

APPLICATIONS FOR FUNDING FROM CORE PARTICIPANTS TO THE INQUIRY

Lord Justice Leveson:

1. Essential to this Inquiry has been the voice not only of the press and the police but also those who complain that they have been the subject of unlawful or unethical attention by the press and who argue that present systems of redress are inadequate to deal with their legitimate concerns. To have conducted the Inquiry without assistance from those who, at the very least, represent one section of the public would have been to fail to take legitimate and entirely appropriate account of the public concern that led to the inquiry in the first place. I emphasise that this voice has not been restricted to the famous or the wealthy but has included many who complain that they have simply been caught up in events which were not of their making and have not had a satisfactory or reasonably available route to challenge the way in which they have been treated; for fairness and balance, it has therefore been essential that those without means have been able to take a full part in the Inquiry.
2. To that end, many have sought core participant status for different modules of the Inquiry. Pursuant to s. 40 of the Inquiries Act 2005 ('the Act'), a number of those who were successful in their applications now seek a measure of reimbursement for the legal expenses properly incurred in attending or otherwise in relation to the Inquiry. I emphasise, from the outset, that this statutory power is not restricted to those who have core participant status.

Statutory Background

3. It is first appropriate to set out the basis upon which core participant status was granted. Rule 5 of the Inquiry Rules 2006 ('the Rules') states:
 - (1) The Chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.
 - (2) In deciding whether to designate a person as a core participant, the chairman must in particular consider whether
 - a. The person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;

b. The person has a significant interest in an important aspect of the matters to which the inquiry relates; or

c. The person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.

(3) A person ceases to be a core participant on –

a. the date specified by the chairman in writing; or

b. the end of the inquiry.”

4. On 6th September 2011, I heard a number of applications for core participant (CP) status at the Inquiry and, in my subsequent ruling of 14th September 2011, I granted that status to a number of media organisations and the Metropolitan Police for the entirety of the Inquiry. While rejecting a number of applications, I also granted the same status to a large number of individuals who complained about interception of voice mail communications and other illegal or unethical violations and, pursuant to Rule 7(2) of the Rules, ordered that these individuals should be represented by a single recognised legal representative. This order was specifically limited to Module 1 (which in summary form concerned the way in which the press dealt with the public) so that those who were involved could reconsider their position in relation to the other aspects of the Inquiry as it unfolded. By the start of this Module, the group (collectively and colloquially described as core participant victims or CPVs) comprised 53 individuals. It was subsequently agreed that their recognised legal representative would be Collyer Bristow LLP. During the course of the Inquiry, for good reason, a number joined the group and at least one left. I should add that I later granted CP status to the National Union of Journalists.
5. On 25th January 2012, I came to consider Module 2 which concerned the relationship between the press and the police. To the other CPs were added the Mayor’s Office for Policing and Crime (as the regulator for the Metropolitan Police and the successor to the Metropolitan Police Authority) and Surrey Police. I also considered a further application that was specifically advanced on behalf of the same individuals who had been described as CPVs, and agreed that this status should remain for Module 2. Although Collyer Bristow remained the recognised legal representative for this Module, it was agreed that Bindmans LLP would act as an agent for this part of the Inquiry. Again, other applications were refused.
6. Core participant status for Module 3 of the Inquiry (concerning the relationship between the media and politicians) came to be considered on 5th April 2012. Not surprisingly, most of those CPVs who had been involved with Modules 1 and 2 were not concerned with this aspect of the Terms of Reference and I then determined that 8 Members of Parliament (or former Members of Parliament) should be granted this status for Module 3. It is worth adding that in relation to a small number who had been CPVs (and some others), I decided that, for the purposes of this module, they did not fall within Rule 5(2) and their applications were rejected. Once again, it was

agreed that Bindmans should handle the detailed work for this part of the Inquiry. On the basis that the government was unsighted on evidence to which it could have to respond as soon as it was given, I subsequently granted a further application for CP status to the Prime Minister and a number of identified members of the Cabinet.

7. It is not surprising that nearly all of those who have sought and been granted CP status have funded their involvement and representation themselves. Most have been represented by leading and junior counsel (with News International represented by two leading counsel and a junior) and I have no doubt that very considerable cost has been incurred. The CPVs (and to a very much lesser extent, the National Union of Journalists) have sought a contribution to their funding which brings me to the statutory regime on which these applications have been made.
8. Section 40(1) of the Act allows a person to apply, in writing, to the chairman of an inquiry at any time for the award of a reasonable amount by way of compensation for loss of time or in respect of expenses properly incurred or to be incurred in attending or otherwise in relation to the inquiry. Those expenses can specifically include amounts in respect of legal representation. Eligibility for an award is governed by s. 40(3) of the Act and is only available to:
 - (a) a person attending the Inquiry to give evidence or to produce any document or other thing; or
 - (b) a person who, in the opinion of the chairman, has such particular interest in the proceedings or outcome of the Inquiry as to justify such an award.'
9. Finally, the power to make an award is subject to conditions or qualifications as may be determined by the Minister and notified to the chairman: I have received notice of such conditions and qualifications the result of which is that I have issued a protocol known as the Inquiry Protocol relating to Legal Representation at Public Expense (to be found at <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Legal-Representation-at-Public-Expense.pdf>). Thus, the applications for funding that have been made have been adjudicated in line with this protocol.
10. In exercising this power, I am required to comply with the Minister's determination and to 'act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or witnesses or others)'. Thus, I must scrutinise whether the work for which payment is claimed (and the time taken) itself represents a legitimate charge to public funds. Furthermore, subject to that determination, in assessing an application for funding, I also am required to take into account both the financial resources of the applicant and whether making the award is in the public interest. I ought finally to add that the rates payable to counsel and solicitors are set out in the Protocol, and all applications have been submitted on the understanding that these rates will be applied rather than what might be the somewhat higher rates that can be agreed between a client and his or her legal representatives.

Applications for Funding

11. A number of applications for funding have been entirely straightforward. Certain witnesses (not core participants) have been granted extremely limited funding for legal advice to cover the statements that they have been required to make pursuant to s. 21 of the Act; in each case, they have had to provide sufficient detail to the Inquiry to satisfy the requirements of the protocol in advance of such a decision. After similar declarations, travelling expenses have been granted to a few witnesses. Of the CPs, the National Union of Journalists, sought (and were granted) a modest contribution to their legal costs for which purpose their financial accounts were disclosed and assessed.
12. More difficult has been the position of the CPVs. On 25 October 2011, the Inquiry received a detailed application for funding in relation to Module 1 from Collyer Bristow who, from the outset, have distinguished between a number of their clients who are more than able to meet the cost of representation without recourse to public funds and those of modest (and, in some cases, extremely modest) means who were likely to fulfil the requirements for public funding. Without requiring full financial disclosure of each of their clients, information was sought in relation to those who Collyer Bristow considered fell within the category of moderate income or below and on whose behalf, therefore, they wished to pursue an application. For the sake of completeness, I add that on 17 April 2012, an application for funding for Module 2 was received from Bindmans, as agents for Collyer Bristow: involving, as it did, the same individuals, the application followed the same approach as that adopted by Collyer Bristow for Module 1. Finally, on 18 April 2012, with full financial disclosure from four of those granted CP status, an application was made by Bindmans in relation to Module 3 for those particular individuals.
13. Before dealing with the merits, it is important to record that I have been extremely impressed by the care shown by Collyer Bristow and Bindmans in relation to the claims for public funding which they have pursued. Not surprisingly, given the subject matter of the module, by far the largest claim is in respect of Module 1 which involved not only the preparation of many statements but also detailed consideration of the other evidence which particularly affected 'the public' and the redress available. They have been very conscious that a number of their clients have absolutely no wish even to be thought of as seeking public assistance and they (and their clients) have readily accepted (a) the need to apportion (albeit in a general way not necessarily favourable to them) costs incurred for those with means and for those without, (b) substantial limitations on the work which can be said justifies public funding, (c) the time that has such work has taken and (d) the rates at which any of the work will be funded. The upshot is that there is a very substantial shortfall between what might be described as chargeable cost and costs which the Inquiry might be prepared to meet. Thus the claim on public funds is in the region of one quarter of the costs actually incurred, the balance being met by those (performing what is, in reality, a substantial public service) who are in a position to pay them.

14. The same is so for Module 2 where much less cost has been incurred as extremely careful consideration has been given to the extent to which CPVs needed to be involved in the subject matter of the module. As for Module 3, an even more restrictive view has been taken of what involvement has been necessary to ensure that the interests of those who are CPs are represented and pursued.

Conclusion

15. It is very clear that this Inquiry has been taken extremely seriously by all who have been involved in it; enormous care and very considerable resources have been deployed by all CPs involved (along with other interested organisations) and, in addition, public funds have been expended not only in relation to the counsel, solicitors and civil servants who are part of the Inquiry team but also by those in government, the police, the statutory regulators, the PCC and many others who have gathered evidence together and presented it in a coherent and manageable way so as to allow the extremely wide Terms of Reference to be addressed within the broad time-frames available.
16. It would, in those circumstances, have been quite wrong if CPs without sufficient and available financial resource to fund representation could not have taken part. Had that been the case, there would, in my judgment, have been legitimate public concern that the Inquiry had not adopted a fair procedure and had not permitted a full picture to be presented from the perspective of those who complain that they had been the subject of illegal or unethical press behaviour. Similarly, the Inquiry would have been disadvantaged had the National Union of Journalists not been able to take such part as it felt appropriate.
17. I have therefore decided, in principle, that, subject to appropriate and acceptable disclosure and analysis of any claim, I would be prepared to approve applications for assistance towards legal representation of CPVs and others. In the light of the lengthy and comprehensive dialogue that has taken place between members of the Inquiry team and the relevant solicitors, I am satisfied to the required standard and in relation to the considerations to which the Protocol requires that it would be appropriate to make awards to both Collyer Bristow and, through them, to Bindmans in respect of the applications that have been made. The exact payments will be agreed between the Inquiry Team and the relevant solicitors in accordance with the principles I have set out or, in default, referred to me. The final amounts will be included in the overall costs information that is published regularly on the Inquiry's website.

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