

July 07 Legal Aid Reforms

Category of Law Specific Provisions Specification 2007

(Debt, Employment, Housing and Welfare Benefits)

(NB. No category specific provisions are proposed in the Personal Injury, Clinical Negligence, Consumer and General Contract, education, Community Care, actions Against Police etc or Public Law categories).

Practitioners should familiarise themselves with the Legal Services Commission's draft Specification which is to have effect from October 2007 under the Unified Contract and provides detail of how the fee schemes will operate in practice.

Summarised below is a general overview of the Specification and the relevant fee tables in the Payment Annex. 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.

Full copies of the proposed Specification and Payment Annex can be accessed from the LSC's website or by copying the following links into your internet browser:

http://www.legalservices.gov.uk/docs/civil_contracting/070712_MiscellaneousCategorySpecification.pdf

http://www.legalservices.gov.uk/docs/civil_contracting/070712_PaymentAnnex.pdf

Debt

Applying for a Representation Order in certain Debt Proceedings

- Where suppliers are SQM holders or Provisional SQM holders they may provide Representation under s. 14 Access to Justice Act 1999 in civil proceedings in the Magistrates Court arising out of breach of a financial order of that court where there is a risk of imprisonment and it is in the interests of justice to provide representation.
- Payment for representation will be in accordance with the Magistrate's Standard Fee or revised Standard Fee scheme (see Part E, para 3.5 General Criminal Contract ('GCC')).
- Representation is part of the Criminal Defence Service and may also be performed by those with a GCC.
- Representation will constitute a separate Matter Start (reported using Matter Type DMCA).

Matter Start Boundaries

- Each individual debt does not, itself, justify use of a Separate Matter Start. Separate Matters Starts will generally be justified where:
 - (a) more than one debt is disputed on separate, substantive grounds;
 - (b) proceedings have been issued in respect of more than one debt (an application for liability notice in respect of council tax arrears will constitute proceedings); or
 - (c) the client faces separate enforcement of more than one debt, whether or not arising from a judgement in civil courts.

DEBT FEE STRUCTURE

Fixed Fees

Contracted		Tolerance	
Fixed Fee	Exceptional Threshold	Fixed Fee	Exceptional Threshold
£196	£588	£121	£363

(Source: Table 1 Payment Annex)

Hourly Rates – Legal Help

Activity	London Rate	Non-London Rate
Preparation, attendance and advocacy	£50.70 per hour	£47.80 per hour
Travel & waiting time	£26.80 per hour	£26.80 per hour
Routine letters out and telephone calls	£3.90 per item	£3.75 per item

(Source: Table 7 (d) Payment Annex)

Employment

Matter Start Boundaries

- Where one set of circumstances give rise to a number of statutory claims and contractual claims, all to be treated as one Matter Start under Legal Help.
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EMPLOYMENT FEE STRUCTURE

Fixed Fees

Contracted		Tolerance	
Fixed Fee	Exceptional Threshold	Fixed Fee	Exceptional Threshold
£225	£675	£147	£441

(Source: Table 1 Payment Annex)

Hourly Rates – Legal Help

Activity	London Rate	Non-London Rate
Preparation, attendance and advocacy	£53.10 per hour	£50.05 per hour
Travel & waiting time	£28.05 per hour	£28.05 per hour
Routine letters out and telephone calls	£4.10 per item	£3.95 per item

(Source: Table 7 (b) Payment Annex)

Housing

Expert Reports in housing disrepair cases

- In a disrepair case, suppliers should not instruct an expert to prepare a report outside the procedures of the pre-action disrepair protocol (see Civil Procedure Rules) unless:
 - (a) the report is required urgently to seek an injunction or repairs are about to be carried out and evidence is required.
 - (b) It appears the condition of property may constitute a statutory nuisance, the landlord has been given notice of the condition and a request for remedial works within a reasonable time and that time period has elapsed and the landlord has not made arrangements to take appropriate action.

Pre-action Protocols

- May apply for Legal Representation to conduct work set out in the protocol provided the Funding Code Criteria is satisfied.

Applying for Representation Order or Advocacy Assistance in cases involving Anti-Social Behaviour Orders

- If supplier is SQM holder or provisional SQM holder in housing, they may provide Representation under s. 14 Access to Justice Act 1999 in proceedings in Magistrates Court for an ASBO sought by a registered social landlord against a tenant or person living with him/her, or (by way of Advocacy Assistance) in any appeal against such an order to the Crown Court.
- Payment for representation will be in accordance with the Magistrate's Standard Fee or revised Standard Fee scheme (see Part E, para 3.5 General Criminal Contract ('GCC')).
- Representation is part of CDS and may also be performed by those with a GCC.
- Representation will constitute a separate Matter Start (reported using Matter Type HANT).

Matter Start Boundaries

- A single Matter Start should encompass investigation of both civil remedies and possible proceedings in the Magistrates Court under the Environmental Protection Act 1990.
- A second Matter Start should be commenced only where you reach justifiable decisions both to pursue proceedings and to assist the client with civil proceedings under Legal Help because the case appears likely to be allocated to small claims track.

Homelessness Cases

- Legal Help given in relation to homelessness must be provided on specific legal issue(s) and not for practical matters such as identifying accommodation agencies or making a referral to them.
- All matters within the course of a homelessness application should generally be dealt with under a single Matter Start.
- However, this revised draft of Specification provides that at certain points it will be reasonable to close the matter and open a new Matter Start for a matter involving a request for a review under section 202 Housing Act 1996 (“the Housing Act”), where the local authority remits the decision for further consideration or investigation. In this case, Legal Help pending the further decision should be provided under the existing Matter Start. Once a decision has been reached and an appeal is considered under section 404 of the Housing Act, the Specification provides for when a new Matter Start will or will not be justified.
- Where justified under the general provisions and subject to the sufficient benefit test, a separate Matter Start may be opened in relation to the protection of the client’s property under sections 211 and 212 of the Housing Act.
- Legal Help in relation to concurrent applications to the local authority under Parts VI and VII of Housing Act 1996 should be provided under a single Matter Start. Separate Matter Starts will only be justified where substantially different issues arise in different applications and there is sufficient benefit to the client in carrying out work concurrently in respect of both applications.

Hourly rates in homelessness and possession cases

- For matters involving Legal Help to a client who is a defendant to possession proceedings or assistance in connection with a review of a decision under section 202 of the Housing Act, the appropriate hourly rates for the purposes of calculating whether the claim meets the criteria for an Exceptional Case and for reporting and payment of the Claim are:

Activity	London Rates	Non-London Rates
Preparation, attendance and advocacy	£61.20 per hour	£57.25 per hour
Travel and Waiting time	£30.30 per hour	£29.45 per hour
Routine letters out and telephone calls	£4.40 per item	£4.10 per item

(Source: Table 7(c) Payment Annex)

Housing Possession Duty Scheme (HPDS)

- If a supplier is authorised to provide Legal Help and Help at Court as part of a HPDS they must carry out all such work in accordance with the HPDS Office Schedule and Guidance.
- The Standard Fees payable for this work are as follows:

Non-London	£79.50
London	£84.00

(Source: Table 6 Payment Annex)

HOUSING FEE STRUCTURE

Fixed Fees

Contracted		Tolerance	
Fixed Fee	Exceptional Threshold	Fixed Fee	Exceptional Threshold
£171	£513	£135	£405

(Source: Table 1 Payment Annex)

Hourly Rates – Legal Help

Activity	London Rate	Non-London Rate
Preparation, attendance and advocacy	£53.10 per hour	£50.05 per hour
Travel & waiting time	£28.05 per hour	£28.05 per hour
Routine letters out and telephone calls	£4.10 per item	£3.95 per item

(Source: Table 7 (b) Payment Annex)

Welfare Benefits

Scope of Welfare Benefits Legal Help

- A Welfare Benefits check may only be provided under Legal Help if suppliers identify it as being necessary from the presenting problem and it is required in order to aid resolution of the problem which has been identified.
- A Matter Start must not be opened where the matter could have been easily dealt with by the client (i.e. enquiry to relevant benefits authority).
- Legal Help should not be used to assist a client in completing forms unless an issue of law arises.
- Suppliers cannot attend an interview under caution under this category (Crime category only).

Representation

- Suppliers cannot represent a client at an appeal tribunal or before the Commissioners under this Contract. In very exceptional circumstances, suppliers may justify attendance as a McKenzie advisor (such cases will be monitored).

Separate Matters and Category Boundaries

- Legal Advice on a welfare benefit review and any request or supersession or appeal constitutes the same matter as previous advice.
- Separate Matter Starts in relation to different problems with different benefits will be justified only where the conditions in both paras 5.8 to 5.22 of Civil Specification are satisfied (i.e. problems are more than one separate and distinct legal problem and satisfy the conditions in the general provisions).

WELFARE BENEFITS FEE STRUCTURE

Fixed Fees

Contracted		Tolerance	
Fixed Fee	Exceptional Threshold	Fixed Fee	Exceptional Threshold
£164	£492	£133	£399

(Source: Table 1 Payment Annex)

Hourly Rates – Legal Help

Activity	London Rate	Non-London Rate
Preparation, attendance and advocacy	£50.70 per hour	£47.80 per hour
Travel & waiting time	£26.80 per hour	£26.80 per hour
Routine letters out and telephone calls	£3.90 per item	£3.75 per item

(Source: Table 7 (d) Payment Annex)

For all other fees (such as CLR hourly rates and Standard and Graduated Fees and hourly rates for all other specific categories of law – see the **Payment Annex** of the Civil Specification 2007).