

Auditor of the Court of Session

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[REDACTED]
Scottish Legal Aid Board,
LP 2
EDINBURGH - 7

10 August 2006



Dear Sir,

KC

HMA v. [REDACTED]

I refer to the above case and enclose, for your attention, the Auditor's Report.

The Auditor's Note of Fee is enclosed herewith and I shall be pleased to receive your remittance in settlement.

Yours faithfully,

A handwritten signature in cursive script, appearing to read "C. Cameron".

Principal Clerk
Enc.



The Auditor
Neil J. Crichton, W.S.

Principal Clerk
Mrs. Cynthia Cameron

R E P O R T

by

AUDITOR OF THE COURT OF SESSION

in the cause

HMA V. [REDACTED]

EDINBURGH. 10 August 2006.

The dispute in this matter was referred to the Auditor in terms of Explanatory Note B to Schedule 2 of the Criminal Legal Aid (Scotland) (Fees) Amendment (No. 3) Regulations 2005. The regulations deal with the fees but the matter in dispute concerns travel costs.

[REDACTED] represented the Scottish Legal Aid Board (hereinafter referred to as SLAB) and Mr. Mark Strachan, Advocate, appeared on his own behalf. [REDACTED]

[REDACTED] had lodged Points of Objection and Mr. Strachan produced emails passing between his Clerk and SLAB. The regulations in dispute are set out in Part I Chapter 1 of the said regulations. Paragraph 7 under the heading "Travel" states, "Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken - £100.00, and paragraph 20 states, "The supplementary fee for necessary travel specified in paragraph 7 of Chapters 1 and 2 of Part I ... of the Table of Fees is chargeable only as follows:-

- (a) the travel undertaken must exceed 90 miles in either direction (180 mile round trip);
- (b) the fee excludes travel costs which shall be a chargeable outlay;

Mr. Strachan referred to his Clerk's letter to the Auditor of 20 April 2006 which confirmed that there was considerable agreement between him and SLAB. He agreed that the regulations were in force at the time the disbursement was incurred and that these regulations were for interpretation by the Auditor. It was further agreed that the relevant mileage rate should be 40p per mile. He argued that travelling expenses are chargeable for all travel and not simply after the supplementary fee in paragraph 7 had been incurred. He argued that in the absence of the word "and" at the end of sub-paragraph (a) indicated that sub-paragraphs (a) and (b) stand on their own. Travel costs are not defined in the legislation but sub-paragraph (b) states that travel costs shall be a chargeable outlay. He continued:

- (a) the legislation is clear that travel costs are a chargeable outlay (paragraph 20(b)).
- (b) the Board accepts 40p a mile is the current rate
- (c) Nowhere in the regulations does it set out a requirement for a minimum mileage before travel costs are paid.

He referred to "a parity of justice argument". For example, for an appearance in Glasgow Sheriff Court as a Temporary Sheriff, Counsel is paid no chargeable miles whereas a Solicitor and Temporary Procurator Fiscal are paid a mileage rate.

The legislation is clear concluded Mr. Strachan. In 20(b) the phrase "the fee excludes travel costs" refers only to the supplementary fee in paragraph 7 and not to travel costs generally.

██████████ referred to his Points of Objection and emails and correspondence between SLAB and the Dean of Faculty. Rule 20 does not make general provision for the payment of travel costs as a chargeable outlay in addition to the range of fees set out in the Table of Fees. The application of paragraph 7 is restricted to the circumstances in which the supplementary fee for necessary travel is payable and that fee is only payable in terms of paragraph 20(a) where the travel undertaken exceeds 180 miles round trip. The "fee", to which reference is made in sub-paragraph (b) is, by definition, the fee payable where travel exceeding a 180 mile round trip is undertaken. The *proviso* that travel costs are excluded and payable in addition as an outlay is only relevant or applicable in a situation where the (supplementary) fee is payable. Counsel seeks to isolate sub-paragraph 20(b) and read it outwith the context in which it is so clearly stated. Any argument that paragraph 20(b) can be read alone by reference to the range of fees set out in the Table of Fees is clearly unstateable.

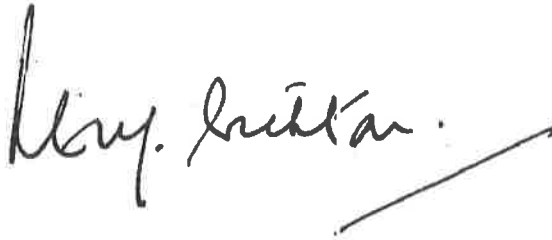
In response to Mr. Strachan's parity of justice argument, ██████████ explained that there is a different method of payment between Counsel and Solicitors. A Solicitor is paid on an hourly basis whereas there is an element of travel built into Counsel's daily rate.

The Auditor does not find the regulations a model of clarity. It would have been simple to insert wording which would have made it crystal clear that general or ordinary travel costs of the type envisaged by Mr. Strachan would not be paid for. However, on the interpretation of paragraphs 7 and 20 the Auditor is satisfied that ██████████

arguments are correct and the above regulations do not allow for travel costs generally.

Travel costs only arise where the criteria in paragraphs 7 and 20 are met.

Accordingly, Counsel's charge for travel costs in this case is refused.

A handwritten signature in black ink, appearing to read "Mary Linton". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

AUDITOR OF THE COURT OF SESSION

