

Dunn & Baker

CRIMINAL DEPARTMENT

CLIENT INFORMATION NOTES

Responsibility for the work

Mrs Caroline Salvatore, who is a Solicitor and a Partner in this firm, will have the overall management and responsibility for your case. In addition, other members of the Criminal Department may undertake work on your behalf, in particular Mark Kendall, solicitor, and assistants Kirsty Gibbons and Veronica Schoeters. Any one of the Criminal Team will be pleased to attend on interviews at a Police Station if required.

Whilst Mrs Salvatore and Mark Kendall would usually expect to represent you in the Magistrates Court, there may be occasions when they are not available, or the Court is at a distance from Exeter, and it may be necessary to instruct an agent from another firm of solicitors. You will be told in advance whether this is necessary and if so, the name of the person who will be attending on your behalf. Where attendance at the Crown Court is involved, a barrister will often be instructed to represent you, and one of the members of the Criminal Department will normally also be in attendance at the Court. Where our attendance is not permitted under the Court Rules, you will be informed in advance. You will be given details of the barrister prior to the attendance.

Charges

a) Private Rates

Our charges are based on the time we spend dealing with a case.

The following is a list of the current hourly rates charged by the fee earners who undertake work in the Criminal Department:-

Name	Status	Hourly Rate £
Caroline Salvatore	Partner	174.00
Mark Kendall	Solicitor	150.00
Veronica Schoeters	Legal Assistant	80.00
Kirsty Gibbons	Legal Assistant	80.00

All the above rates are exclusive of VAT.

b) Criminal Contract Charging Rates (formerly Legal Aid)

Although work is costed on an hourly rate, a Standard Fee Scheme applies in both the Magistrates Court and Crown Court, whereby set fees are payable by the Legal Services Commission/Crown Court in respect of work done up to specific costs limits. Where the costs amount to more than the upper limit, the appropriate hourly rate is payable.

These costs are paid to us direct by the Legal Services Commission.

c) Expenses

There may also be expenses (known as disbursements) incurred during the course of the case, e.g. travelling expenses if the Court is outside Exeter, parking fees, medical report fees, agent's fees etc. Travelling expenses are calculated at 45p per mile.

If you are privately-paying, then it is the firm's policy that funds should be provided by you before the expense is incurred.

Advice in the office

Whilst advice at Court and at the Police Station is not currently means tested, advice at the office can be.

If you are not in employment, or you earn less than the current financial limit, you may have signed CDS Form 2. This will allow us to provide you with legal advice and assistance, including attendances upon you or upon other people in relation to your case, preparing documentation, reading papers, researching law, telephone calls made and received, and letters written. It does not, however, cover actual representation in Court.

There is an upper limit of £300 for advice and assistance. Once this limit has been reached, it is necessary to apply to the Legal Services Commission for an extension, which may or may not be granted. Extensions cannot be backdated.

If you are not financially eligible for free advice in the office, then we would have to charge for any attendance in the office unless and until the cost of your case is covered by a Representation Order (see next section).

Representation at Court

You may be represented in the Magistrates Court under a Representation Order (formerly Legal Aid Order). This covers representation throughout the duration of the proceedings before the Magistrates Court and includes advice on appeal.

In order to qualify, you need to pass a means test and a merits test.

Means Test: You need either to be in receipt of a "passporting benefit" (IS, IBJSA or
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Guarantee Credit) or you need to be of low income (see below under "financial eligibility for representation in the Magistrates' Court")

Merits Test: this is the "Sufficient Benefit" test (see below) and the Court may not grant an Order if it does not believe that it would be in the interests of justice to do so, e.g. where the offence is of a minor nature and you might well be able to deal with it yourself.

Please note that you have a duty to notify the Court, and this firm, of any change of address. Or any change in your financial circumstances.

You must also deal with any requests for information from us or the Court quickly. If you try to hide information from the Court, your Representation Order may be taken away (revoked). In addition, you must not ask us to deal with your case in a way that causes unnecessary expense to the Legal Aid Fund.

If there has been a delay in applying for a Representation Order, then you may be responsible for all this firm's costs up to the date of grant of the Order at private rates.

Financial eligibility for representation in the Magistrates' Court

- 1) Your gross "weighted income" (i.e. gross income, based on the month up to the date of assessment, minus certain allowable deductions for a partner or children living with you) must not exceed £20,740. If you are single with no dependents, then this will be your full gross income. This £20,740 cut-off figure is called "the initial filter".

The income of your partner must also be taken into account, unless your partner is a prosecution witness or the alleged victim of your behaviour.

"Income" is not limited to paid employment. It also includes

- money received from non-passported benefits,
- child benefit,
- tax credit,
- pension,
- financial assistance given to you by relatives and friends,
- spouse or child maintenance paid to you,
- "indirect maintenance" (i.e. your mortgage is paid by your former partner in lieu of maintenance)
- student grants or loans
- benefits in kind received from your employer (as valued on your tax form P2) e.g. if your P2 states "car benefit - £750", that will be added to your income.
- Income from investments and savings
- Trust income

The following benefits are excluded for assessment purposes:

- Attendance allowance
- Severe disablement allowance
- Carer's allowance
- Disability living allowance
- Constant attendance allowance
- Council tax benefit
- Any payment made out of the social fund

The following income is excluded for assessment purposes:

- Any direct payment under the Community Care, Services for Carers and Children's Services Regulations
- Any exceptionally severe disablement allowance
- Any pensions paid under the Naval, Military and Air Forces (Disability and Death) Service Pensions Order.
- Any Independent Living Fund payments
- Any financial support paid under an agreement for the care of a foster child

- 2) If your gross "weighted income" is in fact below £11,590, then you will be eligible for a representation order without any further assessment
- 3) If your gross "weighted income" is between £11,590 and £20,740, then a full means test will be carried out.

Your "disposable income" will be calculated. This is, your actual gross income (based on your last month's figure), LESS

- Income tax
- National insurance
- Housing costs (mortgage/rent and council tax or 50% of board and lodgings)
- Child care fees (fees paid to a school/local authority for out of school hours care or to registered child minder, for children under 16)
- Maintenance paid to a former partner (whether by way of court order, or simply paying an ex-partner's accommodation costs monthly)
- An annual living allowance figure

A single person has an allowance of £5,304

This base figure of £5,304 is added to for each dependent in the household

- add 64% of the base figure for a partner
- add 15% of the base figure for a child 0 – 1
- add 30% of the base figure for a child 2 - 4
- add 34% of the base figure for a child 5 - 7
- add 38% of the base figure for a child 8 – 10
- add 41% of the base figure for a child 11 - 12
- add 44% of the base figure for a child 13 - 15
- add 59% of the base figure for a child 16 - 18

Housing costs in excess of £500 pcm, must be supported by documentary proof.

If after all these deductions, your residual income is in EXCESS of £3156, then you are ineligible for a representation order.

If your residual income is £3156 or less, then you will be eligible for free assistance in the Magistrates' Court.

Sufficient Benefit Test

We are under an obligation to you (and to the Legal Services Commission) to ensure that the benefit you are likely to gain from the advice and assistance, advocacy assistance or representation is proportional to the costs incurred. We are obliged to bear this in mind throughout the duration of the proceedings, and it might be that we would have to cease to act for you if we did not believe that we could justify the work to the Legal Services Commission. In those circumstances, we would, of course, discuss the matter with you and try to minimize any difficulties which our decision might create in relation to your case.

Withdrawal of Legal Aid

There are certain circumstances in which a Representation Order may be withdrawn:-

- a. At your request.
- b. If, for some reason, e.g. you persist in a course of action against our advice, we decide that we can no longer represent you.
- c. If the Court becomes aware that you knowingly made a false statement which influenced the Court to grant you Legal Aid.

Should the Representation Order be withdrawn for any of the above reasons, except (b), then you will have to pay on a private basis if you wish to be represented by this firm. **Please note** that it is a criminal offence to give false information in order to obtain a Representation Order.

Defendant's Costs Order

Should you be successful in defending the case, or the Prosecution decide to withdraw the charge against you, you will be entitled to ask to have your costs paid out of the Central Fund. This is called a Defendant's Costs Order. The amount of the Order will be such amount as the Court considers reasonable to compensate you for any costs which you have incurred. This sum may not cover the total amount of the work undertaken in your case and you will be responsible for any difference between the sum allowed by the Court and the total costs calculated at private rates.

You are also entitled to claim any costs incurred personally, e.g. your travelling expenses for attending at Court. You are not, however, entitled to compensation for loss of earnings. The expenses which you may claim are as follows:-

Subsistence: up to 5 hours at Court (half day)	£2.25
Subsistence: between 5 hours to 10 hours (full day)	£4.50
Subsistence: over 10 hours (more than one day)	£9.75
Travel:	25p per mile or your train fares

Where a Representation Order has been granted, we will not normally apply for a Defendant's Costs Order, since your costs will be paid by the Legal Services Commission in any event.

Advice at Police Station

This is a free service, the costs being recovered from the Legal Services Commission.

Termination

If at any time you wish this firm to cease work for you on this matter, please let us know in writing. If you are paying privately, we will then prepare a final bill in respect of work done and deliver this to you as soon as is practicable. Until all outstanding costs are paid, the firm retains a 'lien' over the papers. This means that we have a right to keep the papers until our bill has been paid. We will, of course, release the papers to any new solicitors you instruct or to yourself, if requested, as soon as our bill has been paid.

If you have a Representation Order, the situation is slightly different. If you wished to instruct new solicitors, then as soon as we received a letter from those solicitors enclosing your authority, we would normally pass over the file. In those circumstances, we would also have to write to the Court to confirm that we consent to the Representation Order being transferred. We would not normally pass over the whole file if you were going to represent yourself, although we would, of course, let you have any relevant paperwork, e.g. Prosecution statements, Defence statements and any papers which you had given us.

We reserve the right to stop acting for you as solicitors if:

1. You do not pay our costs or money on account in accordance with our terms of business; or
2. We cannot continue to act without being in breach of rules of professional conduct; or
3. We are unable to obtain clear instructions from you; or
4. For any reason there has been a serious breakdown in confidence between us.

Storage of papers and documents

After completing the work, we are entitled to keep all your papers and documents while there is money owing to us for our charges and expenses. We will keep our file of papers (except for any of your papers which you ask to be returned to you) for no more than six years, following which it will be destroyed. We will not destroy documents you ask us to deposit in safe custody.

If we retrieve papers or documents from storage in relation to continuing or new instructions to act in connection with your affairs, we will not normally charge for such retrieval. However, we may make a charge based on time spent producing stored papers or documents to you or another at your request. We may also charge for reading, correspondence or other work necessary to comply with the instructions given by you or on your behalf.

Complaints Procedure

As a firm, Dunn and Baker aims to offer an effective and efficient service to all clients. However, should there be any aspect of the service provided by the Criminal Department with which you are unhappy and which cannot be resolved with Mrs. Salvatore, then you may raise the matter with Simon Cutting, who is the Office Manager. Details will then be provided of our firm's complaints procedure.

DUNN & BAKER – HERE TO HELP YOU

dunnandbaker.co.uk

***Disclaimer:** The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.*