

THE LEGAL AID ACT 1986

**THE DUTY ADVOCATE (POLICE CUSTODY) SCHEME 1998**

*Coming into operation*

*11<sup>th</sup> January 1999*

In exercise of the powers conferred on the Legal Aid Committee by section 21(A) of the Legal Aid Act <sup>1</sup>1986<sup>1</sup>, and all other enabling powers, and with the concurrence of the Treasury, the following Scheme is hereby made:-

*Introductory*

**1. Citation, commencement and interpretation**

(1) This scheme may be cited as the Duty Advocate (Police Custody) Scheme 1998 and shall come into operation on the 11<sup>th</sup> January 1999.

(2) In this Scheme-

“advice” means advice and assistance under the provisions of Part II of the Legal Aid Act 1986;

“arrestable offence” has the meaning given by section 27(1) of the Police Powers and Procedure Act <sup>2</sup>1998<sup>2</sup>,

“custody officer” has the same meaning as in Part IV of that Act;

“duty advocate” means an advocate who in accordance with this Scheme is available to attend at a police station for the purpose of providing advice, and in clauses 9 to 13 includes an advocate acting in place of the duty advocate under clause 8(4) or (6);

“the Committee” means the Duty Advocate Committee established by clause 2;

“initial advice” means advice given by telephone in accordance with clause 9(2);

“on-call period” has the meaning given by clause 8(2);

“the panel” means the panel of duty advocates maintained by the Committee

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<sup>1</sup> 1986 c.23

<sup>2</sup> 1998 c.29

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under clause 3;

“police station” includes any place in the Island where a person is in custody;

“the rota” means the rota of duty advocates drawn up by the Committee under clause 3(c);

“senior advocate” means an advocate who has been qualified as such for at least 5 years;

“the Society” means the Isle of Man Law Society.

“suspect” means a person who -

(a) for the purposes of assisting with an investigation attends voluntarily at a police station;

(b) accompanies a constable to a police station without having been arrested; or

(c) has been arrested and is being held in custody,

and requests advice from the duty advocate.

## **2. Duty Advocate Committee**

(1) There shall be a Duty Advocate Committee which shall consist of -

(a) the President of the Society;

(b) the chairman of the Remuneration Committee of the Society;

(c) a member of the Manx Bar appointed in accordance with paragraph

(2).

(2) The first member of the Committee referred to in paragraph (1)(c) shall be appointed by the President of the Society, and thereafter that member shall be appointed by the panel in accordance with arrangements made by the Council of the Society and approved by the Legal Aid Committee.

(3) A member of the Committee appointed under paragraph 1(c) shall, unless he sooner resigns by notice in writing to the President of the Society, hold office for a term of one year from his appointment, and shall be eligible for re-appointment.

(4) The following provisions shall have effect with respect to the proceedings of the Committee -

(a) the Committee shall at its first meeting and thereafter annually, elect a chairman to hold office for such period not exceeding one year as the Committee may determine;

(b) 2 members of the Committee shall constitute a quorum:-

(c) the Committee shall keep written minutes of its proceedings.

## **3. Functions of the Committee**

The Committee shall -

- (a) maintain a panel of duty advocates in accordance with the following provisions of this Scheme;
- (b) consult with the Chief Constable as to the arrangements to be made for the provision of advice by duty advocates in accordance with this Scheme;
- (c) draw up a rota of duty advocates to be available to provide advice in accordance with this Scheme;
- (d) when required by the Legal Aid Committee or of its own motion, make reports and recommendations to the Legal Aid Committee concerning the operation of this Scheme; and
- (e) maintain such records as are necessary for the performance of its functions.

*The panel of duty advocates*

**4. Appointment of panel**

(1) The Committee shall not appoint a person to the panel unless -

- (a) he has applied in writing for appointment;
- (b) he holds a current practising certificate as a advocate;
- (c) either -
  - (i) he has comprehensive experience of criminal defence work; including advocacy in the courts exercising criminal jurisdiction in the Island and the provision of advice to persons arrested and held in custody; or
  - (ii) the Committee is satisfied that he has attended a relevant course and obtained relevant training to enable him to provide competent advice to suspects;
- (d) he is willing to act personally as a duty advocate and to undertake (unless prevented by absence or illness or for other good reason) the duties allocated to him under the rota; and
- (e) he is otherwise suitable to act as a duty advocate

(2) If the Committee is satisfied that an applicant complies with the conditions in paragraph (1)(b), (c), (d), and (e) it shall as soon as practicable appoint him to the panel and notify him of his appointment.

(3) The Committee may not refuse an application by an advocate who is qualified under paragraph (1)(b) without first interviewing him, and if it refuses the application it shall notify him in writing of its reasons for doing so.

(4) In determining whether an applicant is suitable to act as a duty advocate, the Committee may take into account any representations received as to his past performance as a duty advocate.

(5) The Committee shall notify the applicant of the substance of any adverse representations before it takes account of them under paragraph (4).

**5. Term of membership of panel**

- (1) An advocate shall cease to be a member of the panel -
  - (a) on the expiry of 5 years from the date of his appointment;
  - (b) on the expiry of 3 months' notice in writing to the Committee (or such less notice as the Committee may accept) of his intention to resign;
  - (c) on his removal or suspension under paragraph (3);
  - (d) if he is sentenced to custody for an offence;
  - (e) if an order is made against him under section 2(4)(c) or (d) of the Advocates Act 1976<sup>3</sup>;
    - if he fails for a period of 28 days or more to carry out his duties as a duty advocate;
  - (g) if he fails to comply with the requirements of clause 4; or
  - (h) if he ceases to hold a current practising certificate as an advocate;

but (subject to paragraph (2)) shall be eligible for reappointment in accordance with clause 3.

(2) The Committee may not consider an application for reappointment to the panel by a person who has ceased to be a member by virtue of paragraph (1)(g) until he has undergone a course of training referred to in clause 4.

(3) The Committee may for good cause-

- (a) remove an advocate from the panel;
- (b) suspend an advocate from the panel for a period not exceeding 6 months.

(4) Before exercising its powers under paragraph (3) the Committee shall

- (a) notify the advocate of the substance of the complaint against him
- (b) give him not less than 21 days' notice of the meeting of the Committee at which the matter will be considered;
- (c) give him an opportunity of making oral representations to the Committee at that meeting; and
- (d) consider any oral or written representations he may make.

**6. Continuing training**

A member of the panel shall undergo a course of training approved by the Committee or by The Law Society of England and Wales relevant to advice at police stations in England and Wales under arrangements corresponding to this Schemes-

- (a) in the year immediately after he is first appointed as a member of the panel;
- (b) in the year immediately after he is appointed as a member of the panel following a period exceeding 3 months during which he was not such a member;
- (c) in every second year after the year in which he has previously undergone such a course.

**7. Duty to report change in circumstances**

A member of the panel shall immediately notify the Committee of any of the following circumstances -

- (a) any change in his practising address;
- (b) if he ceases to hold a current practising certificate as an advocate; or
- (c) if he fails to comply with clause 6;
- (d) if he is incapable of carrying out his duties for a period of more than 28 days;
- (e) if he is charged with or convicted of any offence;
- (f) if a complaint against him is made to the Advocates Disciplinary Tribunal.

**8. The rota**

(1) For the purposes of the rota there shall be “on-call periods”-

- (a) from 6.00 p.m. to 7.00 a.m. on every day of the year, and
- (b) from 7.00 a.m. to 6.00 p.m. on every Saturday, Sunday and holiday in the year

(2) the Committee shall allocate a member of the panel to be duty advocate for every on-call period.

(3) No member of the panel shall be allocated under paragraph (2) to any 2 consecutive on-call periods without his consent.

(4) The Committee shall allocate a member of the panel, being a senior advocate, to be available for every period of 7 days -

- (a) to be consulted by the duty advocate in any case of difficulty;
- (b) to be called upon by the custody officer to act as duty advocate in place of the duty advocate in a case of grave crime (for example, homicide or rape).

(5) A member of the panel who is to be duty advocate for any on-call

period under the rota may arrange for another member of the panel to take his place on the rota, but shall notify the Committee in advance of any such arrangement.

(6) Where a duty advocate -

- (a) has attended at a police station and is requested to advise more than one suspect, and
- (b) having interviewed a suspect, believes on reasonable grounds that a conflict will exist or be created if he interview another suspect.

*Functions of duty advocates*

**9. Initial advice**

(1) The duty advocate shall accept the case of any suspect referred to him by telephone by the custody officer at a police station.

(2) Where the duty advocate accepts a case under paragraph (1), he shall in the first instance give advice by telephone (“initial advice”), unless in his opinion the circumstances of the case demand immediate attendance at the police station to give advice in person.

(3) If the suspect is incapable by reason of drunkenness or violent behaviour of speaking to the duty advocate over the telephone, the giving of initial advice may be postponed until the suspect is capable of speaking to him.

**10. Mandatory attendance at police station**

(1) This clause applies where -

- (a) the suspect has been arrested in connection with an arrestable offence and the police intend to interview him;
- (b) the police intend to resolve an issue of identification by holding an identity parade, group identification or confrontation;
- (c) the suspect complains of serious ill-treatment by the police; or
- (d) the suspect is a child or young person.

(2) After providing initial advice the duty advocate shall -

- (a) inform the suspect that he will attend at the police station to advise him in person, and
- (b) so attend and advise the suspect there,

unless the duty advocate is of the opinion that there are exceptional circumstances for not so attending, in which case he shall explain to the suspect his reasons therefor and notify the custody officer of his decision.

(3) If a police interview, identity parade, group identification or confrontation is postponed to a time when the duty advocate is no longer on duty, he shall make arrangements to ensure that the suspect continues to receive advice from himself, from the person who is then the duty advocate or from another advocate instructed by the suspect.

## **11. Discretionary attendance at police station**

(1) Where a duty advocate is requested to attend at a police station to give advice to a suspect but clause 10 does not apply, the duty advocate may so attend if he considers that it is in the suspect's interests to do so.

(2) In deciding whether to attend at a police station under paragraph (1) the duty advocate shall have regard to whether he can provide initial advice with sufficient confidentiality.

## **12. Continued instructions**

(1) Where the duty advocate has given advice to a suspect at a police station, he may indicate to the suspect that he may instruct the duty advocate to continue to act for him, but before he does so he shall -

- (a) advise the suspect that he is entitled to instruct any advocate; and
- (b) ask the suspect if he has an advocate whom he wishes to instruct.

(2) If the suspect states that he wishes to instruct another advocate, the duty advocate shall not act for him.

(3) If the suspect indicates that he wishes to receive advice from a named advocate or firm, the duty advocate shall not continue to act for the suspect, even though that advocate or a member of that firm is not available, unless the suspect expressly asks him in writing to do so.

(4) The duty advocate shall within 7 days send a copy of any written request under paragraph (3) to the Committee.

(5) Where the duty advocate does not continue to act for the suspect, he shall make available to any advocate subsequently instructed by the suspect any relevant information about the case.

### *Remuneration*

## **13. Remuneration**

(1) duty advocate shall be remunerated by the Treasury at the following rates:-

- (a) £135 for each on-call period during which he is available in accordance with the rota under clause 8(2) (to include any initial advice);
- (b) in addition, for each hour or part of an hour during which he attends



at a police station to give advice to a suspect, the hourly rate prescribed by the Treasury pursuant to section 19(3) of the Legal Aid Act 1986, together with his reasonable travelling expenses at a rate determined by Treasury.

(2) A member of the panel who attends at the police station and gives advice in the place of the duty advocate under clause 8(6) shall be remunerated at the rate specified in paragraph (1)(b).

(3) A member of the panel, being a senior advocate, shall be remunerated by the Treasury at the following rates –

(a) £310 for each period of 7 days during which he is available under clause 8(4);

(b) in addition, for each hour or part of an hour during which he attends at a police station to give advice to a suspect, or is consulted by the Duty Advocate under clause 8(4)(a), the hourly rate prescribed by the Treasury pursuant to section 19(3) of the Legal Aid Act 1986 together with his reasonable travelling expenses at a rate determined by Treasury.

(4) Any claim for remuneration under this Scheme shall be made by lodging in the General Registry a claim in writing in a form approved by the Committee.

(5) A claim form lodged by a duty advocate shall include -

(a) a note of every occasion on which he called upon a senior advocate to advise under clause 8(4)(a);

(b) where he decided under clause 10(2) not to attend at a police station, a note of that decision and of the exceptional circumstances which in his opinion justified it.

(6) Any claim for remuneration under this Scheme shall be assessed by the Chief Registrar, who may disallow or reduce any claim if he considers it unjustified.

(7) A member of the panel who is aggrieved by any decision of the Chief Registrar under paragraph (6) may make written representations to the Legal Aid Committee within 21 days of being notified of the decision, and the Legal Aid Committee may make such adjustment, if any, as appears to it to be proper.

#### *Advice by advocate outside on-call period*

### **14. Advice by advocate outside on-call period.**

(1) Where, at the request of a suspect, an advocate who is a member of the panel attends at a police station outside an on-call period and advises the suspect there, he shall be entitled to be remunerated by Treasury in like manner as a duty advocate.

(2) Accordingly clause(1)(b) and (4) to (7) shall apply to an advocate acting

as mentioned in paragraph (1) as it applies to a duty advocate.

MADE 2<sup>ND</sup> November 1998.

Members of the Legal Aid Committee

#### EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme provides for duty advocates to give advice and assistance to suspects at police stations. It establishes a Duty Advocate Committee to manage the service (clause 2 and 3), provides for a panel of duty advocates (clause 4 to 7) and a rota for their availability (clause 8), specifies their duties (clauses 9 to 12), and provides for their remuneration (clause 13) and the remuneration of other advocates who attend to advise suspects at a police station (clause 14).