

# **PUBLIC FUNDING OF CRIMINAL ADVICE AND ASSISTANCE PRIOR TO CHARGE**

## **1. SCOPE OF ADVICE**

Solicitors must hold a General Criminal Contract to be able to undertake publicly funded criminal work.

The work capable of being funded will include pre charge work (ie at the investigation stage and prior to a member being charged) to include advising a client as to his rights and advising on the most appropriate strategy to adopt when being interviewed under caution. and advice and assistance at the police station when the client is interviewed.

It is important to distinguish between advice given to a member whilst at the police station and advice given when not at the police station. The former is paid for out of public funds without any means assessment whilst the latter is subject to a means test.

## **2. FUNDING CRITERIA**

All advice work prior to charge is subject to a merits test referred to as “the sufficient benefit test”. Advice may only be given to a client at public expense where it is shown that there is “sufficient benefit to the client” and having regard to the circumstances of the matter under investigation and the personal circumstances of the client. In most cases involving police officers facing criminal investigation this test will be met. However, the solicitor has to continue to review the sufficient benefit test throughout and there will be constraints upon the length of time which can be spent in the provision of advice including that provided at the police station.

## **3. FINANCIAL ELIGIBILITY.**

i) Advice other than at a police station.

Whilst this can be funded it is subject to an upper limit of £300. This can be extended but only in very limited circumstances.

The entitlement to carry out such work is also limited by financial criteria applicable to the individual client’s means.

Under criteria issued in April 2004 clients are only eligible to receive advice from public funds (outside the police station) if they have a disposable income which does not exceed £91 per week or if they are in receipt of certain stipulated state benefits.

There are also capital limits which vary where an individual client has dependants. The capital eligibility is low. An individual with no dependants must have no more than £1,000 of disposable capital to be eligible to receive publicly funded advice (outside the police station). For those with 2

dependants the limit is £1,535 with an increase of £100 for each extra dependant.

It is the responsibility of the solicitor to establish whether the client meets the financial eligibility criteria before submitting a claim to the LSC (Legal Services Commission) for payment.

An application to exceed the upper limit (of £300) must be made to the Regional Director. It will be necessary to show that the work to be undertaken is reasonable and that the sufficient benefit criteria is met and that the client does not have means above the prescribed limits.

The limits upon the work that can be undertaken outside the police station places considerable constraints in cases involving the investigation of federation members. In almost every case, where disclosure prior to interview occurs and detailed instructions are needed, the £300 upper limit would be exceeded. An application to extend can only be made if the member passes the means test. It is doubtful whether any federation member would meet this stringent eligibility test. In these circumstances the ability to extend the limit on funding will not be available to the solicitor instructed.

The current JCC policy is to meet the costs of legal advice prior to charge provided the allegation the member faces is "job related". In most cases this involves the solicitor being sent a copy of the relevant papers and the solicitor arranging to see the member and the federation friend at the solicitors office prior to the interview at the police station. Whilst any work undertaken by the solicitor at the police station is claimed from the LSC, any work done outside of the police station is billed to the JCC.

Cases involving federation members often involve pre interview disclosure and it is rare that a member would not benefit from meeting the solicitor and obtaining advice prior to attendance at the police station.

#### ii) Police Station Advice.

Advice and assistance provided at the police station where the solicitor attends at the station together with the client is funded from public funds under the terms of the contract in the majority of cases. In such circumstances there is no financial limit and no financial qualifying criteria. It is however necessary for the solicitor to show that the time spent at the police station was sufficiently beneficial to the client and that it was reasonable.

In respect of advice given at the police station RJW claims costs under the criminal contract and does not seek payment from the Police Federation. It is a condition of instruction that such fees will be claimed from the public purse. [It should be noted however that certain minor offences, including minor road traffic offences are excluded under the contract.]

#### 4. CONCLUSION.

- Public funds are available for advice and assistance provided to clients under the criminal contract.
- The provision of such advice other than whilst at a police station is subject to stringent financial constraints and a financial eligibility test .
- It is highly unlikely that a police officer would meet the financial eligibility test.

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