ACCOUNT OF EXPENSES INCURRED TO THE SCOTTISH LEGAL AID BOARD BY MESSRS ALLCOURTS, SOLICITORS, LIVINGSTON

IN CAUSA

PF LINLITHGOW v [redacted] JS

Linlithgow, 19 October 2004.

Having examined the account of expenses in the aforesaid case and having heard Mr [redacted] for the Scottish Legal Aid Board and Mr Stuart Peebles thereon, I hereby tax the said account in terms of Regulation 11(2) of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 in the sum of £73.90

Auditor of Court
Linlithgow

PF LINLITHGOW v [redacted]

In this taxation the Scottish Legal Aid Board was represented by [redacted] and Messrs Allcourts by Mr Stuart Peebles. [redacted] indicated that the only objection to the account lodged was in respect of an eight-page letter for which a fee of £ 48 had been claimed under the Advice and Assistance procedure. The basic issue was whether that letter or parts of it were necessary and reasonable, having due regard to the terms of Regulation 17 of the Advice and Assistance (Scotland) Regulations 1996 which provides that "*.... fees and outlays allowable to the solicitor .... shall only, be.... fees for work actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given, due regard being had to economy ....*" etc. [redacted] submitted that the full content of the letter in question was neither necessary nor reasonable and indeed was premature. He accepted certain parts of the letter were relevant, but the remainder, if necessary, could have been sent at a later date. Thus it would have been covered by the fixed fee payable when full legal aid was subsequently granted. [redacted] conceded that, having regard to the Scottish Legal Aid Board's "Legal Aid Fees and Taxation Guidelines" publication, paragraph 2.3.24 thereof, the letter, if construed as a confirmatory letter, could be considered reasonable insofar as one of the four exceptions outlined in that paragraph might apply, i.e. exception (4) – *the matter may be subject to a time limit, date of hearing, penalty imposed.* To that extent the Board would be prepared to allow a fee. However his contention was the letter went beyond this. He maintained much of the detail of the letter was premature. His position was that the only matters which were particularly relevant and reasonable at that stage were the issues in respect of the court dates and bail conditions. This would reduce the letter to a one, possibly two, page letter but no more than that. He cited two cases. The first was the decision of the Auditor at Airdrie in the case of [redacted] and a case of my own here at Linlithgow *HMA* v [redacted]

In the case of [redacted] the Auditor had disallowed a number of pages from a letter that contained detail of prison rules. These rules were readily available in separate statutory documentation. Accordingly, the Auditor had disallowed those parts of the letter which had in effect reproduced the prison rules, as they could have been photocopied and attached as an appendix to the letter itself.

In the case of *HMA* v [redacted] observed the Auditor had disallowed letters in a case which had involved word processed "mail-shot" type letters, although he conceded this was not exactly the same point as was at issue in the current case.

In reply Mr Peebles submitted that in his view what was necessary and reasonable within the scope of Regulation 17 was dependent on the circumstances of the individual case. It was a matter for the solicitors acting in the case to consider the circumstances and decide what was best in the interests of the client. He accepted the "similar letters" position in the *HMA* v [redacted] case but submitted that that only applied to similar letters within an individual case, as was the situation in *HMA* v [redacted] He did not agree that the letter was in any way premature. He argued that it was likely that at the first meeting with an accused in custody, the accused would be

unable to take in all the matters that were covered by the letter. He noted that this was particularly difficult within Linlithgow Sheriff Court, given the restrictions in facilities available for interviewing clients. It was his view that all the issues in the letter were important to the client and were as brief as they could possibly be. He did not believe that the decision in [redacted] was particularly relevant to this case, as the content of the material which could have been annexed to the letter in that case was a set of statutory rules. These were general to all situations of that nature and were not exclusive to a particular individual. He noted that [redacted] had also made the point that SLAB had to consider the impact on its budget of fees claimed which did not fall within the provisions of Regulation 17 of the Advice and Assistance (Scotland) Regulation 1996. Mr Peebles contended that budgetary issues were entirely a matter for the Board and should not be a matter for consideration by the Auditor in reaching is decision.

I am of the view that in this case the eight-page letter ought to be allowed. Mr [redacted] had conceded that a letter of one to two pages could be allowed given the terms of the fourth exception to the general rule expressed in paragraph 2.3.24 of the Legal Aid Fees and Taxation Guidelines (1994). Having considered that paragraph it seems to me that the further potential exceptions (1) and (2) (*the client was in a distraught state of mind and the subject matter was too complex for memory*) might also apply in the case of accused in custody, depending on the circumstances. Notwithstanding [redacted] assertions that matters other than dates of trial and bail could be covered by a separate leaflet or annex, I am more persuaded that the content of the letter is likely to be informed by the circumstances of individual cases. In my view, the information contained within the letter was all extremely relevant to the conduct of the case and it seemed to me that it was more responsible for the agent to advise his or her client in those terms as soon as possible after the initial meeting.

If, as [redacted] was suggesting, some of this information *could* be reduced to a pro forma document, it appears that no such document approved by an appropriate body exists. Both parties confirmed this. This sets this case apart from the Auditor's decision in the case of [redacted] Neither does this case sit exactly on all fours with the case of *HMA* v [redacted] where the decision related to a number of "similar letters" in a single case. On the question of the financial implications for SLAB, I note in fact that this was also considered by the Auditor at Airdrie in the case of [redacted] He was not persuaded by SLAB's arguments in this respect. Neither am I, and like the Airdrie Auditor I also of the view that each case requires to be considered on its own merits.