



DECISION BY LADY RAE

in

NOTE OF OBJECTIONS

by

MARK STEWART QC

to

THE REPORT OF THE AUDITOR OF  
THE COURT OF SESSION  
under Regulation 11 of the Criminal  
Legal Aid (Scotland) Fees  
Regulation 1989

in causa

HER MAJESTY'S ADVOCATE

against

GM

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Act: A Smith QC  
Alt: R Crawford QC

3 July 2014

[1] For the purposes of this *ex tempore* decision I do not propose to detail all of the background to this case or the submissions made.

[2] In short, between 2012 and 2013 the Noter represented the accused, GM, on charges of attempted murder and culpable homicide. The case was ultimately dealt with by way of a plea of guilty tendered at a preliminary hearing on 7 March 2013. An *interim* compulsion order was pronounced and this led to subsequent procedure culminating in an evidential hearing on 2 August 2013 relating to a restriction order and compulsion order.

[3] The Noter lodged a number of fee notes and no issue is taken with the rate or fee charged for the particular entries. The only issue taken by the Scottish Legal Aid Board, hereinafter referred to as "the Board", was the separate preparation fee charged by the Noter. As a result of this, the present case was remitted to the Auditor of the Court of Session and a diet of taxation was fixed for 20 November 2013. The Auditor heard representations on behalf of the Noter and the Board. As a result of that taxation, the preparation fee charged by the Noter was disallowed.

[4] A Note of Objections was lodged to this Court under Regulation 11 of the Criminal Legal Aid (Scotland) Fees Regulation 1989 and I heard submissions on behalf of both parties on Friday 27 June 2014.

[5] I was referred to various parts of the regulations which I need not detail at this stage. What is clear from these regulations is that all preparation is included in the level of fess prescribed in the Table of Fees, but that a separate fee for preparation can be claimed, and "shall be allowed" but only on certain restricted conditions. In addition it is clear that it is for the Board or, as the case may be, the Auditor to decide, in terms of the regulations, whether such a fee falls within the regulations and is or is not allowable. It is also clear that a fee for preparation is allowed only once in any case and is not payable until the case to which it relates has concluded.

[6] Paragraph 14 of Schedule 2 of the regulations sets out the circumstances in which a separate preparation fee shall be allowed. It seems to me that on a proper reading of that paragraph (14) there are three options open for a separate preparation fee. The first is where the case is dealt with in terms of section 76 of the Criminal Procedure (Scotland) Act 1995 where a guilty plea has been tendered. The second option covers situations where a case proceeds to trial or for a hearing where a fee is payable at the full rate under paragraph 4(q) to (t) of Chapters 1 and 2 of Part 1 or paragraphs 3(p) to (t) of Chapters 1 and 2 of Part 3 of the Table of Fees. In the case of the first and second option the level of preparation is that to which paragraph 15d applies. Where paragraph 15d applies, preparation is only allowable if counsel has had to peruse in excess of 7,500 sheets. The third option covers situations including where a plea of guilty is tendered, as in the present case, and the level of preparation is that to which paragraph 15c applies. 15c permits charges depending on the number of sheets which counsel requires to peruse including the range of 1,000 to 3500 sheets where counsel would be entitled to three days preparation.

[7] In the course of submissions it was clear that the Noter believed that he was entitled to select which option would apply to his claim for fees. It was argued that the circumstances of the present case came under the third option and he would be entitled to charge preparation for his perusal of 1,271 sheets.

[8] The view of the Board was that, having regard to the evidential hearing dealt with in August 2013, preparation should be assessed under option 2, as I have called it, and as the Noter had not perused in excess of 7,500 sheets, he was not entitled to a preparation fee. The Auditor agreed with this approach.

[9] The argument on behalf of the Noter was to the effect that the Auditor had erred in law and had misdirected himself in his interpretation of the regulations.

[10] Senior counsel for the Board addressed me on the various parts of the regulations, including paragraphs 12-15. In essence the Board took the view that the circumstances of this case, looking at the whole case and having regard to the subsequent evidential hearing, fell within option 2 and in terms of the level of fees which the Noter was entitled to charge, this case came fairly and squarely within paragraph 4(qa) of Chapter 2 of the Table of Fees which regulates fees chargeable by senior counsel. As a result the Board and subsequently the Auditor were fully entitled to disallow the separate fee for preparation having regard to the fact that the number of sheets perused by the Noter fell below the 7,500 allowable under option 2. In these circumstances, the Auditor had not misdirected himself.

[11] In the course of submissions, I asked Mr Smith QC, acting for the Noter, whether the factual circumstances existing in the present case could fall within option 2. While Mr Smith conceded that they did he was of the view that they also fell within option 3.

[12] Looking at the whole circumstances of this case, it seems to me that, on a proper reading of the regulations, this case does indeed fall within option 2. The Board was in my view fully entitled to disallow the separate preparation fee and that being the case, the Auditor has not misdirected himself. I do not agree with the submission that it is for counsel to select which option he is entitled to charge under. If that were correct it would mean that the Board would not be permitted to consider what else may have occurred in the case, such as a subsequent evidential hearing which is what occurred here. It is, in my view, a matter for the Board and as the case

may be the Auditor to assess whether a fee is allowable or not, providing of course any assessment is done in accordance with the regulations. Standing the fact that there are circumstances existing in the present case which fall under option 2, the Auditor was perfectly entitled to disallow the preparation fee.

[13] Accordingly I shall repel the Note of Objections and there being no motion for expenses I shall make no further order.



HIGH COURT OF JUSTICIARY  
INTERLOCUTOR SHEET  
Hearing on Objections to Auditor's report

Ref. No. Misc9/14 Date: Thursday 3 July 2014	Judge: Lady Rae
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Noter: Mark Stewart QC Respondent: Scottish Legal Aid Board	Court of 1 <sup>st</sup> instance: Glasgow High Court
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Noter's address:  n/a	Prayer of Note of Objections: To find and declare that the Auditor of the Court of Session erred in law and in fact by taxing off fees of the Noter and that the matter should be remitted back to the Auditor with directions to allow the fees in full.
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The court, having heard counsel on the Note of Objections by the Noter to the Auditor's report, repels the objections and makes no further order.

# Auditor of the Court of Session

Parliament House  
Edinburgh EH1 1RQ

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LEGAL POST: LP 5 Edinburgh 10  
Telephone: 0131-240 6789  
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E-mail: [maildesk@auditorcos.org.uk](mailto:maildesk@auditorcos.org.uk)  
[www.auditorcos.org.uk](http://www.auditorcos.org.uk)

HMA v [REDACTED]

Mark Stewart QC

Legal Aid Reference SL/27719246

EDINBURGH. 18 March 2014. At a diet of taxation on 20 November 2013, the Auditor heard representations on behalf of Mark Stewart QC and the Scottish Legal Aid Board in respect of Mr Stewart's fee note dated 20 March 2013 in the total sum of £4,404.00. Having considered the information provided and the submissions made, the Auditor now taxes the said total fee at TWO THOUSAND SIX HUNDRED AND FOUR POUNDS (£2,604.00). To the said sum there falls to be added VAT at 20%, £520.80, and the Auditor's fee, inclusive of VAT, £129.60 altogether THREE THOUSAND TWO HUNDRED AND FIFTY FOUR POUNDS AND FORTY PENCE (£3,254.40)



AUDITOR OF THE COURT OF SESSION

NOTE/

The Auditor  
Kenneth M. Cumming, W.S.

Principal Clerk  
Mrs Sheila Muir



## NOTE

1. Having carefully considered the Criminal Legal Aid (Scotland) (Fees) Regulations 1989, the Auditor has concluded that the effect of paragraphs 14(a) and 15(d) of the Notes on the operation of Schedule 2 is that, in either of the circumstances described in paragraphs 14(a)(i) or (ii), no separate preparation fee is payable unless the total number of sheets exceeds 7,500.
  
2. Accordingly, since Mr Stewart has, in a subsequent fee note dated 3 August 2013, claimed a fee in terms of paragraph 14(a)(ii) and the total number of sheets is only 1,271, no separate preparation fee is payable.
  
3. For these reasons, the Auditor has abated the preparation fee of £1,800.00 in full.

# SENIOR COUNSELS FEES

## FEE NOTIFICATION (Proposed Fee)

w: www.advocates.org.uk

e: fee.rendering@advocates.org.uk

t: 0131 260 5725

[REDACTED]  
PER 1ST LEGAL LIMITED  
159 WHITLETTS ROAD  
AYR  
KA8 0JQ

**Date of Issue** 20-03-2013  
**FSL Reference** C817/M0120193/2  
**Contact Name** ANTHONY D CURRIE  
**Contact Ref.** 10-1

CRIMINAL LEGAL AID - SCHEDULE 2

1 of 4

**Case** HMA -V- [REDACTED] - MURDER

**Case Type** CRIMINAL LEGAL AID- SCHEDULE 2  
**LA Cert No.** SL/27719246/12 **Issued** 08-10-2012

**Client** [REDACTED]

**Correspondent**

**Advocate Code** S41 M L STEWART QC

**VAT Reg. No.** 502 7953 50

Date	Details	Amount
14-11-2012	CONSULTATION WITH AGENT AND CLIENT, STATE HOSPITAL CARSTAIRS. TRAVEL FROM DUNDEE TO CARSTAIRS AND RETURN . 170 MILES @ 40 P PER MILE. TRAVEL ALLOWANCE	250.00  68.00 100.00
19-12-2012	CONSULTATION WITH AGENT AND CLIENT, STATE HOSPITAL CARSTAIRS. TRAVEL FROM DUNDEE TO CARSTAIRS AND RETURN. 170 MILES @ 40 P PER MILE. TRAVEL ALLOWANCE	250.00  68.00 100.00

\*\*\* LEGAL AID \*\*\*

BACS Payments to:  
Sort Code 80-02-24 Account 00373977

Continued...

**FEE NOTIFICATION  
(Proposed Fee)**

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CRIMINAL LEGAL AID - SCHEDULE 2

2 of 4

**Case** HMA -V- [REDACTED] - MURDER

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**LA Cert No.** SL/27719246/12 **Issued** 08-10-2012

**Client** [REDACTED]

**Correspondent**

**Advocate Code** S41 M L STEWART QC

**VAT Reg. No.** 502 7953 50

<b>Date</b>	<b>Details</b>	<b>Amount</b>
04-03-2013	CONSULTATION WITH AGENT AND CLIENT, STATE HOSPITAL CARSTAIRS. DISCUSSING FINAL DRAFT NARRATIVE AND TERMS OF PROPOSED PLEAS. TAKING INSTRUCTIONS THEREON.	250.00
	TRAVEL FROM DUNDEE TO CARSTAIRS AND RETURN. 170 MILES @ 40 P PER MILE.	68.00
	TRAVEL ALLOWANCE	100.00
07-03-2013	PRELIMINARY HEARING, GLASGOW HIGH COURT - PLEAS OF GUILTY TENDERED. INTERIM COMPULSION ORDER PRONOUNCED.	1350.00

\*\*\* LEGAL AID \*\*\*

BACS Payments to:  
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Continued...

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[REDACTED]  
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**Date of Issue** 20-03-2013  
**FSL Reference** C817/MO120193/2  
**Contact Name** ANTHONY D CURRIE  
**Contact Ref.** 10-1

CRIMINAL LEGAL AID - SCHEDULE 2

3 of 4

**Case** HMA -V- [REDACTED] - MURDER

**Case Type** CRIMINAL LEGAL AID- SCHEDULE 2  
**LA Cert No.** SL/27719246/12 **Issued** 08-10-2012

**Client** [REDACTED]  
**Correspondent**  
**Advocate Code** S41 M L STEWART QC

**VAT Reg. No.** 502 7953 50

Date	Details	Amount
1800.00	PREPARATION: - 3 DAYS AT 2/3 OF DAILY RATE OF £900.00 PER DAY. 3 X £600.00	1800.00

- SCHEDULE 2 DETAILS -  
ACTING AS SENIOR COUNSEL  
COURT TYPE: HIGH COURT  
NATURE OF CASE: CULPABLE HOMICIDE, ATTEMPTED  
MURDER  
CHARGES AGAINST CLIENT: 2  
CATEGORY OF CASE: A

\*\*\* LEGAL AID \*\*\*

BACS Payments to:  
Sort Code 80-02-24 Account 00373977

Continued...

**FEE NOTIFICATION  
(Proposed Fee)**

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Date of Issue 20-03-2013  
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Contact Name ANTHONY D CURRIE  
Contact Ref. 10-1

CRIMINAL LEGAL AID - SCHEDULE 2

4 of 4

Case HMA -V- [REDACTED] - MURDER

Case Type CRIMINAL LEGAL AID- SCHEDULE 2  
LA Cert No. SL/27719246/12 Issued 08-10-2012

Client [REDACTED]  
Correspondent  
Advocate Code S41 M L STEWART QC

VAT Reg. No. 502 7953 50

Date	Details	Amount
	NUMBER OF ACCUSED: 1	
	PREPARATION - NUMBER OF SHEETS:1271	

1800.00  
360.00  
2160.00

\*\*\* LEGAL AID \*\*\*

Net Total 4404.00  
VAT @ 20.00% 880.80  
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FEE TOTAL 5284.80

BACS Payments to:  
Sort Code 80-02-24 Account 00373977

*Less: Taxed off*

2160.00

*Add: Auditor's fee (inc VAT)*  
PAYMENT REMITTANCE

3124.80  
129.60

3254.40

Please send payment to:

FACULTY SERVICES LIMITED  
Advocates Library  
Parliament House  
EDINBURGH  
EH1 1RF  
DX No: ED549302  
LP3 EDINBURGH 10

FSL Reference C817/MO120193/2  
Fee Total 5284.80  
LESS Abatements  
PAYMENT ENCLOSED  
Abatement Authorised by:

NB responsibility to recover fees in legally aided cases lies with the instructing Agent. Failure to include said fee(s) in the account to The Scottish Legal Aid Board will result in the payment being due by the instructing Agent. The VAT date for this supply is the date of payment - not the date of issue. In the event that this fee notification is challenged please return stating your reasons. When making payment please return one copy - a receipt will be sent by return.



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