

## ELIGIBILITY CRITERIA FOR INCLUSION ON THE DUTY PLANS

- You must hold a practising certificate with no restriction affecting your entitlement to undertake legal aid work as at the closing date for applications.
- You must be accepted on to the Criminal Legal Assistance Register.
- At the time of applying for inclusion on the Plans, you and your firm must have a place of business within the sheriff court or district court area for which the duty plan is being prepared and conduct the majority of your business within that court. *This requirement can only be disregarded where local circumstances necessitate it, and only after agreement between the Board and the local Faculty.*
- Only a registered solicitor connected to such a firm who has been providing criminal legal assistance and practising in the criminal courts for at least one year is eligible for inclusion on a plan. If you have already served a year in a district court and move to another sheriff court district, that experience will be taken into account and you will not be obliged to serve a year on another district court plan unless there is a waiting list. *This requirement can only be disregarded where local circumstances necessitate it, and only after agreement between the Board and the local faculty.*
- If you are eligible for inclusion in a duty plan, you must undertake duties in the local district court for one year before being considered for inclusion in the sheriff court plan (unless you are practising in a sheriff court district where there is one plan for both the district and sheriff court). *This requirement can only be disregarded where local circumstances necessitate it, and only after agreement between the Board and the local faculty.*
- If you move to another sheriff court district you are entitled to inclusion in the local duty plan on application, subject to availability, if you have undertaken similar duties in your previous sheriff court district.
- You can only be included in a duty plan for one sheriff court district at any one time. *This requirement can only be disregarded where local circumstances necessitate it, and only after agreement between the Board and the local faculty.*
- As duty solicitor you must
  - perform the required services **in person**
  - give priority to the performance of these services
  - be available when the particular court requires it (even if the papers are not ready) to perform these services during each sitting by the court that you are attending as duty solicitor.
- You may not be able, for good reason, to carry out all or part of your period of duty in person. If, after making *bona fide* efforts, you cannot contact your alternate or any other solicitor on the duty plan, you may delegate your duties to any other solicitor practising within the same sheriff court district who can perform them. If you have had to delegate your duties, you must always tell the Board why you could not carry out your duties in person, and the name and business address of the solicitor to whom you have delegated your duties.
- If you fail to attend to your duties without making provision for another solicitor to attend to them, you may be considered unsuitable for inclusion in a future duty plan. Any other solicitor who, in these circumstances, is required by the police, court or Board officials to substitute for the duty solicitor is deemed to be acting as duty solicitor for the purposes of the plan.
- If you wish to withdraw from the plan for any reason you must give at least one month's notice to the Board, or undertake the duties you have agreed to carry out.
- Recognition of the power of faculties to prescribe local policy

The services of duty solicitor have to be provided throughout Scotland in very different situations. These criteria therefore need to be supplemented by certain local policies which may from time to time be agreed with local faculties. There may be additional administrative or other provisions which take into account the prescribed policy of the local faculty. *This may also include the provisions regarding the expected levels of experience in undertaking criminal court work which a duty solicitor is required to demonstrate, if appropriate.* Such policies must be clearly presented to, and approved by, the Board. Some fundamental conditions (such as the use only of a registered solicitor) cannot be altered.