

IN THE COURT OF SESSION

R E P O R T

RM; DP; DC; BS & BC

by

THE AUDITOR OF THE
COURT OF SESSION

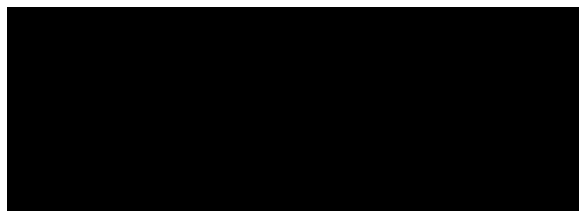
in respect of a
dispute between

MR. JAMES FRIEL, SOLICITOR of
Messrs. Jim Friel & Co., Solicitors,
Glasgow

and

THE SCOTTISH LEGAL AID BOARD

in the causes



EDINBURGH. 13 August 2007.

The taxation of the Accounts in these cases was heard on 18 June 2007. In attendance were James Friel and [REDACTED] of Jim Friel & Company, Solicitors, and [REDACTED] [REDACTED] on behalf of the Scottish Legal Aid Board.

A number of entries in each account had been agreed and the Auditor was asked to come to a view on the remainder.

Mr. Friel's argument applied to each of the cases. There was, he said, a principle in dispute. He had sent a Joint Minute to SLAB but its terms had never been agreed and the Minute was never signed. The effect of the proposals introduced by Lord Bonomy was that counsel should be involved early and certainly pre indictment. Mr. Friel, as instructing solicitor, has to make a decision only on which court the trial will proceed. Mr. Friel has very considerable experience in acting in the criminal court and in the last 20 years, and certainly the last 2.5 years when the Bonomy proposals have had an effect, he has never been wrong. Once he has decided on the likely forum Mr. Friel writes to SLAB to obtain instructions to instruct junior counsel. In these matters he found that his request for sanction was refused but after delay, they were eventually granted. He was given no reasons for the refusals nor did anyone in SLAB suggest that his judgement was flawed. It was clear from all of these cases that they were destined for the High Court. He felt SLAB were being perverse. The Bonomy proposals sought immediate action which should be effective and efficient and would be done with "due regard to economy". The attitude and conduct of SLAB had caused Mr. Friel additional work which he maintained should be met under the Legal Aid Certificate.

Understandably, [REDACTED] was unable to comment on each specific case and, in particular, why no sanction for junior counsel was granted on Mr. Friel's request.

Whatever the rights and wrongs of the affair, Mr. Friel was only entitled to be paid for the work which was covered in the regulation. He understood Mr. Friel's frustration and did indicate that a meeting might help.

This dispute had been referred to the Auditor for taxation in accordance with regulation 11(1) of the Criminal Legal Aid (Scotland) Fees Regulations 1989. The test which the Auditor must apply is set out in Regulation 7.(1), "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 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 paragraphs 1 to 5 of Schedule 1."

This is the only test which the Auditor can apply to the items in Mr. Friel's accounts. The Auditor cannot allow entries which seek to take SLAB to task for failing in what Mr. Friel sees as their clear duty nor can he be paid for reporting SLAB's acting to the Law Society. The Auditor taxes the accounts in the cases as follows:

	As Lodged	As Taxed
	No fee	No fee
	£108.00	£108.00
	£687.84	£439.20
	£936.00	£230.40
	£534.00	£78.00



AUDITOR OF THE COURT OF SESSION