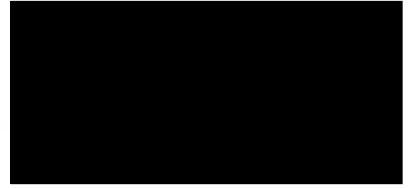


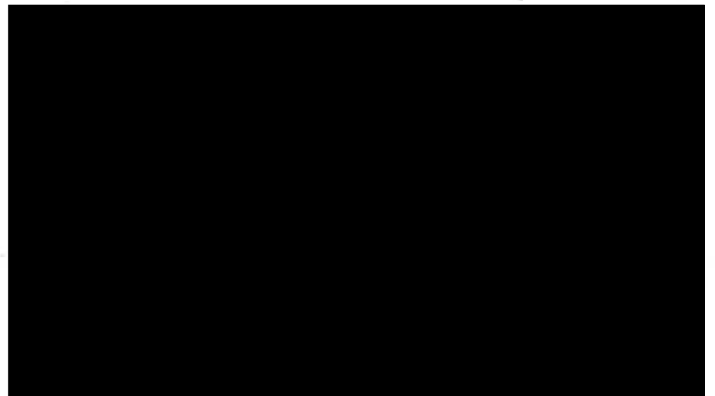
**Taxation Report**  
**18<sup>th</sup> January 1993**



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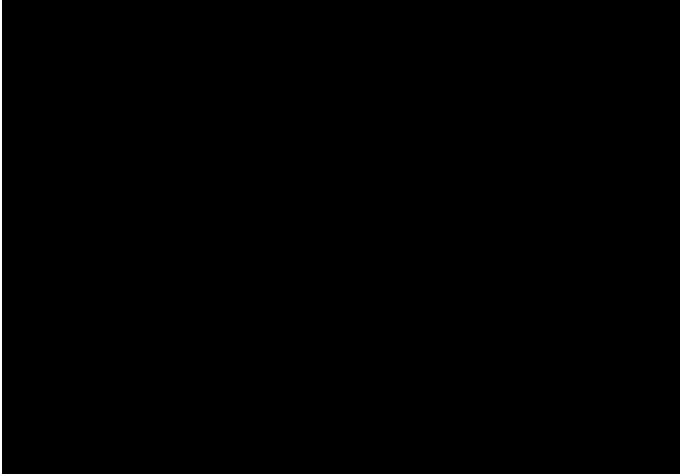


**Caesar & Howie, Solicitors**  
**Summary Time & Line**  
**Definition of place of business**



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**OPINION OF COUNSEL**  
**for**  
**SCOTTISH LEGAL AID BOARD**  
**regarding**  
**Auditor's Report**  
**in causa**

PF -V- 

I refer to the Memorial sent to me for my opinion in this case. Having considered the papers I have reached the view that the Learned Sheriff was correct in the decision he reached on the Note of Objections and there is no basis for an appeal. The Criminal Legal Aid (Scotland) (Fees) Regulations 1989, Regulation 7 and 8 and the primary legislation, clearly envisage that fees and outlays will be payable in respect of work carried out by individual Solicitors rather than firms of Solicitors. While a firm, or a partner in a firm of Solicitors, may have a number of places of business, by virtue of operating offices in different locations, in my opinion, an employed Solicitor will normally have only one place of business, for the purposes of the Regulations. Indeed, in my view, the expression "place of business" is probably inappropriate in respect of an employed Solicitor. An employee normally has a place of employment not a place of business. Self-employed practitioners or traders,

company or partnerships have places of business. The fact that the employer of the employed Solicitor has more than one place of business does not, in my view, mean that the employed Solicitor, for the purposes of the Regulations, has more than one place of business or employment. The employed Solicitor has, in my view, for the purposes of the Regulations, a place of business where he is employed to work at and from. In the present case this appears to have been the office at Bathgate. The fact that no doubt the employed Solicitor could have used facilities available at an office belonging to his employers at Linlithgow did not, in my opinion, turn that office into his place of business for the purposes of the Regulations.

In my opinion therefore the Learned Sheriff approached the matter correctly in drawing a distinction, as he did, between the position of the partner in the firm on the one hand and the employee on the other. The partner had a place of business at Linlithgow since as a partner in the business which carried on business (of whatever nature) from Linlithgow, he could truly be said, in law, to be carrying on a business from that office. The position, in law, was different with regard to the employed Solicitor who, in my opinion, could not in any proper sense be said to have a place of business at Linlithgow.

**THE OPINION OF**



**Advocates' Library  
Parliament House  
Edinburgh**

**25th February 1993**

OPINION OF COUNSEL  
for  
SCOTTISH LEGAL AID BOARD  
regarding  
Auditor's Report  
*in causa*

PF -v- [REDACTED]

1993

Scottish Legal Board

MEMORIAL  
by  
THE SCOTTISH LEGAL AID BOARD  
for the  
OPINION OF SENIOR COUNSEL

DECISION BY THE AUDITOR OF COURT, LINLITHGOW  
DEFINITION OF "PLACE OF BUSINESS"

The Criminal Legal Aid (Scotland) (Fees) Regulations 1989 Regulation 7(1) and 7(2) contain the relevant provisions in dealing with the fees to which a solicitor is entitled for time spent in travelling to and from court. Regulation 8(1) contains the equivalent provisions, in similar terms, dealing with the outlays incurred in travel. The work and expenses must be "actually and reasonably" incurred. Both Regulations, however, contain a qualification that the court to and from which the solicitor is travelling should not be "a court in the town or place where the solicitor has a place of business". It was with regard to an interpretation of this provision that the parties went to taxation before the Auditor of Court, Linlithgow.

Two summary criminal cases were referred to the Auditor: the case of [REDACTED] where the accused was represented by an assistant of Messrs Caesar & Howie and the case of [REDACTED] where the accused was represented by a partner of the firm. The assistant was Gordon Henderson and the partner was Kenneth Hogg.  
CS

Opponent's Position

The case argued by Messrs Caesar & Howie is as narrated in their letter of 13 August 1992, a copy of which is enclosed with these papers.

Board's Position

- It was accepted that in terms of the Legal Aid (Scotland) Act 1986 section 4(2)(a) and section 33 that there was an obligation to account to an individual solicitor. Vendor and corporate codes were simply administrative arrangements to create a mechanism whereby payments due to individual solicitors could, by mandate, be lodged in firm accounts. The solicitor who carried out the work was the solicitor to whom the Regulation was addressed. "Nominated solicitor" had a particular definition in terms of Regulation 2 of the said Criminal Legal Aid (Scotland) (Fees) Regulations 1989

- The office in Linlithgow was quite clearly a "place of business". The street sign stated "Caesar & Howie, Solicitors and Estate Agents". A sign in the window stated that "Council house purchase is our speciality". They were commercial premises of the firm of Caesar & Howie and were, accordingly, a place of business. The expression was not qualified in any way. Indeed, it did not even require to be a legal place of business, although it clearly was. There was certainly no qualification stating that it had to be a place of business for carrying out criminal work. There was no proviso; there was no saving in the Regulations. It fell to be interpreted according to its plain meaning. By applying its plain meaning, the interpretation arrived at did not reach a nonsensical or unjust situation. It was not enough if in an individual case a solicitor was merely inconvenienced by the application of the plain meaning of

the term. Reference was made to Lord McCluskey's remarks in Drummond & Company -v- Scottish Legal Aid Board

- Any argument that an office in Linlithgow was not a place of business of a partner in that firm was unsustainable. A firm was only a quasi person in Scotland. The individual partners were jointly and severally liable for all debts and, indeed, entitled to share in the success of this local enterprise. It could not be argued, for example, in connection with payment of rates for that office that the individual partners of Caesar & Howie did not have a place of business there. Similarly, it was not a matter for the Scottish Legal Aid Board to look into where individual qualified assistants had their contracts of employment. If Caesar & Howie were of the view that a solicitor regularly had to attend Linlithgow Sheriff Court then it was a commercial decision where to place its court partners and assistants. It was not a matter of concern for the Board if they chose to place them in offices other than the local office to the court. An assistant attending Linlithgow Sheriff Court did have a "place of business" as Linlithgow. He would be able to take clients to that office to take precognitions, to obtain photocopies of productions, to use the telephone and other secretarial services.

The Auditor was, correctly, of the view that the entire matter hinged on a legal definition and it was not really for him to make that decision. He decided although he had some sympathy for the Board's arguments that he should find for Caesar & Howie in order that the Board could frame and lodge the appropriate Note of Objections.

A hearing took place before Sheriff Stone on Monday 15 February 1993 at which time the points were again argued. The Board's position remained the same. Caesar & Howie led the same arguments and also, to a certain extent, some arguments based on the main place of business of a partnership whereby jurisdiction would be in Bathgate rather than Linlithgow. Also, that the term had to be read in context of where it appeared ie the CRIMINAL Legal Aid (Scotland) (Fees) Regulations. None of the arguments, however, were terribly persuasive as regards the office being a place of business and the liability of a partner for an office carrying out business in Linlithgow.

Sheriff Stone started off by asking whether he should apply this statute literally or in such a way as to make it reasonable. However, he was persuaded, eventually, that the office was carrying out legal business and given the lack of any qualification, that it was a place of business.

Ultimately, however, he was not persuaded that it was a qualified assistant's place of business even though such an assistant would have access to such an office. It was clear that the assistant did not work in that office and had no other interest in the office.

The decision is a significant one. The Act of Adjournal (Criminal Legal Aid Fees) 1964 provides that a solicitor shall be allowed "expenses actually and reasonably incurred by himself or his clerk in travelling to and from the court at which the accused appears or the trial or appeal takes place (not being a court in the town or place where the solicitor has a place of business)". To the best of my knowledge, this provision has not been challenged in the thirty years since, although, it has to be accepted, that circumstances have changed. In recent years, there has been a problem with a number of solicitors opening up offices which are, basically, estate agencies. Although there have been some complaints, this is the first time a solicitor has actually queried the interpretation of the provisions. It could be significant if the Scottish Legal

Aid Board is required to pay the travelling time and expenses of qualified assistants travelling to courts where there firms have offices, albeit that the more extreme cases would be tempered by the general provisions whereby the expenses have to be actually and reasonably incurred.

The Opinion of Counsel is sought on whether the Board should appeal the decision arrived at by Sheriff Stone.

It is understood that the Board does have a right of appeal although this is not provided for in the Regulations. A photocopy of part of a Note by Senior Counsel on this matter is enclosed.

### Enclosures

1. Copy of letter from Caesar & Howie dated 13 August 1992.
2. Copy of decision by the Auditor of Court, Linlithgow.
3. Copy Note of Objections.
4. Copy interlocutor.
5. Appendix re appeal to House of Lords - Drummond & Company -v- Scottish Legal Aid Board (remarks of Lord McCluskey tied).
6. Extract of Note by Senior Counsel on right of appeal from Note of Objections.

*Bans Corp.*

Sheriffdom of Lothian & Borders at  
Linlithgow

Note of Objections

by

SCOTTISH LEGAL AID BOARD

to

Auditor's Report

in causa

PF -v- [REDACTED]

PF -v- [REDACTED]

[REDACTED]  
Solicitor  
Scottish Legal Aid Board  
44 Drumsheugh Gardens  
EDINBURGH



SHERIFFDOM OF LOTHIAN & BORDERS AT LINLITHGOW

NOTE OF OBJECTIONS

by

SCOTTISH LEGAL AID BOARD

to

AUDITOR'S REPORT

in causa

PF -v- [REDACTED]

PF -v- [REDACTED]

1. The Scottish Legal Aid Board (hereinafter referred to as "The Board") hereby objects to the decision by the Auditor of Court, Linlithgow in the taxation of the accounts of Messrs Caesar & Howie, Solicitors, Bathgate in the case of accused persons [REDACTED]
2. The Auditor correctly refers to the Criminal Legal Aid (Scotland) (Fees) Regulations 1989, Regulation 7(1) and 7(2) as containing the relevant provisions in dealing with fees. Regulation 8(1) contains the equivalent provisions, in similar terms, dealing with outlays. In accordance with the Regulations, a solicitor may claim fees and outlays for travel to and from the court, not being a court in the town or place where the solicitor has a "place of business".
3. The two cases are unrelated except in as much as the solicitor representing the accused sought travelling time and outlays in respect of travel from Bathgate to Linlithgow and return in a situation where the firm of Caesar & Howie had in the Board's submission a "place of business" in Linlithgow. Accordingly, the Board sought to abate any items in the accounts relating to travelling time and outlays. In the case of [REDACTED], the accused was represented by an assistant of the firm. In the case of [REDACTED], the accused was represented by a partner of the firm.
4. The Auditor has misdirected himself in finding that the office which Messrs Caesar & Howie maintain in Linlithgow is not a "place of business" in terms of the legislation. In particular, the Auditor has erred in apparently basing his decision on the premise that "no criminal or other court business is dealt with in the Linlithgow offices of Messrs Caesar & Howie". The legislation is not qualified in any way as to the nature or type of business being carried out. Nor is the premise that "no solicitor practises from there either temporarily or on a permanent basis" a proper basis for such a conclusion in terms of the Regulations.
5. It is admitted that the firm of Caesar & Howie had commercial premises situated in Linlithgow. The Board is unaware of the exact nature of the work carried out from that office nor its staffing arrangements either at the time when the work was carried out nor from time to time, nor should the Board be obliged to seek such information in terms of the Regulations.
6. The court is invited to find that the office of Caesar & Howie situated in Linlithgow is, indeed, a "place of business" and to remit the matter back to the Auditor to deal with the proposed abatements in the above accounts accordingly.

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**DECISION BY THE AUDITOR OF COURT, LINLITHGOW**

in the taxation of the accounts of Messrs Caesar & Howie, Solicitors, Bathgate in terms of Regulation 11 of The Criminal Legal Aid (Scotland) Fees Regulations 1989 as amended in respect of Fees and Outlays in the case of accused persons 1) [REDACTED] and 2) [REDACTED].

These two cases came before me on Wednesday 16 December 1992 following a dispute between the Solicitors and the Scottish Legal Aid Board regarding the question of fees claimed for travelling time to and from Court and for the travelling outlays incurred.

Although each account was for a separate case, the points at issue were substantially the same. The cases were therefore dealt with together.

The Solicitors Messrs Caesar & Howie, Bathgate were represented at the taxation by Mr K R W Hogg, and the Board by [REDACTED].

Both parties addressed me at some length on the question of the Board's proposed abatement of fees for travelling time to and from court and associated outlays being the only issue between them. The difficulty arises in respect of the interpretation of Regulations 7 and 8 referred to above in respect of this particular Legal Firm and the general question of instructing Solicitors outwith the town where the Court is situated.

Regulation 7(1) (dealing with fees) provides that " ..... a Solicitor shall be allowed such amount of fees as shall be determined to be reasonable remuneration for work actually and reasonably done and travel and waiting time actually and reasonably undertaken or incurred, due regard being had to economy ....."

Regulation 7(2) "In determining the fees specified in paragraph (1) above there shall be taken into account ..... (b) time necessarily spent in travelling to and from the court at which the accused

appears or the trial or appeal takes places (not being a court in the town or place where the Solicitor has a place of business .....) provided that it would not have been more economical to use a local Solicitor unless it was reasonable in the interests of the client that the nominated Solicitor or a Solicitor assisting the nominated Solicitor in terms of regulation 4(3) should attend personally."

Regulation 8(1) (dealing with outlays) provides that a Solicitor shall be allowed the following outlays:-

"(a) expenses actually and reasonably incurred by himself .... travelling to and from the court at which the accused person appears or the trial or appeal takes place (not being a court in the town or place where the Solicitor has a place of business) ..."

The Board's submissions were that the Solicitor does have a place of business in Linlithgow there being an entry in the Scottish Law Directory showing an address at 49A High Street, Linlithgow for the firm of Caesar & Howie that it was not sufficient that by a management decision the firm had undertaken not to conduct Legal Business from a branch office, and that even if the address in Linlithgow were held not to be a place of business it would have been more economical for the accused to employ a Linlithgow Solicitor or if the accused exercised his right to employ a Solicitor of his own choice outwith the town where the court was situated he should do so at his own expense and not at the expense of public funds. Mr Haggarty for the Board pointed out that in relation to his first submission the Board did not distinguish between a partner in the Firm who would be associated with all of the firm's branch offices and an assistant who may be employed at only one or more of them. There was no significance in the fact that each Solicitor has an individual "vendor code" this being simply a convenient method adopted by the Board for accounting purposes in fulfilment of the Board's obligation under Sections 4(2)(a) and 33(1) of The Legal Aid (Scotland) Act 1986 to make payment to "any Solicitor." In practice fees are paid to a legal

firm in terms of the individual Solicitor's mandate.

Mr Hogg, submitted that although an address was shown in Linlithgow for Messrs Caesar & Howie it was not, in fact, an office from which Legal business was conducted and no Solicitor was based there or had any rooms there. The business conducted from the Linlithgow address is restricted to Estate Agency matters only and the offices are sufficient for the accommodation of the Estate Agency staff and Office Manager only.

It was further stated by Mr Hogg that although there were three Legal firms in Linlithgow only one Solicitor undertook Criminal business and that at a restricted level, and in addition that although the distances from Linlithgow were not great in the present two cases it was not reasonable owing to the lack of Public Transport for the accused to travel to Linlithgow to instruct a Solicitor.

Mr Hogg also addressed me on the question whether an assistant who was employed at one branch of a firm only could be held to have a "place of business" at another branch of the Firm. The assistant's contract of employment related to Bathgate and The Legal Aid Board had provided him with a separate Vendor Code.

Neither party was able to provide me with a definition of "place of business" as it applied to the Legal Aid Provisions.

Having carefully considered the whole matter I have concluded that this is not a straightforward matter of a firm with a branch office in the town where the court is situated and accused persons who could reasonably have been expected to instruct a Solicitor in the town where the court is situated. It is within my own knowledge that the office in Linlithgow is an Estate Agency Business and that during my six years in Linlithgow I do not recall there ever being a resident Solicitor in spite of there being an

entry in the Law Directory showing a name up until 1991. I understand that no Solicitor's name now appears under that address. The accused [REDACTED], who was represented by the qualified assistant Mr Henderson, Bathgate resides in Armadale the accused [REDACTED] who was represented by the Senior Partner Mr Hogg, resides in Fauldhouse. Both of these accused would pass through Bathgate on the 15 and 8 miles journey respectively to Linlithgow and would require two buses changing at Bathgate.

Over the years the Sheriff Court District of Linlithgow has changed considerably. In 1975 at the time of reorganisation Bo'nness to the north of the District was transferred to Falkirk Sheriff Court in Central Region. The most rapid expansion in population and development took place along the M8 corridor towards the south of the District and the restriction on further development in Linlithgow has left the court in the old County town of Linlithgow a significant distance away from the bulk of its customers, and consequently Legal firms, both in miles and for those who require to travel by public transport also in time.

In all the circumstances therefore, in the absence of a definition of "place of business" and in respect that the clients of Messrs Caesar & Howie would be disadvantaged if I held that the Estate Agency Business in Linlithgow were a "place of business" under the Criminal Legal Aid (Scotland) Fees Regulation 1989 as amended, I find, on the basis that no criminal or other court business is dealt with in the Linlithgow offices of Messrs Caesar & Howie and that no Solicitor practices from there either temporarily or on a permanent basis that the office is not a "place of business" for the purposes of the Regulations. I also find that it was reasonable in the interests of both clients in respect of the lack of Solicitors in Linlithgow who undertake criminal business, for them to instruct Solicitors in the nearest town to the court and which is en route to the court. Had the accused instructed Solicitors in a more remote part of the District or indeed outwith

the District I would most likely have taken a different view having due regard to economy. I also find that as the attendances at court related to trial diets on each occasion it was reasonable in the interests of the clients for the nominated Solicitor to attend in person rather than instruct a local Solicitor. As there was no dispute as to the amount of time taken in travelling or the number of miles charged I hold therefore that the Scottish Legal Aid Board were not justified in applying an abatement to the amounts claimed and that each account should be settled as charged.



R M Sinclair  
Auditor of Court Linlithgow  
18 January 1993.

