00

(2) The costs of telephone calls, letters and e-mails will be reimbursed at a rate of £7.35 per item. Photocopying charges will be paid at 10 pence per sheet.

(3) The legal representatives of each interested party will agree in advance, with the Chairman, the size and composition of the legal team to be engaged, including the seniority and number of counsel where that is agreed to be necessary. No existing legal representatives may be added to or replaced without prior written application to the Chairman being made and his authorisation being granted.

(4) The maximum number of hours that can be charged by a legal representative in receipt of an award made by the Chairman shall be in accordance with the terms of the Chairman's letters of 19th April 2011 and subject to the rates specified above. No payment for hours worked in excess of the maximum number will be made.

- (5) It will not normally be possible to obtain public funding for costs which were not subject to the agreement of the Inquiry Solicitor prior to the costs being incurred including costs which are in excess of the terms upon which agreement with the Inquiry Solicitor has been reached.
 - (6) Expenditure incurred before notification of the Chairman's award of funding and agreement with these terms, or expenditure in excess of the terms upon which approval is granted will not normally be recoverable.
 - (7) All legal representatives will be expected to work in a cost-effective and economic manner and avoid unnecessary duplication of work and all work that is not reasonably necessary for the representation of the client.
 - (8) At any time the Inquiry Chairman may approve funding for legal representation where a witness is unrepresented and does not have access to representation from any other source and where the interests of justice require that witness to be legally represented.
9. The Chairman has determined the maximum number of hours which may be claimed by interested parties and communicated this in a letter dated 19th April 2011 to the legal representatives of the interested parties. The extent of any funded work which will be allowed within these categories will depend on what is appropriate and necessary in relation to each witness or interested party.

The following categories of work are encompassed:

- (1) Receipt of initial instructions**
- (2) Preparation of witness statements**
- (3) Preparation for oral evidence by witnesses and interested parties**

Funding will not normally be provided for any investigative work or for instruction of experts.

(4) The hearing

Public funding for attendance at the Inquiry hearing will be in accordance with that expressly authorised in the Chairman's letter of the 19th April 2011. Fees for time spent at the hearing may be disallowed if the Chairman determines that attendance was unnecessary. Funding for work done during the course of the hearing other than attendance at the hearing will not be available without prior agreement with the Inquiry Solicitor.

(5) Closing Submissions

Insofar as permission has been obtained from the Chairman for closing submissions to be made the reasonable cost of preparing and presenting such submissions will be met from the public purse.

Joint representation and conflicts of interest

10. Wherever possible, witnesses are encouraged to instruct Solicitors who are already retained by other witnesses or suspected witnesses to the Inquiry. The purpose of that is to avoid duplication of cost.
11. Where the Inquiry Solicitor has reason to believe that the interests of any witness or interested party may conflict with the interests of any other witness or interested party she shall ensure that such conflict is made known to those involved to ensure that any public funding which is made available for legal assistance will be awarded on the basis that separate Solicitors, and if necessary Counsel, are retained.

Other Costs

Disbursements

12. Payment of disbursements over £100 will be made only where prior approval has been obtained for the expenditure from the Inquiry Solicitor or his nominee. Payment for disbursements under £100 will be made only where the expenditure is necessary and reasonable and supported by the appropriate vouchers.

Travel and waiting costs

13. Hourly rates for travel and waiting for legal representatives will be at 50% of the agreed rate for legal work. This rate is inclusive of mileage. One hour travel time may be claimed for a round trip journey from the Greater Belfast area to Banbridge, three hours may be claimed for a round trip journey from Coleraine and four hours may be claimed for a round trip journey from Derry.

Billing procedure

14. Invoices for legal fees to be claimed from public funds should be sent to the Inquiry Solicitor on a monthly basis within 14 days of the end of the month in question. Timesheets should be kept in respect of all work for which public funding is to be claimed and be available for inspection by the Inquiry as required. A detailed invoice should be provided to the Inquiry Solicitor which contains the description of work done, when it was undertaken, the identity and grade of fee earner and the total of hours spent per capped period. Counsel's fee notes must also be submitted on a monthly basis and those fee notes must be supported by details of precisely what work was done and how much time was spent on it. A general claim for "preparation" will not be acceptable.
15. The Inquiry Solicitor will consider the bills and the principles set out in this proposal will apply to that consideration.
16. Following the consideration of bills in accordance with the procedure above the Inquiry Solicitor will determine the amount which should be paid and notify the Solicitor of the assisted party accordingly. Where agreement on any bill cannot be reached with the Inquiry Solicitor, the Taxing Master of the Supreme Court of Northern Ireland will normally be asked to adjudicate and the legal representative receiving funding will be required to agree, in advance, that s/he will be bound by any such adjudication. The Inquiry Solicitor will honour and approve for payment any adjudication of the Taxing Master under this paragraph.

Discretion

PROTOCOL ON COSTS

17. The Inquiry Chairman and the Inquiry Solicitor retain the discretion to vary the application of the terms of this protocol on a case by case basis where it is considered necessary for the proper conduct of the Inquiry.

18. Failure to agree to any of the matters set out above and in this protocol may result in payment being refused.