

Mental Health Additional Questions and Answers 10th August

Since the publication of the Mental Health fee scheme on 22nd June, we have received several queries from providers. This document will be updated weekly with new questions and answers. If you have any additional questions, please email them to: yourquestions@legalservices.gov.uk

Please note that many questions received related to the draft specification for Mental Health, which is currently out for consultation, so these questions have not been answered here. The consultation closes on 3rd August and we would welcome your views on the specification. More information can be found here: http://www.legalservices.gov.uk/civil/docs_for_consultation/consultation_mental_health_spec.asp

1. When will the final version or new draft of the Mental Health Specification be made available?

The final version of the Specification (all categories except MH) will be posted on our website in mid-August along side the notice to amend the Unified Contract from 1 October.

The Mental Health specification will be available in late October

"For up to date information on the latest publications, please visit our website at http://www.legalservices.gov.uk/civil/unified_contract.asp

2. When and how will providers be trained on how the scheme will work in practice?

In the autumn the LSC will hold training events focusing on detailed operational issues ie- what fee to claim for what types of case, when new matters can be started, how to fill in the claim forms, how we will pay for exceptional cases etc.

3. In cases where the client has been moved to a more appropriate hospital a greater distance away from their solicitor, can the same firm continue to advise?

Yes

4. Is it possible for a supplier to receive both a remote travel fee and an adjourned hearing during a case?

Yes- the payments for remote travel and adjourned hearings are entirely separate and unrelated.

5. What factors are taken into account in deciding whether a case will be exceptional?

Exceptional cases are determined by their costs.

A case is exceptional if the profit + counsel costs are equal to or greater than three times the fee payable, plus 1 times any additional travel payments or adjourned hearing payments. For example:

For an MHRT case with work at Levels 1, 2 and 3 to qualify as exceptional, the profit + counsel costs would need to be greater than or equal to:

3 x (Level 1 Fee + Level 2 Fee + Level 3 Fee)

i.e.: 3 x (£140 + £340 + £311) = £2,373.

If the case qualifies as exceptional all profit costs will be paid at hourly rates.

6. When will the list of “remote” hospitals receiving the additional travel payments be available?

The definition of “remote” and the list of remote hospitals are being developed as part of the development of the contract specification following that consultation.

7. From the Mental Health bill do you anticipate an increase in demand for Tribunals?

We do expect changes to demand from tribunals following the introduction of new MH legislation. We have discussed the likely and possible impact of the legislation with the Department of Health. The Department of Health have agreed to meet the actual costs of legislation for the Spending Review 2007 period.

8. The LSC have published Mental Health Peer Review guidance, will the Peer Review process continue for the medium to long term?

We are rolling out Peer Review with the aim that all firms will be peer reviewed by 2009. Peer Review will then become cyclical and we have not placed an “end “ date on its use.

9. How frequently are Mental Health files for suppliers currently being reviewed? E.g. Annually, every 24 months or less frequently.

The starting point is that a Peer Review result is valid for 3 years. File assessment may also lead to a Peer Review being carried out- see below for more information.

10. How many MH solicitors do we have on board to conduct Peer Reviews and is this likely to have an impact on the capacity to deliver the service to MH client groups

The Peer Review Panel consists of 8 reviewers. Reviewers are contracted to provide 36 days per annum. Peer Reviews choose when this work will be timetabled within the year. Any additional work is provided at the reviewer’s discretion, managing the impact this will have on their own service delivery to MH clients.

11. Is it proposed that the ‘File Assessment 2’ be used if there are insufficient MH peer reviewers?

File Assessment is a way of targeting Peer Reviews most effectively, not a replacement for Peer Review. All firms will be Peer Reviewed in their main categories of work. For minor categories where the contract is below £50,000, their work may be File Assessed and may then be Peer Reviewed as necessary.

12. Will the ‘File Assessment 2’ process continue in the medium to long term?

File Assessment is due to be rolled out in autumn 2007 and will be used as long as it is necessary to prioritise and target Peer Reviews.

13. How will the ‘File Assessment 2’ complement other processes e.g. ‘Peer Review’ to assess the work done and ensure the quality of the service?

See above

14. Will the following elements of the ‘File Assessment 2’ process be implemented in the future

- a) **Value for Money (FAVFM)**
Yes, likely to be implemented late 2007
- b) **File Assessment – Quality of Advice (FAQ) (where total value of the contract is less than £50,000).**
We are currently reviewing whether the file assessment quality process will be needed to allow us to prioritise peer review. At this stage we think it most likely it will be implemented late 2007.

For more information on Peer Review and Quality Assessment see http://www.legalservices.gov.uk/civil/quality_performance.asp

15. Is it envisaged that the proposed MH fee scheme Specification Rules and guidance are to remain until the full implementation of ‘Carter’ or will there be continuous change until we are in a position to meet the ‘Best Value tendering’ objective?

It is our intention that the specification currently out for consultation will be in place throughout the life of the fixed fee scheme. We intend that any further changes to the specification will coincide with the move to best value tendering. However, we may need to change the specification before then as a result of external factors, and so cannot guarantee that there will be no intermediate changes. All changes will be consulted on.

16. As a general point it would seem that if a MHRT is being progressed and another mental health issue arises that is nothing to do with the MHRT and beyond the scope of MHRT powers, it will not be possible to open another Legal Help. Treatment and medication issues would be a good example. Have I understood this correctly?

If a MHRT matter is in progress, other connected issues should in general be dealt with under the same matter. This has been taken into account in the development of the fee scheme and levels.
However, the exact definition of the boundaries between matters is part of the consultation and development of the contract specification.

17. What does ‘best value tendering’ mean? What do you mean by the fact that you will be introducing this in the ‘longer term’?

Best Value Tendering is the next stage of reform following Lord Carter’s review, under which the LSC will tender for contracts to provide legal aid services based on quality, access and value. The LSC is developing detailed plans for best value tendering, including in Mental Health work. The LSC will publish further information on best value tendering for civil categories in the autumn.

18. What happens if a patient withdraws his MHRT and of course then becomes eligible to apply a second time during the same period of detention? Is that a new matter?

The exact definition of the boundaries between matters is part of the consultation and development of the contract specification.

19. Will mileage disbursements still be paid?

Yes

20. You say that for some remote hospitals, that you will designate, travel time will be paid a fixed additional travel payment. What about remote forensic hospitals where the local suppliers do not have forensic

experience? Will this mean that patients will be required by the LSC to be represented by people who may not have the requisite experience?

The definition of "remote" and which hospitals it will apply to is part of the consultation and development of the specification.

New Questions and Answers 10th August

21. When will the list of remote hospitals be published?

The definition of remote hospitals is being developed alongside the specification. The final version of the specification and the list of hospitals will be published in late October.

22. Please explain to me exactly how the payment of disbursements will be dealt with under the proposed new fixed fee scheme.

As currently hourly rates, disbursements will be claimed on the CMRF. They will then be paid in addition to the fixed fee, subject to assessment, and form part of the SMP.

- **Will it be possible to apply for payment on account of disbursements?**

There will not be payments on account for disbursements- they will be dealt with through reconciliation and adjustment of the SMP.

- **What level of fee will you pay to a Forensic Psychiatrist for an independent report?**

As now, there will not be a set fee for Forensic Psychiatrists.

- **What criteria will you apply to allow an independent report to be obtained?**

Current criteria will apply.

- **Will there be a pot of money given to firms to pay for disbursements or merely an adjustment under the monthly payment regime?**

As now, payments will be reconciled against claims so differences between the SMP and the amount claimed including disbursements will lead to adjustments in the monthly payments.