

Auditor of the Court of Session



APPENDIX 5D

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[REDACTED]
Head of Legal Services (Technical),
Scottish Legal Aid Board,
DX ED555250
EDINBURGH 30

13th August 2002

Dear Sir,

GB

HMA v. [REDACTED]

I refer to your letter of 17th July which was received by fax on 22nd July. The Auditor would comment as follows:-

YELLOW

Work considered to be administrative in nature and work not chargeable to the fund

The Auditor believes that the definition of a fee-earner can be found in *Cost of Time, An explanation of the Cost of Time, prepared by the Professional Remuneration Committee of the Law Society of Scotland*, under the heading fee earners which states "Fee earners are those members of staff in an office who perform legal work directly attributable and chargeable to specific clients as opposed to staff members such as typists, receptionists, clerks and juniors who perform general work which cannot be charged directly to any specific client and whose cost is recovered as a general overhead."

The work undertaken in relation to these entries (mainly regarding the submitting and uplifting of the photographs) would be classed as administrative exercise and, therefore, the Auditor disallows entries 1, 3, 6, 9, 15, 17, 20 + 42, entries 34 + 41 have been allowed as a two page and one page letter, to reflect the Solicitor instructing the printer to reproduce the photographs.

BLUE/

The Auditor
Neil J. Crichton, W.S.

Principal Clerk
Mrs. Cynthia Cameron

2.

13th August 2002

BLUE

Charges for unqualified assistant examining photographs, investigating statements, assessing progress to date etc. general background preparation

These entries in the blue section can mainly be attributable to preparation for the case. In total 32 ½ hrs have been spent by unqualified members of staff in preparation of the case. Given the time spent by Mr. Friel (objection 47) there must be an element of duplication with this work and the work undertaken by Mr. Friel. Therefore, the Auditor allowed the followings entries 4,11(1 ½ hrs allowed to include all work in preparation to meeting the client), 21 (4 ½ hrs allowed for the work involved in the crown statements), 28 (1hr allowed in relation to preparing defence productions) and 29. The entries of 2, 7, 8, 10, 14, 19, 36, 37, 43 and 44 have been abated.

PINK

More than one agent in attendance, e.g. unqualified assistant and Solicitor in attendance at Consultation with Counsel

Even if it was not possible to seek approval from the Board prior to the meetings taking place, the Solicitor should have obtained retrospective sanction in terms of Regulation 14 (2) of the above Act. This had not been done. The other meetings would also have required prior approval from the Board as it is work of an unusual nature. All entries under this category have been abated.

ORANGE

Internal discussions between unqualified assistant and other unqualified assistant or Solicitor.

The Auditor is in no doubt that the work claimed in this section was undertaken and undertaken to a high standard. The test in taxing any fees in a criminal legal aid matter is set/

3.

13th August 2002

set down in The Criminal Legal Aid (Scotland) Regulations 1989, Regulation 7(1) which states " ... *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.*" The Solicitor in this case made the decision to employ unqualified members of staff to undertake certain duties and the rates applied to their fees are lower than the rates a qualified person would be entitled to. However, with the due regard to economy test, the monetary value is not the only factor the Auditor has to take into consideration. The Auditor has to satisfy himself that the work done by the unqualified person would have been payable had the work been done by a qualified Solicitor, in that regard the Auditor has disallowed entries 5, 18, 13, 27, 31 and 33 as he is not satisfied that these entries would be payable had they been incurred by a qualified Solicitor. Entry 26 has been allowed at one hour for preparing for the interview with Lesley Anne Gilchrist

GREEN

Locus Inspections

The Auditor has considered in detail the narratives in the Account regarding the locus inspections in dispute. Unfortunately the Auditor found little help in these narratives as they were very broad in their wording and did not detail exactly the reasons for the third inspection of Drumpellier Park/Gartloch Road, fourth inspection of Drumpellier Park/Gartloch Road, eighth inspection of Bain Street and third inspection of the Fairways Pub.

All entries in this section have been abated

WHITE

'Other' abatements, including preparation

The/

4.

13th August 2002

The Auditor deals with the individual abatements below.

Claim: 1 hour Unqualified Assistant - £21.00.

Objection No. 35. Trying to obtain wedding photographs re alibi of incrimination re accused's brother but no-one at home.

Reasonable to allow, photographs were being used as a defence production in relation to the accused's special defence of incrimination and the Solicitor is entitled to do his utmost to recover these documents - allowed as claimed.

Claim: 1.5 hours Unqualified Assistant - £31.50. 1.5 hours Unqualified Assistant - £31.50. £4.80 telephone call.

Objection Nos. 38 and 39. Same as above. Photographs obtained third time.

Reasonable to allow, photographs were being used as a defence production in relation to the accused's special defence of incrimination and the Solicitor is entitled to do his utmost to recover these documents - allowed as claimed.

Claim: Abatement - £337.60.

Objection No. 47. Preparation by Jim Friel.

The preparation was detailed by Mr. Friel on the last pages of the Account. The Board's final offer was 26 hours. This was over a period of five months and equated to approximately 5.2 hours per month. In the particular circumstances of this case, the serious nature of the charge and the photographic evidence involved, the Auditor allowed 32 hours in total approximately 6.4 hours per month.

Yours faithfully,

Principal Clerk
c.c. Messrs. Jim Friel & Co.