

Taxation Report

13th December 2004

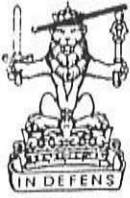
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SM/3205182303

Central Criminal Lawyers

FIXED PAYMENT

FTA as a deferred diet



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

Your Reference: SM/08/3205182303

Our Reference: DGL

Date: 13 December 2004


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

Dear Sir

Taxation - PF v [REDACTED]

I enclose a copy of my certificate and note in respect of the above.

Yours faithfully


D Lynn
Auditor of Court



INVESTOR IN PEOPLE

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*Account of Expenses incurred to the
Scottish Legal Aid Board by Central
Criminal Lawyers*

in causa

PF Linlithgow v [REDACTED]

LINLITHGOW 13 December 2004.

Having examined the aforesaid account of expenses and having heard [REDACTED]
for the Scottish Legal Aid Board and Mr I Bryce 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 FIVE HUNDRED AND FIFTY POUNDS (£550.00)
of fees together with NINE POUNDS SIXTY PENCE (£9.60) of outlays


Auditor of Court

TAXATION

PF Linlithgow v [REDACTED]

This taxation was heard at Linlithgow on 7 December 2004.

[REDACTED] appeared on behalf of the Scottish Legal Aid Board (SLAB) and Mr I Bryce for Central Criminal Lawyers

The point at issue in this case was fairly straightforward: was the diet at which an accused appeared from custody in respect of a warrant granted for failure to appear at a diet of deferred sentence a "deferred sentence" for the purposes of paragraph 6 of Schedule 1 of the Criminal Legal Aid (Fixed Payments)(Scotland) Regulations 1999?

[REDACTED] explained that Central Criminal Lawyers had tendered an account to SLAB dated 5th August 2004 in respect of this case. That account contained a claim for 13 diets of deferred sentence. [REDACTED] said that in terms of the 1999 Regulations, a solicitor was entitled to what he described as a "core fixed payment" of £500 to cover most work in summary proceedings from tendering a plea up to and including the first 30 minutes of any trial. There were other "add ons" which could be claimed depending on the circumstances. Included in these was a fee of £50 (in the Sheriff Court) for representation of accused at a diet of deferred sentence. In SLAB's view, two of the deferred sentence diets in this case (26th March and 16th July) were not deferred sentences as defined in terms of said Regulations. On these occasions, the accused had simply been appearing in Court in answer to warrants to apprehend granted for failure to appear at earlier sentencing hearings. [REDACTED]

referred me to paragraph 2 of the Regulations. This states: "... 'diet of deferred sentence' includes those diets where the case has been adjourned for enquiries or reports under Sections 201(Power of Court to Adjourn Case Before Sentence) and 203 (Reports) respectively of the 1995 Act". In the view of SLAB, the diets at which the accused had attended on the 26th March and 16th July were not acts of deferred sentence as defined in the Regulations, and accordingly the account ought to be abated by £50 for each those dates.

In reply, Mr Bryce argued that Regulation 2 did not define absolutely what was meant by a deferred sentence. He noted the Regulation opened with the words "... 'diet of deferred sentence' *includes* those diets where the case has been adjourned for enquiries or reports ...". He argued that this allowed a degree of interpretation; the nature of the diet depended entirely on what actually happened at the hearing. He observed that if in these circumstances the representation had to be subsumed by the core fixed payment, this could lead to a solicitor having to represent a client on a number of occasions in effect for no fee. He submitted that at this type of diet the solicitor representing the accused approached the situation as a deferred sentence diet, and dealt with the matter accordingly. In his view, in practical and logical terms and in the interests of justice, such a diet was a deferred sentence for the purposes of the Regulations.

This case was perhaps a bit unusual in that it had 11 diets of deferred sentence plus the two at which the accused had appeared from custody. It did not seem to me that this kind of repeated failure to appear situation in the course of a number of deferrals would arise on a regular basis. In practical terms, it is more likely that any accused failing to appear regularly would be remanded in custody and not allowed the opportunity to persist in this course of conduct. Having had a closer look at the Regulations, I was of the view that the word "includes" in paragraph 2 was simply a reference to the distinctions in differing types of deferral within the 1995 Act. Accordingly, there was not enough latitude provided within the Regulations to view the diets of 26th March and 16th July as deferred sentence diets. The diets attracting a "deferred sentence" fee for these dates had in fact been those for the hearings immediately preceding 26th March and 16th July respectively, at which the accused should have appeared for sentence but failed so to do. These were allowed by SLAB. The interpretation paragraph of the Regulations in my view was quite restrictive. The fees for 26th March and 16th July must then fall to be subsumed within the core fixed payment in the particular circumstances of this case. I have therefore abated the account by a total sum of £100.