

# The Baha Mousa Public Inquiry

Inquiry Chairman: The Right Honourable Sir William Gage

## Note relating to applications for legal representation at public expense

1. Under section 40(1)(b) and (2) of the Inquiries Act 2005 the Chairman has power to make awards to a person in respect of legal representation expenses properly incurred, or to be incurred in relation to their involvement with the Inquiry.
2. The Chairman's power to make awards is subject to such conditions or qualifications as may be determined by the Minister causing the Inquiry to be held and notified by him to the Chairman.
3. On 20 October 2008 the Rt Hon Bob Ainsworth MP, Minister of State for the Armed Forces, under authority delegated to him by the Secretary of State for Defence, notified the Chairman of the determination he had made in relation to the qualifications and conditions that he wished to attach to any awards that are made under section 40 of the 2005 Act. A copy of the Minister's letter is annexed to this Note.
4. The Inquiry will shortly publish a Protocol relating to Legal representation at Public Expense, taking account of the qualifications and conditions that have been placed on the Chairman

**Duncan Henderson**  
**Solicitor to the Inquiry**

22 October 2008

**Annex: letter from the Minister of State  
for the Armed Forces**

**The Baha Mousa Public Inquiry**



MINISTER OF STATE FOR  
THE ARMED FORCES

MINISTRY OF DEFENCE  
FLOOR 5 ZONE B MAIN BUILDING  
WHITEHALL LONDON SW1A 2HB

Telephone: 020 7216 9000 (Switchboard)

D/MSU/4/5/2/is

20<sup>th</sup> October 2008

*Dear Sir William*

I understand that as Chairman of the Baha Mousa Public Inquiry, you intend to designate the families of Baha Mousa and the other detainees as core participants in the inquiry, and as such they may make an application to you to make an award under section 40 of the Inquiries Act 2005 (the Act) in respect of their costs of legal representation. As you know, under section 40(4) of the Inquiries Act 2005, the Chairman's power to make an award is subject to such conditions or qualifications as may be determined by the Secretary of State and notified by him to the Chairman. The Secretary of State has delegated this authority to me and I have accordingly set out at Annex my determination as to the qualifications and conditions I wish to attach to such awards.

I also understand that when the Inquiry was established in May 2008, responsibility for publication of the Inquiry report was not determined. Pursuant to section 25(2)(b) of the Act, I invite you to take that responsibility and should be grateful if you would confirm that you are content to do so.

The Rt Hon Bob Ainsworth MP

The Rt Hon Sir William Gage  
The Baha Mousa Public Inquiry  
P O Box 64365  
London  
EC1P 1PN

Private Office



MINISTRY OF DEFENCE

## Annex A

**NOTICE OF DETERMINATION BY THE SECRETARY OF STATE FOR DEFENCE TO THE CHAIRMAN OF THE BAHU MOUSA PUBLIC INQUIRY UNDER SECTION 40(4) OF THE INQUIRIES ACT 2005**

1. The Secretary of State for Defence has determined under section 40(4) of the Inquiries Act 2005 ("the Act") that the power of the Chairman of the Baha Mousa Public Inquiry to award amounts in respect of legal representation under section 40(1) and (2) of the Act to persons eligible for an award under section 40(3) shall be subject to the qualifications and conditions set out below.
2. The qualifications and conditions are:
  - 2.1 The Chairman shall only make an award relating to a person's costs of legal representation in relation to the Inquiry where he considers it necessary, fair, reasonable and proportionate to make such an award.
  - 2.2 An award shall be subject to the condition that payment will only be made for work that is properly evidenced and can be identified as having been done in an efficient and effective manner, avoiding unnecessary duplication and making the best use of public funds.
  - 2.3 An award shall be made only in respect of legal work undertaken by an applicant's legal representative whom the Chairman has designated under either rule 6 or rule 7 of the Inquiry Rules 2006 to be that person's recognised legal representative in relation to the Inquiry.
  - 2.4 The Chairman shall approve the size and composition of any legal team to be engaged by an applicant's recognised legal representative, including the number and seniority of counsel whose retention he agrees to be necessary.
  - 2.5 In determining whether to make an award the Chairman shall specify the broad areas of work that are to be covered by the award and the hourly rates applicable to all members of the applicant's approved legal team, subject to the maximum hourly rates specified at paragraphs 3 and 4 below.
  - 2.6 Having regard to the inquisitorial nature of the Inquiry, an award shall not be made in respect of investigative work undertaken by an applicant's recognised legal representative or in relation to obtaining an expert's report unless the Chairman has given his express written permission in advance for such work to be undertaken.

- 2.7 An award shall limit the maximum number of hours that can be charged by any member of an applicant's legal team in any week to 40 save that, exceptionally, the Solicitor to the Inquiry may authorise an increase to a maximum of 60 hours during the eight-week period immediately preceding the commencement of the oral hearings and during the oral hearings where he is satisfied that such increase is justified in all the circumstances. For the purposes of this paragraph a week shall be taken to commence on a Monday and end on the following Sunday, and no unused hours below the maximum in any one week may be set-off against any other week.
3. The maximum hourly rates for legal work by the members of an applicant's legal team shall be:
- |                                                                                                           |             |
|-----------------------------------------------------------------------------------------------------------|-------------|
| <b><i>Leading Counsel (whether a member of the Bar or a solicitor acting in the role of advocate)</i></b> | <b>£200</b> |
| <b><i>Junior Counsel (whether a member of the Bar or a solicitor acting in the role of advocate)</i></b>  | <b>£100</b> |
| <b><i>Solicitors:</i></b>                                                                                 |             |
| <b><i>Solicitors with over eight years post-qualification experience</i></b>                              | <b>£150</b> |
| <b><i>Solicitors and legal executives with more than four years experience</i></b>                        | <b>£125</b> |
| <b><i>Other solicitors, legal executives and fee-earners of equivalent experience</i></b>                 | <b>£100</b> |
| <b><i>Trainee solicitors, paralegals and other fee-earners</i></b>                                        | <b>£75</b>  |
4. The maximum hourly rates for travel and waiting by the members of an applicant's legal team shall be half of the agreed hourly rate relating to legal work specified at paragraph 3.
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) they have been incurred with the prior agreement of the Solicitor to the Inquiry.

