



Legal Aid
Agency

Ministry of Justice Guidance on Remuneration of Clinical Negligence Experts

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1. Overview

The Ministry of Justice has confirmed the position regarding the level of fees that it considers will generally be acceptable for specified expert types providing reports in clinical negligence (cerebral palsy) cases. The guidance note can be found below.

2. Ministry of Justice Guidance on Remuneration of Clinical Negligence Experts

This note sets out guidance from The Ministry of Justice (MoJ) on the level of fees that should be generally payable to specified experts in clinical negligence (cerebral palsy) cases.

The current specified rates paid for expert services in legal aid cases are set out in the Table after paragraph 1, of Schedule 5 of the Civil Legal Aid (Remuneration) Regulations 2013 (“the 2013 Regulations”). The rates consist of a number of fixed and hourly rates that apply to different types of services, including those where factual evidence is required and those where an expert is providing a professional opinion. The specified rates are payable to any relevant expert regardless of their experience and can be exceeded in specified circumstances as set out in paragraph 2 of Schedule 5 to the Civil Legal Aid (Remuneration) Regulations 2013. These are firstly, where the evidence is key to the client’s case and then either the material is of such a specialised and unusual nature that only very few experts are available or the complexity of the material is such that a more senior expert is needed.

It had been reported that particular firms had been experiencing difficulty in securing the services of particular experts at the rates in the 2013 Regulations in cerebral palsy cases. MoJ is satisfied that generally in cerebral palsy cases the evidence usually provided by medical experts is likely to be key to the client’s case. Therefore the first limb of the exceptionality test in paragraph 2 of Schedule 5 to the 2013 Regulations is generally likely to be satisfied.

Following a meeting between the then Legal Services Commission (LSC) and the representatives of clinical negligence firms in 2012, the MoJ has been supplied with the results of a limited provider survey showing the numbers of the relevant expert types available to be commissioned, and the hourly rates routinely paid to secure their services.

The results of joint MoJ and Legal Aid Agency (LAA) analysis shows that there are limited numbers of neurologists, neonatologists and neuroradiologists, but much larger numbers of obstetricians available to work in this area. MoJ is satisfied that the limited numbers of neurologists, neuroradiologists and neonatologists available to provide the specialised and unusual evidence that is often necessary in cerebral palsy cases indicates that the second limb of the exceptionality test in paragraph 2 of

Schedule 5 to the 2013 Regulations is also likely to be satisfied in many of these cases. It will therefore generally be possible in cerebral palsy cases for the fees for these specific types of experts to be increased in accordance with paragraph 2 of Schedule 5 to the 2013 Regulations.

While the limited provider survey also indicates that a broad range of rates have been paid to these expert types, MoJ is satisfied that the median rate for each type is a reasonable basis on which they should be remunerated and that the same rate should apply regardless of the location of the expert.

In the light of this, we consider that the following rates are a reasonable starting point for the rates that we would expect the LAA to normally apply when a specialist expert is commissioned to provide specialised and unusual evidence in a cerebral palsy case, and their evidence is key to the client's case:

| | |
|------------------|---------------|
| Neurologist | £200 per hour |
| Neonatologist | £180 per hour |
| Neuroradiologist | £180 per hour |

Where the provider wishes to exceed these rates, then they will need to provide sufficient justification to do so and where the LAA consider that a higher rate is not justified, clear reasons must be given.

It is anticipated that specific rates for such experts in cerebral palsy cases will be considered for inclusion in the 2013 Regulations, subject to any necessary revision following the outcome of the consultation: *Transforming legal aid: delivering a more credible and efficient system* which was published on 9 April 2013. In the interim, providers seeking to instruct relevant experts in the above categories in cerebral palsy cases at the new rates must submit an application for prior authority to the Legal Aid Agency.

Obstetricians

The limited survey confirmed that there are a much larger number of obstetricians working in this area. As a result, MoJ is not satisfied that there is a sufficiently limited supply to justify separate rates being prescribed at this time.

The current codified rates for obstetricians providing expert service is set at £135 per hour and this therefore remains the starting point for the rates that the LAA should normally apply when an obstetrician is commissioned in a cerebral palsy case. Higher rates may only be paid where the exceptionality test in paragraph 2 of Schedule 5 to the 2013 Regulations is met in the particular circumstances of the case.