

## **Mental Health Receiverships – Remuneration to be Allowed to Receivers**

By virtue of Rule 45(1) of the Mental Health Rules 1998 “Where a receiver is appointed for a patient, the judge may, during the receivership, allow the receiver remuneration for his services at such amount or at such rate as the judge considers reasonable and proper and any remuneration so allowed shall constitute a debt due to the receiver from the patient and his estate.”

In the case of Advocates who are appointed to act as Receivers, Rule 63(1) also applies: “No receiver for a patient shall, unless authorised by the judge, be entitled at the expense of the patient's estate to employ an advocate or other professional person to do any work not usually requiring professional assistance.”

If the Receiver is a senior Advocate and wishes to personally manage the day to day affairs of the patient, the Court has taken the view that it would not be appropriate to charge advocacy fees for day to day tasks which, had his mental capacity not diminished, the patient would have delegated to a reasonably competent bookkeeper or a personal assistant such as arranging property maintenance, paying bills and the like.

Likewise, when the bulk of the work relates to financial management of the patient's affairs it may be more appropriate to engage a professionally qualified accountant, and to only instruct a firm of advocates if necessary to obtain legal advice, for which the Receiver would be responsible for authorising payment. The Court is mindful that particular care is required in assessing legal fees where the Receiver is an Advocate and he charges the patient for providing legal advice, or instructs his firm to do so.

Previously, Receivers' claims for remuneration were reviewed in accordance with High Court Directive/Chancery Division III (6) issued in 1960 which gave the Court “complete discretion in determining the amount of remuneration to be allowed” and recognised that “each individual case will be considered on its merits with due regard to the amount of work involved”. By virtue of Rule 15.21(3) of the High Court Rules 2009 (High Court Directives in force) the Directive has ceased to have effect but its principles remain valid.

General Registry officers review the claims submitted by Receivers supported by relevant schedules of work performed and will make a specific recommendation to the Court as to the amount that appears reasonable given an examination of the accounts which usually give a fair indication of the complexity of work the Receiver has undertaken.

The officers work to the following scale in framing that recommendation:

Item	Accounting periods ending after 31 December 2013
Minimum fee	£200
Hourly rate maximum	£192
Allowable income	5%
Realisation gains:	
1.000%	0 to £100,000
0.750%	£100,001 – £425,000
0.375%	£425,001 – £1,000,000
0.125%	Over £1,000,000

The recommendation will be for the lower of the sum due from either the hourly rate calculation or the sum due in respect of allowable income and realisation gains calculations,

subject to a de minimus fee of £200 if a claim is made. A Receiver may of course waive his claim for all or part of his remuneration.

The remuneration to be allowed is then notified in writing to the Receiver.

As a decision of the Court, any disagreement would be subject to formal appeal in accordance with section 107 of the Mental Health Act 1998 to the Staff of Government Division.

Finance & Central Services Division  
General Registry

12 March 2015