

## MENTAL HEALTH REVIEW TRIBUNAL (MHRT) SCHEME

### Representation by Solicitor or Counsel under ABWOR

This was initially a pilot scheme and has now been introduced into legal aid legislation under Regulation 5 of the Legal Advice and Assistance (Amendment) Regulations Northern Ireland 2012. A standard fee scheme is in operation and the expected level of representation is solicitor or Junior Counsel.

Instructing Solicitor can conduct the entirety of the case or they can instruct Counsel. If a solicitor instructs Counsel, the instructing solicitor is responsible for agreeing and paying Counsel's fees out of the standard fees payable to the solicitor by the Commission. Prior certification for Counsel is no longer required for MHRT proceedings in ABWOR.

However, the Commission will require that the solicitor states in the report on case the identity of the solicitor or Counsel who conducted the proceedings and provided representation at each stage. Any claim for payment which omits this information will be rejected. Solicitors should also ensure that the name of the solicitor or Counsel appearing before the MHRT is recorded by the Tribunal.

Applications relating to the MHRT were formerly subject to both a merits test and a means test. The merits test continues to apply. The legal aid merits test will be met in the vast majority of these cases which involve review of detention and provide legal safeguards for review of deprivation of liberty.

However, the means test, the financial eligibility criteria prescribed in or under Part II of the 1981 Order, has been removed for all applicants for legal aid for advice and assistance under Green Form Rep 5 in relation to potential proceedings and for ABWOR APP7 representation before the MHRT.

Pursuant to the amended legislation, the Commission can dis-apply the financial eligibility test for MHRT advice and assistance and representation. The Commission continues to monitor the operation of the Scheme in conjunction with the Department of Justice and welcomes comments from practitioners regarding any aspect of the Scheme.

### Mental Health Review Tribunal Remuneration under ABWOR

Remuneration for advice and assistance in MHRT proceedings were reviewed and significantly revised in 2010. Advice and assistance is framed around three different stages (or Levels) in the proceedings. **Fees for Level 3 Representation at Tribunal are payable either to solicitor or counsel but not both.** Solicitors are responsible for agreeing and paying Counsel's fees out of fees payable by the Commission and certification for Counsel is no longer required for MHRT

proceedings. The three stages of the proceedings and respective fees for same are as follows:

Legal Aid Scheme	Level	Fee (Exc VAT)
Green Form	Level 1 (Initial Advice and Assistance) - Taking instructions and to include all work up to the legal aid application stage up to £88.00 limit.  Prior authority required to exceed £88.00 Limit. Prior Authority to exceed limit can only be sought in respect of travel only	£88
ABWOR	Level 2 (Preparation and Negotiation) - This fee is only payable if application made to MHRT and work is required to prepare and progress to the hearing	£330
	Level 3 (Representation at Tribunal) - Payable to either solicitor or Counsel If hearing does not proceed eg if patient discharged no fee will be payable  <u>Adjourned Hearing Fee</u> - Payable to representative either solicitor or Counsel if representative has attended at Tribunal venue irrespective of whether an appearance made before Tribunal	£370  £76.25
Mileage	All	35.7 per mile
Travel	Level 1 Levels 2 & 3	£24.25/hour Included in Fee
Photocopying	All levels – if necessary and vouched	10p per page
Disbursement	All levels - these will not be covered unless specific prior authority granted	As per authority of Commission

The Department of Justice is responsible for legal aid policy. If there is any change to the above arrangements or legal aid remuneration by the Department of Justice, this will be notified to practitioners and updated Guidance will be issued.