

Protocol

Foreword

This is a suggested protocol only and all practitioners are at liberty to choose to follow it or not. It intends to provide for fair practice amongst professionals in order that those taking part in the refusal to work under the new rates are afforded some degree of protection.

The decision to adopt this protocol has been taken because of the cuts to the rates of pay to legal aid lawyers announced in June and due to take effect on the 1st July 2015 with further cuts in January 2016.

The rates payable, and the continued cuts, have made it increasingly difficult for us to properly discharge our obligations to our clients and the wider justice system. Without the proper resources, we cannot adequately represent our clients against the CPS and Police. Notwithstanding, hitherto we have continued to work in order that our clients may benefit from access to justice regardless of their means. We attend court and wait while the prosecutor finds his file, or for the interpreter to attend or for a prisoner to arrive despite the consequent cost to us. We do so rather than leave the client unrepresented and out of some overriding sense of justice.

These latest cuts threaten to restrict access to justice for all except the very rich. Whilst we desperately want to ensure that justice is available to all, we cannot carry on providing representation when to do so would put our businesses at risk and threaten our staff with job losses. Furthermore, and in order to maintain profitable businesses, we would have to make changes to the way in which we deliver our service which would result in a sub-standard service and low quality representation. We are not prepared to partake in such a system of "Justice".

Accordingly, we believe that refusing to act in cases from the 1st July is the only way we can ensure that in the future, our clients are afforded adequate advice and representation.

It is considered that there are 3 main areas of work that will be affected and this protocol has been split accordingly:

1. Police Station:

No own client police station cases will accepted on a legally aided basis from midnight on the 1st July 2015.

Accordingly, we will not attend the police station to advise prior to interview.

We will not provide telephone advice.

We will not advise on any aspects of the case whatsoever.

We may want to speak with the client to explain the nature of our action.

However, be careful not to advise. If you are deemed to have advised then you may be liable for any action/inaction thereafter. Similarly, the client may be considered to have received advice which may prejudice the client in any later applications regarding his treatment and the admissibility of the interview.

The police are obliged to offer every detainee the opportunity to speak with a solicitor. A failure to do so should render the ability to interview void.

Accordingly, suspects must be processed without interview unless they waive their right to such advice.

2. Magistrates Court:

No representation order will be applied for any new magistrates court work from midnight on the 1st July 2015.

Accordingly, we will not attend the court to provide advice, assistance and/or representation of any kind to any client wishing to rely on public funding who prior to said date does not already have funding in place.

Of course, we are likely to be present at court dealing with existing matters and it may be difficult to avoid clients appearing for the first time and expecting representation. Accordingly, it will be unwise to offer any advice, even for free since this may be deemed advice for which we will later be held accountable. Similarly, the client may be deemed to have benefited from advice which may prejudice him/her in any later applications.

The client may be told about the reason for the refusal to accept instructions on a legally aided basis but stop short of offering any advice.

You may refer the client to the duty solicitor and offer a leaflet explaining our position.

Applications to adjourn for private funding are not encouraged, the client can do so him/herself and you may be drawn by the court into inadvertently giving advice, assisting the court with issues and other such matters which you may later be held accountable for.

Assuming the client seeks alternative representation, no other firm will accept instructions in the case whether on a publicly or privately funded basis.

Any firm approached by a client seeking to pay privately will enquire as to whether the client has previously been told by another firm that he cannot be represented on a legally aided basis and if so he will be referred back to the original firm.

There will be no excuses made for representing clients due to age, vulnerability, nature of charges etc. it is considered that this will quickly lead to a breakdown of the intended protocol.

3. Duty solicitor

a. Police Station Duty:

The duty solicitor scheme will not be affected by this protocol. It will operate as normal and we will continue to fulfil our obligations under the contract in this regard.

Any client requiring representation by the duty solicitor will be attended to in accordance with our obligations to do so.

Each firm on the rota will provide the minimum 1 duty solicitor to accept calls and attend to represent clients as required.

The obligation to take duty solicitor calls does not extend to back up matters and therefore firms may not wish to accept these as part of this protocol .

As duty solicitor we will undertake said cases to the extent that the work required of us does not interfere with our right to take reasonable breaks and meals and sleep during a 24 a relevant hour period. Once a duty solicitor is accepted by the duty solicitor on call, that duty solicitor will not accept any further duty solicitor work until they are no longer engaged dealing with that client. If the police indicate that there may be a further interview with regards to the current client then the duty solicitor will not accept any further work in the meantime.

Having represented a client as duty solicitor at the police station it must be made clear to that client that if he/she requires representation at court on a legally aided basis that it may not be given for reasons otherwise explained other than by possibly the duty solicitor.

If a client referred to the duty solicitor has previously been declined advice by an own solicitor the duty solicitor must check that it has been referred back by the DSCC otherwise the Duty solicitor will not be paid and in which case the duty solicitor does not have to and ought not attend. Furthermore, if the client has been declined representation by an own client firm and then requests the duty, the matter must be referred back to the own client firm thereafter in the event the client wants to pay privately for subsequent representation.

We will not accept any duty solicitor slots offered to us by the LAA in the event that notice is given to them that existing slots cannot be covered for whatever reason.

I have set out below the relevant parts of the duty sol requirements?

Mandatory Attendance

9.39 Subject to Paragraph **9.41**, you must provide the following services once a Matter has been accepted:

(a) attendance at the Police Station to provide advice and attend all police interviews with the Client where the Client has been arrested in connection with an offence;

(b) attendance at any identification parade, group identification or confrontation;

(c) attendance at the Police Station where the Client complains of serious maltreatment by the police

NB:

1. If you do not attend and it is reasonable not to do so you must record clearly your reasons. (9.40)
2. You may exercise your discretion not to attend for vipers but note that you may not be paid the fixed fee, (assuming that would have been the only attendance and you did not have to go for an IV for example) at the discretion of the LAA. (9.41).

There are some additional requirement you should also be aware of:

Additional Requirements:

9.48 Cases referred by the DSCC to you whilst your nominated Duty Solicitor is on Rota duty must be accepted unless the nominated Duty Solicitor is already engaged with another Client at a Police Station or at a hearing of an application for a warrant of further detention or an extension of such a warrant or at an armed forces custody hearing or a conflict of interest arises.

9.49 If the Duty Solicitor is already at the Police Station when a Client requests the Duty Solicitor, he or she must inform the DSCC of this fact when a request for advice is accepted. If a conflict of interest arises the case must be referred back to the DSCC.

9.50 You must accept a Matter referred by the DSCC if the nominated Duty Solicitor is unavailable for one of the reasons set out in Paragraph **9.48** above but providing you have a Duty Solicitor available to accept the Matter without delay who is able to arrange attendance at the Police Station, if necessary, within 45 minutes.

You must use all reasonable endeavours to accept Panel and Back-up Matters referred by the DSCC.

If a duty solicitor provides representation to an own client of another firm, then as a matter of courtesy that duty solicitor will inform the own client firm of the outcome of that case in order that the said firm can keep up to date with matters.

b. Court Duty:

When acting as duty solicitor at court it is very important to protect oneself from liability attributed following advice and representation provided. Thus far, solicitors acting in capacity as duty have failed to properly do so.

Firstly it is key to understand exactly what your obligations are:

10.7 A Duty Solicitor at a magistrates' court must provide the following services to any defendant who wishes to receive Advocacy Assistance:

- (a) Advice to an individual who is in custody **and**;
- (b) The making of a bail application unless the individual has received such assistance on a previous occasion;
- (c) Advice to an individual who is involved in Prescribed Proceedings

NOTE:

10.9 A Duty Solicitor must not provide Advocacy Assistance in committal proceedings or at a not guilty trial, nor, subject to Paragraph **10.8 (e)** and **(f)** above, Advice and Assistance and/or Advocacy Assistance to a Client in connection with a non-imprisonable offence.

When acting as duty we will not undertake any more than is required of us under the terms of the contract.

We will not act for those who have received previous advice.

We will not act for the clients of firms who have otherwise refused to act on a legally aided basis unless to do so would breach our obligations under the contract.

We will not seek to provide private quotes to those who consult us as duty when they have previously been declined advice on a legally aided basis and in such circumstances we will refer back to the original solicitor.

Any firm approached by a client seeking to pay privately will enquire as to whether the client has previously been told by another firm that he/she cannot be represented on a legally aided basis as a result of that firm having decided

to take individual action and if so he/she will then be referred back to the original firm.

If a duty solicitor provides representation to an own client of another firm, then as a matter of courtesy that duty solicitor will inform the own client firm of the outcome of that case in order that the said firm can keep up to date with matters.

Miscellaneous Other:

We will of course continue to service existing work either privately funded or in which a representation order has been granted pre- 1.7.15.

However, as a direct consequence of the cuts, as of the 1st July, all good will hitherto extended to the court and the system generally will be withdrawn.

If the court or CPS file is missing then we will return to the office and await a call from the court advising the case is ready to be called on at which time we will return.

Similarly, if the interpreter has chosen to attend another court first before arriving at the court we are at to represent our client, we will return to the office and await a call from the court to notify us the court is now ready to hear our case. Likewise for prisoners.

In the event that we refuse to act in a matter then we will ask of the client to refer back to us in the event any other does so agree. This will be referred to the local steering committee.

We will keep this protocol under constant review. It may be subject to change.