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Direct dial number: 0131 240 2060

Our Ref:

Your Ref:

Please quote the department
above and our reference:

1 July 2011

Dear Ian,

Police Station Duty Scheme

There are a number of inaccuracies contained in the letter and professional practice guidance issued by the Law Society today, 1 July 2011. Unfortunately, the Law Society did not allow us to see these prior to publication to clarify any issues relating to the operation of the Solicitor Contact Line.

Solicitor Contact Line

It is unclear why the Law Society do not agree with the ACPOS statistics that it takes around 3 hours for the police to arrange a consultation (including phone advice) between a suspect and a solicitor. However, the primary objective is to ensure timely access to advice and that suspects are not held in custody any longer than is necessary. Contacting the named solicitor in a first call will not be cost-neutral to the Police. The Solicitor Contact Line will save the police time currently engaged in trying to contact solicitors. Quicker response times will lead to faster interviews and save on police overtime costs.

The Law Society make a comparison with England and Wales. Interestingly, in England and Wales, the Defence Solicitors Call Centre also takes all calls from the police, both requests for named and duty solicitors.

Period of time to return calls to Solicitor Contact Line

One of the priorities of the Scottish scheme is to ensure that suspects are not held in custody any longer than is necessary. The scheme will operate in the following way:

The Police will call the Solicitor Contact Line, which is operated by Board employed solicitors, to inform them that a suspect requires advice. If the suspect has a named solicitor, the Solicitor Contact Line will call that solicitor.

If the solicitor does not answer the telephone call, the solicitor has 25 mins to call the Solicitor Contact Line back to confirm that they will contact the Police and provide the

advice. (If there is no response 15 mins after the first call, the Solicitor Contact Line will call them again and allow a further 10mins.) This all relates to the initial contact, not the giving of advice.

Employed solicitors

As a result of the decision taken by many private practice solicitors not to participate in the duty scheme, the Cabinet Secretary for Justice asked the Board to ensure suspects' access to advice by greater use of employed solicitors and public defenders. The police station duty plans will, therefore, be covered by a mixture of private practice solicitors, Board employed solicitors and the Public Defence Solicitors' Office across Scotland.

We have not employed any additional PDSO solicitors. We have employed a small number of solicitors to operate the Solicitor Contact Line. They will provide telephone advice and attend police stations where appropriate. We have also employed a small number of solicitors to attend police stations only, where this is required. As the Law Society will be aware, staff can be recruited on different terms of employment and we have recruited these additional staff in the most cost-effective way possible.

The cost of the advice given by these employed solicitors - whether telephone advice or at a police station will not be subsumed into any subsequent grant of ABWOR or criminal legal aid.

Employed solicitors do not "claim advice and assistance"

The Law Society has incorrectly said that employed solicitors claim advice and assistance. This is not the case. Employed solicitors are paid a salary. Although they are providing advice and assistance and collecting contributions, they will not submit an account in the same way as a private practice solicitor does.

Incorrect cost of the helpline

We have informed the Law Society on a number of occasions that it is misleading to use the amount £318,500. It reflects an estimate of costs produced at a very early stage of development of the proposals when a variety of options were being considered. Despite this, the Law Society has continued to use this figure. Further updated estimates have been given to the Law Society but these have not been used. However, all these estimates were less than the Law Society's estimates contained in their business case for a helpline system.

Any additional costs incurred will be as a result of solicitors choosing not to act as duty solicitors. However, the Board will use its best endeavours to minimise the cost of the scheme, commensurate with its' primary purpose of ensuring suspects timely access to solicitors.

Local faculties

We have been informed that many local faculties have taken decisions that they should withdraw. However, that does not mean that all firms in these areas have done so.

Professional Practice Guidance

Board employed solicitors - confidentiality

It is unfortunate that the Law Society did not discuss with us the content of their professional practice guidelines, as they relate to the Board's employees, prior to publication. As employees of the Board, the employed solicitors are covered by section 34 of the Legal Aid (Scotland) Act 1986. They also sign a confidentiality clause in their contract of employment.

A suspect's consent to contact a solicitor is obtained by the Police, both where there is a named solicitor and, in the event the named solicitor is unavailable, that the advice is provided by the Solicitor Contact Line. Consent to disclose personal data is therefore already obtained.

Contact with suspects

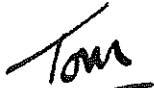
In the earlier paragraph under 'Solicitor of Choice' the Law Society states that "*the request for advice by the suspect to a nominated solicitor becomes a proper instruction once accepted by the nominated solicitor.*" The Solicitor Contact Line is, however, only involved in giving advice when a solicitor is not in a position to accept instructions in the matter or is unavailable.

However, even if there is a solicitor-client relationship, a solicitor may, nevertheless, communicate with an individual known or believed to be the client of another solicitor under Rule 14(f) where the "first solicitor is not already acting for another party in the matter and the person has sought advice from that solicitor." Given that under the scheme, the suspect will have already consented to such advice, the first solicitor (that is, the Board's employed solicitor) is entitled to provide the advice.

The Law Society goes on to state that contact could only be made if the helpline were not already acting for another party in the matter. That is incorrect. Section 28(2) of the Legal Aid (Scotland) Act 1986 provides that employed solicitors can act for different parties having opposing or otherwise different interests in relation to the same matter.

This letter has been made available on our website for the benefit of the solicitors who may have read the Law Society's letter and professional practice guidance.

Yours sincerely,



Tom Murray
Director of Legal Services & Applications