

Taxation Report

26th April 2006

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SM/08/4069330204

Aberdein Considine, Solicitors

FIXED PAYMENT

FTA as a deferred diet

Report of Taxation at Aberdeen Sheriff Court on 26th April 2006 in respect of Legal Aid Account for [REDACTED] LA Ref No SM/08/4069330204

Appeared: - Mr P Shepherd, Solicitor of Messrs Abercain Considine, Solicitors, Aberdeen

[REDACTED] Scottish Legal Aid Board, Edinburgh (SLAB)

This matter was referred for taxation by Mr Shepherd in terms of Regulation 11(2) of the Criminal Legal Aid (Scotland) (Fees) Regulations (1989). The point in issue in this case is whether or not the diet at which an accused appears from custody on a warrant granted for failure to appear at a diet of deferred sentence is a "deferred sentence diet" for the purposes of paragraph 6 of Schedule 1 of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1997.

Mr Shepherd submitted an account dated 31st August 2005 to SLAB, in respect of summary criminal proceedings against [REDACTED] at Aberdeen Sheriff Court, which concluded on 29th August 2005. SLAB initially abated the account by £550, although later agreed to make a further payment to Mr Shepherd of £450. The remaining abatement of £100 relates to appearances from custody by [REDACTED] on 29th November 2004 and 20th May 2005 following warrants being granted in respect of her non appearance at deferred sentence diets on 8th November 2004 and 12th April 2005, and is the reason for the reference to the Auditor of Court at Aberdeen.

Mr Shepherd submitted that the core fixed fee of £500 covered all work done by a solicitor up to and including any diet at which a plea of guilty is made and accepted, and that a further fixed fee of £50 is payable for representation at a diet of deferred sentence. He submitted that there was nothing in the Regulations to cover an accused appearing from custody on a warrant granted for failure to attend court when sentence has been deferred. Where a Sheriff has deferred sentence in terms of sections 210, 202 or 203 of the Criminal Procedure (Scotland) Act 1995, and an accused fails to appear, SLAB will pay the additional £50 fixed fee for the solicitor's attendance in these circumstances. Mr Shepherd further submitted that when a Sheriff has deferred sentence on an accused, that position is established, and doesn't alter because an accused fails to turn up. Whatever the Sheriff has deferred sentence for still has to happen. It is his view, that a warrant case falls much more easily under paragraph 10 of Schedule 1 of the Regulations, and there is nothing to say that it should be included in the core fee of £500. Mr Shepherd confirmed that when representing an accused appearing from custody following a warrant having been granted for non-appearance at a deferred sentence he would be fully prepared, and in most cases he would expect to present a full plea in mitigation.

[REDACTED] submitted that the diets on 29th November 2004 and 20th May 2005 were not deferred sentences in terms of paragraph 2 (Interpretation) of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999, which states "diet of deferred sentence includes those diets where a case has been adjourned for inquiries or reports under sections 201 (power of court to adjourn case before sentence) and 203 (reports)

respectively of the 1995 Act". In his view an appearance on warrant cannot be a diet of deferred sentence, as it has not been adjourned to a fixed date. In this case the appearances on 29th November 2004 and 20th May 2005 were not deferred sentences, as the case had not been adjourned to those specific dates. He submitted that the diet at which an accused appeared on warrant would be for the failure to appear, and was an "adjourning diet" to fix a diet when the deferred sentence would be dealt with. He advised that this was based on information that had been obtained from Linlithgow Sheriff Court and Scottish Court Service HQ. I asked [REDACTED] what SLAB's position would be if the Sheriff resolved a case when the accused appeared in these circumstances. [REDACTED] advised that he had briefly considered the point, however he had not prepared for it to be raised at this taxation diet. To his knowledge, it would not be the practice for cases to be resolved, and there would be a further adjourned diet. He conceded that if the appearance on warrant was held to be a deferred sentence diet, then this would attract the additional £50 fee. [REDACTED] referred me to paragraph 2 (Interpretation) of Schedule 1 of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations for the interpretation of a deferred sentence and to paragraph 1 of Schedule 1 of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1997 the final part of which states that the core fixed fee of £500 includes "any subsequent or additional work other than specified in paras 2-13 below" In his opinion the fixed fee could cover anything throughout the proceedings not specifically allowed for, including subsequent appearance at a Fines Enquiry Court, and not just work up to and including a plea of guilty. He added that appearance on warrant is not an area of work covered by a discrete payment. [REDACTED] also referred me to an unsigned copy of the Auditor of Court's Report of a taxation that took place at Linlithgow Sheriff Court on 7th December 2004 where the Auditor upheld the abatement of fees in a similar case.

In my experience, where an accused appears from custody following a failure to appear at a diet of deferred sentence, a Sheriff at Aberdeen Sheriff Court would expect to deal with the deferred sentence, and not simply the failure to appear. There could be a further adjourned diet for a number of reasons i.e. the accused's solicitor or reports previously requested were unavailable, or there was a statutory requirement to obtain reports. Much is made of the fact that [REDACTED] appeared "on warrant". The warrants granted in this case were the method used to secure her attendance at court to deal with the deferred sentence. The diet on which she appears in court following the execution of the warrant is fixed in terms of S135 of the Criminal Procedure (Scotland) Act 1995. In this case, when [REDACTED] appeared on 29th November 2004 the Sheriff deferred sentence for a further 6 months for her to be of good behaviour, and on 20th May 2005, sentence was deferred for a further 2 months as there were other outstanding matters calling then. In my opinion, in this particular case on the two dates referred to, the diets were deferred sentence diets, and Mr Shepherd is entitled to the additional fixed payment of £50 for each of these attendances. The sum of £100 should not therefore be abated from the account submitted in this case.



Kim Arthur
Depute Auditor of Court, Aberdeen
2nd May 2006