



21 July 2009

Tony Fisher
Ministry of Justice
PO Box 180
WELLINGTON 6140

Dear Tony

LAWYER FOR CHILD REMUNERATION RATES

Members of the Family Law Section Executive Committee last met with you on 11.3.09 to express the Section's concern about the inconsistent application of the Level 3 Lawyer for Child remuneration rate where two or more of the case characteristics were present, indicating the need for superior skills.

At that meeting you agreed to issue a Court Circular clarifying what constituted "superior skills" and indicating in what circumstances the Level 3 rate would be applied. That circular (FAM 09/01) was issued on 20.3.09

The Family Law Section agreed it would provide the Ministry with feedback three months after the circular was issued. Attached are comments from the Section's 25 regional representatives.

The Section is pleased to report that, generally speaking, the circular is being applied correctly in the South Island. The only problem seems to be that in one area, counsel have to apply for the Level 3 rate, (it is not given automatically) and, in another area, court staff are not applying the Level 3 rate despite two or more of the case characteristics being present.

Unfortunately, the report is not so positive from the North Island. In 9 out of the 17 areas, the court circular is not being applied correctly. Court staff are using their discretion to apply, or not apply, the Level 3 rate. In many instances, it is left to individual counsel to apply on every file for the higher rate. One court is not applying the circular in all CYFS/MSD matters. Another court is paying Level 2 on all cases regardless of the circular or the number of case characteristics present.

There are delays and problems when counsel has written to the court regarding existing files. In Auckland, for example, one practitioner wrote to the court regarding the rate on several existing files and most were declined even when there were *four* or more of the case characteristics present.

There is confusion in some courts regarding the range of rates in Level 3 – from \$155.00 to \$170.00. After the court circular was issued, courts are now paying a range of rates, generally \$160.00 or \$165.00, when in the past \$170.00 was paid for the Level 3 rate.

I do not believe this situation is reflective of what was agreed at our previous meetings with you. It is unfair that practitioners in one part of the country are receiving a lower remuneration than others, for essentially the same work, and while the correct rate is applied automatically in some cases, in other cases, practitioners have to apply to the court on a case-by-case basis.

I appreciate that it will take time for you to investigate these inconsistencies, and hope the report will assist you in this task.

Our members, who have supplied this information, have requested advice as to what is being done to resolve this issue and I would like to report back to them in the near future.

I am happy to meet with you to discuss this issue further, should you wish, and look forward to hearing from you soon.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Maskell', with a stylized, flowing script.

Paul Maskell
Chair

**LAWYER FOR CHILD REMUNERATION RATES
UPDATE FROM FLS REGIONAL REPRESENTATIVES
JUNE 2009**

NORTH ISLAND

Northland

Below is the response from our Family Court Co-ordinator, Maria Vuletich :

"Hi Bridget

The standard rate for Lawyer for Child is \$155 per hour. I give this amount when the LFC is new or inexperienced. I also give \$155 for CYFS review re-appointments of LFC. I give \$160 per hour for most referrals. I give the set rate of \$170 hour for Hague and Lawyer to Assist the court cases. If cases have multiple issues ie sexual abuse, D/V, mental health issues I usually run it past my manager Karen Wren and have known to give \$170 hour. Also if the report is directed by a Judge to be filed in very short time ie immediately, in one weeks time or less. I hope this is helpful, you can contact me if you have any further queries
Regards, Maria Vuletich, Family Court Co-ordinator"

There remains confusion about why "Level 3" has a range of rates, and what about Levels 1 and 2? I asked Maria about these, and she didn't know what they are.
Is there discretion to pay the \$170 per hour, even if the criteria are clearly met?

Auckland

May 2009

I emailed all Auckland Central members asking for feedback regarding the application of Level 3 Lawyer for Child rates at the end of April.

One practitioner advised that they had not had any appointments from the Auckland Family Court where the remuneration is more than \$155, in contrast to appointments they get from the Manukau Family Court where several files are at \$170.

Another advised that they had had one appointment where the rate of \$170 was used without them asking for it. Cultural and psychiatric issues were obvious there.

Another practitioner said "In connection with one recent appointment I argued for \$170 per hour on the basis that three of the characteristics set out in the circular were present and it therefore required "superior skills". It was in fact a run of the mill situation where a protection order had been made and there was an application for a parenting order and a respondent who had taken no steps. The court co-ordinator agreed to the \$170 per hour but pointed out that the Level 3 rate was between \$155 and \$170. It doesn't make much sense to me to have a range for Level 3 and I had certainly understood initially that Level 3 referred to \$170 only. I'm not sure if I asked for \$170 in a similar case again that I would get it!"

I have a number of Lawyer for Child appointments from Auckland Court, so it may be best for me to summarise my experiences and the issues I have observed. Following our last Liaison committee meeting, it appears a new system has developed for new appointments. The Court Co-ordinator emails through the documents and the form they have prepared

which sets out the categories. Counsel is asked to complete that and send it back. It seems from my experience that if the criteria are met, the appointment is confirmed at the higher rate of \$170.

I have a number of old files (existing prior to the circular) that meet the criteria and upon receipt of the circular last year, I wrote to the Court and requested an increase in the rate on the appropriate files. Some were approved relatively quickly, some were declined, despite being *four* or more of the factors present! It seemed to depend on who was making the decision, and at that time the Auckland Court Manager's approach was rather restrictive in interpreting the circular.

Since the last liaison meeting and the last Circular, I have received emails on all of the files where I had outstanding requests from one of the court officers asking for me to complete the form referred to above and email it back. This was, although in many cases there had been a series of letters, first seeking the increase and then seeking advice as to what was to happen with that file due to the time that had elapsed. That was at the end of March, but I have received two letters back since then, confirming an increase. I am still waiting on the others.

I also accept appointments from the other courts in the Auckland region and it is apparent that there are still differences between courts. For instance, in a case transferred to the North Shore from Auckland where the higher rate of \$170 had been approved, I was appointed at the lower rate, and had to ask for the higher rate again. The Court Manager said that while the characteristics were there, (substance use, violence and psychiatric issues) there was still a discretion and he did not consider the case required superior skills. He said it may have earlier required superior skills but for a review (CYFS proceedings) he did not think it warranted the higher rate.

In Papakura and Pukekohe, I have had several files at \$165. I do not know why the rate is \$165 and not \$170!

Waitakare Court has responded to the letter I sent months ago requesting an increase - a file with 5 children, none of whom speak English, they are refugees, parents with possible mental health issues and violence issues. From discussions with other counsel it seems they may be saying that Level 3 has a range from \$155-\$170 and stick with \$155.

June 2009

There is now a significant difficulty that has arisen with processing files where the higher rate is requested in Auckland. I have a number of files where a request has been made for a higher rate, at the end of last year or the beginning of this year. In the meantime, further requests have been made for extensions to the available balance, as the file has progressed. Finally the requests for an increase have been granted, but the difficulty is that all correspondence after the date of that request has not been considered. Counsel receive a letter advising that they have been granted \$170 and letters advising of historical balances. Alternatively they reset the balance to \$170, regardless of the requests you have made in the intervening period. I have personally had 6 or 7 files where this has happened, and I have had to write letters summarising all of the requests made over the last 6 months, and ask for the file to be reviewed and the earlier letters considered. Also bills which were sent with the

request for a higher rate have not been processed (even when they are 6 months old.)

All in all, very frustrating! I suspect this is happening for other Auckland Family Court counsel. The Auckland Court seems to have some problems with delays in all areas at this time.

Waitakere

One practitioner has raised a concern with me as to the discretion to apply the higher \$170 rate. In a case where she was appointed at \$155 she identified two qualifying factors in terms of the circular and sought payment at \$170. She had thought that it would be automatic that if the factors were present she would get the higher rate. The Family Court Co-ordinator reviewed the file and responded that she did not think on the facts of that case the higher rate was warranted. The practitioner was advised to file a memorandum if she wanted the matter reconsidered. The Co-ordinator has stated that given that Level 3 rate has a range, that they can determine the level of payment within that range.

Manukau

The Manukau Court uses a check list to identify features and briefs at the Level 3 rate. If the circumstances on a file change, then counsel go back to the Court to apply for an increase in rate. There has been no difficulties in obtaining the increased rate where appropriate. This has been the case since the Court circular was issued. Papakura and Pukekohe have the same Family Court Co-ordinator. The checklist is not forwarded to counsel, as the Manukau Court does, but characteristics appear to be identified by the Co-ordinator and the higher rate paid where appropriate. There has definitely been an improvement in the process from the Papakura and Pukekohe Courts. There appear to be no problems in the South Auckland cluster.

North Shore

The Lawyer for Child rates are working and protocols are understood by counsel - i.e. two matters on the checklist ticked will mean the higher rate either at inception or as requested by Lawyer for Child will be paid. However, attendances up to when the request was made, remain at the \$155.00 rate.

Thames

It appears it is still up to the individual Lawyer for Child to query the rate, and the Court is not automatically paying the Level 3 rate when the case characteristics are present. It is unfair to practitioners to have to ask for the higher rate when it is clear from the Court circular that this must be paid if the two or more of the characteristics are present.

Hamilton

Unfortunately, there has been no change in the way the Court staff are failing to apply the Level 3 rate. The \$155.00 rate is automatically applied and it is left to individual counsel to apply for the Level 3 rate where the factors are present. Practitioners are still being advised by the Court that any increase to the rate is discretionary even if the requisite factors are present. Even though a checklist of case characteristics are being used in other areas of the country, there is no suggestion a checklist will be used in the Hamilton courts.

Taranaki

Practitioners in Taranaki are receiving the higher rate in more cases, i.e. where the particular case characteristics are present.

Tauranga

In some cases, the case characteristic and Level 3 rate is being applied. However, this is not a consistent practice in all cases. The Tauranga regional representative has spoken to the Court Co-ordinator who is very open for counsel to apply for the higher rate if they think the case characteristics are being applied. Local counsel's understanding is that if two or more of the characteristics are present, then the higher rate is warranted. It should not be up to individual practitioners to apply on a case by case basis to the court for the higher rate.

Gisborne

There does not appear to be any problems with the correct rate being applied where the case characteristics are present.

Hawkes Bay

One of our local members had a comment on the "superior skills" for Lawyer for Child matters – he was concerned that the Ministry of Justice refuse to apply this to when we are appointed for CYFS/MSD matters, and he did not understand the reasoning behind this. Lawyer for Child Level 3 rates are being applied where the criteria applies in both Napier and Hastings.

Rotorua

The Court staff are using a checklist to identify case characteristics. There are instances when the characteristics emerge after the case commences so it is up to the individual practitioner to write to the Court requesting the Level 3 rate. In these cases, the higher rate is usually granted. As far as cases that have more than two characteristics at the outset, the Court staff are still using their discretion in some instances, although this has improved slightly from the last report in February 2009. In these cases, it is still up to individual counsel to justify why the Level 3 rate should be paid. Some Court staff are very familiar with the process and the different levels of rates, whilst others are not. However, when practitioners need to engage with the Court staff in Whakatanae and Rotorua, they are generally very helpful and obliging. The same cannot be said about the Court staff in Tokoroa, who will only pay a \$155.00 rate on all cases, whether or not two or more case characteristics are present. The staff are unhelpful and most of the time, unpleasant to deal with.

Wanganui

Our Family Court Co-ordinator seems to be applying the new criteria for the higher rate when appropriate. There has only been one recent occasion when she had not picked it up and as soon as it was raised with her the higher rate was approved.

Palmerston North/Manawatu

There is consensus that these are being applied as appropriate by the Family Courts Co-ordinator in this area.

Hutt Valley

We have never had difficulty with getting the higher rate when appropriate, and a consistent practice has continued.

Porirua

The Porirua and Levin Registries are properly implementing the clarified policy for Level 3 appointments. On occasions where the Level 3 rate appears appropriate, but has not been initially allocated, the Courts respond promptly to a request for the matter to be reconsidered for Level 3 rate.

Wellington

It appears that Court staff are applying the new criteria and paying the Level 3 rate. However, it seems counsel need to write in on existing files establishing the criteria for the higher rate before the current lower rate is changed. So far, requests for an increase in rate have been accepted.

SOUTH ISLAND

Ashburton

The Court grants the higher Level 3 rate using the criteria set out in the Court circular. As many of the cases involve two or more of the case characteristics, Lawyer for Child is frequently granted the higher rate.

Marlborough

No practitioners have reported getting the higher rate recently but being a small court that would not be surprising. As per the last report, it appears that some practitioners have applied for the Level 3 rate in some cases for the reasons of urgency and also where there is a combination of urgency; language difficulties; and/or domestic violence combined with parenting issues, and these had been paid at the Level 3 rate.

Nelson

It appears that typically, Court staff are applying the new criteria and paying the Level 3 rate where two or more factors are present. I have been advised of a couple of instances where there has been two or more factors present where the Court staff have not paid the higher rate despite the practitioner bringing to the Court staff attention the presence of two or more of the criteria.

Christchurch

The Registry and the profession are aware of the new criteria regarding the Level 3 rate for Lawyer for Child appointments, and it appears that it is being applied consistently.

Timaru

I have had no indication from Timaru members as to any recent problems – the higher rate seems to be interpreted as being \$170.00 per hour.

West Coast

In general Level 3 rates are available for Lawyer for the Child though this would normally necessitate an approach to the Registrar setting out reasons justifying that increase. I have not known a legitimate approach to be declined.

Southland

There has been no issues reported from members in Southland with the appropriate rate being applied. There are three of us in this office doing Lawyer for Child work and there have been no problems getting paid the correct rate in the appropriate circumstances.

Otago

The consensus from Otago practitioners undertaking Lawyer for Child assignments is that the initial appointment is often now at the higher rate where two or more case characteristics are present. This was not frequently occurring previously. Local practitioners who provided feedback advised they had the higher rate approved when requested, on the grounds that two criteria are met. It was pointed out that on occasions, these criteria do not arise until after the case commences.