

**SCOTTISH LEGAL AID BOARD  
MEMORANDUM**

To: [REDACTED] Solicitor  
c.c.: [REDACTED] Senior Specialist  
From: [REDACTED] Specialist  
Room F15  
Extension 251

Date: 29 November 2001

Ref: SC/RM

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**SKYE BRIDGE CASES**

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Believe it or not, but I received a decision from the Auditor today re the taxation of the above A&A accounts. Even more of a shock came when I read that he was upholding our position on the question of providing ABWOR. I think that you were fairly certain that we'd lost. I see that he also makes reference to counsel's fees but given the number of years which have elapsed, I can't recall what the issue was with counsel. Perhaps you'll remember?

In any event, if you wish to pass the accounts down, I'll arrange for them to be finalised, where necessary.

[REDACTED]

[REDACTED]

[REDACTED]



**SCOTTISH COURT SERVICE**  
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*Elgin IV30 1BU*

*Sheriff Clerk*  
*Mr W M Cochrane*

Accounts Division  
Scottish Legal Aid Board  
DX ED250  
Edinburgh 1

*Your Reference:* JC/RM/GI

*Our Reference:* WMC

*Date:* 27<sup>th</sup> November 2001

Dear Sirs

Skye Bridge Audit Cases -



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Please find enclosed my decision in relation to the above. Please accept my apologies for the inordinate delay in issuing my decision, for which I can offer no excuse.

Yours faithfully

William M Cochrane  
Auditor of Court



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██████████ - Scottish Legal Aid Board

W M Cochrane, Auditor of Court, Elgin

26 November 2001

ABWOR - SLAB refusal to pay - ABWOR granted by Solicitor in terms of Regulation 4(1)(a) and Regulation 5(1)(a) of the Advice and Assistance (Assistance by Way of Representation)(Scotland) Regulations 1988.

[The Scottish Legal Aid Board submitted that the Solicitor for the accused had granted ABWOR when the criteria laid down by the aforesaid Regulations had not been met. The matter was referred to the Auditor in terms of Regulation 11(2) of the Criminal Legal Aid (Scotland)(Fees) Regulations 1989 as amended.]

HELD, that the Board were correct in refusing to accept that the Solicitor for the accused was correct in granting ABWOR to his client.

Note: The accused in these proceedings was charged along with many others with a number of Contraventions of the New Roads and Street Works Act 1991 Section 38(1).

The Complaint(s) served on him included a Notice of Penalty which stated:-

*"Notice of Penalty applicable to the Contravention of Section 38(1) of the New Roads and Street Work Act 1991. Charged in the complaint to which this Notice is attached: in respect of each charge. You will be liable in terms of Section 38(1) of said Act. A Fine not exceeding level 3 of the standard scale of fines referred to in Section 289G of the Criminal Procedure (Scotland) Act 1975, as amended" - (level three on the standard scale at the appropriate time was £1000). It must be noted that there is at no time in the Notice of Penalty any mention of a period of imprisonment being imposed as a penalty.*

Given that the basis of the Solicitor granting ABWOR is laid out as follows:-

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**Assistance by way of representation which may be provided**

4. (1) The assistance by way of representation which may be provided under Part II of the Act in relation to summary criminal proceedings shall be representation of an accused person who is not in custody.
- (a) at any diet (other than a diet which has been preceded by a plea of not guilty) at which a plea to the competency or relevancy of the complaint or proceedings, or a plea in bar of trial, is tendered on behalf, and thereafter until that plea has been determined by the court and any related appeal to the High Court of Justiciary under section 334(2A) of the 1975 Act has been disposed of or withdrawn;
  - (b) at any diet (other than a diet which has been preceded by a plea of not guilty) at which a question within the meaning of rule 113 of the Act of Adjournal (Consolidation) 1988 is raised and thereafter until that question has been determined by the court;

and this has to be read in conjunction with the following Regulation from the same legislation referred to above.

**Criteria for determining whether assistance by way of representation should be provided**

5. (1) The assistance by way of representation described in regulation 4(1)(a) and (b) above provided under Part II of the Act only where the solicitor to whom application has been made to that
- (a) the offence is such that if provided it is likely that the court will impose a sentence which would deprive the applicant of his liberty or lead to loss of his livelihood;
  - (b) there are substantial grounds for tendering the plea to the competency or solvency or, as the case may be, raising the question; and
  - (c) it is reasonable in the particular circumstances that assistance by way of representation be made available.

It is therefor clear to my mind that Parliament when laying down the legislation involving Contravention of the New Roads etc. did not intend that a conviction in terms of Section 38(1) of said Act would 'impose a sentence which would deprive the applicant of his liberty or lead to the loss of his livelihood.

The Solicitor for the accused contended that the accused could serve a period of imprisonment in default of payment of the fine. Initially I had sympathy with this argument though on reflection the serving of a period of imprisonment would not be as a direct consequence of the legislation rather as a consequence of the accused failing to pay the fine and the Court then imposing an alternate period of imprisonment in terms of The Criminal Procedure (Scotland) Act 1995 Section 216 after due enquiry to reason for the non payment.

That being the case the Solicitor for the accused misdirected himself in providing ABWOR to the accused as a monetary penalty imposed as a consequence of the charges brought against him did not carry a penalty of imprisonment or lead to a loss of livelihood.

There were many other submissions made by the Solicitor for the accused as to his background and eligibility for ABWOR/Legal Aid and a full picture of the background to the charges and then initial passage of the charges through the Court. Further representations were made as to the amounts of the accounts submitted and offers made to Solicitor by SLAB, these are matters which I do not feel that an Auditor of Court can comment on, the duty of the Auditor in this case was to give a decision as to whether the granting of ABWOR was appropriate.

Lastly I was asked by the Solicitor for the accused to comment on the employment of Senior Counsel in these proceedings, given the importance of these proceedings to those using the Skye Bridge and the complexities that arose out of these proceedings. Again I do not feel this is something that an Auditor of Court can comment or Rule on as it is not his function to sanction the employment of Counsel, Senior or otherwise.



William M Cochrane  
Auditor of Court