

ADJUTANT-GENERAL

603. Legal Aid.---Provision of Facilities for the Defence of Accused at Courts-Martial in the United Kingdom.

1. A scheme for providing civilian professional assistance for the defence of accused at courts-martial in the United Kingdom has been approved and will be adopted forthwith. It is broadly comparable to that already in existence for civilians prosecuted before criminal courts in the United Kingdom, and is available to all ranks, subject to an examination of the financial circumstances of the accused, and to the approval in each case of the O. i/c Military Department, Judge Advocate General's Office.

2. The general principles to be followed in deciding whether a case justifies the provision of such assistance are that:--

- (a) It is necessary because the prosecutor is legally qualified, or the trial involves points of legal difficulty, or the expert examination of witnesses.
- (b) It would have been provided if the case were brought before the civil courts.
- (c) The trial may be of serious consequence to the accused.

3. Where assistance, under the conditions of para. 2 above, is necessary, defence will be provided initially at public expense, subject to an undertaking by the accused to pay whatever sum is due from him according to the regulated scale based on income, means and commitments.

A scale of contributions based on net annual income has been fixed. It ranges from 1 pound in the case of those whose net annual income from all sources does not exceed 100 pounds, to 25 pounds where it does not exceed 500 pounds. Cases where the net annual income from all sources is more than 500 pounds will be dealt with on their merits. Net capital in excess of 50 pounds, or, where the accused is married and living with his wife, or separated only by the exigencies of the Service, of 100 pounds, will also be regarded as available to meet the cost of legal assistance.

The eventual payment will not exceed the cost, to the public, of the legal assistance provided.

4. To ensure uniformity of treatment, the decision that legal assistance is necessary, and the assessment of the payment to be made by the accused, will be in the hands of one authority, the O. i/c Military Department, Judge Advocate General's Office, who, if he so decides, will issue a legal aid certificate and make the necessary arrangements.

This officer will from time to time circulate to commands lists of solicitors in their area who are prepared to accept service under the scheme.

5. In any case where, in the opinion of the accused's C.O. or the convening officer, one or more of the principles of para. 2 are likely to apply, the accused will be asked whether he wishes to:--

- (a) Apply for the service of a defending officer.
- (b) Instruct his own solicitor.
- (c) Apply for professional legal assistance through the Army scheme.

In the event of his electing under sub-para. (c) above, there is no objection to his nominating a solicitor to act on his behalf under the scheme, subject to the acceptance by that solicitor of the normal conditions regarding fees, etc., and provided that no extra expense to the public is involved. Any such nomination will be forwarded to the Judge Advocate General's Office with the application.

If he elects under sub-para. (c), the accused will be informed that the grant of legal aid will be conditional upon a decision that professional assistance is necessary in his particular case and upon the payment of such sum as may be justified by the amount of his means. He will then be required to complete and sign a statement setting out his means and commitments and, if he is married and is not separated from his wife apart from the exigencies of the Service, those of his wife.

6. The accused will be afforded all possible assistance in completing the statement referred to in para. 5. This statement will be made on a form as shown in the Appendix to this A.C.I., which combines an application for professional assistance and a statement of the applicant's means and commitments. The form will be printed as an Army Form in due course, but meanwhile units will produce their own copies.

The particulars given in the statement should be sufficiently detailed to enable the applicant's means and commitments in terms of capital or income to be truly ascertained and should, therefore, include, for example, details of any charges or outgoings on any assets, whether of a capital or income nature, which may be disclosed in the statement.

Where the accused is unable from his recollection to give any information or seems uncertain about the accuracy of the information he can give, his C.O. will consider how far any estimate the accused can provide seems reliable. He will also consider whether it is

possible without undue delay for the information to be obtained by the accused for inclusion in the statement before it is despatched to the Judge Advocate General's Office.

When the statement of means has been completed the C.O. may, without prejudice, inform the accused of the probable maximum contribution in his case, viz., all capital over 50 pounds (100 pounds if married) plus the income contribution which appears to be appropriate in his case, varying between 1 pound in the case of a private soldier, to 25 pounds in the case of an officer of the rank of captain. It should be made clear, however, that the decision rests with the O. i/c Military Department, Judge Advocate General's Office.

The accused will also be asked to nominate two solicitors in order of preference, selected from the area list.

7. The completed application for professional legal assistance, including the statement of means and commitments and nominations, will then be forwarded by the convening officer with the summary of evidence to the O. i/c Military Department, Judge Advocate General's Office, who will decide whether to issue a legal aid certificate.

In approved cases a legal aid certificate will be issued to the convening officer concerned. It will include details of the sum payable. The accused will then be invited to sign an undertaking in the following terms:--

"In consideration of the grant of a certificate for legal aid in connexion with my trial by beginning .;..... I agree to pay pounds (figures and words) and authorize this amount to be charged to my army account and, if necessary, recovered from future entitlement to pay or other emoluments.

Signed.....
Regimental particulars.....

Witnessed by:--

..... Date.....
..... Rank and Regiment Station....."

The completed undertaking will then be returned to the O. i/c Military Department, Judge Advocate General's Office, who will make all subsequent arrangements for the attendance of the solicitor and the date of trial in conjunction with commands.

If a certificate is refused the O. i/c Military Department, Judge Advocate General's Office, may offer to assist in retaining a solicitor or counsel at the accused's own expense.

8. Recovery from the accused will be made by paymasters or agents in the normal manner.

9. The solicitor's bill of costs will be sent to the O. i/c Military Department, Judge Advocate General's Office, for taxation and payment after the trial.

10. Further investigations are being made with a view to introducing a modified legal aid scheme in overseas commands.

Army Council Instructions

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