

The principles set out in this document are intended to provide clarification concerning the Mental Health Specification introduced in January 2008 and as such should be read in conjunction with the relevant sections of the Specification. These notes are set out with headings which correspond to the relevant section of the Specification to which they apply, being based on a number of frequently asked questions that the LSC has received from suppliers since the Fixed Fee scheme commenced. In all matters relating to the performance of Controlled Work the primary source for decision-making remains the Unified Contract.

The Mental Health Fee Scheme MH 12.4 - 12.10

- You are entitled to claim all levels of fees relevant to the stages of work which you undertake. For example in a Section 2 case in which you have been instructed on the day of the Tribunal hearing, you may claim Levels 1, 2 and 3 if work justifying the Level 2 has been undertaken. This would depend on whether thirty minutes of “substantive preparation” as defined by rule 5.9 of Part A of the Civil Specification had been carried out between the end of initial instructions and the start of representation. If it has then Levels 1,2 and 3 can be claimed.
- **New fee rates took effect in July 2008. The new fees are set out in Appendix 10 of the Deed of Settlement and only apply to matters commencing on or after 1st July 2008 and during the lifetime of the current contract. Therefore any cases started prior to 1st July 2008 will continue at the old rates and fixed fees, regardless when each subsequent stage is reached.**

Non MHRT Fee MH 12.13 - 12.17

- If you have conducted a non MHRT matter you are entitled to claim the non MHRT Fee of £275. If you subsequently give advice on a tribunal application but do not make the application you remain entitled to the non MHRT Fee and do not have to substitute it for a L1 MHRT Fee.

The L1 MHRT Fee would only replace the non MHRT Fee in circumstances where there was an application made to the tribunal and in those cases a L2 MHRT Fee would also usually become payable subject to having carried out at least 30mins substantial legal work. (See MH 12.21)

- Where a managers meeting is automatically convened UNDER SECTION 20 OF THE MHA on the submission of the Form 30, this will be classed as a **renewal** hearing and will 'roll back' into the eligibility period (and therefore into any other applicable fees from that period) in which the Form 30 was submitted, even where all work is actually undertaken in a new period of eligibility.

In any other circumstances, and particularly where the managers are meeting to consider an **application made by the patient**, this will not be classed as a renewal meeting and the matter will sit within the same period of eligibility in which the application to the managers was made.

- For billing purposes all work done under the non MHRT Fee or the L1 MHRT Fee is carried out under Legal Help and as such Legal Help rates should be used when calculating costs. All work done under the L2 MHRT Fee and the L3 MHRT Fee is carried out under CLR and CLR rates should be used accordingly.
- **Where a client receives a decision from the MHRT for deferred conditional discharge this constitutes aftercare advice and is therefore covered by the MHRT Fees paid in the case. For the avoidance of doubt, an adjourned hearing fee can be claimed for each meeting of the tribunal in respect of this decision. Once it is clear that there are to be no more hearings (ie at the point at which a final decision is made) then a L3 fee may be claimed in respect of the last hearing attended.**

Aftercare advice will not constitute a separate legal issue and MHRT files should not be billed until all such issues are dealt with.

Only one stand alone non MHRT matter may be opened in any period of eligibility unless a separate and distinct legal issue arises justifying a further matter start.

- Where a client has a number of different issues including eg treatment, s117 meeting etc and in addition has a tribunal application generally the MHRT Fees payable will include all the other non-MHRT issues. Only where there is a separate and distinct legal issue will it be allowable to open a non MHRT matter.
- A manager's review of a barring order against the nearest relative on which the client (who is the patient) wishes advice and assistance does not constitute a separate and distinct legal issue and as such you may not claim a separate non MHRT Fee for this work if the client applies for a MHRT in the same period of eligibility.
- Where you advise a client generally and claim a non MHRT Fee this must roll-up into any subsequent MHRT Fees that are incurred even if

the tribunal application is made by the client independently and you only become involved at a late stage.

- The “**rolling-up**” principle also applies where the client is the nearest relative . Where a non MHRT matter is opened to advise the nearest relative generally on their rights and they subsequently make their own application to the tribunal the non MHRT Fee will be rolled-up into the MHRT Fees.
- In cases where the initial advice regards tribunal matters and the client is advised not to apply the non MHRT Fee should be claimed but no means assessment is required.

For the avoidance of doubt, if the client is not eligible to apply for a tribunal at the time of the initial attendance a means assessment must always be carried out, (e.g. first 6 months on a s37, already had tribunal in current period etc).

- When a client is informal only the non MHRT Fee is payable. If work is begun while a client is informal and continues after they are made formal the non MHRT fee can be claimed separately from any MHRT Fees that may also be payable in the period in which the non MHRT matter concludes,i.e there is no need to roll the informal work into the work undertaken once the client becomes subject to a section.
- The application to the MHRT is deemed to have been made, for the purposes of calculating the appropriate Fees, when the form is submitted to the MHRT
- If you open a non MHRT matter to advise on a tribunal application which is not subsequently made this does not require a means assessment to be carried out. If you go on to provide further advice under this matter there is no further requirement to carry out a means assessment.

Level 1 MHRT Fee MH 12.18 – 12.19

- This fee covers initial advice where the client is eligible to apply for, and subsequently makes, (or has already made), an application to the MHRT. All work at this level should be claimed at Legal Help rates.
- If the application has been made prior to you receiving instructions, the level 1 fee is claimable once initial instructions have been taken and a decision to proceed has been taken. This includes those situations where instructions are received at the last minute.

Level 2 MHRT Fee MH 12.20 – 12.23

- The level 2 fee is payable once the 30 minute requirement for further work has been met. Please see Rule 5.9 in Part A of the Civil Specification and Rule 12.21 of the Mental Health Specification.
- The 30 minutes qualifying work should be claimed as part of the level 2 fee. Any work undertaken under the level 2 fee should be claimed at CLR rates

Level 3 MHRT Fee MH 12.24

- The level 3 fee is payable for representing the client before the MHRT and includes any aftercare work.
- The Level 3 fee will become payable for the hearing where a final decision is reached. “Decision” refers to a disposal at the point at which it becomes clear that there will be no further tribunal involvement relating to a period of detention.
- If an MHRT has adjourned on one or more occasions in circumstances which would entitle you to claim an Adjourned Hearing Fee, but no “final” hearing ever takes place, you may claim an MHRT level 3 fee in substitution for the last Adjourned Hearing Fee (Mental Health Specification 12.27).

The Adjourned Hearing Fee MH 12.25 – 12.27

- The adjourned hearing fee is payable in respect of adjourned Tribunal hearings only. It does not apply to any adjourned Hospital Managers meetings.
- You must have attended the place of hearing and demonstrate on file that you could not reasonably have known about the cancellation before making the journey to the place of the hearing (see Mental Health Specification 12.25). If the tribunal is adjourned at your request you must demonstrate that you could not have known about the necessity for an adjournment before travelling to the tribunal and that it could therefore not have been requested prior to the tribunal convening.

- The following are examples of where the adjourned hearing fee may be claimed:
 - No hearing can take place (i.e. it is cancelled) because some Tribunal members are not present.
 - The hearing is adjourned for other reasons outside of the provider's control (for example, medical reports which should have been available are not available).
 - The provider has to ask for an adjournment in order to act in the best interests of the client (for example because of the patient's presentation on the day).

Remote Travel Payments MH 12.28 – 12.33

- The Commission is committed to providing access for all clients entitled to assistance under the Mental Health SQM category. You are encouraged to inform the Mental Health Lead at your Regional Office if you believe that you have identified a new location which has insufficient access.

Exceptional Case Provisions MH 12.34 – 12.38

- When calculating whether the case is exceptional travel costs, like all other profit costs, are included within the fees, and should be included in the profit costs. Travel costs covers travel time at hourly rates. Mileage and train fares are examples of disbursements and are therefore paid **outside** the fees.

Prior Authority for Counsel MH 12.40 – 12.44

- You may not claim counsel CLR rates for work carried out by in-house counsel or solicitor advocates.
- You may not obtain prior authority for higher rates for in-house counsel or for solicitor advocates (whether in-house or external).

Financial Eligibility and Funding Code Criteria (incl form completion)

MH12.46 – 12.50

- Matters conducted under Legal Help (eg those attracting the L1 non-MHRT Fee) will ordinarily require you to carry out a means assessment. However, if advice has been provided on an application to the tribunal at the outset and such an application is a realistic possibility, provided that this is clearly recorded on the file the means assessment need not be carried out. For the avoidance of doubt, if the client is not eligible to apply for a tribunal at the time of the initial attendance a means assessment must always be carried out.

- Means assessments must be carried out even where the client lacks capacity. This is because Legal Aid remains fundamentally a means tested service and as such, other than in certain specified matters, may only be provided to those who have been assessed as being eligible according to the relevant regulations.

In cases where a means assessment has been carried out this must be done in accordance with the relevant Rules & Guidance and in particular evidence of eligibility must be obtained and retained on file. Please refer to Unified Contract Paragraph 2.4 which stipulates *“Satisfactory evidence, as described in guidance, in support of the prospective Client’s information as to their means must be provided to you before you assess financial eligibility, subject to the provisions of Paragraph 2.5. The evidence (or a copy) must be retained on the file.”*

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Although the Contract requires that evidence is obtained at the outset in practice no reduction would be made if evidence was obtained at any time in the case as long as it demonstrates that the client was eligible at the time the Legal Help form was signed. It should be noted however that this approach **may** put costs at risk should the evidence never be obtained or if it subsequently does not support the means assessment carried out.

Unified Contract paragraph 2.5 sets out the limited circumstances under which work may be performed without first obtaining evidence of income. It also sets out the restrictions to be applied to claims for costs in cases where evidence is not subsequently obtained. However we recognise that it may sometimes be difficult to obtain proof of income particularly with regard to detained patients. In such circumstances you should follow the guidance in the LSC Manual, Vol 2 Part F para 12.11 which provides that *“ It will often be impracticable to obtain evidence of income from patients with mental health problems who are in hospital (for example, those detained under the Mental Health Act). Practitioners should however attempt to obtain oral or written confirmation of the position (e.g. type of benefit received) from the ward manager or social worker where practicable”*.

For the avoidance of doubt, evidence of income should be provided in all cases when a means assessment is required and the onus is on the provider to demonstrate that reasonable attempts have been made to obtain it, or to justify why such evidence could not be obtained. In circumstances where evidence is not obtained the following approach will be taken:

- For detained patients, if reasonable attempts have been made to obtain the evidence, then costs may be allowed in principle (subject to the usual reasonableness test)
 - If reasonable attempts have not been made to obtain the evidence no costs will be allowed. If no attempt is made a provider cannot simply rely on comments in medical reports such as “client is on appropriate benefits” unless that benefit and the amount received is identified.
 - For non detained patients no costs will be allowed in any cases where there is no evidence on file without reasonable justification
- There is a combined Legal Help & CLR Form Version 3 which became mandatory from October 2008 for use only in Mental Health matters. The form contains boxes to denote whether a non-MHRT matter is means tested or not and the relevant box should be marked.
 - If you travel to see a client to take initial instructions but they then refuse to see you and the forms are not completed then no Fee may be claimed.
 - If a non-MHRT issue subsequently becomes part of a matter attracting MHRT Fees only the original LH/CLR form is needed.
 - The CMRF client demography information is not mandatory however it is extremely useful in monitoring equitable access to services and as such we encourage suppliers to assist us by completing this wherever possible.

Controlled Work Matter Start Boundaries MH 12.51 – 12.63

- The term ‘complaint arising out of the client’s status as a patient’ [para 12.15(b) of the Mental Health Specification] refers to their current status as a detained patient and therefore relates to complaints regarding issues or incidents which occur in the current period of eligibility.

Accordingly, where the matter relates to a complaint regarding issues from a previous period of eligibility the non MHRT costs will not roll-up into the MHRT Fees in the current period.

If the complaint does relate to a period in which MHRT Fees are also payable and as such is rolled-up, the matter, including the tribunal costs, should not be closed and billed until the complaint matter has been closed.

- If a tribunal is concluded and the relevant MHRT Fees paid any issues which subsequently arise within the same period of eligibility will not generally justify a new matter start. A further non MHRT Fee will not become payable unless any issues constitute separate and distinct legal issues. Examples may include matters arising under the Mental Capacity Act or potential JR of the hospital (as opposed to the tribunal).
- Where a tribunal reconvenes, for example following a statutory recommendation under s72(3) as opposed to the constitution of a new tribunal due to a new application or referral, this does not constitute a new matter and the original matter should be kept open until final disposal.
- If a client remains as a voluntary patient after the removal of a section a separate non MHRT matter may be opened if a new legal issue arises requiring advice and assistance.

The following examples DO NOT constitute separate matters:

Where the client is the nearest relative who receives advice under legal help regarding their responsibilities and subsequently applies for a tribunal in their own right, then this should be treated as one matter with the non MHRT fee rolling up into the MHRT fees.

Where the client is a patient, a managers hearing which is convened to consider an appeal against a barring order is not considered to be a distinct and separate legal issue if it arises during the same period of eligibility in which the client has requested assistance with a MHRT.

A forensic client is advised and represented at MHRT, and is not discharged. The client wishes the provider to attend a subsequent CPA meeting falling within the same period of eligibility. The advice given and support provided at the CPA meeting relate in part to issues which may be relevant to a future Tribunal or period of eligibility. This is not a 'separate and distinct' matter and should be rolled up with the MHRT fees being claimed within the existing period of eligibility

The following examples DO constitute separate matters:

A Tribunal decides not to discharge a patient and the section is subsequently renewed. The patient then enters a new period in which they are eligible for a Tribunal hearing. If a new application is immediately made

two matters are claimable because a NMS can be started once a client enters a new period of eligibility. See MH12.55

Exceptionally a client may be transferred twice within same period of eligibility, e.g. a client has a Tribunal hearing booked in Bristol hospital. They are then transferred to London and the case transfers to another provider at the same time. The client is transferred back to Bristol (and to the original provider) before the Tribunal hearing has been re-arranged, and within same period of eligibility. The original file will have been closed upon the first transfer/referral. This example would constitute three separate matters.

Granting an Application for Controlled Legal Representation

- CLR is not available for a nearest relative to be represented at a tribunal unless the tribunal is to consider an application made by the nearest relative.

For all queries relating to Mental Health cost assessment or the Mental Health Specification you should contact the Mental Health Unit. For all other queries you should contact your regional Mental Health Lead who is based at your Regional Office.