Taxation Report

23rd February 2004

CC

[redacted]

0354103500

John Carroll & Co

Solemn Time & Line
Perusal / Preparation

Similar Letters

SCOTTISH COURT SERVICE
Sheriffdom of Lothian and Borders
Sheriff Clerk's Office
Sheriff Court House
High Street
Linlithgow
EH49 7EQ

[redacted]
Scottish Legal Aid Board
DX
ED 555250
Edinburgh 30

Your Reference: SI/0354103500

Our Reference: DGL

Date: 17 March 2003

RECEIVED
18 MAR 2004

Dear Sir

Taxation - HMA [redacted]

I enclose a copy of my certificate and note is respect of the above. The fee in respect of this matter is £2224, payable by the Board directly to myself.

Could you also arrange to have couriers uplift the solicitor's files etc. which are within the Sheriff Clerk's office at Linlithgow and return same to Mr Carroll.

Yours faithfully

D Lynn
Auditor of Court

29/3/04

INVESTOR IN PEOPLE

Telephone: 01506 842922
Facsimile: 01506 848457
Email: linlithgow@scotcourts.gov.uk
DX: 540881

Note:

H M ADVOCATE v [redacted]

Introduction

In this taxation held within Linlithgow Sheriff Court on 23rd February 2004, [redacted] appeared on behalf of the Scottish Legal Aid Board (SLAB) and Mr J Carroll appeared on behalf of his own firm John Carroll & Company. Mr Carroll had lodged an account extending to 96 pages with the Scottish Legal Aid Board in respect of the case of HMA v [redacted] a lengthy Sheriff and Jury Trial. Proceedings in the case had commenced by way of petition in Linlithgow Sheriff Court but were subsequently transferred to Edinburgh Sheriff Court after service of the indictment. SLAB proposed several abatements to the account. These were not acceptable to Mr Carroll, and the account was referred to the Auditor at Linlithgow for taxation.

Prior to the taxation the Board lodged a background note for the Auditor setting out the detail of their proposed abatements. These were as undernoted:

Item	Proposed Abatement
Preparation	£3766.35
Perusals	£1614.15
Similar letters	£3436.8
Precognition time and Framing	£927.75
Edinburgh Agent's Account	£1113.02
Acting behind counsel	£264.60
Court times not apportioned correctly	£200.45
Precognition Agent's travel time	£294.00
Researching the law	£147.70
Letters and Telephone Calls	£216.99
Total	**£11981.81**

Mr Carroll had in turn lodged a reply thereto. There were also available copies of correspondence between Messrs John Carroll and Company and SLAB on the abatements.

Issues agreed

At the start of the taxation both sides indicated that there were issues which would likely be agreed. After a short adjournment the following issues were agreed between parties:

Precognition time and framing – abatement £927.75.

SLAB accepted this fee.

Edinburgh agents' account – abatement £1,113.03

SLAB accepted this part of the claim.

Acting behind Counsel – abatement £264.60

Mr Carroll agreed to this abatement

Court times not apportioned correctly abated by £200.45 fee

Mr Carroll agreed to this abatement.

Researching the Law - abatement of £147.17

SLAB accepted this part of the claim

At the conclusion of the taxation, the following agreements or compromises were also reached:

Precognition agent's travel time - abatement of £294.00

SLAB conceded this.

Various letters and telephone calls - abatement of £216.99

Parties were content to compromise (by 50%) on this figure, and a sum of £108.50 was reinstated to the account, with the figure of £108.49 therefore being abated.

It also agreed that the split between outlays and fees in the account required to be amended because of an error in proper allocation thereof. Before any consideration of abatements, the account was therefore properly stated as fees of £50,480.29 and outlays of £5136.68.

Issues remaining in dispute

This basically left 3 main issues in dispute: ***preparation time***, ***perusals*** and ***"similar letters"***.

Preparation time and perusals.

It was agreed that the principal issues in dispute in respect of these matters were in effect the same. SLAB's main argument in respect of a number of entries for perusals and preparations was that the terms of the Scottish Legal Aid Board Criminal Legal Aid Fees and Taxation Guidelines, March 1998, had not been complied with. The reason for these guidelines was to enable SLAB to assess ojectively whether work carried out was necessary and had been carried out in the most efficient and cost effective manner, consistent with the proper conduct of the case.

Paragraph 2.5, of the Guidelines, in relation to preparation, states that
"*Care should be taken to identify the actual work carried out in respect of any claim for preparation by adding an appropriate narrative to this item the account*"

In the case of perusal of documents, paragraph 2.6 the guidelines go on to state that "*An accurate contemporary record must be kept of the time taken to peruse a document; the date on which the work is carried out; clear reference to the document of production number being perused, the length and nature of the document and the name and status (qualified or unqualified) of the individual carrying out the work. The solicitor must also retain all contemporaneous notes taken during this process and being in a position to provide all this information to the Board in support of a claim. The Board considers perusal to be the reading, digesting and noting of a document by the solicitor and a claim cannot be made in respect of such work every time a solicitor seeks to return to that document. The Board requires to know the time taken and the nature of the document being perused at any give time in order to assess how long it would reasonably take to read the particular documents. The Board is then in a position to form a view as to whether the charge is reasonable and, therefore carry out its proper function. Lack of essential information will almost*

certainly lead to a substantial abatement. The Board also has to be satisfied where there are a number individuals concerned in perusing documents that some of structured approach has been adopted, whereby a proper allocation of work was laid down to avoid unnecessary duplication of effort and the resultant unnecessary and unwarranted expenditure."

[redacted] said that while the account submitted to SLAB by Mr Carroll contained some useful explanations of some of the entries under the perusals and preparation headings, in general terms a majority of entries did not conform to the standard that was required by the Taxation Guidelines. Mr Haggarty submitted that in his experience, most difficulties in relation to entries on perusals and preparation were on just this point. In his view, it was possible for a solicitor to provide the detail required in the body of the account. Short of an employee of SLAB going through the productions and checking them against the account entries, there was no other way for SLAB to be satisfied about those individual entries if no explanatory narrative was provided. SLAB could not make an objective assessment of an account unless the solicitor preparing the account provided the information required by the Taxation Guidelines. In the present case, for example, it would be difficult to determine whether there was any duplication as between perusal of papers and preparation. It was not good enough for SLAB simply to be given a large box of documents which someone within the Board was obliged to read over in detail to make an objective assessment. SLAB had made this point time and again.

He also pointed to some of the entries being fairly extensive in terms of the time recorded, with no apparent breaks. For example an entry on the 22nd February 2003 suggested uninterrupted work from 8 am until 8 pm in the evening, a total of 720 minutes claimed. There were other similar, but not so extreme, long entries within the account.

Accordingly SLAB had abated a number of entries principally for what might be described as lack of the specification required by paragraphs 2.5 and 2.6 of the Taxation Guidelines, and also because of those instances where lengthy periods of time had been claimed with no apparent breaks noted therein.

SLAB however recognised that work had been done in respect of perusal and preparation, and was prepared to make a compromise offer of a global figure of 50 hours for preparation and 50 hours for perusals.

Mr Carroll explained that this had been a very difficult case. He had not had the benefit of the resources available to the Crown and Police. The material he had received from the Crown and details of witnesses had not necessarily come in any logical order. This had not assisted in the preparation of the case.

In respect of perusals, he said that the separate entries of 25th January to 16th February 2002 contained sufficient specification as required by SLAB. The entries between the 25th January 2002 and 16th February 2002 were in fact one continuous perusal over a number of the number of days, where he was attempting to find evidence of fraud. The entry of 16th February, for example, narrated that

" *although being the subject of legal proceedings for debt there is nothing to indicate here that the client committed the fraud as alleged* ".

Further, the entry of 16th February specifically included the word "*completed* ". Mr Carroll explained this indicated his completion of a multiple-day perusal, but at that stage he did not realise there were further productions etc (from 159 onwards as noted in the entry of 21 February 2002) to come, requiring further perusal. In his view SLAB should have understood from the entries between 25th January and 16th February 2002 what he was looking for. For confirmation thereof, SLAB could look at the productions if they so wished because they were referred to the entries between those dates. SLAB could have gauged what work had reasonably been done, and this would have enabled them to make an objective assessment of whether the time expended was reasonable. It was not appropriate for SLAB to come along and suggest that the solicitor had not done the work simply because they could not work out what the solicitor had done.

On preparation, Mr Carroll explained that he had done much of the work himself. There had been considerable difficulty in attempting to marry-up witnesses with relevant productions. It had been necessary to search closely through the many productions to link them up with relevant witnesses. There had been pressure on the defence to agree certain evidence, but having undertaken the preparation work to the

extent the defence had, it had become clear that it would have been inappropriate to agree this evidence. Counsel had also relied upon this preparation in the case. In his view this had limited Counsel's fee in the end of the day. My understanding of Mr Carroll's position was that the extensive preparation carried out by him meant that the trial was shortened considerably thus achieving in effect a saving overall, and was therefore justified and reasonable.

I have to say I had some sympathy with both parties on the question of perusals and preparation. There is no doubt that this was potentially a long Sheriff and Jury case, and having been involved locally in the initial arrangements for dealing with the case I had some personal knowledge of it. From what Mr Carroll said in terms of the order of receipt of witness and production material, it may well have been difficult to keep reasonable contemporaneous detail of actual work undertaken. However, it seems to me all the more important in such cases that solicitors should follow SLAB's requirements in terms of paragraphs 2.5 and 2.6 of the Criminal Legal Aid Fees and Taxation Guidelines of March 1998. The Guidelines (at page 1) also clearly state that

"The onus is always on the solicitor to establish that work is actually and reasonably done and to this end the solicitor should be in a position to support all entries with file notes, vouch all expenditure and be in a position to justify all costs when supporting an account to the Board."

In a case of this size in particular, it does not seem reasonable that SLAB should be left to go through extensive files to make an assessment of a particular fee entry. There may be occasions when they will have to follow this course of action to an extent, but that should be to supplement a narrative already provided in the account by the solicitor. I therefore agree with the perusal and preparation abatements in principle.

According to their note of objections, SLAB proposed to abate £3766.35 for preparations and £1614.15 for perusals (a sum total of £5380.50). By my calculations the total preparation originally claimed was £5876.35 and total perusals £3724.15 (a sum total of £9600.50). The difference between the two totals is therefore the figure

£4220.00, which is the amount of the global offer of 50 hours for each of preparation and perusals (i.e. £2110 x 2 = £4220). I asked [redacted] what the basis of the actual calculation of this offer was. As I understood him, it was recognition for work actually done, and was offered on a discretionary basis. If I as Auditor was with SLAB on this particular point, I too had discretion in respect of this figure. On that basis, and having regard to Mr Carroll's representations, I believe it reasonable to recognise to some extent the amount of work actually done, and likely reasonably done, though not fully specified. The problem I have in determining an amount for this is really the same as SLAB's, i.e. lack of narrative information readily available to make an objective assessment thereof. Accordingly, the most reasonable approach I think I can take to achieve this result is to reduce the abatements made by SLAB by 50%. In doing so I seek to recognise SLAB's point on the specification of entries, while appreciating some of the defence difficulties. Accordingly I have reduced SLAB's proposed preparation and perusal abatements from £3766.35 and £1614.15 respectively to £1883.27 and £807.07 respectively.

Similar letters

The main issue in dispute here was whether the same or similar types of letter sent to multiple recipients (witnesses in this case) should *each* attract the higher fee of £6 for letters as defined by paragraph 3(e) of Schedule 1 of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989, or the higher fee for the first letter and a lesser fee (£2.40) for each subsequent similar letter. The £2.40 fee is prescribed by paragraph 4(b) of the said Schedule 1 for "*short letters of a formal nature, intimations and letters confirming phone calls*"

[redacted] explained the practice of SLAB in respect of payment for framing letters of a similar nature, a solicitor would be entitled to the higher rate for the first letter (and this meant a letter of pages of 125 words or numbers or part thereof, as defined in paragraph 6 of Schedule 1) and the lower rate (or "short letter" rate) for the others.

He referred me to the 1994 and 1998 Criminal Fees and Taxation Guidelines and also to the 2000 Criminal Accounts Assessment Manual. In all of these documents there is a reference to "similar letters", clearly setting out SLAB's position:

"*Where letters similar in content are sent to a number or persons (eg letters to a number of witnesses requesting them to attend to give statements) the Board will allow the first letter at the full rate and the remainder at the formal rate*".

He referred to page 54 of the 2000 Criminal Accounts Assessment Manual, which makes reference to regulation 14(1)(d) of the Criminal Legal Aid (Scotland) Regulations 1996. That regulation provides that prior approval is required by the Board for work likely to involve unusually large expenditure. SLAB expands on Regulation 14(1)(b) in the 2000 Criminal Accounts Assessment Manual as follows: "*The requirement for sanction gives the Board the front end control it requires in dealing with work of an unusual nature or likely to involve unusually large expenditure which the Board, as third party, will require to pay for*".

In essence, as I understood it, and with reference to the Regulation and Assessment Manual, [redacted] position was that SLAB was tasked with meeting expenses just as a third party would be. He had referred to two decisions in support of this. The first, *HMA v Gray, 1992 SCCR at 882* was a case dealing with outlays. In this case the Sheriff observed that the Auditor had not applied an objective test to determine whether a prudent man of business would have incurred the outlay at issue. The second, an unreported (I believe) case of Lord Eassie i.c. *Nicholas Dingley v The Chief Constable of Strathclyde Police,* in which the Court of Session set out a broad overall view of the nature of solicitor and client, third party paying. In Mr Haggarty's view, it was not enough for solicitors to say that the Taxation Guidelines and Assessment Manual were only guidance; a solicitor could not ignore them and simply say "I will do what I need to do". They had to live within the guidelines.

Mr Carroll's position was that the Board had a statutory duty to pay for work actually and reasonably done. He said that there was no real definition of what a short letter meant – other than the explanation that it may be of a formal nature, intimation or letter confirming a phone call. Any letter of 125 words, unless an intimation etc, was a letter as described in paragraph 3(e) and as such attracted a fee of £6.00 per page. He also observed that within the regulations there was no provision for or description of "similar letters". Further, just as there was no provision in the regulations to allow

SLAB to increase a fee because of complexity of a piece of work, letter or document, there was no provision to reduce a fee, such as by the creation of the concept of the "similar letter." He added that in many cases when drafting letters to witnesses, he did not really need to think about the content thereof; nevertheless that letter was no less important to the witness and to the case. He observed that *HMA v Gray* related to outlays, not fees, and that Lord Eassie's case was in respect of counsel's fees in civil matter, not a criminal case. SLAB had to be guided by the Regulations. The Board had no discretion other than to decide if a particular letter to a witness was reasonable; if so, they had to pay the prescribed rate (i.e. the paragraph 3(e) rate) for that letter.

In reply, [redacted] pointed out that one of SLAB's fundamental roles was to ensure not only that work had actually been carried out but also that the charges were reasonable.

There was also a brief reference by both parties to a case involving the "similar letters" issue that had been before the Auditor in Glasgow, but no formal taxation had taken place. Mr Carroll advised me that that SLAB had withdrawn its objection in that case as the Auditor had given an early indication that he would not support the Boards' position in this matter. However no taxation actually took place, and so there was nothing formally available to assist the present case one way or the other.

I did not find that the debate on the meaning of short and formal letters in the Regulations really helped. I believe that the position regarding letters of this nature falls to be determined by reference to Regulation 7:

"Subject to the provisions of regulations 4, 5, 6 and 9, and paragraph (2) of this Regulation, a solicitor shall be allowed such amount of fees as shall be determined to be reasonable for work actually undertaken..."

I think the test that has to be applied on this point is whether it is reasonable to charge a higher rate for what amounts to a "mail shot" type of letter. I was able to inspect an example of one of these letters, and it is difficult to see what exactly would justify the higher fee. The essential difference from the other letters was the name and address. In these days of word processing it cannot really be the case that letters which basically require the insertion of different names and addresses but where the substance of the letter is the same or similar, a full fee is a reasonable fee payable by

the Board for each one. Accordingly, I would allow the proposed abatement to stand and therefore have abated the account by the sum of £3436.80 in respect of the entries thereanent of 11 May 2001 and 20 September 2001.

A breakdown of abatements is shown at Annex 1.

D Lynn
Auditor of Court
17 March 2004

Annex

Fees	£50480.29
Outlays	£5136.68
Total	**£55616.97**

Abatements	**Amount**
Preparation	£1883.27
Perusals	£807.07
Similar letters	£3436.8
Acting behind counsel	£264.60
Court times not apportioned correctly	£200.45
Letters and Telephone Calls	£108.49
Total	**£6700.68**

Total fees and outlays allowed = £ 55,616.97

- 6,700.68

£48,916.29

∴ total fee payable = £43,779.61

NPS for £5281.14

JOHN CARROLL & COMPANY

SOLICITORS
40 CARLTON PLACE, GLASGOW G5 9TS.
TELEPHONE: 0141-429 0666
FAX: 0141-429 6680

23 February 2004

Our Ref: JC/MC
Your Ref:

Scottish Legal Aid Board
44 Drumsheugh Gardens
Edinburgh
EH3 7SW

URGENT – BY FAX

Dear Sirs,

[redacted] **(SL/0354103500)**
TAXATION, LINLITHGOW SHERIFF COURT – 24/02/04 @ 10.30 AM

Having given further consideration to our response to your note of objections, we have concluded that it would suffice if you were to receive a copy of our letter to the Auditor of Court.

Accordingly, a copy is attached.

Yours faithfully,

JOHN CARROLL, LL.B., N.P.

JOHN CARROLL & COMPANY

SOLICITORS

40 CARLTON PLACE, GLASGOW G5 9TS.

TELEPHONE: 0141-429 0666

FAX: 0141-429 6680

23 February 2004

Our Ref: JC/2551/MC
Your Ref:

Auditor of Court
Linlithgow Sheriff Court
High Street
Linlithgow EH49 7EQ

Dear Sir,

Taxation in re [redacted] 24 February 2004 10.30am
LA Reference: SL/0354103500

We refer to the above case and advise that the note of objections was received from the legal aid board by email attachment late in the evening on Friday 20 February 2004. We regret the short notice in our responses.

The board's reference to Dingley does not appear to be appropriate as it concerns different statutory provisions covering civil legal aid. The provisions under consideration in Dingly are mentioned at least twice when it is stated, inter alia,

"Regulations 9 and 10 of the 1989 Regulations deal with the fees allowable to counsel. Regulation 9 is in these terms:

> *"9 Subject to the provisions of Regulation 10 regarding calculation of fees, counsel may be allowed such fees as are reasonable for conducting the proceedings in a proper manner, as between solicitor and client, third party paying."*

and

"Regulation 10(1) provides that in the case of the Court of Session fees for counsel are to be calculated in accordance with Schedule 4. For other tribunals, including the House of Lords, Regulation 10(2) stipulates that counsel's fees shall be 90% of the amount of fees which would be allowed for that work on a taxation of expenses between solicitor and client, third party paying, if the work done were not legal aid."

Under the criminal legal aid scheme referable to this account the terms of reference are quoted in the board's letter although it appears that the board is conflating these principles under some conceptual provision that has yet to be enacted. The position

relating to criminal legal aid fees is correctly quoted in the board's letter in the following passage.

"The standard of taxation is set out in regulation 7(1):- "Subject to the provisions of regulations 4, 5, 6 and 9, in paragraph 2 (of this Regulation, 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 fees allowed shall be at the rates provided in paras 1 to 5 of Schedule 1."

It is not disputed by the board that the work specified in the account has been done and so the "actually done" test, if we can call it that, is satisfied. In a case of this kind it is reasonable to undertake proper preparation. There is no duplication of work within the account that has submitted to the board. Nothing under the reasonableness test would preclude re-visiting aspects of a file if it was reasonable to do so. That would not necessarily involve duplication of work. It is submitted that the case under consideration at any particular time should be examined in light of its own circumstances.

It is not irrelevant to consider the resources given to the Crawford case by the police and prosecution services when looking at this account. At a very early stage in their enquiries the police took by stealth, and later by warrant, all business records of Crawford's of Bathgate. This enabled the police to make immediate contact with the whole customer base and yet it took several years for the combined resources of the police and prosecution services to bring this case to a state where it was ready to come to court. By contrast, we were provided with a list of names and addresses and no documentation. The client had undergone severe stress as a consequence of the actions of the police and was being treated for depression. He could not explain, as he could not see nor remember every transaction. He was left with no records. We were obliged to obtain precognitions as and when witnesses were prepared to meet with our agent but could not make much sense of the case until the documentation was made available to us. The witnesses were hardly better placed in the majority of cases. That aspect of the matter has been explained to the board.

This letter shall now deal with the board's note of objections broadly along the same lines as set out by [redacted]

There is no doubt that the solicitor advocate fee-notes were included with the account when it was submitted. It appears that they have gone adrift within the offices of the legal aid board, as has the Edinburgh agent's fee-note, which was similarly included. Copies of the solicitor advocate fee-notes are included with this letter and we are endeavouring to obtain a further copy of the Edinburgh agent's account. As a consequence of the size of this account and the bulky nature of the papers to go with it, we were scrupulous in the preparation and assimilation of the bundles of papers being sent to the board. They were clipped together in order of relevance to one another and were kept with the legal aid certificate and sanction forms for ease of reference.

When a solicitor's account, such as this one, is sent to the board it is supported by all precognitions, productions etc. that are relevant to the case and the account, in

particular. Accordingly, when the entries are examined in conjunction with the papers it should be apparent to an organisation such as the board just what it involved in the case. As far as we can gather the regulations do not require that papers be sent with an account to the board. However, that has been a requirement for many years. For example, the board has accepted that a claim for a "long letter" is sufficiently vouched by the simple legend' *"20 Feb 2003 Long letter to chief constable of Strathclyde – copy letter enclosed - £12.00"*. It is understandable that the person paying might require more detail if such supporting documentation is not included with the account.

In relation to preparation for trial, it is clear that the case is lengthy and complex. So much was said repeatedly by the prosecutor and the court. The support for that comes from a number of sources in addition to that. The time taken by the police and prosecutor to prepare this case even to the "petition stage" of first appearance of the client is but another factor. It was said by the prosecutor in debates on delay that that amount of time was required due to the complex nature of the alleged fraud and the mass of documentation that had to be examined. Almost all of that documentation was included with the productions made available to the Defence and included with the account and presumably examined by the board in order to support its decision to abate the account.

When dealing with complex mixed issues of fact and law, it is submitted that the board should not ignore those difficulties encountered by the prosecutor when preparing the case for court. The additional difficulty of the Defence, which is not one suffered by the prosecutor, is that the documentation is not made available to the Defence during precognition of the case. In a case where documentation lies close to the heart of the matters at issue, this creates inordinate problems.

The board has been informed of the time taken, vouched for in our business records. As indicated in the account, despite spending hours and hours seeking support for the allegation that Mr Crawford was carrying out a long firm fraud we were not able to find it. Mr Carroll is not in the habit of writing notes to himself about what cannot be found. The papers submitted to the board should provide adequate support for the fact that the work was reasonably done. Although it is often necessary to go back and forth among papers to check certain things, it is submitted that this cannot be read as duplication in the sense in which it is intended to apply in accounts. It is humanly impossible to carry verbatim detail of statements for more than a few seconds. This is vouched by expert testimony in a case currently before the appeal court (Campbell and Steele v HMA). That is not to say that there was any duplication in preparation or perusal of papers. As stated in the account, both brought with them their own problems. That the work was actually done is not an issue from what we can deduce from the board's objections.

On the matter of what the board call "similar letters", there is no provision in the legislation that would allow the board to increase a fee charged because a piece of work, letter or other document was complex. Equally, there is no provision that would allow the board to reduce the fee by creation of the notion of "similar letters". In a taxation that was scheduled to take place at Glasgow on this very point [redacted] the board withdrew from the taxation because discussions with the auditor indicated no support for the board's position on this matter. The result is now that the board will not apply its "similar letters" policy in Glasgow Sheriff Court cases but

will seek to do so in other jurisdictions.

Precognition time and framing. There was submitted with the account a full set of precognitions of witnesses. The person attending to the account had assumed that it would be evident from the information and copy precognitions provided, just who was being referred to. For avoidance of doubt, the witnesses are all of the police officers of X Division of Lothian and Borders Police.[04/04/2001] It was felt that prevailing upon one of the witnesses to permit access to the police statements was the most economical way to proceed. It should be appreciated that in a solemn case there is no formal arrangement whereby access to police statements can be achieved. Many police officers insist upon face-to-face precognition. However, much depends upon personal and confidential arrangements that have been struck up over the years. The board benefits from this as the savings are passed on directly.

The Edinburgh agent's account was most certainly submitted with the papers. We shall attempt to obtain a further copy in time for the diet of taxation but perhaps by then it will be found.

There was an error in the entries on "acting behind counsel" but the board could never argue that we were maintaining that part of the claim.

The computer program into which the entries are placed automatically apportions the court times and we have relied upon that. It is possible that someone has made those entries contrary to the instructions for the program but time does not permit that matter to be addressed today. We will endeavour to have an answer to that issue at the diet of taxation.

Precognition agent's travel time. A detailed letter has been sent to the board. While it may be possible to fly to London, it is not so for Cambridge. In addition, the availability of witnesses was not certain despite our best efforts. They were businessmen and women with more pressing matters on their minds than co-operation with a defence agent acting for someone who had allegedly perpetrated a fraud upon them. The history of precognition in this case established that and the board is aware of this. There is no such thing as a typical budget airline cost. Experience of any regular traveller, such as our Mr Carroll for example indicates that on many occasions it is cheaper to fly by standard airlines. Cancellation offers refund and such matters as adjustment of one's timetable is far more simply and cheaply achieved. A person would require to arrange a hire car upon arrival and we cannot see that, in the scheme of things in this case, any saving or significant saving was in the offing. We operate on best information and practice at the time the decisions are made.

Researching the law. This is not a charge for research but a charge that is similar to that made in a number of cases in which we have been involved. Those charges have been met by the board. We know that research of the law is not a good charge. However, it is now the case that the courts are demanding copies of cases that are difficult to obtain or, for one reason or another, are not readily to hand within the court in which the matter is to be debated. We know where the law is to be found and we know what the law is. The charge is for attending to the task of extracting the books and taking copies for the court. Of course, if we are not to be paid for this time consuming task then we shall simply abandon it and leave it to the court to take the

matter up with the board. We endeavour to assist the court and facilitate the speedy running of the diets to which these issues arise. Doing what the board would imply we should, nothing, will slow the court and cost more. Strictly speaking, we have no obligation to assist the court by provision of anything other than a list of authorities.

Letters and telephone calls. These are relatively minor. However, we do not accept the board's position whereby our information to a client, agent, witness or whomsoever is to be curtailed. Insufficient information simply creates more enquiries and expense, not to mention delay. The work is actually and reasonably done.

Much of what is said in this letter has been addressed in correspondence with the board, within the body of the account or the history and working practices between ourselves and the board over a number of years. While we provide a full and detailed account with supporting papers and vouchers, we note that abatements are supported, if at all, by little more than cryptic comment, often nothing more than a stroke of the pen through the entry. If we cannot understand the board's position then we cannot respond to it.

To put the matter into context and deal with the estimate of court costs, we calculated on the basis of our collective experience what this could have been, had the court been tied up for six months in this trial. The notes are now missing but a rough re-cap for the five months that the trial did not run is as follows:-

Witnesses including citations, flights, accommodation and expenses @ £400.00 each	£ 80,000.00
Sheriff	£ 70,000.00
Procurator Fiscal	£ 30,000.00
Clerk of Court	£ 14.000.00
Jury	£ 97.000.00
Court Staff (macer and police officers)	£ 33,000.00
Utilities (courtroom, heating etc)	£ 50,000.00
Defence (counsel, agents at say £500.00 per day each counsel and say £350.00 per day for the agent)	£135,000.00
Total	£509,000.00

We trust this provides answers to the board's objections and hope that any remaining issues can be addressed at taxation.

The final matter concerns the papers in the case. A full set of papers and copy documents was submitted to the board along with our account. The papers have not been returned and we are writing to the board with a view to ensuring that they are brought to the taxation.

Yours faithfully,