



Ireland

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OUTLINE OF THE LEGAL AID SYSTEM

HOW IS IT ORGANISED?

Criminal legal aid is primarily organised under a Statutory Criminal Legal Aid Scheme supplemented by several *ad hoc* arrangements. These various schemes operate independently from each other, have different rules of eligibility and operation, and are not managed or administered by one central body. A determination of eligibility under one scheme does not confer eligibility under any other.

Under the Statutory Criminal Legal Aid Scheme (“the Statutory Scheme”), the judiciary is responsible for assessing eligibility and granting legal aid. The accused person applies to the court for a legal aid certificate, usually when they are first brought before the court or via the submission of a form called the “statement of means” to the Court Registrar. In certain circumstances if a person is charged before the District Court, they can apply for legal aid for both a solicitor and counsel (barrister) under an administrative *Ad Hoc District Court (Counsel) Scheme* administered by the Department of Justice and Equality.

In addition, the Legal Aid Board manages and administers two *ad hoc* criminal legal aid schemes: the Garda Station Legal Advice Revised Scheme (“the Garda Scheme”); and the Legal Aid-Custody Issues Scheme (“the Custody Issues Scheme”). The Garda Scheme applies specifically to people who have been detained at the Garda (police) station. Legal aid can be obtained for telephone consultations, police station consultations, and attendance of a solicitor at the formal police interviews and identity parades. The Custody Issues Scheme relates to certain High Court, Court of Appeal and Supreme Court proceedings including *habeas corpus* applications, bail motions, certain types of judicial review, and European Arrest Warrant applications.

A determination under any scheme not to apply legal aid is final and cannot be appealed. The only option is to judicially review a refusal—a Court reviews the soundness of the decision-making process but not the decision itself.

HOW IS IT FINANCED?

The Department of Justice & Equality has budgetary responsibility for all of the criminal legal aid schemes. In 2013, **€0.8 million** was spent on legal aid under the Garda Scheme and **€3.4 million** was spent under the Custody Scheme, according to the Legal Aid Board Annual Report. **€50.9 million** was spent under the Statutory Scheme, which includes fees for legal aid lawyers and other operational costs of the scheme.

HOW IS IT MONITORED?

There is currently no separate quality control mechanism for legal aid lawyers and no institution responsible for monitoring the quality of legal aid. However, a complaint can be made against a solicitor through the Law Society, and against a barrister through the Bar Council.



LEGAL AID IN: IRELAND

MAJOR ISSUES WITH LEGAL AID

Lack of a unified Legal Aid Scheme and different eligibility criteria applicable for each scheme.

Decisions regarding eligibility under the Statutory Scheme are at the discretion of the judge, with a lack of clarity and certainty about the means and merits tests.

Lack of quality assurance and monitoring mechanisms.

The police have discretion over which solicitor to appoint under the Garda Scheme, which can lead to concerns about independence.

We thank **Grace Mulvey**, JUSTICIA Programme Manager, Irish Council for Civil Liberties for her expert input to this document.

MEANS AND MERITS TEST

For the Statutory Scheme, a combined means and merits test is applied. The means test is at the discretion of the Court and is not governed by any financial guidelines. In cases of murder or an appeal from the Court of Appeal to the Supreme Court, then only the means test is applied. For all other cases the merits test must also be satisfied, which includes an assessment of the gravity of the charge or any exceptional circumstances in the interests of justice that warrant legal aid. In general, if there is any real risk of imprisonment, the merits test will be met.

For the Garda Scheme, only a means test is applied. Persons detained under certain legislation and either in receipt of Social Welfare payments or earning a salary of less than €20,316 are eligible.

Under the Custody Issues Scheme the Court considers the means of the applicant and decides whether the person is in a position to retain a lawyer without the Scheme, before making a recommendation to the Legal Aid Board to apply this scheme. This is a discretionary decision and is not governed by financial guidelines.

THE REALITIES OF ACCESS TO LEGAL AID

ACCESS TO LEGAL AID DURING INVESTIGATIVE STAGE

When a person is detained at the police station, the detainee can get legal aid for telephone consultations, a set number of police station consultations, and solicitor attendance at formal identification parades. Since 7 May 2014, following a Supreme Court judgment, solicitors have also been permitted to attend police interviews with their clients.

The hourly rates payable to solicitors for client consultations and attendance at the police station vary depending on the time and day of the attendance. The rate is **€72 per hour+VAT** between 8am to 8pm Monday to Friday, and **€93 per hour+VAT** for after hours, weekends and Bank Holidays. Solicitors are not paid for time spent reviewing video or documentary evidence, or police video interviews.

QUALITY OF LEGAL AID AND EFFECTIVE CRIMINAL DEFENCE

A solicitor who wishes to be added to the Court Registrar panel of legal aid lawyers under the Statutory Scheme is only required to provide a current valid tax clearance certificate. A barrister who wishes to represent legally aided clients under the Statutory Scheme must first be approved by the Bar Council and then submit a valid tax clearance certificate to the Minister for Justice and Equality, who maintains this panel. Neither solicitors nor barristers have to be specialised in criminal law in order to provide legal aid.

There is no panel of solicitors for the Garda Scheme. If a solicitor wants to provide police station legal advice, they informally make it known by contacting a police station directly or becoming a 'known solicitor' to the police or the suspect by way of reputation. In practice, if the detainee does not nominate a particular solicitor, the police have complete discretion as to which solicitor is called. It appears that some police stations tend to routinely use the same limited number of solicitors.



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