

Note

This taxation took place on 26 February 2013. Mr Boag appeared on behalf of Messrs Cairns Brown whose account it was and [REDACTED] appeared on behalf of The Scottish Legal Aid Board (The Board).

The only matter in dispute was a claim for a deferred sentence fee of £38-00 on 18 July 2012 which the Board had declined to pay on the grounds that paragraph 4 (b) of Schedule I of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989, read in conjunction with paragraphs (j),(k),(l) and (m) of the Notes to the Regulations, cannot be read alone and only comes into effect if Paragraph 4(a) applied.

It was agreed at the taxation that paragraph 4(a) did not apply in this case as the matter did not proceed to trial. [REDACTED] maintained the Board's position for the reasons given above. Mr. Boag argued that there was nothing in the Regulations or the Notes which prevented a stand alone fee under paragraph 4 (b) being charged.

The only case to which I was referred was a decision by Sheriff A Wylie Robertson at Stirling in the case of HM Advocate v [REDACTED] which held that paragraph 4 (b) could stand alone and that there was nothing in the Regulations which prevented such a fee being charged. Although I am not bound by the Sheriff's decision I am in agreement with it. I do not accept Mr. Haggarty's contention that paragraph 4(b) cannot stand alone but only applies if paragraph 4(a) applies. A plain reading of the paragraph does not, in my view, make paragraph 4(b) a consequence of paragraph 4(a) and I have accordingly allowed the fee and taxed the account in the sum of £1288-47.

SHERIFFDOM OF NORTH STRATHCLYDE AT DUMBARTON

NOTE OF OBJECTIONS

in the case of

PF (DUMBARTON) -V- [REDACTED]

arising from

**A decision of the Auditor of Court
at taxation on
26 February 2013**

The Scottish Legal Aid Board ("the Board") objects to the Report by the Auditor of Court, Dumbarton Sheriff Court, dated 12 March 2013. The taxation arose in relation to the fees claimed by Messrs Cairns Brown, Solicitors, Dumbarton in respect of the accused [REDACTED]

For ease of reference a copy of the Report (and the Sheriff's decision to which reference is made in the Report) is attached to this Note. The Board objects for the following reason:

1. In reaching his decision, it is respectfully submitted that the Auditor misdirected himself in law in concluding that a discrete fee could be allowed for preparation for a deferred sentence in terms of paragraph 4(b), Part 2, Schedule 1 of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989, in the circumstances of this case.

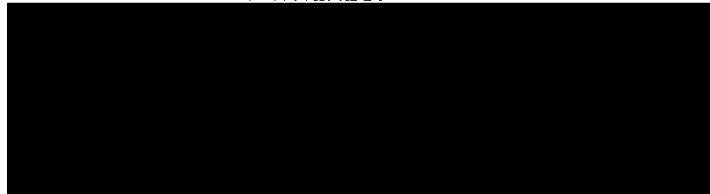
The Auditor is correct in his identification of the relevant provisions, namely paragraph 4(b) of Part 2 (Table of Inclusive Fees for Solemn First Instance Proceedings) read in conjunction with paragraphs 3(j), (k), (l) and (m) of the Notes on the application of Schedule 1. Whilst it was agreed at the taxation that paragraph 4(a) did not apply in this case as the matter did not proceed to trial, it is not the position of the Board that paragraph 4(a) is irrelevant in that it remains the Board's submission that paragraph 4 has to be read together, by reference to the relevant Notes. Put short, there can only be "a subsequent day of trial", or "diet of deferred sentence" in the alternative, if there has been a first day of trial in terms of regulation 4(a).

Similarly, the relevant Notes, which govern the way in which the fees set out in the Tables of Fees are to be applied, are, in the Board's submission, equally clear as to their intent and application. A discrete fee for preparation (as distinct from travel, waiting, conduct etc) is disappplied in paragraph 3(j), except as provided for in Part 2 of the Table of Fees. Paragraph 3(k) sets out the restricted circumstances in which such a fee is chargeable. Paragraph 3(l) provides that Fee 4(a) is

chargeable only once, within these restricted circumstances. Paragraph 3(m) provides that Fee 4(b) is chargeable only twice for preparation for a "subsequent trial", or diet of deferred sentence in the alternative, within these restricted circumstances. There is clearly no assumption that a discrete fee for preparation is chargeable in terms of the scheme set out in the Schedule.

It is for these reasons that the Board does not agree with the Auditor in his decision that paragraph 4(b) can stand alone and, in agreeing with the solicitor, that there is nothing in the regulations to prevent such a fee being charged.

IN RESPECT WHEREOF



Solicitor
44 Drumsheugh Gardens
Edinburgh
Solicitor for the Scottish Legal Aid Board

SHERIFFDOM OF NORTH STRATHCLYDE AT DUMBARTON


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PF (DUMBARTON) -V- 

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**A decision of the Auditor of Court
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**Solicitor
44 Drumsheugh Gardens
Edinburgh
Solicitor for the Scottish Legal
Aid Board**

Dumbarton 1 May 2013

Sheriff W Dunlop QC

Act : Mr Haggarty on behalf of SLAB

Act : Mr Cairns on behalf of Cairns Brown

The Sheriff, having heard parties' procurators, Repels the Note of Objection; Approves the Auditor's Report Account as assessed, Finds no expenses due to or by either party in respect of the hearing on the objection.


Sheriff

2.5.13

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CLERK OF COURT