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New rules for detention and arrests in Scotland - new rights for persons questioned by the police



Following the much publicised Cadder case, which turned on the issue of legal representation when an accused person is questioned by police, the Scottish Parliament brought in emergency legislation. This has had a number of far-reaching consequences for anyone questioned by the police. MTM was at the forefront of publicising the implications of the Cadder case, warning as early as 2009 - and well before the appeal ruling - of the likely consequences with regard to cases going through the courts based on police evidence obtained without a lawyer being present.

The legislation, which is now in force, is the Criminal Procedure

(Legal Assistance, Detention and Appeals) (Scotland) Act 2010. The Act amends Sections 14 and 15 of the Criminal Procedure (Scotland) Act 1995 which relates to the rights of suspects and arrested persons.

Six-hour detention becomes 12-hour detention

Under the new legislation, the six-hour detention period is now extended to 12 hours. So a person can now be detained, in relation to a crime punishable by imprisonment, and taken to a police station for a period of up to 12 hours. After that time the person must either be arrested or released. However, in unusual circumstances the

police can detain a person for a further 12 hours.

New right to legal consultation

A person who is detained or arrested, and who is about to be interrogated by the police, now has a new right to have a private consultation with a solicitor before any questioning begins and is also allowed to have a solicitor present with them during questioning.

A consultation can take the form of a telephone discussion, where the solicitor is unable to attend immediately at the police station, or it can be a consultation with the solicitor in person at the police station. The person in custody is also now allowed to have a solicitor present with them during the police interrogation and can ask for a private consultation with their solicitor during the police interview.

Rights when questioned at other locations and in other circumstances

The new rights to have a private consultation with a solicitor before the interrogation, to have a solicitor present during the interrogation and to consult

with a solicitor during the police interrogation, also apply to people who are questioned by the police at other locations. Specifically, the same rights apply to people who are questioned in their own home by police, and to people who attend the police station voluntarily to assist the police with their enquiries.

A fairer system

What all this amounts to in MTM's view is a much fairer system. As we have pointed out in our contributions to the legal and media debate on the issues surrounding the Cadder case, it was previously all too easy for someone to incriminate themselves when being questioned without a solicitor being present.

The new legislation means that individuals are safeguarded against such eventualities by having the right to a solicitor to advise them. All of this makes for a much fairer system for people being questioned - people in such circumstances should always avail themselves of expert legal advice and representation. Take a look at our website at www.mtmdefence.co.uk for more background on this major change to Scottish Law.

Cadder case implications lead to wider review

The implications of the Cadder case continue to be felt throughout the legal establishment. A consultation concerning police arrest and detention, evidence requirements and possible limits on rights of appeal are all up for discussion in a consultation paper as part of a review by Lord Carloway, a Scottish High Court Judge.

The review was set up immediately following the Cadder decision in the UK Supreme Court last October, on the rights of suspects in police detention to legal advice, and the emergency legislation pushed through the Scottish Parliament altering the time limits for police detention and making changes to rights of appeal. Above all, the review is based on looking at the practical investigation of crime and what happens when a person is deprived of his/her liberty during that investigation.

The review's terms of reference are to look at the law and practice of questioning suspects in the light of recent human rights decisions, and the implications for criminal evidence; the extent

to which the emergency Act may need reconsideration or replacement; and to make recommendations for further changes.

Covering the four main themes of custody, key stages of custody, evidence, and appeals, the paper poses 34 questions intended to help shape the discussions. Among them are questions such as: whether the requirement for corroboration should be abolished; whether the court should be allowed to draw an adverse inference from an accused's silence; what rules should govern police questioning; and when should a suspect's right to legal assistance arise.

These are fundamental issues at the heart of delivering justice. MTM will be taking part in the consultation, promoting the interests of defence clients - just as the firm did in its public response to the issues around the Cadder case itself. The results of the review, which includes the consultation, will be published in the autumn with a list of recommendations.

Expertise and swift action

- decisive factors in all Appeal work

Time to appeal

MTM has long experience in this area of legal work and our solicitor advocates are active in the Court of Criminal Appeal. We represent many clients who have already been convicted and sentenced, and who come to us to mount an appeal. As with so many legal matters, it is absolutely imperative to take swift action. If someone has been convicted and wishes to appeal against their sentence then they should contact us immediately to get things started before it is too late.

Time is of the essence

In appeal work, time limits can be exceeded only in very unusual circumstances. It is therefore vital that a person who wishes to appeal against a conviction, sentence or both should make contact with MTM immediately as there are strict time limits in place. If you are late in trying to

lodge your appeal it will almost always be refused simply on that basis, regardless of the merits of the appeal itself.

Each passing day matters

In summary cases (that is cases heard only before a Sheriff or a Justice of the Peace) a person has only seven days in which to appeal. In cases on indictment (that is either before a Sheriff only if it is a plea of guilty, or after a jury trial) any appeal against sentence, or intention to appeal against conviction, must be lodged with the court within 14 days.

Swift action called for in all cases

As an expert firm in appeals, MTM Defence Lawyers is swift to act. We can very often give initial advice over the telephone and appointments can be arranged, sometimes even within 24 hours, to take full instructions in relation to the appeal and to lodge the appropriate appeal document with the court. MTM Defence Lawyers also has two solicitor advocates, who are qualified to provide expert opinions of the prospects of success in appeal. They can deal with the other written formalities required in appeal work, and to provide representation at the Court of Criminal Appeal itself, which is the highest court in Scotland.

New rules on proof of income

The Scottish Legal Aid Board, which funds all publicly funded cases in Scotland, has recently introduced new rules regarding applicants' proof of income. As a firm of defence lawyers, MTM is now required to provide proof of clients' income to the Board as part of the funding process for their cases. Legal Aid is a public service and as such the scheme is open to the highest levels of scrutiny and accountability.

As one of Scotland's leading defence practitioners, MTM has rigorous systems in place to ensure compliance with the requirements of SLAB. The firm makes regular applications to the Board on behalf of clients and has proven expertise in legal Aid work.

Clients are now being asked to bring with them proof of income to any legal consultation. Such proof can be a bank statement, a DSS statement of benefits or a print-out from a bank or post office account. Having such information to hand will speed up the process for the client and help to push their case through the system.

MTM passes inspection

MTM has successfully passed its annual inspection by the Scottish Legal Aid Board compliance department.

On an annual basis our standards of service are audited by the Scottish Legal Aid Board to check that we are complying with the legal aid regulations and to check that we are providing a high level of service to our clients.

We are pleased to confirm that yet again MTM successfully passed the audit by the Scottish Legal Aid Board's compliance department. The auditor spent two days at this office going through a random selection of our files and was satisfied that we had been complying with the Scottish Legal Aid Board regulations and with the code of conduct for criminal defence solicitors providing legal aid.

Real and measurable results

The results of appeal work can be dramatic. Here are just a few examples of what has and can be achieved for our clients:

- An eight-month prison sentence commuted to 200 hours community service in DSS fraud case. This was a direct result of the firm's in-depth knowledge of recent sentencing guidelines in High Court cases
- Fines halved in the case of a client who had been previously convicted of stealing diesel from garages and driving without insurance
- A 60-day prison sentence quashed and substituted with a one-year probation period in respect of a theft charge. MTM's appeal was based on the fact that the incident was outwith the pattern of the recent record of behaviour of the individual concerned

It should be remembered that success in such cases also has a direct positive influence on many other people - on family, particularly on dependants such as children whose wellbeing is directly related to having a parent around them. There are also issues relating to being employed and being able to provide for your family - again, appeal work is vital to such interests.

Legal aid and appeals

Legal aid is very often available for appeals. It is important to note that if you had legal aid in your original case then that will mean that you will automatically be entitled to legal aid for your appeal. In circumstances however where legal aid is not available then we are happy to discuss reasonable legal fees to undertake this work on your behalf at any time. We will charge only fees that we have agreed with you beforehand - consequently there will never be any large unexpected bills to pay.

IN THE HIGH COURT

The power of legal persuasion



Having a firm on your side that can negotiate and persuade can be invaluable, as two recent cases illustrate.

An MTM client who pled guilty in a High Court case to a charge of supplying class A drugs with a street value in the range of £40,000 - £65,000 has been sentenced to only 300 hours of community service. The leniency of the Court was the direct result of MTM having persuaded the

Defending reputation

From carers to doormen



Losing your good name is not only mortifying, but is also often accompanied by the loss of livelihood - to say nothing of the threat of possible imprisonment. The nature of our work means that we constantly defend people in cases where their reputation is on the line, both here in Falkirk and in courts across Scotland.

A position of trust

In a case that went before Falkirk Sheriff Court we successfully defended a carer who was found not guilty of a charge of stealing £1,000 from a disabled man who was in her care. In a second successfully defended case, a doorman at a nightclub in Alloa

judge to take an exceptional view of the case and to impose a community service order.

Sexual offence charges

In another case, a client was charged with rape. If he had been convicted the client would have faced imprisonment and his name would have been entered on the Sex Offenders Register. The client had no history of sexual offending.

Such cases are a difficult area of the law and some of the most sensitive. The potential damage to reputation is almost incalculable - from personal relationships, to work and social life. Skilful preparation of the case by the MTM team led to the Procurator Fiscal being persuaded to abandon the prosecution.

was found not guilty after trial of a serious charge of assault.

Both cases were important because they were centred on clients who were in positions of responsibility. If either of them had been convicted, then their career would have been effectively at an end, notwithstanding that they may of course have been sent to prison because they would have committed offences whilst they were in a special position of trust.

Dishonesty charges

In a work-related case, MTM appeared for a client charged with an alleged serious dishonesty offence under the Civic Government (Scotland) Act 1982. The client, who had no previous convictions for dishonesty, would have faced many months of imprisonment had they been convicted.

Being charged with offences such as those above goes right to the heart of a person's reputation. MTM is on the side of its clients, often when no-one else is. After all, everyone deserves the very best defence.

Succeeding for clients

Three separate cases won in one day

Effective legal representation calls for versatility and breadth of experience. This was proved once again at three recent separate trials in one day in the Sheriff Court. Clients in all three trials were represented by the same MTM defence lawyer.

Two trials related to domestic assault, and the third related to a charge of sending offensive text messages under the Communications Act 2003. Winning all three trials in the same day was a huge relief for all of our clients and emphasised the range of circumstances in which we are called upon to defend.

One client, two trials and two acquittals in one day

An MTM client has been acquitted twice in one day, on charges that would almost certainly have led to a custodial sentence if the person had been convicted.

The charges against the client were: a breach of the peace by intimidating and threatening his ex-wife; and breaching a special condition of bail not to approach or contact his ex-wife. With both trials relating to the same alleged victim, a prison sentence would have been the most likely outcome upon any conviction.

Defending livelihoods



Your very livelihood could well depend on the quality of your legal defence. As a firm we constantly defend clients in cases where a conviction would lead to the loss of a job.

In a recent case, a driver, already banned for drink driving, was caught driving a motor vehicle when a previous ban for drink driving had not yet expired. In such cases, a Sheriff will normally move to impose a period of disqualification as well as a community service order.

Submissions by MTM, based on extensive research of the law, meant that the firm was able to persuade the Sheriff to resort to neither option, but to impose penalty points instead. It meant the client got to keep their licence - and their job.

Other road traffic related cases that the firm has won over recent months include a client accused of road traffic offences relating to careless driving, failing to stop at the scene of a motor accident and failing to report a motor accident. If the client had been convicted, he would have had over 12 penalty points and would have been disqualified for a period of six months. Once again, such an outcome would have led to the loss of his job, with potentially disastrous

consequences for his family in terms of personal distress and economic hardship.

The firm has also had some notable successes in the Appeals Court for road traffic offences with cases which resulted in fines being halved and a 60-day prison sentence quashed and substituted with a one-year probation period.

Thorough knowledge of legal technicalities

In another case, a client was defended against two charges under the Road Traffic Act 1988. He was acquitted of the charge of driving a vehicle whilst under the influence of alcohol or drugs, and of a charge of failing to provide a specimen of breath to police investigating drink driving.

The acquittal was on the basis of a legal submission of no case to answer. MTM had spotted a legal technicality, and the prosecutor in the case had failed to lead evidence on an important point. Under the section 4 charge, a doctor appearing as an expert witness for the prosecution stated that the client was unfit to drive. However, cross-examination by the MTM defence team demonstrated that this evidence could not be relied on.

Prosecution failure to produce supporting evidence



The prosecutor in a road traffic case has been persuaded to discontinue the prosecution half way through the trial after MTM raised a successful objection to the prosecutor's failure to produce evidence for the defence to examine, in order to give the accused a fair trial. The case involved a charge under Section 172 of the Road Traffic Act 1988, where the registered

keeper of a vehicle had allegedly failed to identify the driver of his vehicle which had allegedly been involved in a road traffic accident. Police officers had attended the registered keeper's house asking who the driver of his motor vehicle was on a certain date many weeks previously. It was successfully argued in court that it was very difficult for him to know who had been the driver of his vehicle.

MTM's approach in this case was to invoke the 'best evidence' rule. We objected to the trial proceeding in the absence of the production of the evidence because it meant the defence did not have an opportunity to examine it, as the police witnesses had done for the prosecution. The presiding Magistrate agreed that this was unfair to the defence and the prosecutor was persuaded therefore to discontinue the trial and our client was acquitted of the charge.

Challenging prosecution evidence

Behind-the-scenes investigations prove a decisive factor

In a case that went to trial earlier this year, MTM led the defence of a client charged with breaking into the home of an elderly lady, committing a serious assault upon her and attempting to rob her. After a four-day trial, the Jury was persuaded to acquit the accused of the charge, despite the fact that there was evidence from an eyewitness that he had committed the crime. The acquittal was secured based on MTM's own investigations and evidence offered as to the whereabouts of the accused person at the time of the alleged assault.

The seriousness of the case meant that a conviction would almost inevitably have resulted in the accused being sent to the High Court of Justiciary for sentence. A sentence here would have resulted in imprisonment for many years.

Expert knowledge - your best defence

Highlighting the unreliability of evidence offered by the prosecution is central to legal defence. In a recent case at Falkirk Sheriff Court, arguments put forward by the MTM team in the course of a trial led to the prosecution abandoning a case of serious assault against a client. The evidence of the alleged victim was deemed by the prosecutor to be unreliable and the case was dropped.