

Protocol for Witness Expenses and Compensation for Loss of Time

1. Introduction

1.1 This protocol deals with the following issues:-

- claiming for out-of-pocket expenses, such as travelling expenses, incurred as a result of attendance at hearings or other attendances required by the Sheku Bayoh Inquiry (the “Inquiry”); and
- claiming for loss of income as a result of attending or assisting the Inquiry (this is referred to as “compensation for loss of time” in the Inquiries Act 2005 (“the 2005 Act”)).

1.2 This protocol explains:-

- who can claim;
- what they can claim for;
- the application process; and
- how applications are decided.

The rules set out in this protocol are subject to, and should be read in accordance with, the Notice of Determination made by the Cabinet Secretary of Justice under section 40(4) of the 2005 Act (“Minister’s Determination”) set out in Appendix A to this protocol, section 40 of the 2005 Act and rules 17 to 28 of the Inquiries (Scotland) Rules 2007 (“the Rules”).

2. Persons eligible to apply

2.1 In terms of section 40(3) of the 2005 Act, the following persons are eligible to apply:-

2.1.1 a person attending the Inquiry to give evidence or to produce any document or other thing; or

2.1.2 a person who, in the opinion of the Chair, has such a particular interest in the proceedings or outcome of the inquiry as to justify such a payment.

2.2 Each person making a claim must submit a separate application. So where for example, two family members both give evidence to the Inquiry and both incur expenses that are reimbursable, each must make a separate claim.

2.3 Awards for travel expenses or compensation for loss of time shall only be made for persons from outside the UK where the Chair of the Inquiry is satisfied that their travel is essential for the fulfilment of the Inquiry's terms of reference.

3. What may be claimed

3.1 Examples of witness expenses actually incurred by an eligible person that can be claimed for include:-

- travel costs;
- food and drink; and
- accommodation if an overnight stay is necessary to give evidence at the Inquiry. Please note that if you intend to claim for the use of overnight accommodation to enable you to attend the Inquiry, you should obtain the prior written agreement of the Inquiry. Failure to obtain such prior written agreement will result in refusal of the claim.

3.2 Expenses actually incurred will be reimbursed according to the Scottish Government's guidance on travel and subsistence expenses and at the rates that

apply to Scottish Government employees. A summary of the parts of that guidance most relevant to the Inquiry's business can be found at [Appendix B](#) to this Protocol. In particular, note that the following apply:-

- supporting evidence in the form of (e.g.) tickets with the price stated on them or receipts must be provided in relation to every claim for expenses incurred;
- costs of standard class rail fares are reimbursed, but not first class;
- you must obtain the agreement of the Inquiry in advance to air travel by email to HWT@shekubayohinquiry.scot. Air travel undertaken without that agreement will not be reimbursed;
- taxis may be used only when other forms of public transport are not available or is necessary by reason of, for example, disability;
- reimbursement of travel by car or motorcycle is based on mileage and the pence per mile set out in the Scottish Government's guidance; and
- subsistence rates are paid for food and drink – actual cost is paid up to a specified maximum rate, which varies according to the amount of time spent away from home travelling to and from, and on, Inquiry business. The cost of alcoholic drinks may not be claimed.

3.3 Payment in respect of loss of income as a result of attending or assisting the Inquiry may only be made in circumstances where the person to be compensated would otherwise face actual financial loss. So a claim for compensation for loss of income can only be made when a loss of wages or other earnings is actually incurred due to attendance at/engaging with the Inquiry. The applicant must provide proof of the loss and its amount.

4. The application process

4.1 Applications must be made in writing by completing the applicable application form. The form can be found on, and downloaded from, the Inquiry's website.

A copy of the form can be found at [Appendix C](#) to this Protocol. Alternatively, you may ask for a copy of the form to be provided when you attend the Inquiry.

4.2 You should submit the form either:

- By completing it and leaving it with a member of the Hearings and Witness Team, along with copies of any receipts or supporting documentation, before you leave your attendance at the Inquiry; or
- By sending it, along with photos or scans of your tickets or receipts and any other supporting documentation, to the Hearings and Witness Team by email to HWT@shekubayohinquiry.scot. Applications must be submitted no later than 7 days after you have incurred the expenditure.

4.3 If reimbursement after expenses are incurred may lead to financial hardship, it may be possible for an application for payment of expenses to be made in advance. If you wish further advice on this, please contact the Hearings and Witness Team at HWT@shekubayohinquiry.scot for advice.

4.4 Please note that failure to comply with the procedures set out in this protocol may result in payment being delayed or refused.

5. How an application is decided

5.1 In relation to those meeting the criteria set out in section 2, rule 18(2) of the Rules requires the Chair to consider the financial resources of the applicant and the public interest so far as relating to the making of an award. Further, the Determination by the Scottish Ministers under section 40 of the 2005 Act provides that claims for loss of income may only be made in circumstances in which the Chair considers it necessary, fair, reasonable and proportionate for such an award to be made.

5.2 Subject to the proper assessment of claims in accordance with paragraph 5.4, and compliance with the terms of this Protocol and the relevant Scottish Government guidance and rates applicable, the Chair has determined that it is in the public

interest that persons giving evidence at a hearing of the Inquiry, or otherwise attending when required to do so by the Inquiry, should not be out of pocket as a result of so doing.

Further, it is generally necessary, fair, reasonable and proportionate that persons losing income as a result of giving evidence or otherwise attending when required by the Inquiry should be compensated for that loss.

5.3 Accordingly:-

- awards of travel and subsistence expenses actually incurred in attending to give evidence or when otherwise required to do so will be made to persons incurring those expenses. No evidence of the financial resources of the applicant will be required, except that where an application for travel and subsistence expenses exceeds £100, however the Chair reserves the right to require such evidence; and
- awards in relation to compensation for loss of time will be made to persons suffering that loss when actual financial loss, such as loss of wages or salary, has been incurred in attending to give evidence or when otherwise required to do so. No evidence of the financial resources of the applicant will be required, except that where an application for loss of time exceeds £120, whether individually or along with similar applications by the same applicant, the Chair reserves the right to require evidence as to the financial resources of the applicant.

5.4 In assessing the amount of the claim that will be paid, the starting point will be the amount of expenses or loss of wages or salary actually incurred and in respect of which receipts and other documentary evidence can be provided. Consideration will be given to whether those expenses have been proportionately and reasonably incurred and whether the expenses are proportionate and reasonable in amount. Regard will also be had to the amounts that are permitted under the guidance and rates referred to in paragraph 3.2. For the avoidance of doubt, no amount in excess

of the amounts specified in, or calculated in accordance with, that guidance will be paid in respect of any claim.

6. Further Information

6.1 If you need any further information about any of the above, or any other matter related to witness expenses and compensation for loss of time please email the Hearings and Witness Team at HWT@shekubayohinquiry.scot.

6.1 Failure to comply with the procedures set out in this Protocol may result in payment being delayed or refused.

Issued under the authority of the Chair on 22 June 2022.

APPENDIX A

Cabinet Secretary for Justice and Veterans

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PUBLIC INQUIRY INTO THE DEATH OF SHEKU BAYOH

DETERMINATION BY MINISTERS UNDER SECTION 40(4) OF THE INQUIRIES ACT 2005

NOTICE TO THE CHAIR OF A DETERMINATION BY THE SCOTTISH MINISTERS UNDER SECTION 40(4) OF THE INQUIRIES ACT 2005

1. In respect of the Inquiry into the death of Sheku Bayoh, chaired by the Right Honourable Lord Bracadale in terms of the Instrument of Appointment in his favour dated 20 November 2020 (the “Inquiry”), the Scottish Ministers have determined under Section 40(4) of the Inquiries Act 2005 (“the 2005 Act”) that the power of the Chair to make awards under Section 40 of the 2005 Act to persons eligible under Section 40(3) of that Act shall be subject to the following conditions and qualifications.
2. In respect of legal representation (Section 40(2)), the conditions and qualifications are:
 - a) Awards in respect of legal representation may only be made in circumstances in which the Chair considers it necessary, fair, reasonable and proportionate for such an award to be made.
 - b) Any award must be subject to the condition that payment will only be made for work that is evidenced and can be identified as having been done in an effective and efficient manner, avoiding unnecessary duplication and making the best use of public funds.
 - c) Rule 18 of the Inquiries (Scotland) Rules 2007 is qualified to the extent that the general criterion in Rule 18(2)(a) (financial resources) is not to be taken into account on an application for an award in respect of legal expenses by family members of Sheku Bayoh who have been designated core participants.
 - d) Awards may only be made in respect of legal representation provided by one or more named legal representatives whose involvement has been approved by the Chair. The Chair must approve the size and composition of any legal team to be engaged, including the seniority and number of any counsel where that is agreed by the Chair to be necessary. An award in respect of costs associated with work carried out by legal representatives who are not approved in advance of the work being carried out may be met only where this is considered by the chair to be appropriate in the particular circumstances.
 - e) Any award must specify the nature and scope of the work for which the award is to be made. Payment will not be made in respect of work that does not fall within the specified scope. An Inquiry under the 2005 Act is inquisitorial in nature and legal representatives will not be paid for investigative work or work in relation to

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obtaining expert reports unless the Chair gives express permission in advance for such work to be carried out.

- f) Where the Chair has determined that an award in respect of legal representation should be made, the legal representatives will agree in advance, with the Solicitor to the Inquiry, hourly rates for counsel and solicitors, subject to the following maximum hourly rates, which are exclusive of VAT:
- I. Senior Counsel (whether a member of the Faculty of Advocates or a solicitor advocate): **£200**.
 - II. Junior Counsel (whether a member of the Faculty of Advocates or a solicitor advocate): **£100**.
 - III. Solicitor with over 8 years' post qualification experience: **£150**.
 - IV. Solicitor with over 4 years' post qualification experience: **£125**.
 - V. Other solicitors and fee earners of equivalent experience: **£100**.
 - VI. Trainee solicitors, paralegals and other fee earners: **£75**.
- g) The maximum number of hours that can be taken into account by the Chair in respect of a legal representative for the purposes of determining the level of an award shall be capped at 40 hours per week; however in exceptional circumstances the Solicitor to the Inquiry may authorise an increase in the weekly cap up to 60 hours for counsel or a solicitor during the oral hearings and for a two month period before they commence where he/she is satisfied that such action is justified in all the circumstances, for example, when the work involved in any week clearly needs to exceed 40 hours. Travel time may be paid subject to the limits in paragraph (f) where work is undertaken during the journey. If work cannot be undertaken during the journey then 50% of the hourly rate limits set out in paragraph (f) may be paid. If travel time is paid, it will count towards total hours chargeable for the purposes of limits on hours to be applied by virtue of this paragraph. Awards must not be made in respect of hours worked in excess of the limits set down in this paragraph.
- h) In respect of paragraph (g) of this notice:
- I. No unused hours in any week may be set off against any other week.
 - II. A week shall be taken as commencing on Sunday and ending on Saturday.
- i) Expenditure incurred before notification of the Chair's award of funding or expenditure in excess of the terms upon which approval is granted will not be recoverable. In exceptional circumstances, and after obtaining Scottish Ministers' agreement, the Chair may make an award in respect of expenditure incurred before notification of the Chair's award subject to the terms of paragraph (e).

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3. In respect of awards in relation to compensation for loss of time, or expenses incurred in attending, or otherwise in relation to the Inquiry, (Section 40(1)), the conditions and qualifications are:
- a) Travel and subsistence rates as they apply to Scottish Government employees apply within the United Kingdom. Rail travel would be reimbursed at standard class rate and air travel at economy class rate.
 - b) Rule 18 of the Inquiries (Scotland) Rules 2007 is qualified to the extent that the general criterion in Rule 18(2)(a) (financial resources) is not to be taken into account on an application for an award in respect of compensation for loss of time, or expenses by family members of Sheku Bayoh who have been designated core participants.
 - c) Awards in respect of compensation for loss of time may only be made:
 - I. In circumstances in which the Chair considers it necessary, fair, reasonable and proportionate for such an award to be made; and
 - II. Where the person to be compensated would otherwise face actual financial loss.
 - d) The maximum hourly rates for waiting time by legal representatives shall be half of their hourly rate agreed in advance with the Solicitor to the Inquiry per paragraph 2(f) above.
 - e) For persons from outside the UK (other than family members of Sheku Bayoh who have been designated core participants), awards for travel expenses or compensation for loss of time shall only be where the Chair is satisfied that their travel is essential for the fulfilment of the Inquiry's terms of reference.



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APPENDIX B

GUIDANCE ON TRAVEL AND SUBSISTENCE EXPENSES

This Guidance must be read in conjunction with the Inquiry's Protocol for Witness Expenses and Compensation for Loss of Time Protocol

1. Introduction

1.1 In assessing claims for travel and subsistence expenses from eligible persons the Sheku Bayoh Inquiry (the "Inquiry") is required to pay those claims at the travel and subsistence rates that apply to Scottish Government employees for travel and subsistence within the United Kingdom. This requirement is set out in the Determination by the Scottish Ministers under section 40(4) of the Inquiries Act 2005 addressed to the Chair of the Inquiry.

1.2 In order to assist a person making an application for travel and subsistence expenses, this document summarises those parts of the Scottish Government's guidance and rates on travel and subsistence expenses that are likely to be commonly applicable to Inquiry business. It is not therefore a comprehensive guide. Anyone who has travel, accommodation or subsistence needs not covered by the material below should contact the Inquiry Hearings and Witness Team for advice. Please note that this advice should be sought before expenditure is incurred, as some types of expenditure (such as accommodation and air travel) require advance approval of the Inquiry, and some expenses may not be reimbursable by the Inquiry. The Hearing and Witness Team may be contacted at HWT@shekubayohinquiry.scot.

2. Summary of Travel and Subsistence Rates

2.1 Set out below is a summary of the travel and subsistence expenses that will be reimbursed by the Inquiry and the relevant rates. Travel expenses are the expenses that you incur in relation to travel to/ from Inquiry premises. Subsistence covers meals that you take during the time you are absent from home.

2.2 For example, if you travel by train from Glasgow to Edinburgh, are absent from home for a period of 7 hours and have lunch during that time, you are entitled to claim the cost of your train ticket by way of travel expenses and the cost of your lunch up to a maximum of £10.70 (the applicable maximum subsistence payment for a trip of 7 hours – see table below for different rates for journeys of different durations). More detail of the conditions applicable to each category of expenses/ allowances can be found in the following paragraphs.

2.3 In summary, the amounts you may claim are:

Accommodation	Rate
Bed and breakfast only	Up to £75 per night
Staying with Family/Friends	£36 per night
Travel Expenses/ Mileage Rates	Rate
Rail Travel	Actual cost, standard class only
Travel by taxi/ bus	Actual cost
Motor mileage rate	£0.45 per mile
Passenger supplement	£0.05 per mile per passenger
Motor cycle allowance	£0.24 per mile
Pedal cycle allowance	£0.20 per mile
Subsistence Expenses	Rate
Day subsistence	Actual expenses, subject to the following maximum: £4.90 if absent from home for over 5 hours £10.70 if over 10 hours £15.60 if over 12 hours
Meal allowance	£23.50

3. Travel Expenses/ Mileage Rates – Detailed Rules

Rail Travel

3.1 Standard class rail travel should be used for all journeys. You must take advantage of reduced rail fares, including day returns, saver tickets and season tickets where possible.

Taxi Travel

3.2 Taxi may be used only when other forms of public transport are not available or appropriate by reason of (for example) disability. In any claim made for the cost of taxi travel, you must explain why it was necessary to use it and obtain a receipt for the fare to support your claim.

Motor/ Motorcycle/ Pedal Cycle Mileage Rate

3.3 A mileage allowance is payable if you use your own private motor vehicle, motor cycle or pedal cycle for travel on Inquiry business. The use of private motor vehicles should only occur when it is established that public transport is neither available nor practicable.

3.4 Mileage allowance is payable for the mileage travelled between your home/ workplace and the Inquiry. The shortest practicable route should be taken. Any claim for mileage allowance must include details of the starting point and end point for the journey, together with the number of miles travelled.

3.5 If you require to make a journey to attend the Inquiry by private motor vehicle for which motor mileage allowance is payable, the receipted parking or toll charges incurred on the day for which the motor mileage allowance is payable will be reimbursed. However, you should note that car parking fines incurred for illegal parking whilst on Inquiry business will not be reimbursed.

4. Subsistence Expenses – Detailed Rules

Day Subsistence

4.1 Day subsistence is intended to cover the cost of food and (non-alcoholic) drink that you consume while absent from your home or place of work attending the Inquiry. The amount paid is the actual cost (as shown by appropriate receipts) up to a maximum amount which varies according to the length of time that you are absent from your home or place of work, calculated from the time you leave until the time you return.

The qualifying periods for day subsistence are:

- day subsistence over five hours is paid for a period of absence of more than five hours but less than, or equal to, 10 hours.
- day subsistence over 10 hours is paid for a period of absence of more than 10 hours.
- day subsistence over 12 hours is paid for an absence of more than 12 hours.

It follows from the above that no day subsistence payment may be claimed if the period of absence is less than 5 hours.

4.2 You may not claim any day subsistence if meals/ food/ drink are supplied to you at no cost or if you take meals/ food/ drink at home.

5. General

5.1 The determination by the Scottish Ministers referred to in paragraph 1.1 above specifies that awards for travel expenses or compensation for loss of time shall only be made for witnesses from outside the UK where the Chair is satisfied that their travel is necessary to the fulfilment of the Inquiry's terms of reference.

5.2 Where an application for travel and subsistence expenses exceeds £100, whether assessed individually or along with similar applications by the same applicant, the Chair reserves the right to require evidence as to the financial resources of the applicant.

5.3 Receipts are required for all expenditure claimed except mileage allowances, toll charges and where tickets have been retained e.g. at station barriers and car park ticket machines. If a receipt or used ticket is not attached then this must be stated on the application form giving an explanation of why this is the case. Credit/ debit card receipts are not accepted as proof of expenditure. Any personal items on the receipt should not be included in the claim.

5.4 Where an application is successful, the amount approved by the Inquiry will be paid in full by electronically Bankers Automated Clearing System (BACS).

6. Version control

6.1 This version of the Guidance on Travel and Subsistence Expenses is dated 22 June 2022 and is issued under the authority of the Chair of the Sheku Bayoh Inquiry. It is the second version of this Guidance.

APPENDIX C

Application for payment of travel, subsistence and/or loss of earnings expenses

1. Your name:

2. Your contact details:

Address:

Postcode:

Email:

Phone:

Your preferred way for the Inquiry to contact you about this application:

3. Why are you involved in the Inquiry (for example, are you a witness, supporting a witness etc.)?

4. Details of the expenses you are claiming:

travel costs (if any)¹:

meals and refreshments² (if any):

Please attach receipts/tickets to this form, or provide an explanation as to why you are unable to do so

5. Compensation for Loss of Time

Are you (please circle)

a) employed b) self-employed c) not employed/retired

a) If you are employed, will you be paid for this time absent from work?

If no, please provide evidence (for example, a letter from your employer)

Please provide details of the calculation of the amount you are claiming (e.g. number of hours and the amount of hourly pay or salary. You should provide evidence of the amount of your hourly pay, the number of hours of work you are missing etc. and attach it to this application):

b) If you are self-employed, please provide evidence of your daily rate of income by attaching it to this application and set out the calculation of the amount you are claiming here:

¹ For travel expenses, please specify start and end point of travel, mode of transport, cost (or for mileage claims, distance travelled) and total. E.g. "Home – Queen Street Station, Bus fare £1.70. Queen Street Station – Edinburgh, train, £26.60 (return). Queen Street Station – Home £1.70. Total £30" Or "Home – Inquiry Premises, Car, 100 miles (50 miles each way), £45. Car parking charges £4. Total £49.

² Please specify the time you left home or your place of work to attend Inquiry business and the time that you arrived back there, or expect to arrive back there, together with the amount claimed.

6. Your bank details (payment will be made direct to your bank account):

Name of bank:

Address of branch:

Name of account holder(s):

Account number:

Sort code:

DECLARATION

I confirm that the information I have given in this claim form (and any other documents I provide with it) is true and correct to the best of my belief and knowledge.

Your signature:

Date: