

Auditor of the Court of Session

Parliament House
Edinburgh EH1 1RQ

DX 549304 Edinburgh 36
LEGAL POST: LP 5 Edinburgh 10
Telephone: 0131-240 6789
Fax: 0131-220 0137
E-mail: maildesk@auditorcos.co.uk

Your Ref:
Our Ref: 30257

[REDACTED]
Scottish Legal Aid Board
DX LP 2
EDINBURGH 7

21st March 2003



Dear Sirs,

[REDACTED] 03762483/00
HMA v. [REDACTED]

PT

I refer to the above action and to the diet of taxation which took place on 14th January and enclose herewith a copy of the Auditor's Note.

Yours faithfully,

C. Cameron

Principal Clerk
Enc.

The Auditor
Neil J. Crichton, W.S.

Principal Clerk
Mrs. Cynthia Cameron

N O T E

by

THE AUDITOR OF THE COURT OF SESSION

in the cause

H.M.A. V. [REDACTED]

The matter in issue at this taxation is the reasonableness of instructing a Glasgow Precognition Agent to carry out work obtaining precognitions in Edinburgh.

Mr. Carroll, the accused's Solicitor, stated that this was a complex and difficult case. More than one Petition had been rolled up into one Indictment. Identification was a crucial issue. It was difficult for one person to grasp all the other issues in the matters of this complex case and it was unreasonable to expect another Precognition Agent to grasp these important factors. In the circumstances Mr. Carroll had instructed a Precognition Agent in Glasgow to deal with all the precognition work. This necessitated travel to and attendance on witnesses in Edinburgh. He referred to the Solicitors' Code of Conduct and the Guidance Notes and, in particular, articles 3, 10 and 13. A Solicitor must, "use his best endeavours and had a fundamental duty to his client". The Solicitor was responsible for the Precognition Agent employed. Mr. Carroll, whose practice is normally in the West of Scotland, was not fully aware of the abilities of Precognition Agents in Edinburgh and indeed had heard stories of some irresponsible conduct.

Precognition Agents are not in a regulated profession and Mr. Carroll had to find someone he could trust to enable him to carry out his duties to his client. In these circumstances, he had decided to instruct a Precognition Agent in Glasgow whom he knew and trusted to carry out all the necessary work. Mr. Carroll was entitled to make his own decision against the background of complexities. These were difficult Precognitions, and it was reasonable that one Precognition Agent took them.

██████████ disputed that this was a complex and difficult matter. Two Petitions had been made into one Indictment. The Precognition Agent had made nine trips to Edinburgh. He referred to the Criminal Accounts Assessment Manual published and issued in August 2000 (pages 43-47). He referred in particular to page 46, "Availability of Precognition Agents" and "Exercise of discretion in applying the above table" and the chart on page 45.

There was no reason why a Precognition Agent in Edinburgh should not have been instructed. Mr. Carroll should have been aware of the identity of competent Precognition Agents in Edinburgh. If he did not, he should have contacted local Agents. The Guidelines had been consistently applied through the years and this was not an issue which had been raised by other Solicitors. The test which the Auditor must apply is laid down in Regulation 7(1) of the Criminal Fees Regulations of 1989 which provides that, *"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". Mr. Carroll's failure to instruct an Edinburgh Precognition Agent failed to meet the standard of "due regard being had to economy."

The Auditor accepts [REDACTED] submissions. The Assessment Manual is clear. This is a case where Edinburgh Precognition Agents should have been instructed. There were no features to make this case out of the ordinary. Reasonable enquiries would have elicited the identity of competent Precognition Agents. Use of a Glasgow Precognition Agent did not satisfy the test in Regulation 7(1). The relevant entries in the Account should be dealt with in accordance with this Note.

A handwritten signature in black ink, appearing to read "King Lichten", with a horizontal line underneath the name.

AUDITOR OF THE COURT OF SESSION