

New arrangements concerning the payment of professional fees for Customers in the Re-Review

1. During the information-gathering stage

(i) Following meetings between the Panel, LBG, the APPG on Fair Business Banking and the SME Alliance in March 2021, the following arrangements have now been agreed to deal with professional fees (for legal advisers and/or financial experts) that are proposed to be incurred by a Customer **during the information-gathering stage** of the Re-Review so that these can be paid by LBG.

(ii) It has been agreed that (a) the decision as to whether it is “reasonably necessary” to instruct professional advisers at this stage of the process and (b) if so, the task of approving the fees as reasonable, will be assigned to Peter Hurst (‘PTH’), the former Senior Costs Judge in England and Wales.¹ This will mean that the Panel can continue to dedicate their time to determining cases. PTH will have access to the Panel for any guidance that may be necessary, but the intention is that PTH will essentially be the decision-maker.

(iii) Up until now, the current guidelines had only enabled the Panel to decide “exceptionally” that instructing a lawyer or financial adviser at this stage was reasonably necessary for the purposes of its work (and then to recommend to LBG that the reasonable fees for this work should be met). It has been agreed that the circumstances do not now need to be “exceptional” for such a recommendation to be made to LBG during the information-gathering stage.

(iv) From now on, a Customer will need to satisfy PTH that it is “reasonably necessary” for a professional adviser (or professional advisers) to be engaged for this stage. PTH will consider each case on its merits and will take into account all the relevant circumstances. Assuming he accepts the potential instruction of professional advisers for the information gathering stage as reasonably necessary, he will make a provisional decision on the nature and scope of the work, the hourly rate, and the total fees payable. He will then notify the Customer and the Customer’s

¹ The primary function of the Senior Courts Cost Office is the assessment of costs which are recoverable from one litigant by another litigant or by a lawyer.

advisers and LBG of this provisional view and invite any comment. He will take into account any such comments and his decision thereafter will be final.

(v) To be clear, if what is intended is simply 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 further fees would be payable in relation to that work.

(vi) The Panel wish to emphasise that the Re-Review process has been designed, following Sir Ross Cranston's recommendation to this effect, in a way that lawyers and/or financial experts are not essential during the information gathering stage. The Panel remain confident that, with the assistance of their own team of legal and financial advisers, they can assess a Customer's case for D&C losses without the assistance of lawyers and/or financial experts during the information-gathering stage. No Customer should feel obliged to engage such assistance. However, the Panel have been made aware over recent months that a number of Customers have already taken the step of instructing professional advisers and that other Customers may be contemplating doing so. It can, of course, be of assistance to the Panel to have a formulated claim to assess and the Panel understand that some Customers would prefer to have some professional support during the process. That is why the new arrangement has been put in place.

(vii) So far as fees of lawyers are concerned, Sir Ross Cranston made it clear that "[only] costs incurred by qualified, practising lawyers will be met". The fees of Claims Management Companies or other unqualified advisers for this work will not be recommended for payment by LBG in any circumstances. Financial advisers must be suitably qualified too. In those cases where a professional adviser is instructed at this stage, it will be a requirement that the Customer also provides written confirmation that they have requested that advice/representation.

(viii) In order to assist PTH in making his decisions, Customers and their advisers will be required to complete a questionnaire.

(ix) A summary of the process for PTH to decide on the payment of professional fees is set out below:

- a) Contact PTH via costs@foskettpanel.com to request that he considers whether professional advice is “reasonably necessary”.
- b) You will then be provided with a short questionnaire. This will include sections for both the Customer and the adviser(s) to complete.
- c) PTH will then review the questionnaire and, assuming he accepts the potential instruction of professional advisers, he will make a provisional decision on the nature and scope of the work, the hourly rate, and the total fees payable.
- d) PTH will then notify the Customer and their adviser(s) and LBG of his provisional view and invite comment.
- e) PTH will then take into account any comments and make his final decision.

The proposed fees for any professional services that you wish LBG to meet the cost of **should if possible be approved in advance of work** being undertaken. Any Customer who has already instructed professional advisers or who is contemplating doing so should make initial contact with Peter Hurst to alert him to their position.

2. After delivery of the ‘Minded to Decision’ (‘MTD’)

- (i) As regards **legal advice** during this stage of the Re-Review process, 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.”

- (ii) Any Customer who wishes to obtain legal advice after receiving the MTD will be entitled to do so. 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. He will not, however, have to determine whether the work is ‘reasonably necessary’.

- (iii) In order for PTH to approve the level of legal fees after the MTD, please contact costs@foskettpanel.com indicating:

- a) The nature and scope of the proposed work;
- b) The hourly rate; and
- c) The total fees payable.

PTH will review this information and notify the Customer and the Customer's advisers and LBG of this provisional view and invite any comment. He will take into account any comments and his decision thereafter will be final.

(iv) As regards the instruction of **financial experts** at this stage, PTH will take over the role previously assigned to the Panel, namely, of deciding on a case-by-case basis whether the instruction of a financial expert is reasonably necessary and, if so, the nature and scope of the work and the appropriate level of fees.

(v) In order for PTH to consider the request for LBG to meet the cost of financial advice after the MTD, please contact costs@foskettpanel.com indicating:

- a) Why the proposed work is reasonably necessary;
- b) The nature and scope of the proposed work;
- c) The hourly rate; and
- d) The total fees payable.

(v) Assuming PTH accepts the potential instruction of financial advisers as reasonably necessary at this stage, he will make a provisional decision on the nature and scope of the work, the hourly rate and the total fees payable. He will then notify the Customer and the Customer's adviser(s) and LBG of this provisional view and invite any comment. He will take into account any comments and his decision thereafter will be final. The proposed fees for any professional support that you wish LBG to meet the cost of should if possible be approved in advance of work being undertaken.

3. Work done by professional advisers arising from the IAR fraud other than in the Customer Review or the Re-Review

(i) A Customer may have had professional advisers assisting them during the Cranston Review or may have instructed them afterwards, given the findings of the Review, or have had professional assistance on other matters arising from the IAR fraud.

(ii) In order to qualify for any award for a D&C loss, the Panel have to be able to conclude firstly that the Customer was a victim of the IAR fraud. Where that occurs, it will then be open to the Panel to consider whether the costs of professional assistance arose as a result of the IAR fraud. If so, this could be considered as a separate head of D&C loss. Every case will, of

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course, depend on its own facts. Where the Panel does conclude that the costs of professional assistance did arise as a result of the IAR fraud, PTH will indicate to the Panel whether the fees claimed are reasonable, or, if not, what a reasonable level of fees would be. It would be open to LBG to challenge that decision after the MTD has been issued.