

## **Mental Health Fee Scheme and Specification**

### **Additional Questions and Answers following Provider Workshop Events**

#### **Matter Start Boundaries**

**1. In a case for a restricted patient, the MHRT recommends deferred conditional discharge subject to approval by the RMO on the basis that suitable accommodation is found. The patient continues to be detained whilst they are waiting for suitable accommodation in the community. Is it possible to open up a non-MHRT matter?**

Normally this would be aftercare advice, which would be part of the same matter. If significant distinct legal issues were raised, such as new issues relating to the patient's treatment, this could potentially be a new matter.

**2. The Tribunal recommends transfer to another hospital, but also specifies reconvening if any problems with transfer occur. Problems do occur and the Tribunal is reconvened. Has the Tribunal finished after the first hearing i.e. are fees claimable at this point? Is the second hearing a separate MHRT matter?**

No, the case should remain open until the case has been disposed of in accordance with the specification 12.24.

**3. A client has a number of different issues, for example treatment, confidentiality, s.117 meeting/decision, as well as an MHRT application. These may have been reported as separate cases in the past, so can they still be claimed separately?**

The general rule is that the MHRT Fees payable in that case will also cover all non-MHRT legal issues (see paragraph 12.14 of the Mental Health Specification) but if there is a separate and distinct legal issue a new matter can be started, as per the general specification. A s.117 meeting will not count as a separate and distinct issue requiring a new matter start (see para 12.15 of the specification).

**4. If a Managers' Hearing is held for voluntary patient and there is subsequently a complaint (and the patient is still voluntary), are these separate non-MHRT matters?**

Yes.

**5. A Tribunal results in the reclassification of a patient, leading to a new period in which they are eligible for a Tribunal hearing, and in which a new application is immediately made. Are two matters claimable?**

Yes.

**6. A Hospital Managers' Review takes place at the point of renewal of section, and there is likely to be an MHRT in the new period. Can this be claimed as two separate matters?**

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If an MHRT matter is open, the Managers' Review forms part of this matter. Once the client is in a new period of eligibility (i.e. newly eligible to apply for a Tribunal hearing), e.g. as a result of section renewal, a new MHRT matter can be opened.

If the Manager's Review is being dealt with through a non-MHRT matter, similarly, a new matter can be opened in the next period of eligibility to deal with the MHRT as necessary.

**7. What does a 'decision' at MHRT mean, for example what's the difference between recommendation to reconvene if problems appear, and decision to reconvene whatever happens?**

"Decision" refers to a disposal. This is not about whether the Tribunal reconvenes (or intends to), but refers to the point where a decision has been made on whether to discharge the client (including conditional discharge) or not. Where the Tribunal is to reconvene then the Level 3 fee is not payable until that further hearing has taken place (the Adjourned Hearing Fee being payable for the first hearing), unless the client is discharged before the final hearing - in which case L3 Fee is payable (see 12.27 of the Mental Health Specification).

**8. 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. Is this a 'separate and distinct' matter, despite technically falling in the same period of eligibility?**

No.

**9. 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. Does this example constitute three separate matters?**

Yes.

**10. A client receives a recommendation for supervised discharge, instructs the provider that no further help is required at a s.117 meeting, so the provider closes case. Some weeks later client calls again (within same period of eligibility) and asks for help with e.g. CPA. Is this a separate and distinct matter?**

This is not a separate matter - providers should keep the file open. See Paragraph 12.15 of the Mental Health Specification.

**11. A Hospital Managers' Review takes place right at the end of the period of eligibility, in essence to decide upon the necessity of a new section. Should this be wrapped up in either the preceding or following periods of eligibility?**

If the Hospital Managers' Review takes place at the end of a period of eligibility it should be considered with other work within that period of eligibility (not the following one) and will be paid the Non-MHRT or MHRT as appropriate.

**12. A s.37/41 client is awarded a deferred conditional discharge order following a three-hour hearing, and the MHRT agrees to reconvene in three months time depending on whether the client's discharge conditions are met. Is this all part of the same matter?**

Yes.

**13. A provider has travelled to see a client on their request, but when provider arrives the client is not able to give instructions as to whether they wish to apply for a Tribunal hearing or not in the initial interview. The provider therefore closes the file down and claims when nothing further is heard for a few weeks. It later becomes apparent that the client has applied for a Tribunal hearing without the knowledge of the provider, and has listed them as the legal representative. The provider may become aware of this as late as the day before the hearing. Is this deemed a new case (i.e. the approach of the client is separate and distinct for each portion) even though it occurs in same period of eligibility?**

This will depend on the circumstances of the case and the provider will need to exercise judgement (as currently) and ensure all decisions are reasonable and are justified on the file.

**14. What is the definition of “complaint arising out of the client’s status as a patient” as recorded in para 12.15(b) of the Mental Health Specification?**

This refers to their *current* status as a detained patient, and therefore to a complaint relating to issues which arise and / or incidents which occur during the *current* period of eligibility.

**15. Under what circumstances would a complaint made within a period of eligibility not be rolled up into any MHRT fee(s) claimed within the same period of eligibility?**

When the complaint pertains to an issue that had not arisen during the period of eligibility to which the MHRT fees relate – for example a complaint arising from issues relating to or incidents occurring during a *previous* section / stay in hospital.

**16. If the Tribunal concludes and the client is not discharged, can I claim a non-MHRT fee for any subsequent issues where advice is required within the same period of eligibility?**

See specification paragraph 12.14-12.16. In general, no – but if there are separate and distinct legal issues a new matter may be started to deal with them.

**17. If the decision of the Tribunal is to transfer a client but in the event the transfer does not occur and the Tribunal is re convened, can I claim a new matter start, and if so at what level?**

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No, the case should remain open until the case has been disposed of in accordance with the specification 12.24.

**18. If a client is advised after the removal of section whilst he stays a voluntary patient perhaps for some period, can a separate non MHRT fee be payable.**

Yes, assuming there is a separate non-MHRT legal issue which begins after the MHRT matter is closed.

**19. Does an adjourned Managers' Hearing attract an Adjournded Hearing fee?**

No.

***Which Fees can I claim?***

**20. If a provider is asked to represent a patient at an MHRT hearing at the very last minute, is the L1 fee payable?**

Yes, the Level 1 fee is payable.

**21. Can counsel CLR rates be claimed if an in-house barrister or solicitor advocate is instructed?**

**If we instruct a solicitor advocate can we apply for prior authority to exceed the solicitor remuneration rate?**

No, the hourly rates specified in the payment annex should be claimed for an in-house barrister or for a solicitor advocate. You cannot obtain prior authority for higher rates for in-house Counsel or for solicitor advocates (in-house or external).

**22. What happens if I take instructions rapidly from numerous patients on one visit to hospital, but may later see each patient on a number of occasions before the application to the MHRT is made. At what point is the Level 1 fee claimable?**

The L1 MHRT fee is claimable when the application is made to the MHRT.

**23. I visit a hospital, take instruction to apply to Tribunal, and fax forms to my secretary who sends the letter and application form to MHRT. I then remain at hospital to peruse medical records and speak further to the client. Are MHRT L1 and L2 claimable?**

Yes. Level 2 is payable if the 30-minute requirement for further work is met (see Paragraph 12.21 of the Mental Health Specification).

**24. Under what circumstances can I claim the Adjournded Hearing Fee if I travel to the hospital for the hearing and the hearing does not take place?**

The following are examples of where the adjourned hearing fee can 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 state on the day).

**NB** In all these examples, the provider will have to have attended the place of hearing and demonstrate on file that they could not reasonably have known about the cancellation / necessity of an adjournment before making the journey to the place of the hearing (see Mental Health Specification 12.25).

The Level 3 fee will become payable for the final hearing where a disposal is reached. 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).

## **25. How do we take into account travel costs when calculating exceptional cases?**

Travel costs, like all other profit costs, are included within the fees, so should be included in the profit costs used to calculate whether the case is exceptional.

Travel costs covers travel time at hourly rates. Mileage and train fares are examples of disbursements and are therefore paid **outside** the fees.

## **26. Where a patient's status changes from informal to formal, what fees are now payable?**

When a client is an informal patient, work for them is paid the Non-MHRT fee. MHRT fees are not payable in any circumstances for a client who is neither detained nor subject to compulsion. When their status changes and they become a formal patient, they enter a period of eligibility, i.e. they have a right to a Tribunal hearing. Therefore all MHRT fees become potentially payable depending on the work carried out.

## **27. The client is given initial advice on an MHRT application, no application takes place and a complaint arises which the provider then deals with. Should the client be means tested and at what point?**

No – and the case should be recorded as non-MHRT non-means tested.

## **28. When is the application deemed to have been made to the MHRT (i.e. the the Level 1 fee becomes payable)? Is it when the form is sent and not when MHRT provides a response?**

Yes - the application is made when the form is sent.

## **29. I receive an urgent telephone query from client and I advise them not to pursue an MHRT hearing yet. The client subsequently has a Hospital Managers' Review, for which further advice is given. Is this wrapped up as an MHRT matter, or should the client be means-tested at the outset in order to safeguard against future non-MHRT matters?**

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No – this is not an MHRT matter. The case should be recorded as Non-MHRT and is not means-tested.

**30. If I travel to see a client to take initial instructions and they then refuse to see me, what level of fee, if any, may I claim?**

No fee may be claimed at that point. If the case continues and fees are payable (including L1 which would cover this visit), the travel time for this visit could be claimable.

**31. In a Section 2 case in which I have been instructed on the day of the Tribunal hearing, what levels of fees may I claim - Levels 1,2 and 3? Or just 1 and 3 only?**

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.

**32. If I am en route to the Tribunal and I receive a phone call to say that the hearing has been postponed, can I claim the Adjourned Hearing Fee?**

No, unless you have actually attended the place of the hearing you cannot claim this fee.

**33. If I initially attend the client to provide advice on the possibility of a Tribunal but advise that it is not appropriate to make an application (either because of the prospects of success or where it turns out the client is not in fact eligible for a hearing), what fee can be claimed?**

The non-MHRT fee can be claimed if other advice has been given, but the matter does not have to be means-tested.

**Forms**

**34. Why is there a box for Non-means tested Non-MHRT on the combined LH/CLR form?**

This is for cases where initial advice on the MHRT is given (so no means test is applied), but as a result of advice no application is made, so any issues that are progressed will attract the Non-MHRT fee.

**35. Is CMRF client demographic information discretionary?**

Yes. However, this information is extremely useful to us in monitoring equitable access to services, and so we encourage providers to assist us in this wherever possible.

**36. If a non-MHRT (means assessed) issue becomes part of a matter attracting MHRT fees, is only 1 x LH/CLR form needed?**

Yes.

**37. Should an .xls or.csv file be used for substitute CMRF files whilst there are problems with online submissions?**

You should submit the bulkload spreadsheet as a **.xml file**, a **.csv file** or as a **text file**. For more information on submitting the bulkload spreadsheet please contact the **Online Support Team** on 020 7718 8359 or email [online-support@legalservices.gov.uk](mailto:online-support@legalservices.gov.uk)

**38. Is the new LH/CLR form only applicable for Mental Health? If there is a Community Care case that arises, for example out of a s.117 meeting, can the same form be used?**

The new form is only for Mental Health matters.

**39. A complaint (relating to the current section) forms part of a matter payable through MHRT fees. However, unusually, this complaints run for very much longer than the section, and so overlaps with two or even more periods of eligibility. When should the provider close the matter?**

It should remain as one matter, and the claim should be made when the issues are all closed. For any subsequent period of eligibility a new MHRT matter may be opened to deal with a Tribunal hearing in the normal way.

**Other**

**40. What costs can we claim for attending a Managers' Hearing?**

Where costs are incurred in work that will be paid as a non-MHRT or a Level 1 Fee, these should be claimed at Legal Help rates. Where costs are incurred in work that will be paid as a Level 2 or Level 3 Fee, these should be claimed at CLR rates.

**41. Who is responsible for updating your list of all MHRT locations?**

The LSC is responsible for this, but providers are encouraged to inform Regional Offices (Mental Health Lead) if they believe they are serving at / have identified a new location.

**42. If there are difficulties with the MHRT system, e.g. hearing papers only being received on day of MHRT, does the LSC wish providers to push for an adjournment if the client agrees? Some MHRT panels do force an adjournment through on the day if this happens, but this is not a consistent course of action.**

You should act in the best interests of your client.

**43. Whom do we contact with Mental Health queries?**

You should contact the Mental Health Unit for Cost Assessment/Specification queries and your Regional Office for any queries concerning your contract management including remuneration and matter start allocation.

**44. In many cases, clients will make repeat calls to the provider for advice (e.g. 'I want to get out') and TLS regulations ensure that providers respond to all**

**instructions. How can receipt of these telephone calls be claimed to comply with both LSC and TLS regulations?**

Dealing with the telephone calls needs to be justified and evidenced on the file.

**45. How far are providers to pursue the obtaining of evidence of income under the fixed fee scheme? We are frequently obstructed in this by officials from other Government departments, citing (for example) the Data Protection Act, and this leads to wasted time and resources, particularly in the context of a fixed fee scheme.**

See guidance on evidence of means in Volume 2 of LSC manual and in the Unified Contract Civil Specification. If additional information is required in specific cases providers should contact the mental health unit.

**46. Under what circumstances may non-fee-earners claim for work undertaken?**

The key is whether the work is of a fee-earner nature rather than the status of the person who undertakes the work (provided they are competent to carry out that work). Purely administrative matters and taking/passing on messages will not count as fee earner work. Section 2 of the Cost Assessment Guidance gives full details and if providers wish to discuss specific scenarios they should contact the mental health unit.

**47. Why is it considered reasonable to assess the means of somebody who lacks capacity?**

Legal Aid remains fundamentally a means tested service with certain very limited exceptions, which tend to relate to the state's involvement or obligation. Having legal assistance to someone lacking capacity means tested is not denying either legal aid to them or the importance of assisting them. It is saying that they should pay for their legal assistance if they can afford to- this reflects the general approach of the courts, that proceedings will be funded from the assets of the person without capacity.