

AUDITOR OF THE COURT OF SESSION

PARLIAMENT HOUSE, EDINBURGH EH1 1RQ

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DM



- Petition for Judicial Review
Counsel's Fees

EDINBURGH. 9th August 1999. Having considered the Process and other papers submitted to him and heard the representations made by Counsel and the Scottish Legal Aid Board's comments thereon, the Auditor taxes Counsel's fees at the sum of ONE THOUSAND THREE HUNDRED AND SIXTY POUNDS (£1360.00).

A handwritten signature in dark ink, appearing to read "Neil J. Crichton".

AUDITOR OF THE COURT OF SESSION

The Auditor Neil J. Crichton W.S.
Principal Clerk Mrs Janet P. Buck

IN THE COURT OF SESSION

POINTS OF OBJECTION
by
SCOTTISH LEGAL AID BOARD
to
FEES CLAIMED BY JOHN SPEIR, ADVOCATE
IN THE PETITION FOR JUDICIAL REVIEW OF


against

STRANRAER AND DISTRICT AMATEUR FOOTBALL LEAGUE

LEGAL AID REF: CI/04/6021482/96

1. The Scottish Legal Aid Board objects to fee notes of counsel dated 21, 24 and 26 February, 12 March, 14 May, 10 October and 10 December 1997. The remaining fee notes are not in dispute.
2. There is no provision for fees of a nature claimed by counsel in Schedule 4 of the Civil Legal Aid (Scotland)(Fees) Regulations 1989. The said fees are therefore *ultra vires*. The Auditor does however have powers in terms of paragraph 2 of Schedule 4 in circumstances where the Table of Fees does not prescribe a fee for any class of proceedings or any item of work, to allow such fee as appears to him appropriate to provide reasonable remuneration for the work with regard to all the circumstances, including the general levels of fees in the said Table of Fees.
3. The Board submits that it is not appropriate to separately charge for the items in the disputed fee notes, as such work should more appropriately be subsumed within the hearing fee.
4. In the event that the Auditor is minded to allow such fees as appears to him appropriate in terms of paragraph 2, reference is made to the decision of the court in the cause *Uisdean McKay -v- HM Advocate* (25 June 1999, unreported).

IN RESPECT WHEREOF

Solicitor
Scottish Legal Aid Board
44 Drumsheugh Gardens
Edinburgh

TO: AUDITOR OF THE COURT OF SESSION, PARLIAMENT HOUSE, EDINBURGH

FROM: JOHN SPEIR, ADVOCATE

DIET OF TAXATION : MONDAY 19 JULY 1999

CASE : [REDACTED]-JUD REVIEW (COUNSELS FEES) LA REF:CI/O4/602148/96

RESPONSE TO POINTS OF OBJECTION by SCOTTISH LEGAL AID BOARD

1. The absence of specific provision for certain fees does not make such fees *ultra vires* as paragraph 2 of Schedule 4 of the Civil Legal Aid (Scotland) (Fees) regulations 1989 makes abundantly clear.

2. SLAB do not specify what their position is in relation to the level of the fees objected to by them and therefore there is no fair notice of any particular objection they intend to make in this regard. However, with a view to establishing the reasonableness of the proposed fees I would comment as follows:

(1) Fee note 01- date of issue 11/3/97 - £300

It would appear that the board have failed to consider the nature of the instructions in relation to the work represented by this fee. I attach a copy of the schedule to Agents letter of 17 February 1997* in which you will see that I was specifically asked to advise by telephone how to proceed. Such conversations as afterwards noted took place initially with Edinburgh Agents and thereafter local agents. It

should be appreciated that the telephone calls were not merely incidental but involved giving detailed advice which could, but for the urgency of the situation have been given by way of Note or Notes.

I would further comment on the elements making up this fee as follows:

- 21/2/97 : perusing/considering initial papers comprising precognition and substantial bundle of correspondence (2½ hours);
- 21/2/97: advising both Edinburgh Agents and local agents by telephone in relation to issues raised in said letter of instruction (30 minutes);
- 24/2/97* : considering/perusing further information forwarded by local agents(1 hour) and giving telephone advice in relation to further enquiries and procedure (30 minutes);
- 26/2/97* considering further information and draft letter forwarded by fax from local Agents (1 hour) and advising by telephone in relation to same (x 2 calls of 30 minutes) and further telephone calls to local agents on 28/2/97 and 3/3/97 (20 minutes) in relation to same.

Total time engaged : 6 hours 50 minutes

(* copy relative correspondence attached)

(2) Fee note 02 - date of issue 9/7/97 -£750

There are three elements to this fee as broken down on the fee note, in respect of which I would comment as follows:

-perusing/considering fresh set of papers,etc - £225

A similar consideration arises here as above. This was a case in which

delay was a concern because of the risk of the plea of mora being taken. Rather than preparing a Note setting out specifically what further information was required (which would have taken some time and generate a significant fee) Agents were advised by telephone and once it became apparent that a significant body of material would require to be considered I suggested, in the interests of expediency and expense to simply review the raw material from Agents file. Accordingly, a fee arises not only for the advice given in lieu of a Note (again this was not an incidental telephone call) and also for substantially preparing my own papers from Agents file, rather than simply drafting a petition from a comprehensive bundle of material. This latter element should not therefore be "covered under the petition fee".

-drafting petition* - £375

This petition took two full days to draft and equates to 2 or 3 "standard" judicial review petitions for the reasons given in the fee note. In these circumstances the proposed fee is quite reasonable.

- First Note dated 25.6.98 - £150*

This Fee was allowed by SLAB in original offer.

(* copies enclosed)

(3) Fee note 03 - date of issue 10/10/97 - perusing further papers, revising petition* and Second Note dated 10/10/97* - £150

Submit fee reasonable to cover 2 pieces of written work, especially as the papers and lengthy petition had to be reviewed, 3 months having

passed since the petition was drafted.

(* copies enclosed)

(4) Fee note 04 - other counsel - not objected to

(5) Fee note 05 - date of issue - 16 October 1997 - considering settlement proposals and Third Note dated 6 January 1998* - £200

The fee is substantially for a detailed 4 page Note dated 6/1/98 which was prepared in accordance with Agents instructions (as is apparent from the terms of the Note). The purpose of the Note was to advise in relation to settlement proposals which [REDACTED] was inclined to refuse (see McAndrew's letter of 23.12.97*)

(*copies enclosed)

(6) Fee note 06 - date of issue- 4/2/98 - £500

Not objected to- no comment

(7) Fee note 07 - date of issue - 17/4/98 - £100

The telephone conversations were not merely incidental but were lengthy and involved giving considered advice in relation to further procedure and settlement. Had advice been given in the form of a further Note it is unlikely that the basis of the fee would be challenged.

3. The foregoing comments were forwarded to SLAB by my clerk in September 1998 and February 1999 -see attached letter dated 9 february

1999.

4. Paragraph 3 of SLAB's points of objection is patently nonsensical. Two situations can be used to demonstrate this to be so (i) the involvement of several counsel in different stages of a litigation; and (ii) the case being concluded well in advance of any hearing.

**Advocates Library,
Parliament House,
Edinburgh
16 July 1999**