

LAW SOCIETY SUBMISSION



**SUBMISSION TO THE REVIEW OF THE
GARDA STATION LEGAL ADVICE
REVISED SCHEME**

Department of Justice and Equality

27 October 2015

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

Contents

Introduction.....	4
Executive Summary . Seven Recommendations.....	5
Remove the cap on the number of consultations eligible for payment	6
Ensure the eligibility of non-national visitors to free legal advice during detention	7
Ensure the GSLARS contributes to solicitor firm staff retention and ameliorates solicitor recruitment challenges	8
Pay solicitors when they attend garda stations for interviews or detentions which do not proceed	8
Pay solicitors for actual distances travelled.....	10
Make fundamental facilities available to solicitors when they attend garda stations.....	11
Remove the financial threshold at which people become eligible for free legal advice during detention.....	12

Introduction

The Law Society of Ireland welcomes the opportunity to contribute to the review of the Garda Station Legal Advice Revised Scheme (the ~~GLARS~~ ~~+~~).

The submission is based on the views of members of the Law Society's Criminal Law Committee who are solicitors with extensive experience in the provision of legal advice in garda stations.

Executive Summary . Seven Recommendations

On the basis of feedback of criminal defence law solicitors, the Law Society would like to make the following recommendations:

1. [Remove the cap on the number of consultations eligible for payment](#)
2. [Ensure the eligibility of non-national visitors to free legal advice during detention](#)
3. [Ensure the GSLARS contributes to solicitor firm staff retention and ameliorates solicitor recruitment challenges](#)
4. [Pay solicitors when they attend garda stations for interviews or detentions which do not proceed](#)
5. [Pay solicitors for actual distances travelled](#)
6. [Make fundamental facilities available to solicitors when they attend garda stations](#)
7. [Remove the financial threshold at which people become eligible for free legal advice during detention](#)

1. Remove the cap on the number of consultations eligible for payment
 - 1.1. The Scheme places a cap on the number of solicitor-client consultations which will be eligible for payment, according to the statutory power of detention relied upon by An Garda Síochána. For example, detentions under section 4 of the Criminal Justice Act 1984 as amended are eligible for a maximum of three solicitor consultations over the total period of detention (see Section 6 of the Scheme Provisions and Guidance Document, August 2014). The maximum number includes the initial telephone consultation.
 - 1.2. It is almost always the case that consultations must be held in private with the client between interviews to discuss legal issues as they evolve during the detention process. Since providing legal advice to clients in garda custody since May 2014, solicitors have observed that more consultations can be necessary than the number which are eligible for payment under the Scheme. This is due to a variety of factors, including:
 - i. the nature of the new role of solicitors to provide legal advice during interviews;
 - ii. the role of solicitors throughout the entirety of the detention process; and,
 - iii. the extent to which interviewing Gardaí disclose information during an interview in a piecemeal manner.
 - 1.3. As an interviewing garda puts new information to a client during the course of an interview (a process which is referred to as disclosure) updated legal advice is required. However, when an individual has received the maximum number of consultations prior to a new disclosure/piece of information being put to them during an interview, the cap on the number of consultations has the effect of denying an individual's right to access necessary legal advice about such new disclosures/information. It is anathema to the fair trial rights of individuals to curtail access to legal advice in relation to important information disclosed during the interview process simply because a cap on the number of legal advice consultations has been reached. The issue of the cap on the number of consultations eligible for payment becomes even more pronounced the longer the statutory detention period continues, and also for particularly complex cases.
 - 1.4. As a result, solicitors have experienced non-payment for consultations in circumstances where a detainee has reached the maximum number of consultations but their solicitor forms the opinion that further consultations are necessary in order to ensure that the client receives full legal advice.

RECOMMENDATION 1: The Law Society recommends that the Department of Justice removes the cap on the number of consultations which are eligible for payment so as to ensure unrestricted access to necessary legal advice during interviews and detentions.

2. Ensure the eligibility of non-national visitors to free legal advice during detention
 - 2.1. Both the Scheme and Claim Form necessitate the provision of an individual's Personal Public Service Number (a PPSN). Section 8.2 of the Scheme Provisions and Guidance Document August 2014 provides that even in situations where an applicant does not know their PPSN at the time of detention, every effort must be made to obtain the PPSN as soon after the detention as possible.
 - 2.2. Accordingly, the Scheme and Claim Form do not envisage a situation whereby a non-national visitor is detained and would be eligible for free legal aid in circumstances where their earnings (or lack of earnings) in another country might fall within the criteria for the Scheme.
 - 2.3. While the Law Society understands that solicitors have received legal aid payments when they have attended garda stations to provide legal services to non-national visitors, some non-national visitors and solicitors may be unaware of such eligibility and the possibility of such legal aid should be clarified to all solicitors and detainees.

RECOMMENDATION 2: The Law Society recommends that the Department of Justice and the Legal Aid Board include a new field on the claim form whereby a solicitor can indicate that a PPSN is not available because a person is a non-national visitor.

3. Ensure the GSLARS contributes to solicitor firm staff retention and ameliorates solicitor recruitment challenges
 - 3.1. The extension of criminal defence practice to attending interviews in garda stations has dramatically changed the nature of criminal defence practice, to the extent that some solicitors have decided to change practice areas seeking more manageable working hours and also with a view to improving their work/life balance. In addition, the rate of remuneration is not sufficiently attractive to retain existing practitioners and also attract new practitioners.
 - 3.2. As a result of changes to this area of criminal defence practice, brought about by the need for legal advice during garda station detentions, a number of firms have reported challenges in the past year in both the retention and recruitment of suitably skilled and qualified staff.
 - 3.3. The Law Society believes that the provision of legal advice during garda station detentions is one of the most important roles which a solicitor must play in the fair trial process. Accordingly, the Law Society requests that consideration be given to the extent to which the current arrangements and rates contribute to both the retention of highly skilled solicitors and the attraction of new practitioners to this important area of criminal defence practice.

RECOMMENDATION 3: The Law Society recommends that the Department of Justice recognises the importance of legal advice during garda station detentions by reviewing the current rate of remuneration with a view to ensuring it contributes to both the retention and recruitment of suitably skilled and qualified solicitors in criminal defence firms.

4. Pay solicitors when they attend garda stations for interviews or detentions which do not proceed
 - 4.1. The Scheme does not provide payment for solicitor attendances at garda stations which do not proceed to consultation or interview.
 - 4.2. For example, one solicitor travelled from Dublin to the midlands for a pre-arranged interview in a garda station, however, when they arrived at the scheduled time, they were informed that a decision had been taken not to proceed with the interview. Accordingly, the claim form could not be completed and the solicitor was at a financial loss for travel and also the time which they had allocated to attend the interview.
 - 4.3. The lack of provision for attendances at garda stations also arises in circumstances where it has been arranged that a solicitor attend a garda station but, in advance of the solicitor's arrival at the garda station, the detainee is declared medically unfit for interview.

RECOMMENDATION 4: The Law Society recommends that the Department of Justice introduces an arrangement whereby solicitors are remunerated for travel and time allocated to detentions and interviews which do not proceed.

5. Pay solicitors for actual distances travelled

- 5.1. Section 5 of the Scheme provides that travel expenses are payable from the solicitor firm's base address. However, solicitors frequently travel greater distances to garda stations because they may not be at their firm's base at the time at which the request to attend a garda station is received.
- 5.2. For example, during daytime hours, a solicitor may be in court, attending a prison or in another garda station. During the Scheme's unsociable hours, a solicitor may travel from their home address to a garda station.
- 5.3. The result of the current restriction on travel expenses being payable only from the solicitor's firm's base address is that many solicitors are denied payment for the full extent of their travel.

RECOMMENDATION 5: The Law Society recommends that the Department of Justice amends the Scheme to ensure that solicitors are paid for actual distances travelled.

6. Make fundamental facilities available to solicitors when they attend garda stations
 - 6.1. The Law Society has repeatedly heard from solicitors about difficulties in accessing basic facilities when they attend garda stations. Solicitors attending interviews in garda stations have not been able to access toilet facilities, water, food, rest facilities, office facilities and parking; most of these requirements are both fundamental and essential. A lack of facilities becomes particularly pronounced during unsociable hours and/or lengthy detention periods.
 - 6.2. The Law Society welcomes the Minister's recent announcement of the Garda Building and Refurbishment Programme 2016-2021 (the Programme). The Programme signals a future investment of over " 60 million which will include new stations, major refurbishment of stations/facilities including facilities for meeting victims of crime, essential remedial works to existing stations, and the upgrade of cells and provision of improved custody management facilities. The Minister has indicated that the Programme will ensure a safe, modern working environment for Gardaí as well as fit-for-purpose facilities for visitors, victims and suspects.
 - 6.3. The Law Society believes that the Programme's resources should also be applied to resolving the facilities problems encountered by solicitors attending station interviews.

RECOMMENDATION 6: The Law Society recommends that the Department of Justice ensures that the Garda Building and Refurbishment Programme 2016-2021 resolves the facilities problems encountered by solicitors when they attend garda stations to provide legal services to detainees.

7. Remove the financial threshold at which people become eligible for free legal advice during detention

7.1. Section 4 of the Scheme sets the financial threshold for a person in employment at a gross yearly income of " 20,316. The Scheme is also open to people in receipt of social welfare payments. Accordingly, any detainee with a gross annual income exceeding " 20,316 becomes personally liable for the costs associated with legal services obtained during their detention.

7.2. A number of issues arise concerning the potential of the financial threshold for eligibility to prohibit people in State detention from accessing urgent and necessary legal advice arbitrarily.

7.3. These issues can be summarised as follows:

- i. The financial threshold has the practical effect of denying access to legal representation during detention. This is of grave concern because of the extent to which legal advice during detention facilitates access to fair trial rights and thus functions as a pillar of the criminal justice system;
- ii. The reality is that some people are denied access when their gross income exceeds " 20,316 even marginally;
 - a. Some individuals may have an income in excess of " 20,316 at the time of their detention but may lose their income, and even their future earning potential as a result of the detention, and therefore they may not be in a position to pay for legal advices. Unfortunately, an application for the Scheme cannot be back-dated or applied retrospectively and so they cannot apply at a later date if their circumstances change;
 - b. Other individuals may have incomes in excess of " 20,316 but those funds may already be the subject of other financial outgoings and commitments such as rent, mortgages, court orders, maintenance agreements etc., and thus not be available for legal advices;
 - c. Particularly long and complex detentions increase the cost of necessary legal advice and, accordingly, the more complex the detention, the greater the risk that people who have earnings above " 20,316 will ultimately find themselves in a position whereby they are not able to afford legal advice;
- iii. An inequality is inevitably created between individuals in terms of their ability to access legal advice during a detention; this inequality is based on an individual's earnings, i.e., whether they have earnings above or below " 20,316. A person with earnings above " 20,316 is ineligible to apply for the Scheme, and yet they may ultimately . for other reasons as outlined above - be unable to afford legal advice for a detention in a garda station, and as a result, they are denied equal access to the due process and fair trial rights available to those with incomes below the threshold;
- iv. The financial threshold can cause a particular hardship for people who decide to pay for legal advice and are either (1) subsequently not convicted of the crime for which they were arrested or (2) are detained for questioning and not subsequently

prosecuted.

RECOMMENDATION 7: The Law Society recommends that the Department of Justice reviews the current threshold of financial eligibility for the Scheme with a view to, preferably, removing the threshold entirely or, in the short-term, introducing a higher threshold so as to ensure equality of access to legal advice and equal access to due process and fair trial rights during detentions.