

June 07 Legal Aid Reforms

General Unified Contract – Family Mediation Specification 2007

Summary

This is a summary of the draft Family Mediation Specification. Subject to consultation, this section will replace the terms of the existing for profit and not for profit Family Mediation Specifications under the Unified Contract with effect from 1 October 2007. Practitioners should familiarise themselves with the Legal Services Commission's draft Family Mediation Specification which provides detail of how the fee scheme will operate in practice.

The summary is designed to provide an overview of the specification and you should not therefore assume that all you need to know is included in this summary. A full copy of the specification can be accessed from the LSC's website or by copying the following link into your internet browser:

http://www.legalservices.gov.uk/docs/civil_consultations/070629_draft_family_mediation_specification.pdf

Overview

The Family Mediation Specification shall be a standalone Specification under the Unified Contract. Therefore, where a Supplier does both Family and Family Mediation work, they will have two specifications under their Contract.

The key changes are to facilitate the Fee Schemes, Removal of File review and the removal of the Quality Mark as a contract document (the Quality Mark still applies as the LSC's quality assurance standard but it is no longer a contractual document) – these elements are not open to further consultation.

Introduction

- The terms of the Family Mediation Specification shall apply to all matters commenced on or after 1 October 2007.
- Suppliers may continue to perform Contract Work on any case properly started under the previous Unified Contract Specification (enforce 1 April 2007 to 30 September 2007) or Family Mediation Contract. From 1 October, these cases will be governed by this Family Mediation Specification, but the rates of payment and terms regarding payment will be those under the previous Unified Contract Specification or Family Mediation Contract.
- All payments specified are exclusive of VAT.

Providing Information to another Supplier

- If a client chooses to instruct another supplier (on the same matter or issue), a supplier is required, on request from the new supplier and only with the client's consent, to give to the new supplier the client's file (or a copy), and reasons for the termination of the retainer, as soon as practicable.

Misrepresentation

- If it comes to a supplier's attention that a client has wilfully failed to provide information relevant to a supplier's decision to carry out Contract Work on their behalf or knowingly made a false statement or representation, and after this failure/false statement or representation has occurred, the supplier must report the matter immediately to the Regional Director.

Financial Eligibility

- The rates are as set out in the Community Legal Service (Financial) Regulations 2000 (as amended).
- A Supplier may assess the prospective client's means without the accompanying evidence where it is not practicable to obtain it. The client must provide the evidence as soon as practicable before the mediation. If the subsequent evidence shows that the client is not financially eligible, the supplier may claim the work as a matter start if:
 - (a) It has acted reasonably in undertaking the work before assessing financial eligibility; and
 - (b) It has acted reasonably in assessing financial eligibility.
- The LSC will monitor the number of cases falling into this category.

Assessing the means of a Child

- The appropriate means are:
 - (a) those of the child; and
 - (b) those persons who have care and control or are liable to maintain the child or usually contribute substantially to the child's maintenance.
- Where a supplier accepts an application for Family Mediation from a child it must consider whether it is just and equitable not to aggregate the child's means with those of the person liable to maintain him/her. The presumption is that there should be aggregation but a supplier can decide not to aggregate in certain circumstances, if it is justified.

Reference Numbers

- A reference number must be allocated to each case on first contact with the client.

Payment

- Usually, the Willingness Test will be carried out before the holding of an Assessment Meeting. However, in some circumstances, an Assessment Meeting (Alone) may be held with the party who contacted the supplier first.
- Fixed Fees have been introduced for carrying out the Willingness Test. It is payable once, even if the supplier contacts the other party more than once and is payable whether or not a subsequent Assessment Meeting takes place.
- Clients can choose whether to attend a Joint or Separate Assessment Meeting. A fixed fee is payable for a Joint Assessment Meeting. A fixed fee is also payable for each Separate Assessment Meeting.
- The fees payable:

Category of Work	Payment	Hours/Rate
Joint Assessment Meeting	£130.00 (per couple)	2hrs/£65
Separate Assessment Meeting	£87.00 (per person)	1.33hrs/£65
Willingness Test	£25.00 (per test)	0.5hrs/£50

- The Willingness Test (but not the Assessment Meeting, which must be carried out by mediators) may be undertaken either by mediators or qualified support staff.

Mediations

- Mediations may be Sole Mediations (1 mediator present) or Co-Mediations (2+ mediators present). They may be All Issues, child or Property and Finance Mediations.
- The following Fixed fees are payable and cover all associated work and no additional payments will be made:

Category of work	Single Session	Multi Session	Agreed Proposals
	Session Payment	Case Payment	Agreement Proposal
Sole All Issues Mediation	£168.00	£756.00	£252.00
Co- All Issues Mediation	£230.00	£1,064.00	£252.00
Sole Property & Finance	£168.00	£588.00	£189.00
Co- Property & Finance	£230.00	£834.00	£189.00
Sole Child Only	£168.00	£462.00	£126.00
Co- Child Only	£230.00	£647.00	£126.00

- If a Single Session is all that takes place, the appropriate session payment is all that is payable, and all the supplier should report. If more than one session takes place, the payment for the Single Session is **not** payable. Instead, the appropriate higher case payment is payable and that outcome should be reported.

- The Supplier must report a Single Session or a Multi Session only in 2 circumstances: (i) if it is **sure** that the parties will either not continue with the mediation or that the mediation has been completed; (ii) if it is **reasonably sure** that the parties will either not continue with the mediation or that the mediation has been completed **and** three months have elapsed since the Single Session, or the last session.
- If, at the end of a mediation, Agreed Proposal(s) are reached, this should be reported and the appropriate payment will be payable.
- If the mediation concludes but the parties return within 3 months on the same matter – the case should be reopened. If the parties return after 3 months – it is to be treated as an entirely new application.
- When only one party is receiving public funding, only half the fee is payable.

Notional Hourly Rates and Average Times

Category of Work	Single Session		Multi Session		Agreed Proposals	
	Average Hours	Rate	Average Hours	Rate	Average Hours	Rate
Sole All Issues Mediation	2	£84	9	£84	3	£84
Co- All Issues Mediation	2	£125/84	9	£125/84	3	£84
Sole Property & Finance	2	£84	7	£84	2.25	£84
Co- Property & Finance	2	£125/84	7	£125/84	2.25	£84
Sole Child Only	2	£84	5.5	£84	1.5	£84
Co- Child Only	2	£125/84	5.5	£125/84	1.5	£84

Monitoring and Auditing

- Fee structures can create incentives with sometime undesirable outcomes e.g. holding more than a single Session per couple when it is clear that mediation is not feasible. The LSC will monitor and audit mediation services with this in mind. It may then issue further guidance or consult further so as to amend the fee structure.
- The LSC will pay suppliers on a monthly basis and will be based on the LSC assessment of the amount that will be payable under the Contract for the period to 31 March in each year.
- Suppliers must send properly completed contract work report forms (normally, a Mediation Work Start Form and a Mediation Consolidated Work Report Form) each month. The forms must be sent together within ten days of the end of each month (i.e. for the end of July, to be received by 10th August).

Disbursements

- Disbursements may be incurred where:
 - (a) it is in the best interests of the client to do so;
 - (b) it is reasonable for the supplier to incur the disbursement for the purpose of progressing the mediations; and
 - (c) the amount of the disbursement is reasonable.
- The following disbursements may be incurred (not an exclusive list):
 - (a) interpreters' fees
 - (b) Valuers' fees
 - (c) Counsels' fees.
- The following disbursements may not be incurred:
 - (a) Mediator or client travelling expenses
 - (b) The cost of the room hire for outreach work

(c) Costs of or expenses in relation to counselling, treatment, therapy, training or other interventions of an educative or rehabilitative nature unless authorised by the Lord Chancellor Contact Centre Fees; and

(d) Client expenses.

Location of Work

- Family Mediation must be provided from the Office named in the Schedule unless it is:
 - (a) provided via any Outreach work service specially authorised; or
 - (b) approved by the LSC in writing in advance; or
 - (c) provided to a client on an individual basis where the client for good reason cannot attend a Schedule Office and it is reasonable in the circumstances for the supplier to accept instructions from the client.

Assessments

- All Assessments of Contract Work are to be on the Standard Basis as defined in Rule 44.4(2) Civil Procedure Rules.
- The LSC will normally assess only a sample of cases and may apply any findings to other cases of a similar type (and if it does this, it will do so for all relevant cases reported in the 12 months preceding the date of Assessment).
- The LSC reserve the right to amend a Supplier's future payment structure if the contract payment structure is undesirably affecting the way a supplier performs Contract Work.
- The supplier must submit its claims in accordance with the terms of any limitations placed upon the case.
- If the client has a financial interest in any claim or assessment, they are entitled to make representations in relation to the claim.
- The supplier may not claim for time spent purely on administrative matters or in meeting the administrative requirements of the Contract.

- The supplier cannot claim for time spent on legal research over and above brief checks on the law, unless the case involves a novel, developing or unusually complex point of law.
 - The supplier may not claim for any additional costs incurred because it is based in a location distant from the client where it would have been reasonable for the client to have instructed a supplier closer to them.
 - The supplier cannot claim for matters that properly fall as overheads.
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Appeals

- Appeals from the LSC's assessment decisions can be made to an Independent Costs Assessor within 28 days of notification of the decision (and accompanied by the file). The time limit for appealing may be extended by a maximum of 14 days (it must be requested for good reason within 21 days of the decision).
 - The Regional Director has a right to make written representations in response to the Appeal.
 - The Appeal will be on a documents-only basis. There is no general right for a hearing or to be represented but, if there are exceptional circumstances, a written request for an oral hearing may be made to the Assessor (at the same time as the written appeal, in the suppliers case).
 - The Assessor can refer the appeal to a panel of three assessors, whether to deal as a documents-only appeal or by way of an oral hearing.
 - At any point after submission of an appeal, but not later than 21 days after receipt of the Assessor's decision, either the supplier, the Director or the Assessor may seek clarification of a Point of Principle of General Importance.
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Responses should be sent to Terry Davies (terence.davies@legalservices.gov.uk). The consultation will close on **Friday, 10 August 2007**.