

Taxation Report

16th December 1998



R A Logan & Co

Solemn Time and Line

**Definition of work covered under section
22(1)(b)**

AYR: 16 December 1998.

(HMA - V - [REDACTED])

Mr D Haggarty appeared for the Legal Aid Board.

Mrs C Paton appeared for R A Logan & Co

Having heard argument from [REDACTED] and Mrs Paton, Finds that the work done by Messrs R A Logan & Co on 27 March 1998 which is contained on account reference SL8002121698 does not fall within the scope of Section 22(1)(b) of the Legal Aid (Scotland) Act 1986 and accordingly £81.30 falls to be deducted from the account; I therefore tax the account at £1058.25.

C Gordon

AUDITOR OF COURT

NOTE:

In this case a member of the firm of R A Logan & Co attended at a Police Station at the request of a client who was subsequently prosecuted under solemn proceedings. The firm included the work undertaken prior to their client appearing in Court on their legal aid account in the belief that they were covered by Section 22(1)(b) of the Legal Aid (Scotland) Act 1996. Section 22(1)(b) is in the following terms -

“Automatic availability of criminal legal aid

22. (1) Subject to regulations made under Section 21(2) of this Act, criminal legal aid shall be available to every accused person -

(a) where he is given representation as mentioned in paragraph (b) of Section 21(4) of this Act;

(b) where his case is being prosecuted under solemn procedure until either -

- (i) an application for legal aid under Section 23(1)(a) of this Act has been determined; or
(ii) he is admitted to bail or he is committed until liberated in due course of law,
whichever first occurs;"

Prior to the taxation I had had sight of R A Logan & Co's file which included letters from the Legal Aid Board. Until the letter from [REDACTED] dated 27 October 1998 (which I had not seen prior to the taxation) I was unclear as to why the Legal Aid Board would not allow the work undertaken on 27 March 1998. They agree that the work was undertaken and that it is not a duplication of the work undertaken and covered by the Advice and Assistance Scheme. However they maintain that an extension of that cover should have been sought and the terms of Section 22(1)(b) do not apply. The critical words in the Section are "is being prosecuted". [REDACTED] argued that it was phrased in the present tense and "being prosecuted" commenced with service of a Petition. Full legal aid was granted for the client of R A Logan & Co on 30 March 1998, the day the Petition was served, and entries on the account from that date were allowed by the Board. [REDACTED] further argued that all solicitors should have been aware of this interpretation by the Board as it had been set out in The Scottish Legal Aid Board Criminal Fees and Taxation Guidelines issued to all solicitors in March 1998. At page 2 it states -

"Where a case has been prosecuted under solemn procedure, the panel has automatic cover from the first appearance at court unless the charge on petition is murder, attempted murder, or culpable homicide where cover is automatic from the date of arrest. Automatic legal aid continues until an application under section 23(1)(a) has been determined."

Mrs Paton argued that "is being prosecuted" commencing with service of the Petition was merely a definition which the Legal Aid Board choose. She added that it was not always practical to break an

interview with a client when the financial limit of £80 for Advice and Assistance had been reached and that was why Section 22 had been drafted in those terms. It was quite common to be handed the Petition by the accused as you were going into Court and if [REDACTED] argument was sound solicitors would not be recompensed under Section 22 for work prior to that point. She further argued that the terms of Para 4.4.3.4 of the Scottish Legal Aid Handbook - 1 January 1998 were unclear in that the services available under automatic legal aid appeared to equate fully with the services for murder, attempted murder or culpable homicide when automatic legal aid is available when the accused is in the Police Station.

The terms of Para 4.4.3.4 are set out as follows -

4.4.3.4. Solicitor of own choice or, if required, duty solicitor.

In solemn proceedings, an accused person receiving automatic criminal legal aid is entitled to the solicitor of his choice. He may, however, avail himself of the services of the duty solicitor in terms of arrangements made by the Board under regulation 5 of the criminal regulations. In general, in solemn proceedings, the duty solicitor will be available, if required, to advise and act for any accused in custody on the day when he is first brought before a Sheriff for examination and thereafter until he is admitted to bail or fully committed. The services of the duty solicitor are, therefore, restricted in as much as they do not extend to any part of the proceedings affecting the accused prior to the day when he is first brought before the sheriff. Thus, the duty solicitor cannot be called upon, as duty solicitor, to attend on the accused when he is first detained in police custody. An exception exists in the case of a person who has been taken into custody on a charge of murder, attempted murder or culpable homicide. In such a case, regulation 5(1)(b) provides that the services of the duty solicitor shall be available for the purpose of attending on any person who has been so taken into custody, and of advising and acting for him until he is admitted to bail or fully committed. In the case of murder,

attempted murder or culpable homicide, therefore, the services available, if required, from the duty solicitor equate fully with the statutory criminal legal aid automatically available to the accused person."

Neither solicitor could point me to any case where this point had been determined previously.

In Renton & Brown's Criminal Procedure (Sixth Edition) at para 12-04 it states -

"Solemn proceedings normally commence on the date of whichever of the following happens first; the grant of a petition warrant to arrest and commit the accused, the intimation of a petition, and the service of an indictment"

It cites as an authority for this S1 1996 No. 517 at 2(2)(b); Hamilton v HM Advocate 1996 SCCR 744.

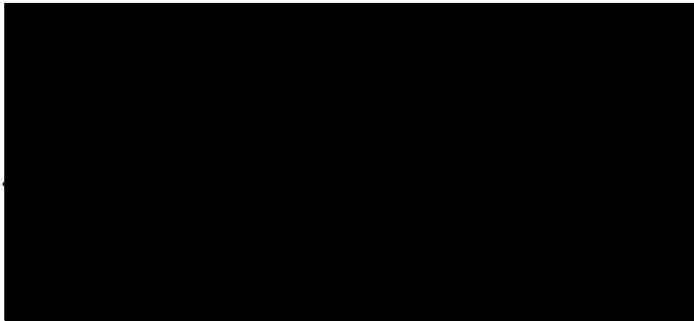
As the key point argued at the taxation appeared to be the words "is being prosecuted"; I accepted the Renton & Brown definition and found that the Legal Aid Board were right not to allow the work done on 27 March 1998.

Issued 23 December 1998.

THE SCOTTISH LEGAL AID BOARD



I enclose a copy of the Auditor's decision which supports the Board's position and, his decision, is particularly clear and well laid out. Quite remarkable really, given that the Auditor was dancing around the room most of the time looking for her copy of Renton & Brown. It transpires she was listening to every word.





SCOTTISH COURT SERVICE
Sheriffdom of South Strathclyde Dumfries and Galloway
Sheriff Clerk's Office
Sheriff Court House
Wellington Square
Ayr KA7 1DR

[REDACTED]
The Scottish Legal Aid Board
DX ED250
Edinburgh

Your reference

Our reference CC/JM

Date 23 December 1998

[REDACTED]
SL8002121698
DIET OF TAXATION - 16 DECEMBER 1998

I enclose a copy of my Note following the taxation referred to above.

Yours sincerely

CHRISTINE COCKBURN
Auditor of Court