

COURT OF SESSION, SCOTLAND

R E P O R T

by

AUDITOR OF THE COURT OF SESSION

in the cause


HMA

against

SR



EDINBURGH. 1 July 2008.

In attendance at the diet of taxation on 12 May 2008 were:  of the  
Scottish Legal Aid Board and Mark Strachan, Esq., Advocate.

The Auditor has been requested to determine whether counsel's fee of £300.00 for written answers to the prosecutor's statement on 14 December 2005 falls to be considered on its own or whether it falls to be subsumed within the charge of £315.00 for the notional diet, a fee to which the Board takes no exception.

This matter was referred to the Auditor in terms of Regulation 11(1)(a) of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 (as amended). Regulation 10(1) of said Regulations was amended and further amended by Regulations which came into force on 25 March 2005 and 10 December 2005 respectively. This matter concluded in August

2006 and the Notes on the operation of Schedule 2 in the 25 March 2005 amendment apply. Note 2 of said Schedule states:

“Where the Table of Fees does not prescribe a fee for any item of work the Board, or as the case may be the auditor, shall allow such fee as appears appropriate to provide reasonable remuneration for the work with regard to all the circumstances, including the general level of fees in the Table of Fees.”

and Note 3 paragraph 3(h) states:

“correspondence, telephone calls, written work (other than work for which fees are prescribed in the Table of Fees) and meetings between counsel acting for the same assisted person are not allowable as separate items and shall be subsumed within the fees set out for the conduct of a hearing.”

Mr. Strachan founded on Note 2 stating that as the Table of Fees did not prescribe a fee for this item of work the Auditor should determine a reasonable fee.

██████████ referred to her Points of Objection and explained the somewhat complex statutory background to these fees. She argued that Note 2 only came into effect if the sub-sections in Note 3 have no effect on the fee sought. “h” does not specifically cover the fee sought by counsel in a positive sense by referring to it but the section, read as a whole, makes it clear that written work (other than work for which fees are prescribed in the Table of Fees) are not allowed as separate items and shall be subsumed within the fees set out for the conduct of a hearing.

Mr. Strachan maintained that the preparation of written answers to the prosecutor’s statement are of importance in this context. The matter is proceeding on a quasi civil

basis and, as set out in his note, he compares this to the obligations on a solicitor or counsel to frame pleadings in civil matters. This is of considerable importance to the client whose funds have been frozen under the Proceeds of Crime Act. It was reasonable that counsel should be paid for framing these written answers and the sum he sought of £300.00 was reasonable.

The Auditor regrets that the Regulations are not clearer but is satisfied that, although the matter proceeds on a quasi civil basis, as the work is done under the Criminal Legal Aid Certificate and flows from criminal proceedings that counsel can only be remunerated under the Criminal Legal Aid Regulations. Here the Auditor is satisfied that Note 3 para (h) applies and as the written work is not prescribed in the Table of Fees it falls to be subsumed within the fees for the conduct of the hearing.

In conclusion, the Auditor does not allow Mr. Strachan's fee of £300.00 for the preparation of written answers.

.AUDITOR OF THE COURT OF SESSION