

2010 Standard Civil Contract - Specification

SECTION 9 - MENTAL HEALTH SPECIFICATION

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PART A - PRELIMINARY

Interpretation

9.1 In this Mental Health Specification the following expressions have the following meanings:

“High Security Hospitals” means the Ashworth, Broadmoor and Rampton high security hospitals and any Procurement Area we have designated under Exclusive Schedule Arrangements for services provided at those hospitals;

“Restricted Cases” means cases involving restricted patients as defined in Section 79 of the Mental Health Act 1983 as amended;

“2007 Act” means the Tribunals, Courts and Enforcement Act 2007

Scope

9.2 This Section applies to all services within the Mental Health Category, including advice in relation to the Mental Capacity Act 2005. It also applies (unless otherwise specified in any Schedule) to services at High Security Hospitals which are subject to Exclusive Schedule Arrangements. This Specification is subject to the transitional provisions set out at Paragraph 1.53 to 1.57 of this Specification.

Levels of Service

9.3 The following Levels of Service are available in the Mental Health Category: Legal Help, Help at Court and Legal Representation. These services are funded as follows:

- (a) Legal Help is funded as Controlled Work.
- (b) Help at Court is funded as Controlled Work. Help at Court can only be granted following the provision of Legal Help in the same matter and should be counted as part of the same Matter Start. However Help at Court may not be granted in relation to the MHT unless the Client is seeking representation as a victim under the Domestic Violence, Crime and Victims Act 2004 (“Victim” – see Paragraph 9.86).
- (c) Legal Representation before a MHT is Controlled Legal Representation (“CLR”) and is funded as Controlled Work. CLR should be counted as part of the same Matter Start as Legal Help in the same matter. CLR may not be granted to a Victim before the MHT although Help at Court is available.
- (d) Legal Representation in any other proceedings in this Category of Work (including proceedings before the Upper Tribunal or in the Court of Protection) is funded as Licensed Work.

PART B - MENTAL HEALTH SERVICE STANDARDS

Presence

- 9.4 You must have a Permanent Presence, as defined in Paragraphs 2.49 to 2.50 of this Specification, in at least one Strategic Health Authority Procurement Area but this does not necessarily have to be a Procurement Area for which you have Schedule Authorisation. However, for the purposes of the Mental Health Category Permanent Presence does not include a requirement that the majority of Mental Health services are accessed at the Office.
- 9.5 In all Procurement Areas for which you have Schedule Authorisation (apart from High Security Hospitals - see Paragraph 9.6 below) you must have either a Permanent Presence or you must have alternative arrangements in the Procurement Area which meet the following requirements:
- (a) you must have an arrangement to use interview facilities at any of the following: another legal aid Provider's offices; another legal service provider's offices; the offices of a mental health third sector organisation; the offices of a non-mental health primary care service; commercially available rented office space. Home visits and/or arrangements to meet in a mental healthcare setting can be considered for individual Clients but must not be the sole means of meeting with Clients resident in the Procurement Area;
 - (b) Clients must be able to contact you by telephone and speak to a person in your organisation every day from Monday to Friday (excluding Bank Holidays and religious holidays) during normal business hours to arrange appointments and, where appropriate, receive advice in emergency cases. This telephone number may be for an office outside the Procurement Area but must not be a mobile number. Out of hours, Clients who telephone must be able to access information about opening hours, who to contact in an emergency and Community Legal Advice. You must provide appointments as reasonably requested by Clients and facilitated by the availability of your Caseworkers..

High Security Hospitals

- 9.6 Where your Schedule authorises you to undertake work in a High Security Hospital you must comply with the following requirements:
- (a) you must employ an Authorised Litigator;
 - (b) you must have a Caseworker with experience of Restricted Cases;
 - (c) all advocates before the MHT must be members of the Law Society Mental Health Panel Review Tribunal Accreditation Scheme;
 - (d) you must have Schedule Authorisation to deliver work in the Mental Health Category of Law in at least one of the Strategic Health Authority Procurement Areas.

Use of Matter Starts

- 9.7 You must use at least 70% of the Matter Starts allocated to you in a particular Procurement Area on Clients physically located in that Procurement Area at the

time the Matter Start is opened. You may use a maximum of 30% of the Matter Starts allocated to you in a particular Procurement Area on Clients not physically located in that Procurement Area at the time the Matter Start is opened.

9.8 You may not use Matter Starts allocated for use in Strategic Health Authority Procurement Areas in High Security Hospitals, except where a Client whom you have advised in the previous two years (or where you have not advised the Client in the previous two years you were the last Provider to advise them) is transferred to a High Security Hospital. If so you may continue to act for them and may utilise Matter Starts for this purpose only if the following criteria are satisfied:

- (a) your Client wishes you to continue to act for them; and
- (b) you employ an Authorised Litigator; and
- (c) you have experience of Restricted Cases; and
- (d) all representation before the MHT will be carried out by Law Society Mental Health Review Tribunal Accreditation Scheme members;

You must keep a record on the relevant case file to demonstrate compliance with these criteria. We will not pay for High Security Hospital Matters where Matter Starts allocated to Strategic Health Authority Procurement Areas are utilised outside these rules.

Referral Arrangements Specific to the Mental Health Category

9.9 If you do not employ an Authorised Litigator you must have referral arrangements in place to refer Clients for appropriate advice and representation. Additionally, in all cases, you must have arrangements in operation so that you can appropriately signpost or refer a Client or potential Client to the following:

- (a) Independent Advocacy services
- (b) publicly funded providers of advice services in the Community Care, Debt, Employment, Housing and Welfare Benefits Categories of Law
- (c) Local Authority Social Services departments
- (d) mainstream Mental Health services
- (e) non-advocacy service support such as user groups and mental health charities.

Supervisor's Legal Competence Standard

9.10 The Supervisor must hold current membership of either:

- (a) The Law Society Mental Health Review Tribunal Accreditation Scheme ;
or
- (b) (For Non-Solicitor Supervisors only) be assessed by The Law Society as meeting the Mental Health Review Tribunal Accreditation Scheme criteria.

(Note: The alternative at (b) is only available to organisations in the Not for Profit sector. The Law Society administers an assessment against the Mental Health Review Tribunal Accreditation Scheme membership criteria, and on meeting the

criteria supervisors will be 'assessed as meeting the Mental Health Review Tribunal Accreditation Scheme criteria'; individuals who do not work in solicitor offices cannot be members of a Law Society Accreditation Scheme.)

- 9.11 The Supervisor must have provided representation on 5 MHT case files in the previous 12 months.

Where the practitioner is unable to demonstrate that they have represented a Client at 5 hearings (due to late cancellation, delay leading to discharge of the patient, etc.) they may, as an alternative, demonstrate the following in meeting the caseload requirement:

- (a) representation at 3 hearings; *plus*
- (b) 2 further cases in which either the preparation for the hearing had been completed and can be demonstrated on file or where they have had conduct of a case which falls within the scope of the category and for which LSC funding was granted.

- 9.12 The Supervisor must have undertaken work in at least 5 Legal Help (non MHT) cases, in the previous 12 months. All such cases must fall within the Mental Health Category of Law and may include Mental Capacity cases.

- 9.13 The Supervisor must maintain a portfolio (including case name and reference) of cases to demonstrate compliance with Paragraphs 9.11 to 9.12. Prior to the appointment as Mental Health Category Supervisor the individual must have demonstrated to our satisfaction a portfolio of cases which meet the requirements in Paragraphs 9.11 to 9.12.

- 9.14 The Supervisor must:

- (a) take account of any changes in legislation and case law and maintain access for the duration of the Contract to the following required texts:
 - Subscription to at least 1 nationally published Specialist journal (containing updates on Mental Health case law and statutes);
 - Access to medical reference publications which must cover:
 - o Categorisation of mental illnesses, and
 - o Classification of psychiatric medication
 - Access to the current edition of the Mental Health Act Manual (Sweet & Maxwell).
 - Access to the current edition of the Mental Capacity Act Manual (Sweet and Maxwell) or Blackstone's Guide to the Mental Health Act [includes Mental Capacity Act] or Legal Aspects of Mental Capacity (Blackwell Publishing) or Mental Capacity (2nd edition, The Law Society) or Mental Health (Jordans New Law).
 - Access to the current Court of Protection Rules
 - Access to the current Deprivation of Liberty Code of Practice
 - Access to all relevant practice directions
 - Access to all relevant judgements and case law in relevant jurisdictions; and
- (b) undertake a minimum of 6 hours of Continuing Professional Development per year in the Mental Health Category of Law of which no fewer than 3 hours must be on the Mental Capacity Act 2005.

PART C - CARRYING OUT MENTAL HEALTH WORK

Funding Criteria

Financial Eligibility

- 9.15 All services provided to a patient whose case is the subject of the proceedings or potential proceedings before the MHT will not be subject to a means assessment. Legal Representation services provided to a client whose case falls under Paragraph 2 of Schedule A1 to the Mental Capacity Act 2005, in proceedings in the Court of Protection under section 21A of that Act (i.e. applications to the court for orders under section 21A of the Mental Capacity Act 2005) will not be subject to a means assessment. All other Clients requiring legal advice within the Mental Health Category (for example, other cases in relation to the Mental Capacity Act 2005) will be subject to the standard means assessment test for Legal Help.
- 9.16 Where the matter started covers advice to the patient in relation to both the MHT as well as other Non-MHT issues you should not conduct a means assessment. However, if the Client is not eligible to apply to the MHT at the time the Controlled Work form is completed, the matter is means tested and a means assessment must be undertaken.
- 9.17 Applications on behalf of a patient may be accepted in accordance with Rule B5 of the Funding Code Procedures and Section 3 of this Specification but in all cases which are subject to means assessment it is the means of the patient which must be assessed.

Funding Code Criteria

- 9.18 The Sufficient Benefit Test as set out in the General Funding Code applies to Matter Starts which are conducted under Legal Help (Non-MHT Fee and MHT Fee Level 1).
- 9.19 Before proceeding to MHT Fee Level 2 or MHT Fee Level 3 in MHT cases the Reasonableness Test for CLR and other relevant Funding Code Criteria must be satisfied – see in particular sections 4 (Standard Criteria) and 12 (Mental Health) of the Funding Code.

Matter Start Rules

- 9.20 The rules in relation to Controlled Work Matter Start Boundaries set out in this Mental Health section of the Specification ensure that issues arising out of the same Period of Eligibility of the Client are dealt with under one Matter Start. Where, however, there is more than one set of MHT proceedings running concurrently within the same Period of Eligibility separate MHT Fees can be claimed for each set of proceedings.
- 9.21 Therefore where a Matter Start is open to deal with a MHT Issue and a Non-MHT issue arises relating to the Client's status as a patient (e.g. a complaint about their treatment in this period of detention) you cannot open a new Matter Start for the Non-MHT issue, and the issue will form part of the same Matter Start. All issues will be remunerated through the MHT fees that are payable for the MHT related work. This is the case regardless of the order in which the issues are resolved.

For example:

If the Client is sectioned, then makes a complaint about his treatment under that section, has a Hospital Manager's Review and finally a MHT within the same Period of Eligibility, this is all part of the same Matter Start.

- 9.22 However if you see a Client who is an informal patient (a patient who is not detained) in relation to a Non-MHT Mental Health issue and the Client is then sectioned you can open a new Matter Start to apply to the MHT. The Client will then have two Matter Starts open at the same time.
- 9.23 In the circumstances outlined at Paragraph 9.58 below, where only one set of MHT Fees are payable in respect of Non-MHT work and MHT work, you may only open one Matter Start.

Detained clients

- 9.24 Upon the following events you must begin a new Matter Start for any subsequent work on a new legal issue:
- (a) Owing to passage of time, a Client has a statutory entitlement to a further MHT.
 - (b) There is a change in the Client's section type.
 - (c) The Client is discharged from their section (including under a Community Treatment Order).
 - (d) The Client withdraws from a MHT and, within the same Period of Eligibility, applies again (in these cases the reason for withdrawal must be clearly noted on the file).

provided you comply with the rules set out in this Section 9.

For example:

A Client is detained under section 2 of the Mental Health Act 1983. A Matter Start is used. The Client is then transferred to a section 3 prior to an MHT taking place. A new Matter Start must be started in respect of the s3 application.

- 9.25 Work to communicate the decision of an MHT to the Client and aftercare advice will not constitute a separate Matter Start because it is covered by the MHT Level 3 Fee. This will include meeting with the Client to advise them of the decision of the MHT. If the Client continues to be detained then it will also include advice regarding when they will be next eligible to apply for an MHT and advice on alternative courses of action e.g. whether they can apply for a Hospital Managers' Review. If the Client is discharged then advice should include any brief advice on how to apply for relevant benefits and on any issues regarding compliance with treatment.
- 9.26 A new Matter Start should not be used in respect of a Hospital Managers' Review where there is already an open file dealing with an MHT. All work in relation to the Hospital Managers' Review should form part of the same matter as an MHT application in the same Period of Eligibility (see also 9.58).
- 9.27 Where a Matter Start is open to deal with a Non-MHT issue and a MHT issue arises in a different Period of Eligibility to that in which the Non-MHT issue arose then you can open a new Matter Start for the Tribunal issue.

- 9.28 You cannot open a new Matter Start when an MHT hearing has been adjourned or postponed. The same case will continue until there has been a hearing finally disposing of the Matter or until the Client is discharged or the MHT withdrawn. In some circumstances however you will be able to claim an Adjourned Hearing Fee as set out in 9.71 to 9.73 below.

Mental Capacity Act 2005 cases

- 9.29 Initial advice can be claimed using the Non-MHT Fee. This includes the preparation of an application for funding for an application to the Court of Protection prior to a full certificate being granted.
- 9.30 Representation at the Court of Protection is not covered under MHT Fee Levels 2 or 3. Providers will need to make an application for Legal Representation which will continue to be paid for under the applicable Hourly Rate. See the Funding Code Decision Making Guidance.
- 9.31 Where a Client has an open Non-MHT matter in relation to the Mental Capacity Act 2005, but the Client is then sectioned or otherwise requires MHT advice, a separate MHT matter may be opened concurrently provided the relevant merits criteria are satisfied.

Informal patients / non-detained Clients

- 9.32 Where the Client is not detained but is seeking advice on a mental health issue other than an issue regarding the Mental Capacity Act 2005 it is covered by the Non-MHT Fee.

For example:

This would cover advice to an informal patient if they wanted to leave hospital. This might include advice on their rights under mental health legislation if they were subsequently sectioned or basic advice on their right to housing and other forms of care in the community. However, if the primary issue is not mental health law but for example relates primarily to another area of social welfare law then a new matter should be started under the appropriate category and not as a mental health Matter Start.

Matter Starts in other Categories of Law

- 9.33 The Mental Health Fees include brief advice on treatment and on aspects of community care law and social welfare law where the issues arise out of and are related to the Client's status as a patient. This will include any brief advice on the Client's entitlement to a Community Care assessment. A separate Matter Start in a Category of Law other than Mental Health may be commenced in accordance with Section 3 of this Specification.

Controlled Legal Representation

When may you provide CLR?

- 9.34 Rule 3.6 of the Specification provides that you may undertake CLR before the MHT in the Mental Health Category of Law in accordance with the criteria in the Funding Code and the provisions in this Specification provided that your Office Schedule permits you to carry out Controlled Work in the Mental Health Category of Law.

- 9.35 CLR is available to the Client whose case is to be considered by the MHT and to the applicant to the MHT who may be the patient's Nearest Relative. If the Client and Nearest Relative make separate applications to the MHT in the same Period of Eligibility then they may be started as separate Matters. Additionally, if a Nearest Relative makes an application to the MHT, the Client whose case is to be considered is entitled to a separate Matter Start for representation should they require it
- 9.36 CLR for proceedings before the MHT is not means tested, regardless of whether the applicant for CLR is the patient or nearest relative.
- 9.37 Applications may, however, be refused if it appears unreasonable that approval should be granted in the particular circumstances of the case though this would be unusual.

Granting an Application for CLR

- 9.38 CLR should be applied for as soon as it is clear that the case will be considered by the MHT.
- 9.39 The Client must complete and sign the CLR form before you sign the form. The Client can send you the signed application by post or fax in the circumstances set out in Section 3 of this Specification.
- 9.40 When you grant CLR you must record details of the reasons justifying the grant on the appropriate section of the application form.
- 9.41 For the avoidance of doubt the grant of CLR does not operate retrospectively.

Signature on application forms for Legal Help and CLR

- 9.42 Exceptionally, where it is not appropriate to use any of the possibilities for the application for Legal Help or for CLR to be made on the patient's behalf and the patient will not sign the application due to their condition, then you may annotate the form to that effect and a Supervisor may sign the form.

Prior Authority for Counsel

- 9.43 Counsel's fees do not count as a disbursement and unless otherwise provided for in this Specification you are responsible for agreeing and paying Counsel's fees out of (but not limited to) any fees paid by us to you.
- 9.44 In cases of unusual complexity Counsel can be reimbursed (partially or wholly) at an hourly rate that is higher than the solicitor Hourly Rates set out in the Payment Annex. You will, however, need to seek prior authority from us. Where we allow a higher rate we will specify both an hourly rate and a maximum cost limit. You may not exceed the specified hourly rate or the maximum cost limit without further authority from us. This authority will not be granted retrospectively and you must obtain it before the work is done.
- 9.45 We will only grant prior authority if the case poses unusually complex evidential problems or novel or difficult points of law (but not otherwise). In MHT cases it is likely to be highly unusual for a prior authority to be granted and it is generally considered that a solicitor should be able to deal with most legal issues.

- 9.46 Where authority is granted and the Matter Start becomes an Exceptional Case in accordance with Paragraph 9.80 to 9.84 below we will pay external Counsel's reasonable fees to you at the rate(s) and up to the maximum specified in the authority. Where authority is granted but the Matter Start does not qualify as an Exceptional Case then we will pay to you, in addition to the Mental Health Fees payable, a sum equal to the difference between external Counsel's fees as authorised by the prior authority and the applicable fees which would have been payable under section 8 (d) of the Payment Annex.
- 9.47 We will pay this differential rate for each hour appropriately claimed by external Counsel up to the authorised limit. You are responsible for accounting to external Counsel as usual.

PART D - REMUNERATION FOR MENTAL HEALTH WORK

The Mental Health Fee Scheme

- 9.48 The Mental Health Fee Scheme applies to all Controlled Work in the Mental Health Category of Law except for Help at Court for Victims (in relation to which see 9.86), and is divided into (a) a fee for all Non-MHT matters (“Non-MHT Fee”) and (b) three fees for MHT matters (“MHT Fees”) as follows:
- (i) MHT Fee Level 1 (initial advice)
 - (ii) MHT Fee Level 2 (negotiation and preparation) and
 - (iii) MHT Fee Level 3 (representation before the Mental Health Review Tribunal).

The Non-MHT Fee and MHT Fee Levels are together referred to as “Mental Health Fees” and the provisions applying to Standard Fees and Graduated Fees in Sections 1 – 6 inclusive of this Specification shall apply to them unless otherwise stated in this Section 9.

- 9.49 Each Matter Start will attract either the Non-MHT Fee or MHT Fees at one or more of the levels, depending on the work carried out on that matter. The Non-MHT Fee and the MHT Fee Level 1 cover all Legal Help and Help at Court. MHT Fee Levels 2 and 3 only apply to CLR.
- 9.50 Disbursements, such as travel expenses, are not covered by the Mental Health Fees and are paid in accordance with Section 4 of this Specification. In addition you may submit a claim to us for an interim payment in respect of unpaid Controlled Work disbursements (not including Counsel’s fees). You may only apply under this Paragraph if at least six months have elapsed since the start of the Matter and, if you have previously applied for payment under this Paragraph, at least six months have elapsed since that application was made.
- 9.51 The fees for MHT and Non-MHT work are mutually exclusive - you cannot claim both the Non-MHT Fee and any level of MHT Fee in the same matter for a Client.
- 9.52 There are also additional payments which apply in some matters where there is an adjournment of an MHT or where a Remote Travel Payment is payable as set out below.
- 9.53 All Mental Health Fees are set out in Section 5 of the Payment Annex.
- 9.54 Where the amount of any Claim as calculated on the basis of Hourly Rates exceeds three times the Mental Health Fee(s) payable for that Matter Start in its entirety i.e. including all Fee Levels which are claimed, it will be classed as an Exceptional Case and paid on Hourly Rates under Paragraphs 9.80 to 9.84 below. Paragraph 9.82 sets out the way in which additional payments referred to at Paragraph 9.52 are taken into account in this calculation.

Work within the Schemes

- 9.55 These Mental Health Fees apply to work done in connection with all Clients regardless of whether they are the patient, the nearest relative or another party, and, regardless of whether the patient is detained, liable to compulsion and living in the community or an informal patient, either resident or in the community. The Mental Health Fees apply to forensic cases.

- 9.56 The Mental Health Fees include advice on the Client's right to apply for a Hospital Managers' Review and/or a MHT hearing or on pursuing a complaint. They also include advice in relation to the Mental Capacity Act 2005: see Paragraphs 9.29 - 9.31.

Non-MHT Fee

- 9.57 This Fee covers all work within the scope of Legal Help within the Mental Health Category of Law which does not concern applications to the MHT. The fee is payable for work in matters where the issues are separate from the MHT process such as a separate Hospital Managers' Review when there is no MHT applied for. It will also cover legal issues relating to complaints or provision of treatment where there is no MHT applied for. If you have conducted a Non-MHT matter and then give advice on a MHT application but do not submit an application to the MHT you are only entitled to the Non-MHT Fee
- 9.58 If an MHT hearing is applied for in respect of a Client, or if there is an automatic referral to the MHT, the MHT Fees payable in that case will also cover all Non-MHT legal issues arising out of or related to the Client's status as a patient and started during the same period of statutory entitlement for the MHT hearing under the Mental Health Act 1983 ("Period of Eligibility", see also 9.24 above). In these circumstances the MHT Fee Level 1 replaces the Non-MHT Fee. For the avoidance of doubt, each time the Client is (newly) eligible to make an application to the MHT they are in a new Period of Eligibility. In respect of such Non-MHT matter and ensuing MHT work you may only claim the appropriate levels of MHT Fees and may not make a separate claim for a Non-MHT Fee, except as provided for in this Section 9.
- 9.59 As an exception to rule 9.58 above, a Non-MHT matter may be started after the MHT work is complete but within the Period of Eligibility where a new Matter Start is permitted in accordance with the rules set out in Section 3 of this Specification. However for this purpose:
- (a) attendance at or work in relation meetings pursuant to s117 of the Mental Health Act 1983 ("s117 Meetings") or Care Programme Approach meetings ("CPA Meetings"); and/or
 - (b) work relating to a complaint arising from the Client's status as a patient within this Period of Eligibility
- do not count as separate and distinct legal problems and do not entitle you to claim a New Matter Start.
- 9.60 Where a Client receives a recommendation from the MHT for deferred conditional discharge you may not open a Non-MHT matter to continue to advise the Client. Any necessary further advice is covered by the MHT Fees paid in the matter.
- 9.61 Where a Client is conditionally discharged (for example under Section 75 of the Mental Health Act 1983) though no longer detained they are entitled to make application to the MHT and the Period of Eligibility may be up to two years. Any separate legal matters (for example a complaint or a Hospital Manager's Hearing) occurring during the conditional discharge Period of Eligibility can be considered separate matters and Non MHT Matter Starts may be opened in addition to any relevant MHT matter. If the Client is recalled to hospital and placed under a different section a new Period of Eligibility commences and a new MHT Matter Start may be opened if required.

- 9.62 Where the Non-MHT Matter is started by you outside the Period of Eligibility, you may claim a Non-MHT Fee in respect of this work but only where a new Matter Start is permitted in accordance with the rules set out in Section 3 of this Specification.
- 9.63 We reserve the right to limit the number of Non-MHT Matter Starts within your overall Matter Start limit for this Category of Law by amending your Schedule accordingly, and we reserve the right to do this both while a Schedule is in force and on issuing a new Schedule. We would do this if we wished to prioritise MHT work or if we reasonably considered that you were commencing Non-MHT Matter Starts other than in compliance with the rules of this Section 9.

MHT Fee Level 1 – Initial Advice

- 9.64 This fee level covers initial advice in any case where the Client is eligible and submits or has submitted an application to the MHT. It covers the work done in making an initial visit to the Client, and follow-up work such as sending initial letters of instruction or making the application to the MHT if none has been made.
- 9.65 Because all MHT cases, even where the hearing has already been listed, require you to make an initial visit and take initial instructions, this fee level is payable (once only) in all cases relating to MHT work where Legal Help has been granted.

MHT Fee Level 2 – Negotiation & Preparation

- 9.66 This fee level begins once the initial advice has been given and an application has been made to the MHT. It includes all negotiation with third parties (such as doctors and hospital managers) and all preparation for the MHT hearing.
- 9.67 The fee only becomes payable once you have given initial advice and an application to the MHT has been issued. All work up to and including making an application to the MHT is included in MHT Fee Level 1. You can claim the Level 2 fee only when you have carried out 30 minutes of preparation or advice or had separate communication with other parties on legal issues.
- 9.68 This level also includes any attendance by the Client's representative at a Hospital Managers' Review or other meetings (such as CPA Meetings and s117 Meetings) between the application for a MHT hearing and the hearing itself.
- 9.69 You must consider in each case whether it is necessary and/or appropriate to attend a Hospital Managers' Review, s117 Meeting or CPA Meeting. Factors to take into account will include the nature of issues to be discussed at the meeting and whether legal advice and/or representations will be required.

MHT Fee Level 3 – Representation before the MHT

9.70

- (a) This fee level primarily covers the act of representing the Client at the MHT and any aftercare services. Work includes Counsel's fees for that representation.
- (b) Where the MHT is adjourned or is postponed, the fee will cover all the sittings of the MHT until a decision (disposal) is reached, except as set out below at Paragraph 9.71.

- (c) If no effective MHT hearing takes place, for example because the Client is discharged before the hearing, then you will not be entitled to claim a MHT Level 3 fee unless you are entitled to claim a MHT Level 3 fee in substitution for an Adjourned Hearing Fee under Paragraph 9.73 below.
- (d) If, however, an effective hearing takes place but the decision is set aside and a new hearing is fixed to re-decide the case (pursuant to section 9(5)(a) of the 2007 Act or otherwise) you may treat the new hearing as a fresh Matter and may claim a new MHT Level 3 fee (and any associated Level 1 or 2 fee subject to meeting all other conditions of this Specification).

The Adjourned Hearing Fee

- 9.71 When a MHT hearing is adjourned or is postponed or cancelled on the day at the request of the MHT or Responsible Clinician, or in circumstances where you make a request to adjourn, postpone or cancel, and where you could not have otherwise reasonably avoided making such a request, and you have already incurred travel costs and/or some representation costs, then you may claim an Adjourned Hearing Fee. You must have actually attended the place of the MHT to claim this fee, but it is not necessary for you to have appeared before the MHT. This fee covers travel to and attendance at the hearing (including advocacy) and any preparation required.
- 9.72 An additional Adjourned Hearing Fee is payable for each additional hearing that is adjourned on the day. When the full hearing takes place then a MHT Fee Level 3 claim can be made for that hearing.

For example:

You attend a hearing, which lasts for 15 minutes before being adjourned by the MHT pending further reports. The Adjourned Hearing Fee is now payable. Two weeks later you go to the re-scheduled hearing. However, this second hearing is also adjourned after 20 minutes. A second Adjourned Hearing Fee is now payable. A week later, you attend the re-scheduled hearing, which is a full effective hearing. The Level 3 fee is now payable.

- 9.73 If an MHT is 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 MHT Level 3 fee in substitution for the final Adjourned Hearing Fee.

Remote Travel Payments

- 9.74 In general, the cost of all time spent in travel and waiting is included within each Mental Health Fee payable. The exception to this is where the Matter qualifies for a Remote Travel Payment as set out below.
- 9.75 A Remote Travel Payment is payable only where the case involves travel to a hospital which is on a list of hospitals which we may publish for this purpose from time to time on our website. Hospitals on this list are those where we consider Remote Travel Payments are necessary to ensure Clients' access to appropriate services. If we reasonably consider that there is adequate access to appropriate services at a particular hospital or hospitals we may remove that hospital or those hospitals from the list, giving three months notice of our intention to do so.

- 9.76 You do not require prior authorisation to incur this Remote Travel Payment provided the criteria are satisfied. Payment will be generated by completing the appropriate box on the CMRF. We will monitor the use of this provision through audit.
- 9.77 Where a Remote Travel Payment is payable, it will be paid as an additional payment no more than once for each Mental Health Fee (i.e. for each fee level) which qualifies under this specification.
- 9.78 Where a Client is moved during a case and is only at a hospital on the list for part of the case you may nevertheless claim a Remote Travel Payment for all fee levels you have provided in the case.
- 9.79 If a hospital is removed from the list during a Client's case you will be entitled to claim a Remote Travel Payment for each of the fee levels you provide in that case prior to the date of its removal from the list.

Exceptional Case Provisions

- 9.80 Subject to Paragraph 9.82, where the amount of any Claim for a matter or case calculated at the relevant Hourly Rates (including Counsel's time calculated on the same basis) is greater than three times the total of Mental Health Fee(s) payable for the work done you may apply to us for that matter or case to be treated as an Exceptional Case. For the avoidance of doubt, time spent travelling and waiting may be included in your calculation for these purposes but disbursements may not
- 9.81 The relevant Hourly Rates referred to in Paragraph 9.80 above are as follows:
- (a) in respect of work covered by the Non-MHT Fee or the MHT Fee Level 1 the relevant Hourly Rate for Legal Help set out at Table 7(a) of the Payment Annex.
 - (b) in respect of work covered by MHT Fee Level 2 and MHT Fee Level 3, the relevant Hourly Rate for CLR set out at Table 8(d) of the Payment Annex.
- 9.82 When calculating whether a matter or case qualifies as an Exceptional Case, if the case qualifies for Remote Travel Payment(s) and/or Adjourned Hearing Fee(s), then in order for it to become exceptional its costs need to exceed the total of;
- i) three times the total of all fee levels payable plus
 - ii) the total of all additional payments payable;

For example:

In an MHT case with work at levels 1, 2 and 3 and two adjourned hearings, in order to become exceptional the costs would need to be greater than or equal to:

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

- 9.83 When calculating the value of Counsel's time under 9.80 above, in order to calculate whether the case should be treated as an exceptional case you should apply the Hourly Rates at 9.81 above, even if you have obtained a prior authority for a higher rate under Paragraphs 9.43 to 9.47 above.

- 9.84 Exceptional Cases will be remunerated on the basis of the relevant Hourly Rates set out in 9.81. These rates will apply to work carried out by either solicitor or Counsel (subject to a higher rate being applied for Counsel's time in accordance with Paragraphs 9.43 to 9.47 above).

Transfers of Provider

- 9.85 Where a Client transfers their case to you from another Supplier then you will be entitled to the full Mental Health Fee for each of the levels of work you undertake, including initial advice and negotiation/preparation.

Payment for Help at Court for Victims

- 9.86 Help at Court for Victims under Paragraph 9.3(b) above is not remunerated under the Mental Health Fee Scheme but is paid at the Hourly Rates set out in the Payment Annex.

Review of Decisions of the MHT

- 9.87 When you provide representation before the MHT, any work done in applying to the MHT to review its decision under section 9 of the 2007 Act and/or in applying to the MHT for permission to appeal under section 11 of the 2007 Act will be treated as falling within the scope of the Level 3 Fee. However, if the MHT sets aside its decision under section 9(4)(c) of the 2007 Act you may, in addition to the Level 3 Fee but subject to Paragraph 9.89 below, claim an additional 'bolt-on payment' of an amount equal to that specified for an Adjudged Hearing Fee at Table 5(b) of the Payment Annex.
- 9.88 For the purpose of the Exceptional Case Provisions under Paragraphs 9.80 to 9.84, a payment under Paragraph 9.87 above shall be treated in the same way as payment of an Adjudged Hearing Fee under Paragraphs 9.71 to 9.73.
- 9.89 No additional bolt-on payment may be claimed under Paragraph 9.87 above if:
- i) The case becomes exceptional in accordance with Paragraphs 9.80 to 9.84 (in which case work done in relation to the review may be claimed under Hourly Rates); or
 - ii) A Certificate is subsequently issued for an appeal or review to the Upper Tribunal arising out of the same matter (in which case work done in relation to the review may be claimed under the certificate under Paragraph 9.92 below).
- 9.90 If you carry out work in applying to the MHT to review its decision under section 9 of the 2007 Act and/or in applying for permission to appeal under section 11 of the 2007 Act, but you did not provide representation at the substantive hearing which resulted in that decision, you may not claim a level 3 fee or any bolt-on payments to that fee but you may claim a level 1 or 2 fee for any work reasonably undertaken.

Certificates for the Upper Tribunal

- 9.91 An application for a Certificate in the Mental Health Category to cover an appeal or review to the Upper Tribunal from the MHT should not be made unless the MHT has determined whether to review its decision under section 9 of the 2007 Act.

9.92 If a Certificate is issued for an appeal or review to the Upper Tribunal arising from a decision of the First-tier MHT then any work reasonably done in applying to the MHT to review its decision under section 9 of the 2007 Act shall (unless the work is already being claimed under the Exceptional Case Provisions) be deemed to be work within the scope of the Certificate (even if carried out before the Certificate was issued) and may be claimed under the Certificate at the remuneration rate applicable to Upper Tribunal work.