



# Criminal legal assistance update

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## Update on Legal Aid Provisions for Attendance at Police Station Interviews

The Lord Advocate issued revised interim guidelines on suspects' entitlement to request a solicitor's advice and/or attendance at a police interview on 7 July 2010. The Guidelines have now been extended to summary criminal cases. In addition these guidelines now advise that suspects should be permitted to speak privately to a solicitor by telephone to provide instruction to the solicitor and receive advice. This would also assist the suspect in deciding whether he or she wishes the solicitor to attend in person at the police station. Where the nominated solicitor is unable to assist, or the suspect does not have a nominated solicitor, then, with the consent of the suspect, either a solicitor identified from the local Duty Scheme or the PDSO (in areas where they have an office) should be contacted and asked to attend, following a private telephone consultation with the suspect.

The arrangements for the provision of advice and assistance for these police interviews were published on our website on 11 June, and updated on 15 June. At present, under current legislation, the advice and assistance scheme is the only way of providing criminal legal assistance to clients at police interviews, unless you are the duty solicitor and the charges involve murder, attempted murder or culpable homicide. These are the only cases which can be covered by automatic legal aid under the duty scheme. For all other cases, advice and assistance must be used, and you need to be satisfied that the client is financially eligible before he or she can be admitted to advice and assistance. The initial telephone consultation with the client can also be used to help determine financial eligibility. In criminal advice and assistance cases, you must obtain financial or other documentation to ascertain financial eligibility, so far as necessary and practicable. In these police station interviews, it is clearly not practicable to see financial documentation, but you must still be satisfied that the client is financially eligible. When completing the form, or submitting an online application for this, you still need to tell us how you were satisfied that the client was financially eligible to receive advice and assistance.

If an attendance at the police station is not required, the advice and assistance form can still be submitted to cover the telephone advice. In these circumstances, the form (or the online mandate) can be left unsigned by the client, but you should include a brief note to explain that the client was not able to sign the form in these circumstances.

If an increase in authorised expenditure is required for the case, you can apply for this in the following ways:

- Monday to Friday 08.30 to 17.00 by contacting the Criminal Applications Department in the usual way;
- Monday to Friday 17.00 to 22.00, Saturday and Sunday 10.00 to 22.00, by contacting the out of hours helpline on 07711 424344;
- Between 22.00 and 08.30 by contacting the helpline on 07711 424344 where a recorded message will approve an increase if you leave sufficient information about the case, client and police station involved.

We previously advised that we were reviewing the legal aid arrangements as we had identified one particular issue which we believe could occur in a small number of cases, where a solicitor attends at the police station for less than two hours and subsequently hands the case to the accused's nominated solicitor (who was unable

to attend the police station). The following change in the legislation now makes a provision in legal assistance for the Board to make a separate payment to the first solicitor.

### **Amendment to the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations**

This amendment to the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations came into force on 8 July 2010. This change is effected by the Criminal Legal Assistance (Fees) (Scotland) Regulations 2010, which can be found on our website ([www.slab.org.uk](http://www.slab.org.uk)). These regulations apply only in relation to cases where criminal advice and assistance is first provided to the assisted person at a police station on or after 8 July 2010.

The change entitles a solicitor to separate payment in relation to the provision of advice and assistance to an assisted person at a police station where another solicitor subsequently makes a grant of ABWOR, or receives a grant of summary criminal legal aid for the same case. In these cases, the fixed payments payable to the second solicitor will be reduced by the amount of the fee to which the first solicitor is entitled.

Where more than one solicitor provided the subsequent ABWOR or summary criminal legal aid, the fixed payments payable to each solicitor will be reduced by the amount of the fee which the first solicitor is entitled to, divided by the number of solicitors who provided the subsequent assistance. So, if the grant of ABWOR or summary criminal legal aid is transferred to a further solicitor, the reduced block fees payable to each solicitor will also be reduced by an equal proportion of the advice and assistance fee paid for the police station visit.