

THE PUBLIC DEFENCE SOLICITORS' OFFICE

STANDARD TERMS OF ENGAGEMENT

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1. About the Public Defence Solicitors' Office

We are a team of directly publically funded criminal defence lawyers, with support and administrative staff, who provide advice and representation in relation to criminal cases at any court in Scotland. We are committed to being fearless in the conduct of your defence.

1.2 *The Public Defence Solicitors' Office and the Scottish Legal Aid Board.*

All PDSO staff and solicitors are employed by the Scottish Legal Aid Board under part V, section 28A of the Legal Aid (Scotland) Act 1986. The Director of the PDSO reports to the Chief Executive of the Board on administrative issues. In all other ways, PDSO operates entirely independently and it is the responsibility of the Director to determine the way the offices operate and to make decisions on individual cases. The Board assesses applications for criminal legal aid submitted by the public defence solicitors in exactly the same way as those submitted by private solicitors. PDSO does not submit accounts to the Scottish Legal Aid Board.

Public Defence Solicitors are paid an annual salary rather than making claims on the legal aid fund on a case by case basis. We have no financial interest in the outcome of your case. PDSO cannot charge you a fee. We only do work under legal aid. If your case is being funded under Advice and Assistance or Advice by Way of Representation legal aid then you may be liable to make a contribution to the cost of your case depending on your circumstances. Your PDSO solicitor will discuss this with you at the beginning of your case. Further details of this are explained below. If your case is funded by any other type of legal aid then you will not have to make a contribution.

1.4 *Codes of conduct;*

Solicitors working in the Public Defence Solicitors' Office are members of the Law Society of Scotland and are bound by the same rules and codes of conduct as any other solicitor in Scotland. These include;

- a) *The Solicitors (Scotland)(Standards of Conduct) Practice rules 2008.* The can be found online at http://www.lawscot.org.uk/Members_Information/Standards/.
- b) *The Code of Conduct for Criminal Work.* This can be found online at http://www.lawscot.org.uk/Members_Information/rules_and_guidance/guides/Rules/Codeconduct/CodeCrimConduct.aspx

Solicitors with extended rights of audience (Solicitor Advocates) must also comply with the rules relating to conducting business in the High Court of Justiciary, Court of Criminal Appeal and Supreme Court. These are;

- a) *The Solicitors (Scotland) (Rights of Audience in the High Court of Justiciary and Judicial Committee of the Privy Council) Rules 2002*. These can be found online at http://www.lawscot.org.uk/Members_Information/rules_and_guidance/guides/Rules/SolAdvocates/roshighcourt.aspx, and;
- b) *The Solicitors (Scotland) (Supreme Courts) Practice Rules 2003*. These can be found online at http://www.lawscot.org.uk/Members_Information/rules_and_guidance/guides/Rules/SolAdvocates/SupremeCourtAdvocate.aspx

All of these rules can be obtained from The Law Society of Scotland at the address below.

The Law Society of Scotland
26 Drumsheugh Gardens
Edinburgh
EH3 7YR
Tel: 0131 226 7411

All solicitors working in the Public Defence Solicitors' Office are also registered with the Scottish Legal Aid Board to provide criminal legal assistance (legal aid in a criminal case). This means that they must abide by the *Code of Practice for Criminal Legal Assistance*. This can be found online at http://www.slab.org.uk/profession/guidance_manuals/the_code_of_practice_criminal.pdf or a copy can be obtained from the Scottish Legal Aid Board. The address for the Board can be found below at paragraph 11.2.

In addition all of our solicitors must abide by the *Code of Conduct for Public Defence Solicitors in Scotland*. A copy of this can be obtained from any of our offices.

2. Meeting with your solicitor

We need to obtain certain information in order to make an application for legal aid on your behalf. When you are meeting with your Public Defence solicitor please bring with you (if you have not already done so):

- Some proof of your name and address. This might be a bank card, passport and a letter to your home.
- Some proof of any income that you have. This could be a recent wage slip, or a letter from the DWP confirming your benefits. If your financial position, or that of your spouse, changes please let us know straight away as this may affect any grant of legal aid. If you do not it can result in you having to repay

money to the Scottish Legal Aid Board and, in some cases, you can be prosecuted for a criminal offence.

- Proof of any savings, shares, heritable property other than your main home or any other capital that you may have.
- Your national insurance number.
- If you have a spouse please also bring details of their income, capital and national insurance number.
- Your bank details.

If you have come to Scotland from a country outside the European Union then please also bring your passport and any visa information that you have. If you are an asylum seeker please bring any correspondence from the Home Office that you have received.

3. Taking your instructions

3.1 What we need from you

It is very important that you tell us in as much detail as possible all about your case and what you remember. The more you tell us the better job we can do. If you have anyone that you think could be a witness for you then you must tell us straight away and give us the name, address and telephone number of that person if you have it. We will arrange to speak to them and take a statement from them.

3.2 Our duty to you

Our duty is to fight for you and your rights. We will give you prompt advice about the law that applies to your case and the procedure that will be followed in court. We will represent you at court and we will prepare your case. We will obtain the evidence that the prosecution has. Please be aware that there can be delays in this happening caused by the prosecution. We will advise you about the evidence against you and keep you informed about developments in your case. If necessary we can advise you and represent you in an appeal.

3.3 Confidentiality

Any communication that you have with any member of our staff is confidential. This means anything that you tell us in person, over the phone or in writing, will never be passed on to someone outside of the Public Defenders' office unless you agree to it. We cannot be forced by the court or the police to say what you have told us. This means that we cannot discuss your case with anyone in your family or a friend unless you tell us to. You can still bring a family member or a friend with you to meetings with us for support.

We will confirm at the start of the meeting that you are happy for that person to hear about your case and what you tell us.

3.4 *Withdrawal of service*

In certain situations we may have to withdraw from acting for you and suggest that you instruct another solicitor. Examples of when this may happen are (but not exclusively):

- 3.4.1 If it becomes apparent that there is a conflict of interest. This means that we may already act for or have knowledge of someone else involved in the case, This may be a witness or another person that has been charged along with you.
- 3.4.2 If your instructions become unreasonable. We also have a duty to the court and so we cannot mislead the court. The legal aid rules also insist that we must have due regard to economy. This means, for example, that we cannot conduct door-to-door enquiries and take statements from unnecessary witnesses.
- 3.4.3 If you give a contradictory position in relation to the offence to any person preparing a court report. For instance if you instruct us to plead guilty on your behalf and you later tell a social worker who is preparing a report for court that you did not commit the offence that you pled guilty to.
- 3.4.4 If you provide us with false information about your identity or false information in support of your legal aid application or if you fail to advise us about a material change in your financial circumstances.
- 3.4.5 We will not tolerate any abuse, either verbal or physical, harassment or intimidation of any member of our staff. If there is any such occurrence we will immediately withdraw from acting for you.

If we do withdraw from acting we shall immediately inform you of this in writing. We will also inform the court, the prosecutor and the Scottish Legal Aid Board.

4 Early pleas and changing your instructions

4.1 *When and how to contact us*

If you wish to enter a plea of guilty at any stage in your case you should inform us straight away. You can contact us in writing, telephone or in person. If you do wish to contact us to change your plea then please try to do this during normal office hours (9:00am to 5:00pm Monday to Friday) in order that we will have access to your file.

4.2 *Discount for an early plea*

The law in Scotland is that you will receive a discount in relation to the sentence imposed if there is an early plea of guilty. The level of discount varies depending on when the plea is made and the nature of the case but can be up to one third of the sentenced that would have been imposed after trial.

5 Who will be dealing with your case

5.1 If you have a particular solicitor in the office that you would prefer to deal with your case please let us know and we will do our best to accommodate that.

5.2 The solicitor who grants advice and assistance or AWBOR or who applies for criminal legal aid on your behalf is responsible for your file and preparing your case. You will be told the name of that solicitor and advised if the solicitor dealing with your case changes. The head of office at the PDSO office that you have instructed is responsible for all of the cases in that office and the Director of the Public Defence Solicitors' Office has overall professional responsibility for all of our cases.

5.3 Given the nature of doing work in criminal courts we cannot guarantee that the solicitor from our office that you will be dealing with will be the solicitor in court although that is always our aim. If it is a different solicitor, that solicitor will know all about your case, be able to fight your case and represent you in court.

6 Keeping you informed

6.1 We will confirm to you in writing that we have taken your case.

6.2 We will send you a copy of the summary complaint that was served on you along with any summary of evidence provided by the prosecution.

6.3 We will send you a copy of any petition that has been served on you.

6.4 We will confirm any court dates to you in writing (unless fixed less than a week ahead in your presence) and send you a reminder of those dates.

6.5 We can send a reminder by text message if you provide us with a mobile telephone number.

6.6 We will advise you when we have statements from the prosecution witnesses and of any developments in your case.

6.7 If you have a particular way that you would like to be contacted, for instance email rather than post, please tell us and we will do our best to meet your request.

7 Your obligations if on bail

7.1 You may have been released on bail by the police and been given a date to attend court or you may have been released on bail by the Court. If you have been “ordained to appear” you are not on bail and you have simply been ordered to come back to court on a certain date or dates.

7.2 If you are on bail there are standard conditions that you must keep to. These will be on the bail order that you have been given by the police or by the Court. They come from section 24 of the Criminal Procedure (Scotland) Act 1995 and they are:

“24(5) the standard conditions referred to in subsection (4) above [*bail conditions*] are conditions that the accused –

- (a) Appears at the appointed time at every diet relating to the offence with which he is charged of which he is given due notice or at which he is required by this Act to appear;
- (b) does not commit any offence while on bail;
- (c) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person;
- (d) makes himself available for the purpose of enabling enquiries or a report to be made to assist the court in dealing with him for the offence with which he is charged; and
- (e) where the (or an) offence in respect of which he is admitted to bail is one to which section 288C of this Act applies [a sexual offence], does not seek to obtain, otherwise than by way of a solicitor, any precognition of or statement by the complainer in relation to the subject matter of the offence.”

7.3 The police or the court may also impose special conditions of bail particular to you. These can be conditions like a curfew or not contacting a person or place relating to your case. You must abide by these conditions too. There is a process to ask for these conditions to be reviewed or removed by the court. If you wish to use this process please contact us straight away.

7.4 If you breach any bail condition you risk being remanded in prison and being charged with a separate offence of breaching bail which can lead to a maximum penalty of 60 days imprisonment in the JP court or 12 months imprisonment in the Sheriff Court.

8 Changing your address

8.1 If you change address you must inform us **immediately**.

8.2 If you are placed on bail by the court and you change address you must inform the court within **7 days**. Failure to do this can result in you being charged with a separate criminal offence. The maximum penalty on conviction for this offence is 60 days imprisonment in the JP court and 12 months imprisonment in the Sheriff Court. We can inform the court on your behalf and we ask that you give us at least 3 days notice of any change of address.

9 Legal aid

9.1 Advice and Assistance

This type of legal aid covers initial work done in the office and in writing. It does not cover any work done in court. It is granted by the solicitor and is only assessed on the basis of your income and that of your spouse. It does take account of set deductions if you support your spouse and any children. **Benefits such as Jobseekers Allowance and Income Support and some other state benefits are ignored for this calculation.** If you (along with your spouse if you have one) earn more than £107 per week after deductions you may have to make a financial contribution towards the cost of your case. You will be told about this by your PDSO solicitor and advised in writing what the maximum contribution will be. For example if your income is, after the set deductions is £107 then the maximum contribution that you will have to make is £7. If your income was £234 per week the maximum contribution would be £134. If your joint income is more than £234, after the standard deductions, you are not eligible. If you have more than £1,639 in savings you are not eligible.

9.2 Advice By Way of Representation (ABWOR)

This is an extension of Advice and Assistance and is granted by your solicitor. This covers all work done including representation in court by us. The financial test is the same as Advice and Assistance and you may have to make a contribution as above. It must also be in the interests of justice that this is granted and it is not available in every case. For instance it is not available in minor road traffic cases.

9.3 Criminal Legal Aid

This legal aid is used in summary cases where you pled not guilty and in all solemn cases. In a summary case an application is made to the Scottish Legal Aid Board by your solicitor and it is decided by them on the basis of your income, capital and outgoings. The Board will also consider whether it is in the interests of justice to grant legal aid. In solemn cases application is made to a Sheriff and it is only assessed on your financial position. **You will not have to make any contribution to your cases costs if granted this type of legal aid.**

9.4 Appeal Legal Aid

This legal aid is used in appeal cases. The assessment is similar to solemn legal aid but application is made to the Scottish Legal Aid Board. You do not have to make any contribution if granted this type of legal aid.

10 Equality

10.1 Our office is committed to making our service available and accessible to as many people in Scotland as we can. We will not discriminate against you on the basis of your age, gender, sexual orientation, race, ethnicity, disability, religion, belief, or any aspect of your social status.

10.2 As part of this commitment we will ask you to complete with us an equality monitoring form. This allows us to collect information on the profile of our clients in order to improve accessibility to our service and recognise any special requirements that you may have when using our service. This information will be collected on an anonymous basis and the details about you will not be passed on to anyone else.

10.3 If you have any particular requirements when meeting with us or in relation to how we contact you and pass on information please tell us and we will do our best to meet those requirements. For instance you may want a female solicitor to deal with your case or you may prefer to get letters in large type or you may prefer to be contacted by telephone. If we are getting something wrong or anything that we do makes you uncomfortable then please tell us. We want to remove any barriers that exist in getting the best information that we can from you.

11 If you are unhappy with our service: How to make a complaint.

11.1 If you are unhappy or dissatisfied with our service or something in relation to your case and how it was handled by us:

11.2 We will always listen to your concerns and we hope that we will be able to resolve any problems between us. If you do wish to make a complaint then this

should be made to the Director of the Public Defence Solicitors' Office, Matthew Auchincloss. We would prefer that the complaint is made in writing so that we have a clear record of you compliant. This can be done by ordinary post and should be addressed to:

Matthew Auchincloss
Director of the Public Defence Solicitors' Office
Complaint
The Public Defence Solicitors' Office
50 St Mary's Street
Edinburgh
EH1 1SX

Or, you can contact the Director by email at:

mauchincloss@pdso.org.uk

Or, if you do not wish to complain in writing, the Director can be contacted at our Edinburgh office on 0131 557 1222.

If your complaint cannot be resolved this way than you can make a complaint to The Scottish Legal Complaints Commission. This is an independent body set up by The Scottish Government to investigate all complaints about the service of the legal profession. More information about the Commission can be found online at <http://www.scottishlegalcomplaints.com/>

The Commission can be contacted at:

The Scottish Legal Complaints Commission
The Stamp Office
10-14 Waterloo Place
Edinburgh
EH1 3EG
Tel: 0131 528 5111
Email: enquiries@scottishlegalcomplaints.org.uk

11.3 If you are unhappy or dissatisfied with how your Public Defence Solicitor, or any member of our staff, has conducted themselves when dealing with you:

Again, we will always listen to your complaint, and we will deal with it sympathetically. The complaint should be made to the Director (details as above). If you are unhappy with how the complaint is dealt at this stage then the matter

can be raised with the Chief Executive of the Scottish Legal Aid Board. The Board prefers to have these complaints in writing, More information can be found on the Board's website www.slab.org.uk and the Chief Executive can be contacted in writing or by telephone. The contact details are:

Lindsay Montgomery CBE
Chief Executive
The Scottish Legal Aid Board
44 Drumsheugh Gardens
Edinburgh
EH3 7SW

Tel: 0131 226 7061.

11.4 Timescale for dealing with your complaint.

We will always try to deal with your complaint within 28 calendar days of having received it.

11.5 Please note that this complaints process cannot change the outcome of your case. If appropriate you can discuss any appeal against a decision of the court in a criminal case with your Public Defence Solicitor.