



# **MHC Procedures for Legal Aid in respect of Appeals of Mental Health Tribunal Decisions to the Circuit Court**

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**Effective Date 1 September 2023**

**Version 3**

## **1.0 Introduction**

This document sets out the Mental Health Commission's (the "Commission") procedures for legal aid, in respect of appeals to decisions of mental health tribunals (and certain other matters) to the Circuit Court ("appeals").

The Mental Health Acts 2001-2018 (the "2001 Act") provide that patients can, in certain circumstances, appeal a mental health tribunal decision; to affirm an admission / renewal order, authorise a transfer to the Central Mental Hospital, or authorise psychosurgery. The Commission's procedures for legal aid in appeal cases covers, *inter alia*, the following:

### **Section 19 Appeal to Circuit Court**

Section 19(1) of the 2001 Act states that; *"A patient may appeal to the Circuit Court, against a decision of a tribunal to affirm an order made in respect of him or her, on the grounds that he or she is not suffering from a mental disorder."*

### **Section 21(2)(c) Appeal to Circuit Court**

Section 21 of the 2001 Act relates to proposals to transfer a patient to the National Forensic Mental Health Service (formerly the Central Mental Hospital), it states that; *"The provisions of sections 19 and 49 shall apply to the referral of a proposal to a tribunal under this section as they apply to the referral of an admission order to a tribunal under section 17 with any necessary modifications."*

### **Section 58(4) Appeal to Circuit Court**

Section 58 of the 2001 Act relates to proposals to perform psychosurgery, and it states; *"That the provisions of sections 19 and 49 shall apply to the referral of a matter to a tribunal under this section as they apply to the referral of an admission order or a renewal order to a tribunal under section 17 with any necessary modifications."*

## **2.0 Operation of the Procedures**

The Commission shall assign a solicitor / barrister as legal representative (“legal representative”) under the Mental Health Legal Aid Scheme (the “Scheme”), to represent each patient before the mental health tribunal, unless the patient proposes to engage one at his or her own expense (and actually proceeds to engage one). In cases where the Commission provides legal representation for an appeal, the same legal representative who represented the patient before the mental health tribunal will generally be engaged to represent the patient at the appeal, unless the patient seeks a new legal representative or engages his or her own legal representative (at their own expense).

The Commission shall require a patient, or their legal representative on their behalf who applies on their behalf, to comply with the requirements in this document before legal aid will be granted.

## **3.0 Notification of an Appeal to the Circuit Court**

Appeals pursuant to Sections 19, 21(2)(c) and 58(4) of the 2001 Act, shall be brought by the patient, by notice in writing, within 14 days of receipt by him or her or by his or her legal representative, of the notice of the decision of the Tribunal concerned. The appeal should be filed in the relevant Circuit Court Office. **This is a statutory time limit.**

A patient who wishes to be granted legal aid for an appeal, as referred to above, shall notify the Commission in the manner outlined in Appendix 1 and must do so within 28 days of receipt of the notice of the decision of the Tribunal concerned (or otherwise). **This is not a statutory time limit.**

#### **4.0 Applications for Legal Aid**

The following must be provided with the notification form, in Appendix 1, before the Commission will consider the request for legal aid for an appeal:

- 3.1 The section 17 report(s) provided by the psychiatrist(s) prior to or at the Tribunal hearing.
- 3.2 The written decision of the Tribunal.
- 3.3 Confirmation in the Notice of Appeal of the ground(s) for the appeal.
- 3.4 Copy of the Form 45 as issued by the relevant Circuit Court Office bearing the court issued stamp.
- 3.5 Confirmation of whether an expert witness is required.

#### **5.0 Counsel**

The solicitor shall discharge counsel's fees from the fees paid to him or her by the Commission. Any issue which may arise in that regard is between the solicitor and counsel. The above matters should be brought to the patient and counsel's attention, by the solicitor.

#### **6.0 Notification of Decision**

The Commission retains the discretion to refuse legal aid. If legal aid is granted for an appeal, a written letter of authorisation will be issued by the Commission to the patient and/or his/her legal representative.

If legal aid is not granted, the Commission will set out in writing the reason(s) for the refusal. The decision shall be communicated in writing to the patient and/or his/her legal representative. A revised application for legal aid can be submitted to the Commission for consideration.

The decision to grant or refuse legal aid shall be issued by the Chief Operating Officer.

## **7.0 Appealing a Decision of the Commission**

If a decision is made to refuse legal aid for an appeal, it shall be open to the patient and his / her legal representative to appeal that decision.

If the patient wishes to appeal, he or she must apply to the office of the Chief Executive in writing within 14 working days of receipt of the written decision, either directly or through the legal representative. The patient's appeal will be considered and determined by the Chief Executive. Such decision will be made within 14 working days of receipt by the office of the Chief Executive of the written request for an appeal.

The decision of the Chief Executive will be in writing and sent to the patient and his/her legal representative and it shall set out the reason(s) for the decision.

## **8.0. Fees and Payment**

8.1 The schedule of fees for appeals are as outlined in Appendix 2. The fees indicated are the maximum fees that shall be paid. The legal representative shall have to discharge the fees of counsel from these fees. The maximum amount quoted will not be automatically paid in each case. The amount that will actually be paid will depend on the stage at which the proceedings are determined, concluded, or withdrawn.

8.2 Appendix 2 sets out the maximum fees that shall be paid in relation to the calling of non-expert witnesses. Where more than one non-expert witness is being called, the prior written consent of the Commission shall be required.

8.3 Appendix 2 also sets out the maximum fees that shall be paid in relation to the calling of expert witnesses. Where an expert witness is to be called, the prior written consent of the Commission shall be required. The Commission shall determine each request on a

case-by-case basis. If it is intended to seek an expert report from the outset, this should be included in the application for legal aid and the request can be dealt with at the outset.

- 8.4 Payment will be made pursuant to the terms and conditions of the Scheme.
- 8.5 All documentation in relation to applications for legal aid for Circuit Court Appeals should be sent to [mhaccalegalaid@mhcir.ie](mailto:mhaccalegalaid@mhcir.ie). Please ensure that such documentation, if sent by email, is **password protected**.
- 8.6 All documentation in relation to the service of and the proceedings should be sent to [circuitcourtappeals@mhcir.ie](mailto:circuitcourtappeals@mhcir.ie). Please ensure that such documentation, if sent by email, is **password protected**.

**APPENDIX 1**

**Notification of Request for Legal Aid in respect of an Appeal of a Decision of a Mental Health Tribunal to the Circuit Court [*amend where appropriate*]**

BLOCK CAPITALS

Patient's First Name(s)\_\_\_\_\_

Patient's Surname\_\_\_\_\_

Address\_\_\_\_\_

Date of Birth\_\_\_\_\_

Date of Mental Health Tribunal\_\_\_\_\_

Name of legal representative\_\_\_\_\_

**Please indicate the type of Appeal:**

1. **Section 19 Appeal to Circuit Court** - (*appeal of decision of a mental health tribunal to affirm an order on grounds that not suffering from a mental disorder*)
  
2. **Section 21(2)(c) Appeal to Circuit Court** - (*appeal of decision of a mental health tribunal to authorise transfer to Central Mental Hospital*)
  
3. **Section 58(4) Appeal to Circuit Court** - (*appeal of decision of a mental health tribunal to authorise psychosurgery*)

**Documents to be enclosed:**

1. The section 17 report(s) provided by the psychiatrist(s) prior to or at the Tribunal hearing.
2. The written decision of the Tribunal.
3. Confirmation in the Notice of Appeal of the ground(s) for the appeal.
4. A copy of the Form 45 as issued from the relevant Circuit Court Office bearing the court issued stamp.
5. Confirmation of whether an expert witness is required.

**Witnesses: (non - expert)**

**(Please give details)**

**Witnesses: (expert)**

**(Please give details)**



**THIS SECTION TO BE SIGNED BY THE PATIENT**

I confirm that I am appealing to the Circuit Court a decision of the Tribunal made on the [Insert Date]

I confirm that I am seeking legal representation from the Mental Health Commission [Legal Aid Scheme].

Signature Patient \_\_\_\_\_ Date \_\_\_\_\_

**THIS SECTION TO BE COMPLETED BY THE PATIENT'S LEGAL REPRESENTATIVE**

I confirm that [Insert Patient's Name]'s application satisfies the requirements of the Commission, in relation to seeking legal aid for an appeal to the Circuit Court.

I agree to keep the Commission informed of developments in the proceedings.

Signature Patient's Legal Representative \_\_\_\_\_ Date \_\_\_\_\_

## APPENDIX 2

### Schedule 1

Fees for legal representative and counsel in the Circuit Court

Schedule of Fees (maximum) payable to legal representatives in appeals of Mental Health Tribunal decisions before Circuit / High Court, effective from 1 September 2023 (exclusive of VAT).

|   |               | Maximum Fee per Case |
|---|---------------|----------------------|
| Legal Representative (Sole Representative at Circuit Court)   |               | €2,791.00            |
| (No additional fee will be paid for counsel if counsel is instructed.<br>The fee for junior counsel is as set out below.) |               |                      |
| Junior Counsel  | Circuit Court | €1,405.00            |
|   | High Court    | €2,627.00            |
| Senior Counsel  | High Court    | €3,850.00            |
| Stamp Duty <sup>1</sup>   |               | €181.00              |

Note 1: All items are payable on a per case basis.

Note 2: The fees are the maximum fees payable. Where the Mental Health Commission is of the view that the maximum fee is not warranted, because of the specific nature of the case in question, then the Commission shall apply a reduced fee accordingly.

Note 3: The fees above are inclusive of all expenses incurred, save for stamp duty (as per the above) and invoiced translation services.

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<sup>1</sup> This includes outlay for commissioner for oaths and registered post.

## Schedule 2

Fees (maximum) for Expert Witnesses and others appearing at Circuit Court effective from 2 August 2023 (exclusive of VAT).

|  |         |
|--|---------|
| (a) Medical Consultants                  |         |
| Preparation of Report                    | €554.00 |
| Appearance before the Circuit Court      | €452.00 |
| <br>                                     |         |
| (b) General Practitioners                |         |
| Appearance before the Circuit Court      | €363.00 |
| (c) Other Health Professionals           | €273.00 |
| (d) Witness other than (a - c) to above. |         |

Claims in respect of loss of earnings must be certified by the claimant's employer and state the gross and net loss of earnings being claimed. An individual who is self-employed must obtain a note from his or her accountant, to the effect that his or her loss of earnings is justified.

Note 1: All items are payable on a per case basis.

Note 2: The fees above are the maximum fees payable. Where the Mental Health Commission is of the view that the maximum fee is not warranted, because of the specific nature of the case in question, then the Commission shall apply a reduced fee accordingly.

Note 3: Normal civic service travel and subsistence rates may be applied to the witnesses covered by this Schedule.

### Schedule 3

Part Fees Schedule for appeals of Mental Health Tribunal decisions to Circuit and High Court effective from 24 July 2013.

|   | <b>Part Fees Schedule — Circuit Court</b>  | <b>Solicitor / Barrister as legal representative (where applicable)</b>   | <b>Junior Counsel</b>                 |
|---|--|---|---------------------------------------|
| A | In the event that the appeal does not proceed, but all the necessary preparatory work has been completed by the legal representative(s) on the appeal  | (i) Sole Representative<br>€1,395.00<br>(ii) Instructing Barrister<br>€670.00   | €787.00                               |
| B | In the event that the appeal does not proceed and <u>some but not all</u> of the preparatory work has been completed by the legal representative(s) on the appeal, payment will apply as follows:<br><br>(a) The papers for an appeal to the Circuit Court have been prepared and lodged.<br><br>(b) A consultation on the appeal with the patient has taken place.<br><br>(c) A second or more consultations as per (b) have taken place. | (i) Sole Representative €348.00<br>(ii) Instructing Barrister €168.00<br><br>(i) Sole Representative €398.00<br>(ii) Instructing Barrister €192.00<br><br>(i) Sole Representative €299.00<br>(ii) Instructing Barrister €143.00 | €196.00<br><br>€224.00<br><br>€168.00 |

|   | <b>Part Fees Schedule - <u>High Court</u></b>  | <b>Solicitor</b> | <b>Junior Counsel</b> | <b>Senior Counsel</b> |
|---|--|------------------|-----------------------|-----------------------|
| A | In the event that the appeal to the High Court does not proceed but all the necessary preparatory work has been completed by the legal representative(s) on the appeal   | €670             | €1470.00              | €2155.00              |
| B | In the event that the appeal to the High Court does not proceed and <u>some but not all</u> the necessary preparatory work has been completed by the legal representative(s) on the appeal, payment will apply as follows: |                  |                       |                       |
|   | (a) The papers from an appeal to the High Court have been prepared and lodged.   | €168.00          | €368.00               | €539.00               |
|   | (b) A consultation on the appeal with the patient has taken place.   | €192.00          | €420.00               | €616.00               |
|   | (c) A second or more consultations as per Section (6) have taken place   | €144.00          | €315.00               | €463.00               |