



# Criminal legal assistance

To be issued to all criminal legal assistance solicitors

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## NEW INTERIM POLICE STATION DUTY PLANS JULY TO SEPTEMBER 2011

This update includes details of some amendments which have been made to the scheme, following recent discussions between Kenny MacAskill MSP, Cabinet Secretary for Justice, the Board and the Law Society of Scotland. Given the changes to the scheme, we have extended the deadline for submitting application forms to **5.00pm on Tuesday 14 2011**. If you have difficulty submitting a form in this timescale, but still wish to be considered, please let us know. Application forms can be sent in paper format to the above address or sent by email to - [batchelortr@slab.org.uk](mailto:batchelortr@slab.org.uk) Copies of the scheme and the duty form can be found on the Board's web site - [www.slab.org.uk](http://www.slab.org.uk)

The key elements of the scheme are the provision of local duty rotas of firms who will be on duty to provide personal advice to suspects and a telephone advice helpline operated by the Board to provide 24/7 cover and a one step contact point for the police. This helpline will provide an effective and consistent means of contacting named or duty solicitors to provide timely telephone advice or personal attendances for suspects, and therefore allow the investigations to be dealt with more quickly and detentions completed in a shorter time.

Helpline solicitors will be able to provide telephone advice to suspects where this is requested, but where the helpline is asked to contact a named solicitor, the helpline will not

be speaking to the client, or providing any advice.

The scheme has been designed to offer security of advice and safeguard both suspects' rights and the prosecution process. The scheme is supported by the Scottish Government, the Association of Chief Police Officers in Scotland, and the Crown Office and Procurator Fiscal Service. We still aim to implement these new duty plans in ways which will accommodate the needs of local circumstances, whilst at the same time ensuring that legal advice is made available to all suspects who request it, as required by legislation, and at a reasonable cost to the taxpayer. In the first instance, we will issue these plans for a period of three months to enable us to monitor their operation, identify any changes needed and make adjustments at the end of this period.

The Board is fully aware that further changes may be needed due, amongst other things, to any developments in case law and the outcome of Lord Carloway's review due in the autumn. However, the legislation introduced by the Scottish Parliament in response to the Cadder decision places a responsibility on the Board to introduce a police station duty scheme from 4 July 2011. The new Police Station Duty Scheme is an *interim* scheme and will be closely monitored and reviewed in light of future decisions and Lord Carloway's Review, as well as in light of its operation over the next three months.

We have invited all solicitors who are registered to provide criminal legal assistance to take part in the duty scheme to ensure that suspects have access to advice when in police custody. The current arrangements do not provide for this.

Following the discussions with the Cabinet Secretary, the Law Society and the Board, the following amendments have now been made to the scheme:

**Being on both court and police station plans-**

We previously said that we would expect solicitors to be on both the court and the police station duty plans as a way of ensuring that both sets of plans have sufficient participants to make them viable across the country. It has now been agreed that for the first three months of the interim scheme we will remove this requirement, but that this will be kept under review.

**Operation of the Helpline** - we will be developing a Memorandum of Understanding with the Law Society on the functioning of the helpline, which will provide certainty to solicitors as to the amount of effort which the helpline will expend in locating named solicitors. We will also explore the option of having non solicitors covering the helpline during office hours to make contact with the named or duty solicitors provided this is cost effective.

**Geographical restrictions on police attendances** - it has been agreed that solicitors could also provide advice to their clients in adjacent plans to the ones on which they are signed up, on the basis that they are able to make personal attendances within the agreed timescales.

Over the past week or so, solicitors have also raised the following with the Board:

*Q. Am I prevented from advising a suspect in police custody on a private basis if I am not on a Police duty plan?*

A. No - a suspect can seek telephone advice or a personal attendance from any solicitor who may or may not be on a police duty plan, and

pay for this privately. Should a client wish telephone advice from a solicitor under legal aid, then that solicitor needs to be on any police station duty plan, and the advice can be paid under advice and assistance. Should the client need a personal attendance from their named solicitor under the current advice and assistance scheme, then that solicitor needs to be on the local or adjacent duty plan and able to make the attendance within the agreed timescales.

*Q. As a duty solicitor, will I be paid travelling and waiting time for attendances at a police station?*

A. Yes - The payments arrangements for these Interim Police Station Duty Plans are under the current advice and assistance scheme. Therefore, travelling and waiting time will be covered at the current time and line advice and assistance rates, with enhanced rates paid for work carried out between 10pm and 7am.

**Between 7am and 10pm** - the standard advice and assistance rates will apply. Waiting time can be charged at the usual rate of £11.60 per quarter hour. Travelling time is half of this rate. The value of any advice and assistance work provided between 7am and 10pm will be still be subtracted from any subsequent grants of ABWOR or summary criminal legal aid which may be granted, unless the advice including any necessary and proportionate travel exceeds 2 hours duration.

**Between 10pm and 7am** - the enhanced rates are £15.47 per quarter hour which is a one third uplift on the standard rate. Waiting time can be charged at this rate, with travelling time again half of this new rate. Between 10pm and 7am, where the provision of advice and assistance takes less than 30 minutes, a minimum payment of £30.04 will still be paid. The payment for any work carried out in these hours will be paid in addition to any subsequent payments for ABWOR or summary criminal legal aid should the case proceed that far.

Further information can be obtained from Kingsley Thomas, Manager of Criminal Legal Assistance on 0131 240 2085 or at [thomaski@slab.org.uk](mailto:thomaski@slab.org.uk)