

A Practical Guide to Criminal Defence Services



legal services

COMMISSION

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Contents

Section 1

1-2

Introduction

- 1.1 About this leaflet
- 1.2 Levels of service
- 1.3 Duty Solicitor Schemes
- 1.4 How do I find a contracted solicitors' office?
- 1.5 Other ways of finding a solicitor
- 1.6 How criminal defence services are administered
- 1.7 Legal aid in Scotland and Northern Ireland
- 1.8 Statutory provisions
- 1.9 Civil cases

Section 2

3-5

Advice and Assistance

- 2.1 What does Advice and Assistance cover?
- 2.2 How do I apply for Advice and Assistance?
- 2.3 Children
- 2.4 Do I qualify financially?
- 2.5 Capital: do I qualify?
- 2.6 Income: do I qualify?

- 2.7 Do I pay a contribution?
- 2.8 Repeated applications
- 2.9 Police Station Advice and Assistance

Section 3

6

Advocacy Assistance

- 3.1 What does Advocacy Assistance cover?
- 3.2 How do I apply for Advocacy Assistance?
- 3.3 Do I qualify financially?
- 3.4 Do I pay a contribution?
- 3.5 How does my solicitor get paid?

Section 4

6-8

Representation

- 4.1 When would Representation be appropriate?
- 4.2 What does Representation cover?
- 4.3 How do I apply for Representation?
- 4.4 Who decides whether I qualify?
- 4.5 What happens if Representation is refused?
- 4.6 Do I have to pay a contribution?
- 4.7 Court Duty Solicitor Scheme

Section 5

9

Legal Services Commission Offices

The Criminal Defence Service

The purpose of the Criminal Defence Service is to ensure that people suspected or accused of a crime have access to advice, assistance and representation, as the interests of justice require.

Since 2 April 2001, private practice solicitors' offices must hold a General Criminal Contract to carry out criminal defence work funded by the Legal Services Commission. Firms are audited against the Contract to ensure they continue to meet quality assurance standards.

Since May 2001 the Commission has also directly employed a number of criminal defence lawyers, known as public defenders. The Public Defender Service is able to provide any of the services outlined in this leaflet in exactly the same way as lawyers in private practice.

Section 1

Introduction

1.1 About this leaflet

This guide explains how the Criminal Defence Service works. It is for people seeking help on criminal matters as well as those who can put others seeking legal help in touch with a solicitor.

1.2 Levels of service

- Advice and Assistance covers advice and assistance on criminal matters (Section 2)
- Advocacy Assistance covers some advice and representation at court (see Section 3)
- Representation for criminal offences (see Section 4)

Only solicitors' offices with a Legal Services Commission criminal contract or public defenders can provide publicly funded criminal defence services. There is a separate leaflet 'Criminal Defence Services at the Police Station and in Court' which provides information about legal advice at the police station and at court.

1.3 Duty Solicitor Schemes

Duty solicitors are available at police stations and magistrates' courts and offer free legal advice in many cases (see Sections 2.9 and 4.7).

1.4 How do I find a contracted solicitors' office?

A contracted solicitors' office is one that has been specially approved and has a contract with the Legal Services Commission to provide publicly funded criminal defence services. Contracted offices have been checked thoroughly to see that they meet certain standards and provide a quality service. The CDS logo shown here is a mark of quality and will be displayed in the window of contracted solicitors' offices.



For the name of a contracted firm in your area call Community Legal Service Direct on **0845 345 4 345** or click www.clsdirect.org.uk

When you find a solicitor, make sure that what you tell him/her about your finances and your case is accurate. There are penalties for deliberate false statements about capital and income and you may have your public funding taken away if you give a solicitor wrong information about your case.

Keep in touch with your solicitor about your case and be guided by his/her advice. You must immediately tell him/her if your finances change or if you change your address.

1.5 Other ways of finding a solicitor

Here are some other ways of finding a solicitor:

- Ask your local citizen's advice bureau, law centre or advice centre.
- Look at the Law Society Directory of Solicitors and Barristers. This lists solicitors' firms and tells you the kind of work they do. Copies of the directory are in libraries, town halls and most advice centres.
- Go to a solicitor's office to find out if they offer the service you require.
- Ask a friend, relative or trade union official.

Remember, only a solicitors' office contracted with the Commission or a public defender can provide publicly funded criminal defence services.

1.6 How criminal defence services are administered

The Legal Services Commission administers three levels of service: Advice and Assistance, Advocacy Assistance and Representation under the general guidance of the Lord Chancellor. Decisions to grant Representation in individual cases are made by the magistrates' court. If Representation is refused you may appeal the decision to the court.

1.7 Legal aid in Scotland and Northern Ireland

There are similar schemes in Scotland and Northern Ireland. If you want to know about legal aid in Scotland, write to:

The Scottish Legal Aid Board
44 Drumsheugh Gardens,
Edinburgh EH3 7SW
Tel: 0131 226 7061
Fax: 0131 220 4878
Website: www.slab.org.uk

For Northern Ireland, write to:
Northern Ireland Legal Services Commission
2nd Floor, Waterfront Plaza
8 Laganbank Road, Mays Meadow
Belfast BT2 7FL

Tel: (0)28 9024 6441
Fax: (0)28 9040 8990
Website: www.nilsc.org.uk

1.8 Statutory provisions

The provisions relating to criminal defence services are contained in Schedule 3 to the Access to Justice Act 1999, as amended by the Criminal Defence Service Act 2006, and regulations made under the Act. This guide is only a summary.

1.9 Civil cases

This leaflet explains criminal matters. If you would like to find out about public funding for civil cases look for the leaflet "A Step-By-Step Guide to Legal Aid". This leaflet is available on our website at www.legalservices.gov.uk or from the LSC Leafletline (see back cover for details).

Section 2

Advice and Assistance

2.1 What does Advice and Assistance cover?

Advice and Assistance covers help from a solicitor including giving general advice, writing letters, negotiating, getting a barrister's opinion and preparing a written case. It enables people of small or moderate means to get help from a solicitor.

It is not available during criminal proceedings, after charge or summons. It does not cover representation in court. It may be available in relation to appeals or prison law. If you have to go to court your solicitor may advise you to apply for Representation (see Section 4); or, in some cases, Advocacy Assistance (see Section 3).

Advice and Assistance is available in England and Wales and applies only to questions of English Law. It does not cover the law of Scotland or Northern Ireland, nor that of any other country.

2.2 How do I apply for Advice and Assistance?

You should call at your solicitor's office. It is best to telephone for an appointment first. If you are ill or cannot travel, you should ask someone to call at your solicitor's office for you – or the solicitor may be able to visit you. The solicitor will ask about all your finances. He/she will then fill in an application form.

Your solicitor will tell you at once whether you qualify. If you do qualify you will not have to pay any contribution. If you want your solicitor to advise you, you must sign the application form. A solicitor can refuse to give you Advice and Assistance. He/she need not give you a reason. However, he/she may be asked to explain the reasons for his/her refusal by the LSC regional office.

2.3 Children

Children are eligible for Advice and Assistance. In most cases where a child is under 17 and requires the help of a solicitor, a parent or guardian should apply on his/her behalf. A solicitor can advise a child directly in some circumstances.

2.4 Do I qualify financially?

You must be able to show that your capital and your income are within the current financial limits. If you are married, or living with someone as a couple, your partner's capital and income will be included unless:

- You live apart
- There is a conflict of interest between you

2.5 Capital: do I qualify?

Add up your capital. This includes the value of your savings (whether in cash, investments, money in a bank or the National Savings Bank) and anything you own of substantial value. Leave out:

- The value of the house you live in (although any value in excess of £100,000, after allowing a maximum of £100,000 for any mortgage, must be included)
- Your household furniture and effects, clothing and any tools of your trade
- Back to work bonus under section 26 Job Seekers Act 1995

From your capital take away the following allowances for any dependants (partner, children, relatives):

- £335 if you have one dependant (this may be your partner)
- £535 if you have two dependants
- £100 for each extra dependant

What is left after making these deductions is your disposable capital. If this exceeds £1,000 you will not be eligible.

2.6 Income: do I qualify?

If you are receiving Income Support, Income Based Job Seeker's Allowance, Guarantee State Pension Credit, Working Tax Credit + Child Tax Credit* or Working Tax Credit with disability element* you will be eligible for Advice and Assistance, unless your disposable capital exceeds £1,000.

*only if gross annual income does not exceed £14,213.

If you are not receiving one of the above benefits, your solicitor will take the actual income in the past seven days of yourself and your partner and deduct from it:

- i Income Tax and National Insurance contributions.
- ii £33.65 for your partner whether or not there is a conflict of interest (see Section 2.4). Where you are separated or divorced, deduct the actual maintenance paid by you in the past seven days.
- iii The following allowances for children and dependants:
 - Dependent children and relatives aged 15 or under £47.45
 - aged 16 or over £47.45

There are allowances for rent, rates and other expenses already built in. Disability Living Allowance, Attendance Allowance, Constant Attendance Allowance, any payment out of the social fund, Council Tax Benefit, Housing benefit and any back to work bonus received by way of Job Seeker's Allowance or payments made under the Earnings Top up Scheme or the Community Care Direct Payment scheme are not counted as income. What is left after making these deductions is your disposable income. You qualify for Advice and Assistance if your disposable income is £95 per week or less and your disposable capital is £1,000 or less.

2.7 Do I pay a contribution?

No. You will not be asked to pay a contribution.

2.8 Repeated applications

You must tell your solicitor if you have had Advice and Assistance from another solicitor about the same matter paid for by the LSC.

2.9 Police Station Advice and Assistance

If the police question you about an offence – whether or not you have been arrested – you have a right to free legal advice from a contracted solicitor. There is no means test for such advice. (The questioning may be at the police station or elsewhere.) In some circumstances the police can delay but not stop you seeing a solicitor. Ask the police to contact the duty solicitor (available 24 hours a day) or your own solicitor. Alternatively you can choose a solicitor from the list the police keep. For further information see the leaflet ‘Criminal Defence Services at the Police Station and in Court’.

Section 3

Advocacy Assistance

3.1 What does Advocacy Assistance cover?

It covers the cost of a solicitor preparing your case and representation in certain proceedings in both the Magistrates' Court and the Crown Court. It covers representation for prisoners facing disciplinary charges before the prison governor/controller, or adjudicator and for discretionary and automatic lifers and those detained at Her Majesty's Pleasure whose cases are referred to the Parole Board.

3.2 How do I apply for Advocacy Assistance?

Your solicitor will be able to decide whether or not you pass the merits test for Advocacy Assistance. In certain circumstances there is a right to appeal if it is refused, though you may seek further advice from another solicitor.

3.3 Do I qualify financially?

There is no financial test except where Advocacy Assistance is provided in the prison law class of work. For this class of work the income limit is £194 per week. The capital limit is £3,000 with allowances of £335 for one dependant, £535 for two dependants plus £100 for each additional dependant. Income and capital will be

assessed in the same way as Advice and Assistance (see Sections 2.5 and 2.6), except that if you receive Income Support, Income Based Job Seeker's Allowance or Guarantee State Pension Credit you will also automatically qualify on capital.

3.4 Do I pay a contribution?

No. You will not be asked to pay a contribution.

3.5 How does my solicitor get paid?

The LSC will pay your solicitors' bill.

Section 4

Representation

4.1 When would Representation be appropriate?

If you have been charged with or summoned for a criminal offence you can apply for Representation.

4.2 What does Representation cover?

Representation covers the cost of a solicitor to prepare your defence before you go to court and to represent you there, including dealing with issues such as bail.

If your case requires an advocate, particularly if it is to be heard in the Crown Court, that will also be covered.

Representation can also cover advice on appeal against a verdict or sentence of the Magistrates' Court or the Crown Court (or a decision of the Court of Appeal) and preparing the notice of appeal itself. Representation is not available to bring a private prosecution – that is, bringing a criminal case against another person.

4.3 How do I apply for Representation?

You should see a solicitor as soon as possible after you have been charged with or summoned for a criminal offence. The solicitor will ask about all your finances. He/she will then assist you to fill in an application form and send it to the court where your case will be heard. If the court refuses to grant you Representation you can apply again.

There is no limit to the number of applications you may make to the court, and you can do so at any time right up to the trial (see Section 4.5).

4.4 Who decides whether I qualify?

Whether or not the Court will grant you Representation depends on the outcome of the Interests of Justice (IoJ) test and means test. The court's decision will be based on the information you give in your application form. The court must carry out both tests before making a decision.

Interests of Justice (IoJ) Test

The court may decide that it is in the 'interests of justice' to grant you Representation where, for example, your case is so serious that if you are found guilty you are likely to go to prison or lose your job, or where there are substantial questions of law to be argued, or where you are unable to follow the proceedings and explain your case because you do not speak English well enough or you are mentally ill.

Means test

This is where the court will look at the details of your finances you declared on the application form.

If you are receiving Income Support, Income-Based Jobseeker's Allowance or a Guarantee State Pension Credit, are under 16 years of age or are under 18 years of age and in full-time education you will automatically qualify financially for Representation.

If you are not receiving one of the above benefits, the court will take the actual annual income of yourself and your partner (this includes money received from your employment, friends, relatives, pension, property, lodgers, student loan, interest from savings, maintenance received from former partners and some benefits) and apply a calculation called the 'simple means test'. You qualify for Representation if your annual income following the calculation is £12,007 or less.

If your annual income following the calculation is between £12,007 and £21,487, the court will deduct from it:

- i Income Tax and National Insurance contributions
- ii annual housing costs
- iii annual childcare costs
- iv annual maintenance to former partners and any children
- v annual living allowance

You qualify for Representation if your annual disposable income is £3,270 or less.

4.5 What happens if Representation is refused?

The court will write to you giving the reason for refusing Representation.

If the court has decided to refuse Representation because it is not in the interests of justice your solicitor may assist you in making another application to the court to review your case. You will need to confirm that your financial details have not changed since you first applied. If your financial details have changed, you may need to complete another application form.

If you are refused Representation by the magistrates' court and you have to go to the Crown Court, you can apply to that court for Representation.

If the court decided to refuse Representation because your application failed the means test, your solicitor may

assist you in making an application to the Legal Services Commission to review your case.

4.6 Do I have to pay a contribution?

If you do not qualify for Representation you will have to cover the costs of your solicitor yourself.

If you do qualify for Representation, at the end of the case you might be asked to make a payment if you have been represented in any court other than a magistrates' court. The judge will only ask you to pay a contribution if it is reasonable in all the circumstances of the case, including your means.

4.7 Court Duty Solicitor Scheme

If you have to go to the magistrates' court on a criminal case and do not have your own solicitor there will usually be a duty solicitor available either at the court or on call to give you free advice and representation on your first appearance, unless you are on bail and your case is only minor and could not result in a prison sentence. There is no means test. Ask the court staff for the duty solicitor. It is best, if possible, to get advice before you go to court.

Section 5

Legal Services Commission Offices

Head Office

85 Gray's Inn Road
London WC1X 8TX
Tel: 020 7759 0000

NORTH WEST REGION

Liverpool Office

2nd Floor Cavern Court
8 Mathew Street
Liverpool L2 6RE
Tel: 0151 242 5200
Fax: 0151 242 5394

Manchester Office

2nd Floor, Lee House
90 Great Bridgewater Street
Manchester M1 5JW
Tel: 0161 244 5000
Fax: 0161 244 5196

Chester Processing Centre

2nd Floor
Pepper House
Pepper Row
Chester CH1 1DW
Tel: 01244 404500
Fax: 01244 404691

NORTH EAST REGION

Newcastle Office

2-8 Star House
Fenkle Street
Newcastle-upon-Tyne
NE1 5RU
Tel: 0191 244 5800
Fax: 0191 244 5998

Leeds Office

Harcourt House
Chancellor Court
21 The Calls
Leeds LS2 7EH
Tel: 0113 390 7300
Fax: 0113 390 7484

MIDLANDS REGION

Nottingham Office

1st Floor
Fothergill House
16 King Street
Nottingham NG1 2AS
Tel: 01159 084 200
Fax: 01159 084 397

Birmingham Office

Centre City Podium
5 Hill Street
Birmingham B5 4UD
Tel: 0121 665 4700
Fax: 0121 665 4899

Cambridge Office

62-68 Hills Road
Cambridge CB2 1LA
Tel: 01223 417 800
Fax: 01223 417 982

WALES

Cardiff Office

Marland House
Central Square
Cardiff CF10 1PF
Tel: 0845 608 7070
Fax: 02920 647 173

Welsh language service line:
0845 609 9989

SOUTH & WEST REGION

Bristol Office

33-35 Queen Square
Bristol BS1 4LU
Tel: 0117 302 3000
Fax: 0117 302 3198

Reading Office

80 King's Road
Reading RG1 3BJ
Tel: 01189 558 600
Fax: 01189 558 780

LONDON & SOUTH EAST REGION

London Office

12th Floor
Legal Services Commission
Exchange Tower
2 Harbour Exchange Square
London E14 9GE
Tel: 0845 602 1400

Brighton Office

3rd/4th Floor Invicta House
Trafalgar Place, Cheapside
Brighton BN1 4FR
Tel: 01273 878800
Fax: 01273 878991

Website address

www.legalservices.gov.uk

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85 Gray's Inn Road
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tel: 020 7759 0000

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fax: 020 8867 3225

The Legal Services Commission
produces the following leaflets:

A Step-By-Step Guide to Legal Aid

A Practical Guide to Criminal Defence Services

*Criminal Defence Services at the Police Station
and in Court*

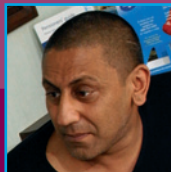
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legal services

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