



HIS HONOUR JUDGE ALTMAN
DESIGNATED FAMILY JUDGE FOR LONDON

19th September 2011

NOTE; THIS SUPERCEDES THE NOTE OF THE 12TH SEPTEMBER

Dear Colleague

Funding of experts UPDATED WHERE UNDERLINED TO DEAL WITH “EXCEPTIONAL CIRCUMSTANCES” FROM 3RD OCTOBER.

A. How are we to provide for the appointment of experts whose fees may be above the LSC rates? At the moment and up to the 3rd October, the position appears to be confused and variable. I understand that this matter has been raised with the President who will no doubt deal with the issue in due course. In the meantime, this issue is now cropping up and I have been asked to give general guidance for London to establish a general approach by way of holding operation.

B. As from the 3rd October 2011 the new regulations, with scale allowances, come into force. I set out Schedule 6 on experts. I apologise for the unsatisfactory copying of the PDF document. Note the provision for exceptional circumstances, which I fear may be overworked.

PLEASE NOTE THAT ANY RELIANCE ON EXCEPTIONAL CIRCUMSTANCES, AS FROM THE 3RD OCTOBER, WILL REQUIRE PRIOR APPROVAL.

C. In Schedule 6, where there are two rates the first is non-London and the second is for London. I have queried with the LSC those London experts who get much less than outside London, usually £90. I have been told this is not a mistake, as I had assumed, but because there is greater provision of such specialists in London. I await clarification of whether this is simply total number, or relates to the ratio of experts to the number of care cases.

The General Guidance is as follows:

Parties should be asked to seek the co-operation of the expert concerned to work within publicly funded rates or to explore the availability of alternative experts who are appropriate and so willing.

1. If this fails to resolve the situation the possibility of prior approval should be investigated with the parties, and, if within the child's timescale and the timetable of the court, a short adjournment to investigate this may be appropriate. In such an event the court order should make clear that this is the reason for the adjournment and contain, if correct, words that confirm the Court's endorsement of the proposal as being an appropriate cost for necessary evidence (See paragraph 2 (b) below for the position after the 3rd October.)
2. If this fails then one or more of the following may apply.

- a. The Local Authority could be invited to make up the shortfall in some way or other. This is wholly inappropriate. The Local Authority has many calls on its funds and there is no reason to believe they are in a better position financially than the LSC. Furthermore the Local Authority should not be used to disguise any failing on the part of the LSC to enable care cases to be litigated properly. If the Local Authority volunteers to do this, so be it, but the court should make sure that this is not with their encouragement or pressure.

- b. (i) Until the 3rd October, there may be an order that recites the facts, and issues as to the fee and gives authority for appointment of the particular expert. For instance this may involve an order such as:

“The court deems the cost of Dr X’s report to be a necessary and reasonable disbursement on the public funding certificates of the publicly funded parties, and further the court deems the hourly rate of £Y to be reasonable on the basis of Dr X’s particular qualifications, expertise and experience, the court being aware that the field of ABC is highly specialised, the court finding that there is no realistic prospect of finding an expert with the necessary expertise who will charge a lower fee. *The court finds that any further delay to give the LSC the opportunity to consider an application for prior approval would be wholly outside the timescale for the children.*”

After the recital the court can then order that ‘Accordingly, leave is given to instruct Dr X.....’ the disadvantage here is that in the final analysis it is open-ended as to what payment will be made and it may not be fair without the agreement of the expert concerned. I suggest that if this form of order is considered, then the understanding of the expert that he/she may be vulnerable should be sought.

(ii) However, as from 3rd October, prior approval will be needed before exceptional circumstances can be relied on. How this can be accomplished within the timescale of the child is difficult to see, unless there is a revision of the LSC administrative procedures. I recommend that parties should make such applications at as early a stage as possible, before the court hearing. If the matter has not been resolved by the time of the court hearing, I suggest that at this stage the section in italics, above, be replaced by:

“the court recommends that this be treated as an exceptional circumstance. There will be a repeat CMC/IRH in (7) days and in order to meet the timescale of the child and the avoidance of unnecessary delay the LSC should determine the issue of prior approval and notify the parties in time for the said hearing.”

Hitherto the LSC has accepted the certificate of the court as to appropriateness of a particular expert. How this will be dealt with from the 3rd October is outside my knowledge at this stage.

- c. The Court declines to give leave unless satisfied that the expert will work within LSC rates, following on from ‘1.’ above. This may be a last resort and not wholly satisfactory in resolving a particular case in a timely fashion.
4. It seems to me that if all this fails, then there is nothing more the court can do of its own motion. The court may refuse to appoint the particular expert, leaving the parties to deal with the matter and take such action as they consider appropriate. This may sound draconian but there is a limit to the manoeuvring we can do to resolve the problem that has been created. If the consequence is that a care case cannot be properly dealt with, then that is a responsibility for others. The court will have done all it can.
3. Finally at the present time and subject to the above each case must be judged on its own merits and standard directions are not appropriate for every situation. For that reason I have not recommended any. I suggest that whatever means a court employs to resolve the situation the decision should be recorded in a very short judgment

This note has been circulated to the Judiciary, FLBA, ALC, Resolution, London Local authorities and others. I should be very grateful for feedback, particularly if you are able to record specific instances, for general comments from experience tend to be discounted as being ‘anecdotal’ ”

Kind regards,



STATUTORY INSTRUMENTS
2011 No. 2066
Legal Services Commission, England and Wales
The Community Legal Service (Funding) (Amendment No.2) Order 2011

SCHEDULE 2

Article 12

“SCHEDULE 6
Experts’ Fees and Rates

Article 5

Section 1

Table

<i>Expert</i>	<i>Non- London Hourly Rate or fixed fee</i>	<i>London Hourly Rate or fixed fee</i>	<i>Comments</i>
A&E consultant	£126	£135	
Accident reconstruction	£90	£68	
Accountant	£50 - £135	£50 - £144	Partner £144, Manager £108, Accountant £80, General staff £50
Anaesthetist	£135	£135	
Architect	£99	£90	
Cardiologist	£144	£144	
Cell telephone site analysis	£90	£90	
Child psychiatrist	£135	£90	
Child psychologist	£126	£90	
Computer expert	£90	£90	
Consultant engineer	£90	£68	
Dentist	£117	£117	
Dermatologist	£108	£108	
Disability consultant	£68	£68	
DNA (per person) – testing of sample	£315 per test	£315 per test	
DNA (per person) – preparation of report	£90	£90	
Doctor (GP)	£99	£90	
Employment consultant	£68	£68	
Enquiry agent	£32	£23	
ENT surgeon	£126	£126	
General surgeon	£135	£90	
Geneticist	£108	£108	
GP (records report)	£63 fixed fee	£90 fixed fee	
Gynaecologist	£135	£90	
Haematologist	£122	£90	
Handwriting expert	£90	£90	
Interpreter	£32	£25	
Lip reader / Signer	£72	£41	
Mediator	£126	£126	
Medical consultant	£135	£90	
Medical	£135	£135	

microbiologist		
Meteorologist	£126	£180 fixed fee
Midwife	£90	£90
Neonatologist	£135	£135
Neurologist	£153	£90
Neuropsychiatrist	£158	£90
Neuroradiologist	£171	£171
Neurosurgeon	£171	£90
Nursing expert	£81	£81
Obstetrician	£135	£135
Occupational therapist	£68	£68
Oncologist	£140	£140
Orthopaedic surgeon	£144	£144
Paediatrician	£135	£90
Pathologist	£153	£540 fixed fee
Pharmacologist	£122	£122
Photographer	£32	£23
Physiotherapist	£81	£81
Plastic surgeon	£135	£135
Process server	£32	£23
Psychiatrist	£135	£90
Psychologist	£117	£90
Radiologist	£135	£135
Rheumatologist	£135	£135
Risk assessment expert	£63	£63
Speech therapist	£99	£99
Surveyor	£50	£50
Telecoms expert	£90	£90
Toxicologist	£135	£135
Urologist	£135	£135
Vet	£90	£90
Voice recognition	£117	£90

Section 2

(Provisions relating to experts)

Payment of expert services of a type not listed in Section 1

1.—(1) This paragraph applies where the Commission receives a request for funding of an expert service of a type not listed in Section 1.

(2) In considering the rate at which to fund the expert service the Commission—

- (a) must have regard to the rates set out in Section 1; and
- (b) may require a number of quotes for provision of the service to be submitted to the Commission.

Meaning of exceptional circumstances in article 5(2)(e)(ii)

2. For the purposes of article 5(2)(e)(ii), exceptional circumstances are where the expert's evidence is key to the client's case and either—

- (a) the complexity of the material is such that an expert with a high level of seniority is required; or
- (b) the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence.

General provisions relating to experts

3.—(1) The costs and expenses relating to experts listed at sub-paragraph (2) are not payable by the Commission as disbursements.

(2) The costs and expenses are—

- (a) any administration fee charged by an expert, including (but not limited to)—
 - (i) a fee in respect of office space or provision of a consultation room;
 - (ii) a fee in respect of administrative support services, such as typing services;
 - (iii) a fee in respect of courier services; and
 - (iv) a subsistence fee;
- (b) any cancellation fee charged by an expert, where the notice of cancellation was given to the expert more than 72 hours before the relevant hearing or appointment.

4. The maximum amount that the Commission may pay as a disbursement in respect of an expert's vehicle mileage is £0.45 per mile.

5. The maximum amount that the Commission may pay as a disbursement in respect of an expert's travel time is £40.00 per hour.