



Criminal Legal Assistance Update 2

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Update on legal aid provisions for attendance at Police Station interviews

Lord Advocate's Guidance to the Association of Chief Police Officers in Scotland (ACPOS)

Prior to the Supreme Court's decision in *Cadder v HMA* which is due on 20 October 2010, the Lord Advocate has provided interim guidelines to ACPOS, to be implemented with immediate effect, that a suspect must be offered access to a solicitor for a private consultation, in person, in advance of an interview and during an interview. This came into the public domain in the Crown Office's press statement on Saturday, 12 June.

As the Lord Advocate's interim guidelines were confidential, we were unable to engage with the profession.

The Lord Advocate's recent decision to take immediate action to minimise risk to any prosecution pending the outcome of the appeal prior to the Supreme Court's decision is separate to the work we have been doing with the Scottish Government, the Crown and ACPOS on preparing options for implementation after the Supreme Court's decision in October 2010.

To try to assist solicitors, we published information on our website on Friday, 11 June to advise you of the availability of advice and assistance for attendance at police stations in these circumstances and the availability of the

Out of Hours Helpline for advice and assistance increase requests which has been available to solicitors for many years. The helpline was manned 24 hours a day between Friday and Sunday, 11 - 13 June to assist solicitors who may have been contacted by police over this initial period.

We have just been informed that the Lord Advocate's interim guidelines will be published today at:
<http://www.copfs.gov.uk/Publications>

Consultation with the Law Society of Scotland and local faculties

We are having urgent meetings with the Law Society of Scotland to discuss the implications of the Lord Advocate's decision for solicitors and to clarify the Law Society's view on solicitors' obligations arising from the new procedure implemented by the Crown.

We are also seeking feedback on solicitors' experience of the new arrangements and their interaction with legal assistance provisions.

Practical arrangements

In what circumstances do the Lord Advocate's interim guidelines apply?

We understand that initially the Lord Advocate's interim guidelines apply in all cases which **may be prosecuted in solemn procedure** and where an individual is interviewed as a suspect in a police station -

- during detention under s.14 of the Criminal Procedure (S) Act 1995;
- during voluntary attendance for interview; or
- under common law between arrest and charge.

We understand that the guidelines will apply to **summary cases** from July 2010.

Who will be asked to attend police stations?

We understand that the Police will initially contact the suspect's nominated solicitor to attend in person. If the nominated solicitor is unable to attend and if the police station is located in an area in which there is a PDSO office, a PDSO solicitor will be asked to attend. If the PDSO solicitor attends the police station and the suspect has a nominated solicitor, the PDSO will not take on the subsequent case and will provide a report of the police station visit to the nominated solicitor. If the PDSO are unable to attend, the solicitor who is named on the Duty Plan will be asked to attend (although this does not come under the Duty Scheme arrangements). If no solicitor is available to attend in person, we understand that advice can be given by telephone.

Legal assistance arrangements

The suspect must be financially eligible for advice and assistance

There is no change to the current financial eligibility arrangements. If the client is not eligible for advice and assistance, there is no other legal aid cover available. The client can therefore be charged privately for this work. For the particular arrangements for murder, culpable homicide and attempted murder, please see the paragraph below.

Availability of advice and assistance

If the Police contact you to advise that your client has requested your attendance at a police station to provide advice prior to an interview, you can be paid under the advice and assistance scheme if the applicant is eligible. As you will be aware, there are different scenarios that can occur:

- If you grant advice and assistance and the case does not progress to a prosecution, you can submit an advice and assistance account.
- If the case proceeds to a solemn prosecution, there is no change to the current arrangements for attendance at police stations and you will be paid under advice and assistance for the work you do.
- If the case proceeds to a summary prosecution, the fee payable for the advice provided at the police station, if under two hours, is included within the fixed payment of £515 for sheriff court cases. This fee was introduced by the Scottish Government following negotiation with the legal profession as part of the reforms to summary justice. That fee was set at a level to include the cost of your attendance at police stations for up to two hours.

In these summary cases, if your travel time and attendance last longer than two hours, this is classed as an "exceptional police station visit" and you can claim for this work in full, in addition to the fixed payment. However, where your attendance at a police station is under two hours and you subsequently hand the case to the accused's nominated solicitor, there is no current provision in legal assistance for payment from the Board. We have highlighted this to the Scottish Government. We think this would currently apply in a relatively small number of cases, especially as the new guidelines apply to the more serious cases at this stage.

Murder, attempted murder and culpable homicide

There is also no change to the duty solicitor arrangements where you are obliged under the

court duty scheme to attend at a police station for a suspect who is detained on a charge relating to murder, attempted murder or culpable homicide. You are entitled to be paid under advice and assistance and there is no financial eligibility test.

Increases in authorised expenditure

There is no change to the process for applying for advice and assistance, the initial limits or the requirements to seek increase in authorised expenditure. The initial limits of advice and assistance expenditure are:

- for a case which is likely to proceed by way of solemn procedure - £90;
- for a case which is likely to proceed by way of summary procedure - £35.

You require an increase in authorised expenditure to carry out work in excess of the initial limit. Any increases granted are done so on the basis that the client is financially eligible. If the client does not turn out to be eligible, the increase is no longer valid.

We have set a guideline limit of authorised expenditure of £300 for the work involved in attending and advising a client at the police station. This is on the basis that the Police can detain an individual for 6 hours and that this will probably be the maximum amount of work you will require to carry out. We have monitored the situation over the last few days and this appears to be sufficient in the majority of cases.

However, there may be exceptions to this and we will continue to monitor the situation. If you require expenditure in excess of £300, please explain the circumstances to us in your increase request. For example, we recognise that if you live in the following court areas: Campbeltown, Dunoon, Fort William, Kirkwall, Lerwick, Lochmaddy, Oban, Portree, Rothesay, Stornoway and Wick, that there may be additional travel required which will involve more than 6 hours work. You may require additional expenditure to cover the longer periods of travel. However, where substantial travel may be required, we understand that the Police may make alternative arrangements.

You should submit the advice and assistance application and increase (online or paper) as normal once you have met with your client.

How to apply for an increase in authorised expenditure

You can apply for an increase in the following ways:

During normal office hours:

- **Monday to Friday (08.30 to 17.00)**

Increases in authorised expenditure can be applied for during office hours by contacting the Criminal Applications Department in the usual way.

Outside normal office hours:

- **Mon - Friday - 17:00hrs - 22:00hrs**
- **Sat - Sun - 10.00hrs - 22:00hrs**

You can contact our **Out of Hours Helpline** on **07711 424344** and speak to a member of our staff who will take an immediate decision on the increase in authorised expenditure. This facility has been in place for a number of years.

Outside normal office hours and helpline hours:

Between 22:00hrs - 08:30hrs, and where the Police have contacted you to advise that your client has requested that you attend a police station, you should contact the **Out of Hours Helpline** on **07711 424344** and leave a recorded message to apply for an increase in authorised expenditure. You will hear a pre-recorded message approving an increase in authorised expenditure for cases in these circumstances.

You must then leave a message with the following information:

- the date and time of your call
- your name
- your firm name
- the name of the suspect
- the name of the police station
- the nature of the offence
- the amount of increase required.

The increase in authorised expenditure is not a block fee; it is a maximum increase and you will have to justify the expenditure incurred at the accounts stage. You must follow this procedure for logging your increase request as

we cannot retrospectively grant increases in authorised expenditure.

Can a first year trainee grant advice and assistance at a police station?

No. According to the Law Society's rules, a first year trainee cannot grant advice and assistance.