



# Legal Representatives Costs & Expenses Protocol

## Version control

Version	Status	Amendments
1.0	Final – March 2020	
1.1	Revision – October 2020	Annex 2 amended to reflect maximum fees payable

## **Introduction**

1. The Costs & Expenses Protocol should be read in conjunction with the HIA Redress Board Procedural Guidance.

2. The powers of the HIA Redress Board (“the Board”) are contained in the Historical Institutional Abuse (Northern Ireland) Act 2019 (“the Act”), and in the Historical Institutional Abuse Redress Board (Applications and Appeals) Rules (Northern Ireland) 2020 (“the Rules”).

3. This Costs & Expenses Protocol (“the Protocol”), which is subject to, and must be read in conjunction with, section 19 of the Act, and Rules 14,15, 16 ,17 & 18. The Protocol is intended to provide general information and guidance as to how the Board will deal with matters relating to costs and expenses. It is not intended to cover every eventuality that may arise.

4. Section 19(2) to (4) enables the creation of rules to make procedural provision for, *inter alia*, the assessment and payment of the costs incurred in connection with legal advice and assistance and for the reimbursement of other costs or expenses.

5. In general, the assessment and consideration of costs and expenses incurred (including legal costs) will be undertaken by a panel appointed by the President of the Board (“the Board”) as part of the final determination of an application for compensation.

6. However, the Board **may** make an award in respect of expenses **to be incurred** in certain circumstances, as set out in rule 18(6). These circumstances are (i) where the expenses are incurred (or to be incurred) by a person in attending a hearing convened by the Board and (ii) where expenses are incurred (or to be incurred) by an applicant or appellant who is acting without legal representation and the expense is incurred in so acting. In both circumstances, the expenses must be properly incurred. Whether or not the expenses are properly incurred will be a matter for the Board.

## **Legal Advice & Assistance**

7. Under rules 14 & 15 a solicitor who is acting for a person making an application for compensation under the Act may make an application to the Board to recover the costs of providing that legal advice and assistance. Any such application must be in writing and set out in the Expenses Claim Form. Applications for compensation will be determined either ‘on the papers’ or further to an oral hearing.

8. In the normal course of events, applications for compensation will be determined on the papers, however, section 9(3)(b) of the Act states that may a panel may direct an oral hearing if there are exceptional circumstances which make it necessary to do so in the interests of justice. The legal costs implications of these two options are examined in more detail below.

### Determination on the Papers

9. Where an application for compensation under section 12(2)(a) or section 12(2)(b) of the Act is successful further to a determination on the papers, a solicitor under rule 14(2) will be paid costs of providing legal advice and assistance to the applicant, based on the award value, as set out in Table 1 of the Schedule to the Rules (Cases where no oral hearing held). For ease of reference this table is reproduced in Annex A below.

10. Where an application for compensation under section 12(2)(a) or section 12(2)(b) of the Act is unsuccessful further to a determination on the papers, a solicitor under rule 14(4) will be paid a fixed cost of £150 unless the panel determines that the application for compensation was wholly without merit.

### Oral Hearings

11. Where the exceptional circumstances described in section 9(3)(b) pertain, the panel will direct an oral hearing and may require a person or persons to attend, by way of a written notice under section 10(1)(b).

12. If a solicitor or counsel has attended one or more hearings, and the application for compensation under section 12(a) and/or section 12(b) is successful, their respective costs will be assessed by the panel by reference to the provisions of rule 15(2) of the Rules and the fixed cost payments set out in Table 2 of the Schedule to the Rules (Cases where oral hearing held). For ease of reference this table is reproduced in Annex A below.

13. Where an application for compensation, which involved one or more oral hearings, is unsuccessful, it will be for the panel under rule 15(4) to determine what cost should be paid to the applicant's solicitor, and counsel, if instructed but it must not exceed the amount that would be payable if the applicant had been awarded compensation of £10,000. A decision by the Board under this rule is final.

14. Where the Board directs a person, who is not an applicant for compensation to attend an oral hearing, a written application may be made to the Board under rule 18(1) in respect of the legal costs arising from the attendance of that person at the oral hearing. In determining the written application, the Board under rule 18(4) will take account of the financial resources available to the person, any alternative sources of funding and whether making an award is in the public interest.

15. The Board under rule 18(5) shall not make an award in respect of the legal representation costs of any person in circumstances where a body, society or organization involved in the provision of residential care has agreed to meet those costs or where it is reasonable, in all the circumstances of the case, to expect a body, society or organization to do so.

16. The precise amount of any costs determined on foot of an application under rule 18 is a matter for the Board to determine in all the circumstances of the case, but it shall not exceed the maximum fixed fee award available under Table 2 of the Schedule to the Rules.

17. Solicitor and Counsel will be able to claim travel cost for attendance at an oral hearing in accordance with rule 16 as set out in Annex 2 below.

#### Child Migrant Programme

18. Where an application for compensation under section 12(2)(c) of the Act, in respect of the Child Migrant Programme (“the CMP”) is successful further to a determination on the papers, a solicitor under rule 14(2) will be paid a fixed cost of £150.

19. Where an application for compensation under section 12(2)(c) above, which also includes an award of compensation under either section 12(2)(a) and/or section 12(2)(b), is successful further to a determination on the papers will be paid a fixed cost based on the value of the section 12(2)(a) and/or (b) award alone, as set out in Table 1 of the Schedule to the Rules.

20. Where an application for compensation under section 12(2)(c) above is successful further to an oral hearing, a solicitor or counsel if instructed under rule 15(2) will be paid a fixed cost of providing legal advice and assistance to the applicant, based on the award value, of £20,000 as set out in Table 2 of the Schedule to the Rules (Cases where oral hearing held).

21. Where an application for compensation, under section 12(2)(c) above is unsuccessful further to an oral hearing, it will be for the panel under rule 15(5) to determine what cost should be paid to the applicant’s solicitor, and counsel, if instructed but it must not exceed the amount that would be payable if the applicant had been awarded compensation of £10,000

#### **Expenses**

22. In this section the Board sets out the approach conditions that a panel will adopt in relation to the assessment and payment of expenses under Rules 16, 17, and 18. Rule 4 is also relevant in that it sets out the supporting documents which should be provided with an application for compensation.

#### Medical Evidence & Expert Reports

23. Rule 4(1)(e) & (f) provide for relevant medical records or expert reports to be submitted to the Board along with the application form. Please note that the Board does not expect or require medical records / expert reports to be provided in all cases, but only in cases where such records / reports are relevant to, and provide supporting evidence of, what is described in the application. If the Board considers that it is necessary to commission an expert report in order to make a determination on a particular application, it will do so.

24. Normally only one expert report will be approved for payment by the panel in respect of an application for redress. The Board will only reimburse a solicitor for the cost of obtaining an expert report when it is provided with a copy of the receipt from the expert of payment for preparing the report.

25. The fees payable by the Board are set out in Annex B below.

26. Under the General Data Protection Regulation (GDPR) provisions, which came into operation from the 25th May 2018, members of the public have the right to access their medical records from their GP or hospital, except in certain circumstances, free of charge. These records should usually be provided within one calendar month of any request, as detailed at the attached link: <https://www.nidirect.gov.uk/articles/accessing-medical-or-health-and-social-care-records>

27. Where a medical practitioner has charged a solicitor a fee for providing a copy of the medical records of the applicant (or the deceased) in support of an application for compensation to the Redress Board, the Board may reimburse the solicitor the amount of the fee, on presentation of the receipt of the fee from the practitioner.

#### Proofs of Status/Identity

28. Rule 4 (1) & (2) requires that an application for compensation must be supported by certain proofs of identity and/or status. The Board does not wish to receive original documents and will accept copies of proofs that are endorsed by a solicitor to read 'certified by a solicitor as a copy of the original'.

29. A list of copy documentation or proofs that the Board will accept as endorsed by a solicitor to read 'certified by a solicitor as a copy of the original' are contained in Annex C. The panel will not normally authorise payment of expenses for such documents.

30. The panel will only pay a solicitor for any expenses incurred in obtaining supporting copies of proofs or documentation on behalf of an applicant, which if not for making the application to the Redress Board they would not have been required to obtain.

#### **Completion of Expenses Claim Form**

31. When the verification and evidence gathering processes are complete, the Redress Board will issue an explanatory letter to a solicitor with an accompanying Expenses Claim Form ("the ECF") to be completed in respect of the application. The letter will explain that an application will shortly be listed before a Redress Board panel for final determination.

32. The letter will also explain that the ECF must be completed in a way which sets out a properly itemised schedule of claimed expenses. It will also highlight that in order to enable payment to be made, the solicitor will be required to provide his/her bank account details.

33. Payment of the costs and expenses may be delayed if the ECF has not been itemised and vouched properly.

34. The ECF must be returned to the Board within 7 days of the 'Issue Date' stated in the letter. All payments will be made by Bankers Automated Clearing System (BACS). A copy of the Expenses Claim Form is attached at Annex D.

## **Important Information**

### Section 14 – Initial Payment Order

35. It is important to note that the panel will not request the completion of an Expenses Claim Form, assess expenses or make an award of costs in respect of a section 14(2) initial payment order in the amount of £10,000, pending final determination of the full award of compensation.

### Section 18 - Information about legal advice and assistance

36. This section places a duty on the secretary of the Board, when requested by the Department of Justice to provide it with the names and addresses of applicants to the Board who have received legal advice and assistance and the details of the solicitors who have provided the advice and assistance.

37. This is to allow the Legal Services Agency (NI) to check that there is no duplication of advice being offered to applicants through legal advice and assistance arrangements under the HIA Redress Board legislation and advice and assistance provided under the statutory legal aid scheme in Northern Ireland.

38. If a solicitor has given advice under the Green Form scheme in connection with the details of claim set out in the application, no claim for this expense can be included in the ECF submitted to the Redress Board.

39. If a solicitor has received payment in respect of medical evidence or expert reports obtained in connection with other civil proceedings, either directly or under the legal aid scheme, which are submitted in support of an application to the Redress Board these expenses must not be included in the Expenses Claim Form.

### Appeals

40. The Board will for a successful appeal under r12 against a determination on the papers pay the solicitor under rule 14(2) the costs for providing legal advice and assistance to the applicant in respect of the original application and appeal. The costs will be based on the appeal award value only, as set out in Table 1 of the Schedule to the Rules (Cases where no oral hearing held).

41, The Board will for an unsuccessful appeal under r12 against a determination on the papers pay the solicitor under rule 14(4) a fixed cost of £150 unless the panel determines that the application for compensation was wholly without merit.

42. The Board will for a successful appeal under r12 against a determination, which required a solicitor or counsel to attend one or more hearings pay their respective costs in respect of the original application and appeal by reference to the provisions of rule 15(2). The costs will be based on the appeal award value only, as set out in Table 2 of the Schedule to the Rules (Cases where oral hearing held).

43. The Board will for an unsuccessful appeal under r12 against a determination, which required a solicitor or counsel to attend one or more hearings in respect of the original application and appeal it will be for the panel under rule 15(5) to determine what cost should be paid to the applicant's solicitor, and counsel, if instructed but it must not exceed the amount that would be payable if the applicant had been awarded compensation of £10,000 as set out in Table 2 of the Schedule to the Rules (Cases where oral hearing held).

**Failure to comply with procedures**

43. It should be noted that failure to adhere to, or comply with, the provisions set out in the legislation or in this Protocol, could result in payment of costs and expensed being delayed or refused.

**Discretion**

44. This Protocol may be amended, suspended or updated at any time, on the direction of the President of the Redress Board.

## Annex A – Legal Costs

### THE SCHEDULE Rules 14, 15 and 18 COSTS PAYABLE TO SOLICITORS AND COUNSEL

**Table 1**

**Cases where no oral hearing held**

<i>Compensation award</i>	<i>Costs for solicitor</i>
£10,000	£298
Above £10,000 but no more than £15,000	£383
Above £15,000 but no more than £20,000	£453
Above £20,000 but no more than £25,000	£513
Above £25,000 but no more than £30,000	£583
Above £30,000 but no more than £55,000	£729
Above £55,000	£911

**Table 2**

**Cases where oral hearing held**

<i>Compensation award</i>	<i>Costs for solicitor</i>	<i>Costs for counsel</i>
£10,000	£2,463	£579
Above £10,000 but no more than £12,500	£2,709	£659
Above £12,500 but no more than £15,000	£2,955	£740
Above £15,000 but no more than £20,000	£3,992	£867
Above £20,000 but no more than £25,000	£4,381	£982
Above £25,000 but no more than £30,000	£4,833	£1,092
Above £30,000 but no more than £55,000	£5,800	£1,311
Above £55,000	£6,960	£1,573



## Annex B – Expenses

The Redress Board will approve a fee of £100 each hour to a maximum of 10 hours for the following reports:

	Psychiatrist	Psychologist
Maximum fee for examination(s) and report. (Breakdown of fees charged, detailing nature of work and hourly rate to be provided on fee note.)	£1000	£1000

It is **not anticipated** that medical experts will be required to attend oral hearings, however in the event there is a need the following will apply:

	Medical Consultant	General Practitioner
Morning, or part thereof	£203.50	£165.00
Morning and Afternoon or part thereof	£297.00	£253.00

**Annex C – Acceptable documents certified by a solicitor as a copy of the original**

Birth Certificate;

Marriage Certificate;

Death Certificate;

Last Will & Testament;

Letters of Administration;

Deed Poll;

## Annex D - Expenses Claim Form



### Historical Institutional Abuse Redress Board (Applications and Appeals) Rules (Northern Ireland) 2020

#### Expenses Claim Form

(Please refer to the Legal Representatives Costs and Expenses Protocol which can be found at [www.hiaredressni.uk](http://www.hiaredressni.uk) prior to completing this form).

<b>Applicant Name</b>	
<b>Redress Board Ref No</b>	
<b>Solicitor Name</b>	
<b>Solicitor Firm</b>	

<b>Rule 17– Expenses of Obtaining Medical Records &amp; Expert Reports</b>				
Date of Report	Type of report	Details of report provider	Fee	Receipt attached (Y/N)

**\*\* Please note that you are required to provide an invoice and receipt confirming payment from the expert who prepared the report.**

<b>Rule 16– Travel Expenses for Solicitor and/or Counsel to Attend an Oral Hearing (if applicable)</b>		
Date of Hearing	Solicitor's Office Address/Counsel Chambers Address	Distance between office address and venue of hearing (miles)

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<b>Miscellaneous Expenses</b>		
Description of expense	Amount claimed	Receipts attached (Y/N)

You can return this form using our online messaging facility. Please refer to Paras 62 to 64 of our Online Application Form Guidance for Solicitors which can be found at [www.hiaredressni.uk](http://www.hiaredressni.uk).

Alternatively, please return to HIA Redress Board, PO Box 2266, BELFAST, BT1 9ZP

**Declaration**

I confirm that:

- In accordance with Rule 17 of the Rules, I have not been, and will not be, reimbursed for the expenses claimed on this form from some other source.
- I understand that information in relation to legal advice and assistance must be shared with the Department of Justice by the Redress Board if requested to do so under section 18 of the Historical Institutional Abuse (NI) Act 2019.
- I am content for the Redress Board to pay any expenses payable to the account details that have previously been provided on the Legal Representative BACS details form.

Name:

Signature (if hard copy only):

Date: