

POSSIBLE SCENARIOS FOR AN INTERIM PAYMENT AFTER THE ISSUE OF A 'MINDED TO DECISION' ('MTD')

There are various scenarios following the issue of an MTD in which an award is made after the Panel has concluded that (i) the Customer was a victim of the fraud and (ii) suffered quantifiable financial loss as a result:

1. **There is no challenge to the MTD award by either LBG or the Customer.**

There is no need for an interim payment as the award will be paid promptly by LBG.

2. **LBG does not contest the Panel's decision that a Customer was a victim of the fraud and does not contest that the Customer is entitled to the award for D&C losses set out in the MTD, but the Customer does challenge it.**

In this situation, as the Final Award will not be less than the award in the MTD, 20% of the MTD award will be made promptly by LBG as an interim payment pending the making of the Final Award if the Customer wants it.

3. **LBG does not contest the Panel's decision that a Customer was a victim of the fraud and does not contest that the Customer is entitled to some award for D&C losses though, for reasons given in its challenge to the MTD, not as much as the Panel's MTD award¹. The Customer does not challenge the MTD award.**

In this situation, until the challenge of LBG has been considered by the Panel and the Final Award determined, the final outcome will be uncertain. The Customer will have to understand that a) the position will remain uncertain until the Panel have completed their work and b) the Final Award may be less than the MTD award, although, in the Panel's view, it is highly unlikely that it will be less than 20% of the MTD award. LBG has agreed to make an interim payment of 20% of the MTD award promptly in this situation if the Customer wants it.

4. **LBG does not contest the Panel's decision that a Customer was a victim of the fraud and does not contest that the Customer is entitled to some award for D&C losses though, for reasons given in its challenge to the MTD, not as much as the Panel's MTD award². However, the Customer does challenge the MTD award.**

As in Scenario 3 above, until the challenges of LBG and the Customer have been considered by the Panel and the Final Award determined, the final outcome will be uncertain. The Customer will have to understand that a) the position will remain uncertain until the Panel have completed their work and b) the Final Award may be less than the MTD award, although, in the Panel's view, it is highly unlikely that it will be less than 20% of the MTD award. LBG has agreed to make an interim payment of 20% of the MTD award promptly in this situation if the Customer wants it.

5. **LBG either (i) contests the Panel's decision that a Customer was a victim of the fraud or (ii) does not contest the Panel's decision that a Customer was a victim of the fraud, but does challenge**

¹ LBG has advised the Panel that in this situation it does not want to be seen to be putting forward a suggestion as to what the figure might be because this is a matter for the Panel.

² LBG has advised the Panel that in this situation it does not want to be seen to be putting forward a suggestion as to what the figure might be because this is a matter for the Panel.

the conclusion that the Customer suffered any financial loss despite being a victim. The Customer either accepts the Panel's conclusion or challenges the amount of the MTD award.

In this situation, whichever position has been taken by the Customer, the final outcome will remain uncertain until the Panel have completed their work and issued a Final Award.

LBG has said that it will not make an interim payment in this situation except in the following exceptional circumstances: where prior to issuing a Final Award the Panel consider they have discussed the position sufficiently to be able to notify the Customer and LBG that, notwithstanding any challenge that has been made to the MTD, they are satisfied that a) the decision on "victim status" will not change and b) the Customer would still have suffered "significant loss" (i.e. more than 20% of the MTD Award) in which case, after issuing this notification and the Customer requests a 20% interim payment, LBG will make this payment.

If the Panel's MTD concludes that the Customer was not a victim of the fraud or was a victim, but suffered no financial loss –

6. **If the MTD is challenged by the Customer**, the final outcome will remain uncertain until the Panel have completed their work and issued a Final Award. LBG has said that it will not make an interim payment in this situation.

7. In what would seem to be the unlikely event of **LBG also challenging the Panel's MTD, as well as the Customer maintaining a challenge**, the final outcome will remain uncertain until the Panel have completed their work and issued a Final Award. LBG has said that it will not make an interim payment in this situation.

IMPORTANT NOTE

Stakeholders and customers should understand that in those situations where the Panel considers that the ultimate outcome is truly uncertain (namely, those set out in paragraphs 5, 6 and 7 above), the Panel will not respond to requests to express any provisional views until their further work has been completed to avoid interrupting their work on other cases.

The Panel will always try to deal with the situation reasonably quickly and, where they feel able to do so, identify the exceptional case referred to in Scenario 5 on their own initiative, but not in response to a request to do so.