



Criminal Legal Assistance Update

11 June 2010

Confirmation of arrangements to provide advice and assistance at police stations

Attendance at a Police Interview

Following the decisions in [Salduz v Turkey](#) and in [PF Forfar v Duncan MacLean](#), (HMA v MacLean 2010 SLT 73), the Supreme Court has considered whether a suspect requires access to a solicitor in order to ensure compliance with Article 6 of the European Convention on Human Rights in the case of *Cadder v HMA*. The Court has advised that its decision will be issued on 20 October 2010.

The following guidance confirms the procedure that is already in place that allows you to be paid for the work you undertake where you require to attend at a police station for the purposes of an interview. This work will include: travel to the police station, attendance with the client and/or attendance at interview and return travel.

Nominated Solicitor

If the Police contact you to advise you 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. There is no change to the process for advice and assistance, the initial limits or the requirements to seek increase in authorised expenditure.

Clients need to be financially eligible for advice and assistance. If the client is not eligible for advice and assistance, there is no other legal aid cover available, so the client can be charged privately for this work.

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.

As you are aware, you need an increase in authorised expenditure sufficient to undertake work and be paid for it. 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 If the client does not turn out to be eligible, the increase is no longer valid. You can apply for an urgent increase in the following way:

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 a maximum limit of authorised expenditure of £300 for the work involved in attending and advising a client at the police station.

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 £300 increase limit 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. You should submit the advice and assistance application and increase (online or paper) as normal once you have met with your client.

Should your client subsequently be prosecuted under summary procedure, your attendance at a police station is, of course, included within the case disposal fee. However if the attendance at the police station is an exceptional police station visit (over two hours) then your attendance at the station is paid in addition to the case disposal fee.

If the case subsequently results in a grant of ABWOR or summary criminal legal aid, the work under advice and assistance (including the police interview) will still be subsumed, unless the time spent at the interview

exceeded 2 hours, with travelling time of 1 hour maximum.

Operation of the Duty Solicitor scheme

As a duty solicitor you are obliged under the 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. Although you are acting as the duty solicitor, you are not in a position to provide automatic criminal legal aid as the client is not, as yet, being prosecuted. Again, you are entitled to be paid under advice and assistance as long as you follow the procedure set out above in order to obtain a sufficient level of authorised expenditure.

In cases where the suspect's nominated solicitor is unable to assist, then we understand that the police may contact a solicitor identified from the duty scheme to see if they can assist. Should you, as duty solicitor or named reserve, be contacted by the police in such circumstances, and you wish to assist, then the appropriate payment route is through the advice and assistance scheme.

