

Policy and guidance on funding for professional fees in the Re-Review – June 2022

This policy and guidance replaces the old policy and applies to all Customers with immediate effect, except for transitional cases described in paragraph 26 below.

Summary

- Peter Hurst ('PTH') continues to be responsible for overseeing professional fees on behalf of the Re-Review Panel.
- Professional advice in advance of a Minded to Decision ('MTD') may be approved where it helps a Customer provide relevant information more quickly, easily and comprehensively than without such advice.
- **Up to £15,000** of professional fees are automatically pre-approved for funding by LBG for any Customer without prior application to PTH.
- Professional advice duplicating the work of the Panel is not necessary. Nor is re-presenting information a Customer has submitted previously, legal submissions on causation and loss, or the various other topics outlined below, including in paragraph 8 below.
- For approval of any professional fees **over and above £15,000**, advisers must apply to PTHurst (costs@foskettpanel.com) **before any additional work takes place**. The £15,000 pre-approved sum applies to the whole period of the Re-Review, both before and after issue of the MTD. Any part of it not used before the MTD can be used after issue of the MTD.
- After an MTD a Customer is entitled to legal advice and, if assessed by PTH to be reasonably necessary, financial advice too. Applications for any costs over £15,000 will need to be determined as appropriate and reasonable by PTH in advance, based on a scope of work and estimated costs that includes the £15,000 already incurred.
- All applications and questions in relation to professional fees should be directed to PTH via costs@foskettpanel.com.

Professional assistance in the information-gathering stage (pre-MTD)

1. If a Customer wishes, professional advice may be sought **where it helps the Customer provide relevant information more quickly, easily and comprehensively** than if the Customer were to provide information directly to the Panel and their team.
2. Up to **£15,000 (exclusive of VAT) of professional fees will be automatically pre-approved** for funding by LBG for any Customer in the Re-Review without prior application to PTH. This means that an adviser can take instructions immediately and start to support Customers without having first to obtain approval for costs up that amount. In most cases, this sum will be adequate to cover the Customer's costs to the point when the Panel issue the MTD.

Professional fees in excess of £15,000

3. **In order for PTH to approve the payment of any costs in excess of £15,000 (exclusive of VAT), the professional adviser must make their application to PTH in advance of the excess costs being incurred.**

4. If this is anticipated, the professional adviser will need to apply in good time and provide a full breakdown of the whole estimated cost (by task, hours, grades, and hourly rates), including for the first £15,000, and an explanation by reference to this policy and guidance of why the fees are “reasonably necessary” in their client’s particular case if the application is pre-MTD.

Guidance on professional assistance that is considered ‘reasonably necessary’ in the information-gathering stage (pre-MTD)

5. Here are some examples of what the Panel regard as being ‘reasonably necessary’ for an adviser (most likely a lawyer) to undertake, which PTH will take into account:
 - a) Conducting correspondence and communications on behalf of the Customer (including telephone and video conversations) with the Panel and/or their Case Managers;
 - b) Helping the Customer prepare a written response to specific information requests or questions from the Panel, if this is challenging for the Customer to do themselves;
 - c) Helping the Customer collate and present succinctly any relevant factual information about:
 - the history and the impact of the fraud on them and their business, based on any documents the Customer has, and their own personal recollections and knowledge, and
 - details of their activities and income since the fraud.
 - preparing the Customer for, and attendance with the Customer at, Case Management meetings or meetings with the Panel, if desired.

Guidance on professional assistance that is considered not ‘reasonably necessary’

6. It is important to remember that the Re-Review is an [inquisitorial process](#) rather than an adversarial one (as explained on the Panel’s website). This means that it is the Panel (and not the Customer, their advisers or the Bank) who investigate and assess a Customer’s D&C losses and who calculate any award that may be due.
7. The Panel have a large team of their own independent legal and financial advisers carrying out detailed analyses of the material for them. Unless the Panel specifically advise you in writing to the contrary in your particular case, the Panel do not need the Customer to engage their own advisers to do this. This type of work will not be funded by LBG as it would effectively be duplicating the work of the Panel, as well as extending the period, unnecessarily, before the Panel can issue a MTD.
8. Here are some examples of work that the Panel regard as being not ‘reasonably necessary’ for an adviser to undertake:
 - a) Presentation of information contained in the Customer’s statement or supporting documents;

- b) Presentation or analysis of information about the business or sector readily available from public records, or in the public domain generally;
 - c) Development or quantification of hypothetical scenarios or outcomes;
 - d) Assessment of the prospects of events occurring in a non-fraudulent (counterfactual) scenario;
 - e) Legal submissions on causation, counterfactual or loss;
 - f) Valuation of the business or assets, in the actual or any counterfactual scenario;
 - g) Calculations of Compensatory Interest or alternative forms of return on lost assets.
9. If what is provided is in effect a repetition of the submission that the Customer made during the Customer Review (to which the Panel will have access within the Customer's file), no fees will be payable in relation to that work.
10. For guidance about what information is likely to be relevant in the information-gathering stage, please see the Panel's published information on Quantifying D&C losses, in particular: [Our Assessment Methodology](#), particularly Establishing the Actual Scenario and [Potential Sources of Material to help assess D&C losses](#).
11. Because everyone wants the Re-Review concluded as quickly as possible, we do need prompt responses to any requests for information we make. It is not only important for the individual Customer's case, but is also important for Customers awaiting the Panel's consideration. We would please ask that Customers and, in particular, their advisers bear this in mind when they receive a request for information and draw the attention of the Panel to any difficulties anticipated in meeting the timetable specified in the request.
12. Where the same professional adviser acts for more than one Customer within the same company/group ('Connection'), the pre-approved sum of £15,000 applies to each Customer. Advisers are not permitted to transfer an unused part of a £15,000 pre-approved sum from one client to another.
13. If the costs incurred for a Customer pre-MTD are less than the £15,000 pre-approved limit, the balance can be carried forward for use in the Customer's MTD review stage. The Panel consider it unlikely that a professional adviser who acts for more than one Customer within the same Connection will incur costs of £15,000 for each Customer.
14. No retrospective applications for funding will be permitted. **Any costs incurred in excess of any approved estimate will not be approved for funding by LBG.**

Fees after issue of the MTD

Legal advice and assistance

15. The Panel's Scope and Methodology Statement explains that –

“Our approach will be that a Customer who wishes to obtain legal advice at that stage will be entitled to do so. The reasonable fees for this will be funded by the Bank.”

The Customer is entitled to both legal advice and, subject to a test of reasonable necessity, financial advice after the MTD if they wish, subject to PTH approving the scope of work and level of fees.

16. The £15,000 pre-approved sum applies to the whole period of the Re-Review, both before and after issue of the MTD, and any part not used before the MTD may be used after issue of the MTD.

17. If a Customer and their professional advisers expect to exceed the pre-approved £15,000 after the delivery of the MTD, the reasonable fees for this will be funded by the Bank, and PTH will determine the scope of the work and the appropriate level of fees.

18. As with professional costs before the MTD stage, going forwards, **no costs in excess of any approved estimate will be recommended for funding by LBG**. Advisers will therefore need to make an application for any costs expected to exceed the pre-approved £15,000 (exclusive of VAT) before reaching that level.

Forensic accountancy or other financial advice and assistance

19. Any costs incurred for providing advice and support falling into the categories regarded as “reasonably necessary” as described above (particularly those listed in paragraph 5) will be approved automatically provided they are covered by the £15,000 (plus VAT) pre-approved limit for all professional fees.

20. For any other type of financial advice or for any financial advice expected to take total professional fees above the £15,000 plus VAT pre-approved limit, PTH will decide on a case-by-case basis whether the instruction of a forensic accountant or other financial expert is reasonably necessary and, if so, the nature and scope of the work and the appropriate level of fees.

21. These proposed fees must be approved in advance of work being undertaken.

Application process for professional fees above £15,000

22. In order for PTH to approve the funding for any professional fees (over and above £15,000 plus VAT), advisers will need to apply to him in advance at costs@foskettpanel.com, and:

- Explain the nature and scope of the work carried out to date and being proposed;
- Provide a breakdown of the cost incurred to date identifying the time spent by whom at what grade and hourly rate; and

- Provide an estimate of proposed future costs, including a breakdown of expected hours by grade and task.
23. Any costs incurred up to £15,000 plus VAT that relate to work regarded as not reasonably necessary pre-MTD under this guidance (including the type of advice mentioned in paragraph 8 above) will not count towards the £15,000 pre-approved amount when further costs are requested above this limit. It is, therefore, important for advisers to keep detailed time records throughout.
24. PTH will review all the information provided in the application and notify the Customer and the Customer's advisers and LBG of his provisional view and consider comments from each before issuing his final costs decision.

Transitional cases

25. All Customers are subject to this Policy, except for transitional cases.
26. Transitional cases refer to Customers whose applications for costs have been the subject of a costs decision before this Policy comes into effect. These Customers are not affected by the terms of this new policy. PTH will be in touch with all Customers who are currently expecting a decision on fees to explain the position in their particular case.