

June 07 Legal Aid Reforms

Mental Health

Final Mental Health Fee Scheme

The Legal Services Commission ('LSC') paper has published the Final Mental Health Fee Scheme which will now come into effect from *1 January 2008*. These notes summarise some of the more important provisions. The summary is designed to provide an overview of the main provisions and you should not therefore assume that all you need to know is included in this summary. A full copy of the published Fee Scheme can be accessed from the LSC's website or by copying the following link into your internet browser:

http://www.legalservices.gov.uk/docs/cls_main/Mental_health_fixed_fees.pdf

Introduction

Implementation of the Scheme was originally planned for 1 October 2007. Following consultation, the LSC has decided to delay implementation until **1 January 2008**.

The LSC will be releasing details in July 2007 of bid rounds which it proposes to carry out in areas where it considers supply may be most vulnerable.

Mental Health Fee Scheme

The LSC will be replacing the two existing remuneration schemes of hourly rates and tailored fixed fees with one system. It is the LSC's intention for the scheme to be followed by Best Value Tendering (BVT) in the longer term.

Scope of the Scheme

The Scheme will apply:

- to all providers with a contract in mental health on or after January 2008;
- to all controlled work in mental health, including advice in relation to Mental Capacity Act 2005 and cases involving clients impacted by the decision in 'Bournewood';
- to all matters opened on or after 1 January 2008 (where client is already receiving Legal Help on a matter at that date, that matter will continue to be paid under the previous arrangements until the end of the matter);

New consultation on applications to Mental Health Review Tribunal (MHRT)

In addition to the new contract specification (the final version of which is being consulted on), the Ministry of Justice will shortly be consulting on a regulation change to remove the means test for initial advice on an application to the MHRT (to correct the anomaly that whilst preparation for and representation at the MHRT hearing is non-means tested, initial advice is means tested.)

The Fees

The fees to be paid (exclusive of VAT) are as follows:

Basic Fees	Value
Non-MHRT	£275
Level 1 (MHRT)	£140
Level 2 (MHRT)	£340
Level 3 (MHRT)	£311
Additional fees	Value
Adjourned Hearing Fee	£124
<i>Remote Travel payment:</i>	
Level 1 (MHRT)	£75
<i>Remote Travel payment:</i>	£150
Non-MHRT	
Level 2 (MHRT)	
Level 3 (MHRT)	

- Each matter will attract basic fixed fees at one or more of the above levels, depending on the work carried out on that matter, and potentially one or more of the additional fees.
- However, when the total profit and counsel costs (based on current hourly rates) result in the costs being equal to or greater than **three times** the overall fee payable (i.e. 3 x (total payable fixed fees) it will be classed as **exceptional** and paid at hourly rates (which are subject to assessment)

Definition of a matter and guidance on new matter starts

Detained clients

- In general, a new matter may be opened for each client each time they are eligible to apply for an MHRT hearing.
- The following events will constitute changes in circumstances, and therefore the potential to begin a new matter for any subsequent work:
 - a client is eligible for a(nother) Tribunal hearing;
 - there is a change in the client's section type;
 - the client is discharged from their section.
- On completion, a matter will be classified as either MHRT or non-MHRT and so will either attract *either* the Non-MHRT fee *or* one or more MHRT fees. Where a matter includes both MHRT and non-MHRT work, MHRT take precedence and the MHRT fee(s) are payable.

Mental Capacity Act (MCA) matters (including possible 'Bournewood' type matters)

- These matters will be covered by the non-MHRT fee and will be subject to the financial eligibility test.
- Where preparation is needed for both an MHRT hearing *and* a Mental Capacity Act matter, a new matter may be started for work relating to the MHRT. The original matter will be limited to the non-MHRT fee.

Voluntary patients/non-detained clients (*advice not related to MCA/Bournewood matters*)

- Where the client is seeking advice on mental health issues (other than advice related to MCA/Bournewood matters), these matters will be covered by the non-MHRT fee and will be subject to the financial eligibility test.
- However, if the primary issue is not mental health, a new matter should be started under the appropriate category of law (where the provider does not have a contract in that category of law and the case is not suitable to be conducted under tolerance, a swift referral should be made).

Non-MHRT matters

- The non-MHRT fee is payable for work on cases where the issue(s) have not included work relating to the MHRT process. This might include:
 - attending a Hospital Managers' Review;
 - assisting with a complaint when other complaints processes have been exhausted or are not appropriate;
 - advocating on legal issues relating to the provision or non-provision of treatment.
- The non-MHRT fee cannot be claimed if, at any point during the case:
 - a Tribunal hearing is applied for or listed;
 - work relating to the Tribunal hearing is undertaken; and/or
 - a Tribunal hearing takes place.

Fee Levels

Level		What is covered?
Level 1 (MHRT)	Initial Advice	<ul style="list-style-type: none"> • initial advice where client is eligible and wishes to apply, or has applied, to the MHRT. • It covers initial visit and limited follow-up work. • It is payable once in all matters relating to MHRT work, including when a client transfers

		to another provider.
Level 2 (MHRT)	Negotiation and Preparation	<ul style="list-style-type: none"> • This begins once initial advice has been given and includes all negotiation with third parties and all preparation for the MHRT hearing. • It is only payable if an application has been made to the MHRT and where work is needed to progress the case for the hearing. • It also includes any attendance by the client's representative at Hospital Managers' Reviews or other meetings between the listing of an application for a Tribunal hearing and the hearing itself.
Level 3 (MHRT)	Representation before the MHRT	<ul style="list-style-type: none"> • This covers the act of representing a client before the MHRT. • Generally, this fee covers all sittings of the Tribunal until a decision is made (together with any Adjourned Hearing Fees payable).
Adjourned Hearing Fee		<ul style="list-style-type: none"> • Payable when the hearing adjourns, or is postponed or cancelled on the day of the hearing, at the request of: <ul style="list-style-type: none"> - The Tribunal or responsible Medical Officer; or - The Solicitor in circumstances where the request could not reasonably have been avoided <i>and</i> where they have already incurred travel or other costs associated with attendance at the hearing. • Includes travel to and attendance at the hearing (including advocacy) and any preparation time.

Travel & Waiting – standard travel	<ul style="list-style-type: none"> Included within the fees. 										
Travel & Waiting – Remote travel	<ul style="list-style-type: none"> The LSC will publish a list of hospitals which it deems to have insufficient services nearby, and for which it will pay one or more fixed additional fees for each matter undertaken for clients resident in these locations. Matters undertaken in remote areas will attract additional fees as follows: <table data-bbox="727 646 1349 821"> <thead> <tr> <th><u>Level</u></th> <th><u>Remote Travel Uplift fee</u></th> </tr> </thead> <tbody> <tr> <td>Non-MHRT</td> <td>£150</td> </tr> <tr> <td>MHRT Level 1</td> <td>£75</td> </tr> <tr> <td>MHRT level 2</td> <td>£150</td> </tr> <tr> <td>MHRT level 3</td> <td>£150</td> </tr> </tbody> </table> 	<u>Level</u>	<u>Remote Travel Uplift fee</u>	Non-MHRT	£150	MHRT Level 1	£75	MHRT level 2	£150	MHRT level 3	£150
<u>Level</u>	<u>Remote Travel Uplift fee</u>										
Non-MHRT	£150										
MHRT Level 1	£75										
MHRT level 2	£150										
MHRT level 3	£150										
Disbursements	<ul style="list-style-type: none"> Will continue to be claimed and remunerated separately. Counsel fees are not a disbursement and their costs are included in each fee level. 										
Exceptional cases	<ul style="list-style-type: none"> When the total profit and counsel costs (based on current hourly rates) result in the costs being equal to or greater than three times the overall fee payable (i.e. 3 x (total payable fixed fees) it will be classed as <u>exceptional</u> and paid at hourly rates 										
Prior authority	<ul style="list-style-type: none"> This may be sought from the LSC for an extra payment where counsel is to be instructed at rates higher than solicitor hourly rates (details to be consulted upon in contract specification). Will only be authorised where the LSC considers that the unusually complex circumstances of the case require and justify representation by more senior counsel at higher rate. 										

Transfer of case	<ul style="list-style-type: none">• Where matter transfers, each provider will be entitled to the full fee for each of the levels of work undertaken.
Forensic cases	<ul style="list-style-type: none">• The same structure and fees apply.
Aftercare and other relevant community care advice	<ul style="list-style-type: none">• Aftercare advice and assistance is included in the relevant fee.
NfP agencies	<ul style="list-style-type: none">• NfPs are subject to the same fees.