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**REPORT ON TAXATION AT ABERDEEN SHERIFF COURT ON 26TH
NOVEMBER 2008 IN RESPECT OF THE ACCOUNT RENDERED BY
MESSRS WOODWARD LAWSON, SOLICITORS, ABERDEEN TO THE
SCOTTISH LEGAL AID BOARD RE [REDACTED] AA/8330491308.**

This taxation diet relates to an account submitted by Messrs Woodward Lawson, Solicitors, Aberdeen to The Scottish Legal Aid Board in September 2008 for work done on behalf of [REDACTED] re an Application to Vary/Revoke a Compulsory Treatment Order. A Joint Remit to the Auditor has been signed and lodged by parties.

The dispute relates to the charge for a letter from Messrs Woodward Lawson to the client, [REDACTED], dated 11th July 2008. A copy of the letter has been produced. The letter is 978 words, and on the basis of 125 words per page, or part thereof, a charge of 8 pages (£58) was made. The Scottish Legal Aid Board is prepared to pay for 3 pages (£21.75), leaving £36.25 as the amount in dispute.

It is understood that Messrs Woodward Lawson are in dispute with The Scottish Legal Aid Board in relation to a number of similar cases, however, the Joint Remit for this taxation relates only to the case of [REDACTED]

In view of the small amount in dispute, and in an effort to minimise costs, it was agreed that the Taxation Diet would be conducted by way of written submissions from both parties. Points of Objection were received from The Scottish Legal Aid Board, followed by a Response for Messrs Woodward Lawson. A Further Submission was then received from The Scottish Legal Aid Board, and a further Response from Messrs Woodward Lawson.

The Scottish Legal Aid Board submitted that they will only pay out of the Fund fees for work actually, necessarily and reasonably done, due regard being had to economy. The letter that is the subject of the dispute refers to a recent first meeting between Mr Woodward-Nutt, solicitor, and [REDACTED] and provides [REDACTED] with detailed advice on various matters not covered at that meeting. The Board does not dispute that the letter is, to an extent, chargeable, only that to routinely charge the full sheetage for a letter which contains substantially the same content is excessive when applying the standard of taxation. The Board Accounts Office has restricted the letter to 3 pages which is, in their opinion, a reasonable compromise. The Board goes on to suggest that the standard elements of the letter should be consigned to a separate note. The Board considers that the letter could deal with aspects personal to [REDACTED] and the separate note could deal with the process. An example of how the letter to Mr [REDACTED] could have been produced, as a letter and note, was lodged by the Board for consideration. The Board further submits that all other law firms who produce such lengthy letters of this nature in similar circumstances have been questioned by the Board when assessing their accounts. They go on to say that such letters have been exhibited and examined by the Board, and that these law firms have agreed to restrict their charges in respect of such initial letters to either two or three pages. The Board has not supported this submission by lodging copies of similar letters or confirmation

01224657223

from all other law firms that they have agreed to restrict their charges in these circumstances. I was referred by the Board to a decision of the Auditor at Airdrie on 22nd March 2004 in the case of [REDACTED]. In this case Prison Rules had been incorporated into a letter to the client, and the Board was successful in precluding any charge for the entries relating to the Prison Rules. In their further submissions in this case, the Scottish Legal Aid Board accepts the vulnerable client base, and wholly accepts that it is absolutely necessary to provide advice in writing in these cases. The Board goes on to suggest that a number of "papers apart" could be produced to deal with the different types of detention circumstances involved. The Board produced several copy letters sent by Messrs Woodward Lawson in relation to Appeals against Compulsory Detention Orders and Short Term Detention Certificates.

Messrs Woodward Lawson submitted that in the case of [REDACTED], they were advising in relation to a less common matter. It was conceded that they do hold a template letter for certain matters, but not for the specific subject matter of Mr [REDACTED] case. The letter sent to [REDACTED] was not standard, or word processed, and as there are various types of detention, the advice in each case would be different. Messrs Woodward Lawson maintain that it would not be possible to have a standard sheet setting out advice that would be applicable to all Mental Health cases. The suggested "Note" prepared by The Scottish Legal Aid Board contains information that may be specific to certain cases; however, not all clients seek to have their case prepared in a typical way. It was further submitted that Messrs Woodward Lawson cannot reasonably be expected to prepare a whole array of standardised "Notes" which cover all case types and procedural possibilities. Messrs Woodward Lawson say that they do not narrate the terms of the Mental Health Act or the various associated Rules and Regulations in their letters to clients. Also, in view of the fact that clients are suffering from acute mental illness or severe learning difficulties and may have significant cognitive impairment, memory problems or other related mental dysfunction, it is not only best practice, but necessary to provide advice in writing. It was noted by Messrs Woodward Lawson that The Board doesn't mention why advice given in any pro forma sheet should not be chargeable, and suggest that any fee also covers the solicitor's time in dictating and signing the letter, and the risk to a law firm associated with providing any advice to a client.

Having considered the submissions and other documents lodged, I find as follows:-

- 1) I am not persuaded that this case is comparable with the case of [REDACTED] as advice is being given to [REDACTED] and he is not simply being provided with a copy of legislation. In any event, I am not bound by the decision of another Auditor.
- 2) There has been nothing lodged by the Board to support the submission that all other law firms who produce such lengthy letters of this nature in similar circumstances have agreed to restrict their charges in respect of such initial letters to either two or three pages.
- 3) There is no suggestion by the Board that the information provided to Mr [REDACTED] is unnecessary, or that the letter is repetitive or uses unnecessarily "flowery" language. In this case the work has been necessarily done, and due regard has been had to economy. The solicitor should therefore be entitled to charge for the information given, whether by note or letter.

01224657223

- 4) It is vital for any client, and particularly a client said to be suffering from mental disorder, that information is presented in a clear and logical manner, and this is not achieved in this case with a "paper apart". Regard for economy should not be to the extent that it compromises the advice given.
- 5) Having examined the other letters from Messrs Woodward Lawson lodged by the Board, they are all similar, but the letter sent to [REDACTED] is not, and relates to a different process. If this was intended as a "test" case, it would have been more appropriate to select one which deals with a more common application.
- 6) The information provided in Para 7 of the letter dated 11th July 2008 to Mr [REDACTED] which starts "Finally, I require to raise one further matter with you" is common to all of the letters produced that were sent by Messrs Woodward Lawson, albeit the wording varies slightly
- 7) I find that 229 words of the letter to [REDACTED] are standard in all of the letters that I have seen produced by Messrs Woodward Lawson to clients in Mental Health cases. This paragraph should be chargeable, not at the standard letter rate, but at the formal letter rate of £2.90 per page of 125 words or part thereof. I tax the letter to [REDACTED] dated 11th July 2008 at £49.30, being 6 sheets at £7.25 and 2 sheets at £2.90.

Kim Arthur
Depute Auditor of Court, Aberdeen
10th December 2008

