

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

N O T E

by

Interim Auditor of Court

K CARTER

in

Taxation Diet held at Glasgow on

8 August 2013

in case of

HMA

against


PO 

on SLAB Account Ref No: 2602100612/

Ref. D2601/15

Nom Sols. Code 340571 in account
presented by Messrs Cairns Brown,
Solicitors, Alexandria.

GLASGOW, 8 August 2013.

Act:  for SLAB

Alt: Mr W Cairns, for Cairns Browns, Solicitors,

Submissions

- 1 Submissions were made by parties relating to two abatements by SLAB, both being for £38 for entries on page 6 of the accounts dated 1 May 2012 and 22 May 2012 entitled “deferred sentence fee, work undertaken by qualified solicitors – £38.”

- 2 I had the benefit of written submissions in advance of the taxation diet from Mr Cairns, and these are attached to this Note as Annexe (A). Those submissions at paras (4) and (5) referred me to two relevant decisions made on the identical point under discussion before me on 8/8/13 and it was conceded by Mr Haggarty that those two cases were on the same point. I have, therefore, included those two cases as Annexes (B) and (C) to this Note. Annexe (B) being Stirling Sheriff Court decision by Sheriff W Robertson in **HMA v Cormack** [dated 2nd April 2012]; and Annexe (C) being Dumbarton Sheriff Court decision by Sheriff W Dunlop QC in the case of **Elizabeth McKean**. [dated 1st May 2013]
- 3 The submissions at today's taxation by [REDACTED] for SLAB referred the Auditor to the necessity of reading carefully the precise terms of the Legal Advice and Assistance, Part 2, Criminal Legal Aid, (Scotland) (Fees) Regulations 1989, Schedule 1, Fees of Solicitors "Notes on the operation of Schedule 1" (my emphasis), and in particular paras. 3(J) to (M). [REDACTED] was insistent that these Notes should be read carefully in conjunction with the Table of Fees, para. 2, Inclusive Fees for Solemn First Instance Proceedings, para 4(b) "a subsequent day of trial or diet of deferred sentence column [c] - fee £38". [REDACTED] was at pains to explain SLAB's interpretation of this and spent a considerable time in his submissions on how the words used should be interpreted. As an example, one submission from Mr Haggarty went into detail on where addition of an "oxford comma" could change the reader's interpretation of para 4(b) (printed on page 95 of SLD Fees Supplement 2012 Edition).
- 4 Mr Cairns submissions, written and oral, were that SLAB's interpretations (convoluted in his view), were trying to make complex what is essentially a simple matter, i.e. he submitted that para 4(b) plainly does allow for a £38 deferred sentence preparation fee.

5 Mr Cairns also asked me to take full account of the two sheriffs' interpretations on this same matter in the precedents within the two cases attached as annexes (B) and (C). He also gave his opinion that it would be "unconscionable that there be no fee whatsoever for preparation for a solemn deferred sentence." I have to say that I find that opinion hard to disagree with. Thorough preparation for such solemn sentence deferred diets would not only be necessary, but would be expected by the client and indeed by the Court. I do not think any conscientious and professional solicitor would attend unprepared to such a diet, where a plea in mitigation (a) can be very lengthy ; (b) is crucial in the sentencer's considerations; and (c) is critical to the accused given that he could be facing up to five years' imprisonment when sentenced at a solemn sentence deferred diet.

Decision

6 I reject SLAB's submissions and uphold those of Cairns Brown.

7 I allow the two £38 preparation fees on page 6 of said account. The total fees now due in this account was not to be decided at the Diet by me on 8/8/13 and that was agreed by both parties, as there have been other abatements to the same account which were not challenged, nor raised at today's Taxation Diet. Accordingly, I cannot accurately "Tax" the account at a final agreed total sum.

8 The Auditors Taxation fee for the Diet of 8/8/13 of £92 plus VAT £18.40 (£110.40) was paid at the Diet by Messrs Cairns Brown, but I find that SLAB are liable for all of that, therefore, an additional outlay of £110.40 should be added to the account.

Notes by Auditor

9 In upholding Cairns Brown's objections and allowing the two fees of £38, I have agreed with their interpretation of the form of words in the relevant regulations, and have rejected SLAB's interpretations.

- 10 I am re-assured in that decision, by the fact that two experienced sheriffs sitting in two different jurisdictions, have interpreted the Regulations in the same way as me.
- 11 As an Auditor of Court, I consider my principal role to be deciding on whether or not to allow certain fees (or part thereof) in terms of various fee tables and Guidance and Regulations. The role of an Auditor in interpreting words and phrases and what precisely was meant by the author thereof, whilst certainly not unimportant when making such decisions on fees, is not an Auditor's primary function (in my view). I would find it very hard to ignore the clear interpretations of the two Sheriffs of the Regulations discussed on 8/8/13, particularly as it was agreed by both parties present, that there was nothing in this taxation case which would distinguish it from the two cases decided by the sheriffs.
- 12 My comments at para (5) above about the importance of solemn deferred sentence diets to the client and the court are , I accept, going beyond the usual parameters of an Auditor's remit and considerations, but have been included to emphasise my own view of the importance of thorough and professional preparation for crucial sentence deferred diets.[bringing my experience as a Sheriff Clerk and court –clerk /Auditor] into my decision making process in the matter discussed here. I also thought that the para (5) information may be relevant if there is any Note of Objections to this decision lodged.

Report issued to both parties on 26th August 2013

K CARTER
Interim Auditor of Court
Glasgow and Strathkelvin

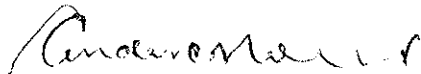
ANNEXES A/B/C –attached as separate papers .

HMA v PAUL OWEN - Note of Objections


Glasgow 30th October 2013

Sheriff A C Normand

The Sheriff, having considered the Board's Note of Objections, together with the Note and Report by the Interim Auditor of the Court, the Submissions by the Agent for Paul Owen, the Note by Sheriff A Wyllie Robertson to the interlocutor dated 2 April 2012 *in causa* HMA v Fraser Cormack, the interlocutor of Sheriff W Dunlop QC dated 1 May 2013 *in causa* PF Dumbarton v Elizabeth McKeen, parties having confirmed that they did not wish a hearing, Repels the Note of Objections; Approves the Interim Auditor's Report Account as assessed.



Sheriff

Glasgow 30/10/13
Certified a True
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Sheriff Clerk Depute

COPY

NOTE OF OBJECTIONS

in the case of

**HMA -v- [REDACTED]
SL/2602100612**

arising from

**a decision of the Interim Auditor of Court
at a Taxation Diet on
8 August 2013**

The Scottish Legal Aid Board ("the Board") objects to the Note by the Interim Auditor of Court, Glasgow Sheriff Court, intimated on Monday 26 August 2013 following a Diet of Taxation held on 8 August 2013. The taxation arose in relation to the fees claimed by Messrs Cairns Brown, Solicitors, Alexandria in respect of the accused [REDACTED]

For ease of reference a copy of the Note (and the Sheriffs' decisions and other documents to which reference is made in the Report) are 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, and the Notes on the application of the Schedule, 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. It is the Board's position that the inclusive fee at paragraph 4 only applies where the case proceeds to "trial", by reference to and as defined in the relevant Notes. This case did not proceed to trial. That is common ground between the parties. Paragraph 4 has to be read together, paragraph 4(b) only applying in circumstances where paragraph 4(a) applies. 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).

Paragraph 4 plainly cannot be read, in a way that makes sense, minus the terms of paragraph 4(a) and the words "a subsequent day of trial" at paragraph 4(b).

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 disapplied 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 part of 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 GLASGOW AND STRATHKELVIN

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**Douglas Haggarty
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Solicitor for the Scottish Legal
Aid Board**