

THE SCOTTISH LEGAL AID BOARD
LEGAL SERVICES COMMITTEE

HMA -v- [REDACTED]

Report by [REDACTED]

This case involved the alleged fraud on the part of two cashiers in the employ of an Aberdeen firm of solicitors. There was considerable documentation comprising some nine years of cash room documentation for the firm along with bank records for that period. In addition, the Crown sought to lead evidence as to the lifestyle of the two accused to indicate that they were living beyond their apparent means. It was part of their defence that the discrepancy of some £500,000, which was admitted, was due to intromissions of former partners in the firm and indicated the existence of a number of other accounts which had not been the subject of examination by the Crown's accountants. The trial came to an abrupt halt within days of commencing due to a successful objection to the admissibility of essential Crown productions, which had not been certified in terms of the correct Banking Act.

There is no doubt that this case involved huge volumes of productions requiring perusal and significant preparation. However, it was considered by the Board that these were essentially financial and it was for this reason that significant sums were made available for expert accountants. Although there were a number of threads in the Board's argument the main thrust of the Board's concern was the general failure of those concerned to keep a detailed note of what was being perused at any given time, and significant duplication of effort. The Board considered that the bulk of the work should have been capable of being carried out by the accountants who, in the form of a report, would draw the defence teams' attention to any irregularities or discrepancies. It did not seem appropriate for solicitors and counsel to attempt to work their way through this highly technical, and probably repetitive financial documentation.

The Board settled Mr Lindsay's account without proceeding to taxation. The taxation proceeded over three days in December 1997 the first two days being taken up with Mr Kemp's account. It became apparent that the Auditor was content to proceed through the account on an item by item basis and to accept whatever explanation was given, after the event, for the work carried out. At one stage, a charge for perusing productions which had arrived at the solicitor's office was allowed even though there was no file note to indicate that such productions had been perused by the solicitor at all. The Board is aware of what can be described as "mechanical entries" where a law accountant will presume that because some event has taken place that work has consequentially followed. The Auditor allowed that entry and was clearly prepared to allow any entry. Accordingly, the parties agreed a settlement at the conclusion of the second day. The agreement is as indicated in the attached schedule and does not form part of any subsequent Report by the Auditor.

The third day was taken up with arguments concerning counsel's fees. The Board expressed its concern as to the level of fees – almost entirely related to preparation – and the lack of detail to indicate what work was being done by the respective counsel in order that the Board could satisfy itself that such work as was done was necessary and carried out efficiently and, of course, that there was no duplication of effort. There were excessive consultations and a failure to

distinguish between consultations, properly termed, and "mass perusals" where the defence teams sat in the Fiscal's office with the Accountants going through productions. It was emphasised that much of the documentation was financial in nature and that notwithstanding counsel's forensic skills much of this work must have been speculative. The Auditor, although an accountant was again content to accept the broad assurances of counsel on the level of information and disclosure available, that this was a difficult and lengthy case and that no work was undertaken which was unnecessary for the proper conduct of the case. The Report by the Auditor dated 4 February 1998 was very broad indeed. He drew attention to the scale of the case and the level of documentation, commenting that the expertise shown by counsel had undoubtedly saved the Board the considerable costs of a lengthy trial. Having "exercised his own skilled discretion" to determine what is fair and reasonable he awarded counsel substantially what counsel had claimed, as can be seen from the attached schedule.

This particular taxation probably highlights the difficulty with regard to preparation. It has been put to the Board quite regularly of late that counsel are not required to keep files or "time sheets" and that it is essentially a matter for counsel's discretion as to what level of preparation is required in these exceptional cases. The difficulty is that there is no actual provision for preparation contained in the Criminal Legal Aid (Scotland) (Fees) Regulations 1989, schedule 2, preparation being dealt with in terms of paragraph 2 of the preamble which states "where the Table of Fees in the schedule does not prescribe a fee for any item of work the Auditor shall allow such fee as appears to him appropriate to provide reasonable remuneration for work with regard to all the circumstances, including the general levels of fees in the said Table of Fees". The lack of a regulatory framework dealing with preparation, the level of remuneration and the level of information to be provided to the Board to enable it to carry out its statutory function is presently under consideration by the Scottish Office.


10 June 1998

List of Papers Annexed

Schedule of settlement details