OUTER HOUSE, COURT OF SESSION

P1157/16

OPINION OF LORD ARTHURSON

In Note of Objections by Tim Haddow to the report by the Auditor of Court dated 11 April 2018 in the cause of Ermiyas Tadesse Wondimu against the Secretary of State for the Home Department

Noter: Dunlop QC; Brown
Respondent: Crawford QC; Scottish Legal Aid Board

6 July 2018

[1] Let me begin by attempting to summarise counsel's respective submissions to the court today in respect of this note of objections. For the noter, Mr Dunlop referred at various points in his submission to the exercise the court required to engage with as anchored in the terms of paragraph 5 of schedule 4 of the 1989 Regulations in which the core words for the purposes of statutory interpretation were "an additional fee for preparation shall only be allowed if it relates to a proof, debate or like hearing". Albeit the remainder of paragraph 5 and paragraph 6 set further parameters in respect of such a putative additional fee.

[2] Mr Dunlop proceeded to offer what he described as a non-exhaustive list of examples of "like hearing" in paragraph 27 in his note of argument and to a shorter list of common features or attributes shared by his list of examples thereof in paragraph 22 of that

note. Mr Dunlop then listed and made powerful submissions on a series of anomalies and set out at length the decision and dicta of Lord Tyre in *O'Neil* on matters of legislative intent which despite changes to the 1989 Regulations were still in play today as they were in 2010. Centring his submission on the core issue or as he has put matters this afternoon "true question of interpretation of the words "like hearing"", Mr Dunlop invited the court to sustain the note and remit the matter to the auditor.

[3] For the Board Ms Crawford began by expressing her sympathy for the counsel involved in the note and for counsel in general, a sympathy which the court shares, but contended, under reference to the normal and natural meaning of the words in issue in paragraph 5 of schedule 4 and to the statutory context, that the regulations required a construction such that permission hearings did not attract a preparation fee. The phrase and issue, Ms Crawford argued, comprised hearings in which there is a prescribed daily fee under reference to a comparison with the former un-amended version of the Regulations. It was plain that the present regime for fee recovery had as its starting point a system of recovery of prescribed fees (schedule 4, paragraph 1) and only where there was no prescribed fee (paragraph 3) or a range of fee available was the former link to reasonable remuneration, a matter which could properly be founded upon. The correct test, she submitted, under Regulation 9 was one where the focus is on work actually and reasonably done with due regard being had to matters of economy. This submission was cogently contested by Mr Dunlop for the noter.

[4] In any event, permission hearings, Ms Crawford submitted, were not like proofs or debates and involved the court asking the question "Is there anything in the argument disclosed on the face of the petition which could lead to a discussion of substance in due course"?

[5] Stepping back from counsel's detailed submissions, at the heart of their discussion both counsel joined issue on the wording of paragraph 5 and invited the court to view the phrase "like hearing" akin to the proverbial elephant which one may have difficulty in describing to another but which one will recognise as an elephant as instantly as one encounters it.

[6] In deciding this point I propose, if I may, to begin and end by looking at what is actually involved in a permission hearing, taken as read, the terms of the Regulations and the relevant statutory background elaborated upon so helpfully by counsel in their submissions. A permission hearing must require preparation of necessity, will be inevitably opposed, may well involve the engagement during the hearing of counsel with authority and in the event of refusal is of course potentially dispositive of the petition process but it is not, nevertheless in my view, a "like hearing" to a proof or debate. It involves the succinct elaboration of a point or points already set out within the petition itself in which full argument to resolve a substantive point in any determinative sense is not required.

[7] The court is, in fixing the hearing, inviting counsel to make submissions of brevity on the potential strength or weakness of matters arising in the petition and focused by the answers which in turn can form the subject of a separate substantive later hearing in due course.

[8] Put short, having taken that view, I have concluded that giving the words in issue here, their natural meaning and in the particular context of recovery of counsel's fees under the auspices of the Regulations which we have been looking at today, that a judicial review permission hearing is not a "like hearing" to a proof or debate and accordingly I now propose to repel this note of objections. Putting matters another way I cannot recognise this species of hearing as the "elephant" that Mr Dunlop has sought to describe today.

[9] I do not anticipate any consequent motion in respect of expenses and on that basis, unless there are any further applications, make no further order today.

IN THE COURT OF SESSION

NOTE OF ARGUMENT

FOR THE SCOTTISH LEGAL AID BOARD

to

NOTE OF OBJECTIONS

under and in terms of regulation 12 of the Civil Legal Aid (Scotland) Fees Regulations 1989

by TIM HADDOW

in the petition of [redacted] for Judicial Review

Introduction

1. On 28 March 2018 the Scottish Legal Aid Board ("the Board") appeared at the diet of taxation, and made objections to counsel's fees. The Auditor issued his report on 11 April 2018. Counsel has lodged a Note of Objections to the report. On 3 May 2018, the Auditor lodged a Minute to the Note of Objections. The Board intends to be represented at the hearing on the Note of Objections, set down for 6 July 2018, and to make submissions in support of the Auditor's report.

2. This Note of Argument is drafted to afford notice of the Board's arguments in respect of the Note.

The issue

3. The Note of Objection raises the issue of what is meant by the words "*relates to a proof, debate or like hearing*" in paragraph 5, Schedule 4 to the Civil Legal Aid (Scotland) (Fees) Regulations 1989 ("the 1989 Regulations"), as amended. In particular, is a permission hearing a "like hearing" to a proof or debate? If not, no fee under the 1989 Regulations is allowed for preparation (Schedule 4, paragraph 4).

4. The issue raised is one of statutory interpretation: "*Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.*", per Lord Nicholls in *R v Secretary of State for the*

Environment, Transport and the Regions ex parte Spath Holme Ltd [2001] 2 AC 349 at 396.

The Board's answer to the issue

5. Properly construed, a permission hearing does not mean a proof, debate or like hearing:

(i) This is the normal and natural meaning of the language in paragraph 5, Schedule 4.

(ii) It is the meaning arrived at in the relevant statutory context.

(iii) It gives effect to the legislative intention.

6. The Noter advances the argument that a permission hearing is like a proof or debate under reference to broader considerations of access to justice. That argument falls to be rejected, in summary, because questions relative to access to justice are for the Scottish Government. The Board and the Auditor can only pay counsel's fees in accordance with the statutory framework, and neither has a discretion to step outside that framework.

Normal and natural meaning

7. A "like hearing" means a hearing which is of the same kind as a proof or debate of a day, or days, in duration. A permission hearing is not like a proof or debate. A permission hearing is not set down for a day, or days, unlike a proof or debate. The additional fee for preparation that may be allowed for a proof, debate or like hearing is calculated by reference to the daily rate applicable to that hearing as prescribed in the Tables of Fees (Schedule 4, paragraph 7). There is no daily rate applicable to a permission hearing.

8. Other hearings which are like a proof or debate within the meaning of paragraph 5, Schedule 4 include a substantive hearing in a Judicial Review, a Jury Trial and a Summar Roll. These are hearings for which a daily rate is prescribed.

9. The normal and ordinary meaning gives effect to the legislative intention. *Esto* the normal and natural meaning of a "like hearing" *could* extend to include a permission hearing, that construction would not be borne by the statutory context and would not give effect to the legislative intention.

Statutory context

The 1989 Regulations, as amended

10. The 1989 Regulations were made under the enabling powers provided in section 33(2) and (3) of the Legal Aid (Scotland) Act 1986. *Inter alia,* the 1989 Regulations prescribe the circumstances in which (a) fees shall be allowable to counsel, and (b) the method of calculation of such allowable fees.

11. The 1989 Regulations were amended, with effect, from 1 April 2011 by the Civil Legal Aid (Scotland) (Fees) Regulations 2011. The purpose of the 2011 Regulations was to provide a more comprehensive, uniform structure based on prescribed fees (including preparation). This structure ensures transparency, certainty and consistency of remuneration. The 2011 Regulations made specific provision for circumstances where a fee for preparation may be allowed, and (if so) the calculation thereof.

12. Regulation 9, as amended, provides the broad circumstances in which fees are "allowable", namely "*fees for such work as shall be determined by the Board to have been actually and reasonably done, due regard being had to economy*". Regulation 9 refers to eligibility to a fee (allowable fees), as opposed to the amount or calculation of a fee.

13. Regulation 9 is subject, *inter alia,* to Regulation 10. Regulation 10 provides that counsel's fees in relation to proceedings in the Court of Session (and other listed courts) shall be calculated in accordance with Schedule 4. Regulation 10 is concerned with the amount or calculation of allowable fees.

14. Regulation 12(1) provides that any question between the Board and counsel as to the

"amount of fees allowable to counsel" shall be referred for taxation to the Auditor.

15. Schedule 4, paragraph 1 provides that the fees of counsel shall be calculated by the Board, or the Auditor in the event of a dispute, in accordance with the fees prescribed in the Tables of Fees.

16. Schedule 4, paragraph 2 provides how a fee is to be calculated where the Tables of Fees prescribe a range of fees for any item of work.

17. Schedule 4, paragraph 3 provides how a fee is to be calculated where the Tables of Fees do not prescribe a fee for any class of proceedings or any item of work. In that event, there is a discretion to allow an "appropriate" fee under reference to what is "*reasonable remuneration for the work with regard to all the circumstances, including the general level of fees in the Tables of Fees*". If the Tables of Fees prescribe a fee, the fee is so prescribed and there is no room for discretion or judgment to amend the prescribed amount. The Auditor could not increase a prescribed fee because he was of the view that it did not represent "reasonable remuneration". Nor could the Board.

18. Schedule 4, paragraph 4 provides that, subject to paragraphs 5 to 7, the fees prescribed in the Tables of Fees include all associated preparation work. The 1989 Regulations, as originally made, contained no such provision.

19. The relevant Table of Fees applicable to junior counsel for Petitions for Judicial Review are found in Table A, Part 1, Chapter 3:

    (i) Item 2 of Chapter 3 prescribes the fee for an oral hearing at permission stage or procedural hearing. The fee is calculated by reference to the length of the hearing, broken into units of 30 minutes.

    (ii) Item 3 prescribes the fee for a substantive hearing (£900 if acting alone, £650 with senior).

    (iii) Item 5 prescribes the fee for all other work by reference to the fees prescribed in Chapter 6. In that regard, reference can be made, *inter alia,* to item 3 of

Chapter 6 (adjustment), item 4 (specification of documents), item 7 (consultations) and item 9 (motions).

The effect of Schedule 4, paragraph 4 is that the prescribed fee for a lengthy contested motion or consultation covers preparation regardless of the time actually spent on preparation. Likewise, the fee for a permission hearing includes all preparation regardless of the actual preparation time. It is only those hearings which are like a proof or debate where a preparation fee may be allowed. A substantive hearing in a Judicial Review is like a proof or debate, and a preparation fee may be allowed for that hearing.

20. Schedule 4, paragraph 5 prescribes the circumstances in which a preparation fee may be allowed for a proof, debate or like hearing. Paragraph 6 prescribes the conditions which require to be met for a preparation fee. Paragraph 7 sets out the methodology to calculate a preparation fee which is allowed under paragraphs 5 and 6, namely by dividing the time allowed into units of 8 hours, each unit being payable at the rate of two-thirds of the daily rate applicable to that hearing as prescribed in the Tables of Fees.

21. Prior to the 2011 amendment, the 1989 Regulations made no provision for a preparation fee. However, it would have been open to the Auditor to consider the preparation element in his assessment of counsel's fees under paragraphs 2 or 4 of Schedule 4 as originally made. These are noted in paragraph 24 of this Note.

The 1989 Regulations, as originally made

22. The 1989 Regulations as originally made are discussed in the decision of Lord Tyre in *Notes of Objection by O'Neill QC and Davidson Advocate* [2010] CSOH 79; 2011 SCLR 143. That decision is superseded by the 2011 Regulations. The decision provides useful background to the 2011 Regulations, and why they came to be made.

23. Regulation 9 provided that "*counsel may be allowed such fees as are reasonable for conducting the proceedings in a fair manner, as between solicitor and client, third*

party paying." Lord Tyre held that Regulation 9 referred to both eligibility and calculation of a fee.

24. Prior to the 2011 amendment, paragraphs 2 or 4 of Schedule 4 enabled the Auditor to increase any fee set out in the Table of Fees. Paragraph 2 entitled the Auditor to allow *"such fee as appears to him appropriate to provide reasonable remuneration for the work with regard to all the circumstances, including the general levels of fees in the ... Table of Fees."* for work where there was no prescribed fee. Paragraph 4 enabled the Auditor to increase any fee set out in the Table of Fees if "*satisfied that because of the particular complexity or difficulty of the work or any other particular circumstances such an increase is necessary to provide reasonable remuneration for the work." (*paragraph 5 contained a similar provision enabling reduction of a fee).

25. The 1989 Regulations, as made, enabled the Auditor to form his own view about whether a fee provided reasonable remuneration. This was the aim of the process of increase or reduction of a fee specified in the Table (*O' Neill and Donaldson* per Lord Tyre at para 44). The Auditor could take into account changes in the level of counsel's fees, whether as a result of general price inflation or otherwise, using a yardstick of the solicitor and client, third party paying basis of taxation as specified in the then Regulation 9 (*O'Neill and Davidson* per Lord Tyre at para 54).

26. The mischief addressed by the 2011 Regulations was to remove the Regulation 9 calculator (or yardstick) of the solicitor and client, third party paying basis of taxation. Counsel's fees can no longer be calculated on that basis. Counsel who agree to accept instructions in a case funded by legal aid do so knowing that the fees will be calculated, in the main, in accordance with the prescribed fee for any particular item of work. The 2011 Regulations limit the circumstances in which the Auditor has discretion to fix counsel's fees. The only room left for discretion is where (i) there is a range of prescribed fees, or (ii) the Tables of Fees do not prescribe a fee for the particular proceedings or work.

Other references to "proof, debate or like hearing"

27. The 1989 Regulations, as made, contained another reference to the term "proof, debate or like hearing". That was in Regulation 11(2)(a) and (3)(a) relative to a payment to account. A claim for a payment to account could be made where the number of days on which a diet of proof, debate or like hearing exceeds 20 days. The "like hearing" is defined by reference to the length of the diet. These provisions were repealed by the 2011 Regulations. The circumstances in which counsel may now seek a payment to account are governed by a protocol, and include cases where a proof, debate or like hearing exceeds 20 days. A like hearing remains defined by reference to the length of the diet.

Practical matters

28. A petition for Judicial Review must state, albeit briefly, why the petition has a real prospect of success. The Tables of Fees recognise that counsel who drafts a petition for Judicial Review is likely to have spent more time doing so, and must have addressed the statutory requirement of a real prospect of success. The fee for a petition for Judicial Review is £350. The fee for a petition for a straightforward interdict is £200. The fee for other Outer House petitions is £300. The fee for a Summons is £300.

29. The fee for a permission hearing assumes that counsel will have addressed "real prospects of success" at the time the petition for Judicial Review was drafted, and as reflected in the enhanced fee. While the Board appreciates that counsel in this case was not counsel who drafted the petition, the 1989 Regulations as amended do not fall to be construed against the background of counsel's availability. The 1989 Regulations as amended do not fall to be construed against the background that more than one counsel may have prepared the real prospects of success argument. This is consistent with Schedule 4, paragraph 6(b) which permits only one preparation fee to counsel (junior and/or senior) for a proof, debate or like hearing, except on cause shown, notwithstanding that the legally assisted person is represented by more than

one counsel (junior or senior) during the proceedings.

30. It may also be the position, as in the present case, that the counsel who drafts the petition will have provided an Opinion addressing *inter alia* the prospects of success prior to legal aid being granted. Opinions prior to a grant of legal aid are paid by Advice and Assistance. In other words, counsel will have been paid a fee for their consideration of the prospects of success.

31. Permission hearings under Rule of Court are usually short in duration. RCS 58.9(1) provides that they should not, except on cause shown, exceed 30 minutes. It is limited to a consideration of the averments made in the petition.

Fee claimed by counsel

32. Counsel appears to have based his fee for preparation on an hourly rate of £50. On any view of the 1989 Regulations, as amended, that is *ultra vires*.

33. Counsel's preparation is either (1) included in the fee for the permission hearing; or, in the event that paragraphs 5 and 6 to Schedule 4 are satisfied, (2) calculated by the formula in Schedule 4, paragraph 7 namely by dividing the time allowed into units of 8 hours, each unit being payable at the rate of two-thirds of the daily rate applicable to that hearing as prescribed in the Tables of Fees.

"Cab rank" ruling

34. In 2011, and in anticipation of the 2011 Regulations, the then Dean of Faculty issued a ruling. This appears to follow concerns expressed by the Dean in *O'Neill and Donaldson,* which are recorded at paragraph 24. The ruling is dated 10 March 2011. The Board understands that the ruling remains. The effect of the ruling is that it is for counsel to decide whether the fees set out in the Tables of Fees constitutes reasonable remuneration for the work instructed. If counsel is of the view that the Tables of Fees do not provide for a reasonable fee then, as a generality, no professional duty to accept instructions will arise. In other words, counsel is not obliged to accept work

which is funded by legal aid.

35. The Board is not aware of any difficulty on the part of legally assisted persons being able to instruct counsel since the Dean's ruling. If such difficulties arose, the Board would raise those with the Scottish Government in terms of its general functions and duties under sections 2 and 3 of the Legal Aid (Scotland) Act 1986.

Access to justice

36. Insofar as the Noter argues that the Board's construction of the 1989 Regulations, as amended, gives rise to concerns that there may be an adverse impact on access to justice that is a matter for the Scottish Government to address. The Board, and Auditor, can only pay counsel's fees in accordance with the statutory framework. Neither the Board nor the Auditor has a statutory basis entitling them to take into account broader issues of access to justice.

Conclusion

37. The fee from the legal aid fund for a permission hearing includes all preparation work. Counsel is not entitled to an additional fee for preparation.

38. The Note of Objections should be repelled.

Ruth Crawford QC

Advocates Library

27 June 2018

Uploaded to folder + also forwarded on to DH - 4-5-18

Auditor of the Court of Session

Your Ref: CI/CO94331116/ ALAN SPENCE
Our Ref: 70045

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SCOTTISH LEGAL AID BOARD
DX 555250
EDINBURGH – 30

3 May 2018

Dear Sirs

[redacted] FOR JUDICIAL REVIEW

I refer to the above and now enclose, for your information, a copy of the Auditor's Minute in response to the Note of Objections in respect of the Auditor's Report dated 11 April 2018.

Yours faithfully,

RECEIVED
- 4 MAY 2018

pp Principal Clerk
Enc.

The Auditor
Kenneth M. Cumming, W.S.

Principal Clerk
Mrs Sheila Muir

IN THE COURT OF SESSION

27 April 2018 Lord Tyre

The Lord Ordinary, on the motion of the petitioner and having considered the email correspondence, allows the petitioner's Note of Objections to the Report by the Auditor of Court, a copy of which has been produced by the petitioner, to be received and marked no. 13 of process; appoints the petitioner to intimate forthwith to the Auditor of Court a copy of this interlocutor in terms of Rule 42.4(2)(C); appoints the Auditor of Court to lodge in process a Minute stating the reasons for his decision in relation to the items to which objection is taken, with a period of 14 days of intimation of this interlocutor.

MINUTE

by

THE AUDITOR OF THE COURT OF SESSION

in response to

NOTE OF OBJECTIONS BY TIM HADDOW, ADVOCATE

in the Petition of

[redacted]

for

JUDICIAL REVIEW

Edinburgh, 3 May 2018

The Auditor respectfully responds to the Note of Objections No 13 of process as follows:-

1. Contrary to what is stated in paragraph 11 of the Note of Objections, the reason given by the Auditor for his decision was that he had concluded that, on a proper reading of the Civil Legal Aid (Scotland) (Fees) Regulations 1989, the analysis of them presented to him on behalf of the Legal Aid Board was correct (see paragraph 1 of the Note attached to the Auditor's Report dated 11 April 2018).

2. To assist the Court, a copy of the Points of Objection lodged and intimated on behalf of the Legal Aid Board in advance of the diet of taxation on 28 March 2018 is attached to this Minute. In reaching his decision, the Auditor had particular regard to paragraphs 18, 19, 22, 25, 27 and 28.

3./...

3. In paragraph 2 of the Note attached to his Report dated 11 April 2018, the Auditor was merely attempting to summarise the essential elements of the Legal Aid Board's analysis.

IN RESPECT WHEREOF

P1157/16 Pet: Ermiyas Wondimu (FE/LA) for J/R

Drummond Miller LLP Office of the Advocate General

27 April 2018 **Lord Tyre**

The Lord Ordinary, on the motion of the petitioner and having considered the email correpondence, allows the petitioner's Note of Objections to the Report by the Auditor of Court, a copy of which has been produced by the petitioner, to be received and marked no.13 of process; appoints the petitioner to intimate forthwith to the Auditor of Court a copy of this interlocutor in terms of Rule 42.4(2)(C); appoints the Auditor of Court to lodge in process a Minute stating the reasons for his decision in relation to the items to which objection is taken, with a period of 14 days of intimation of this interlocutor.

Author: Isla Forbes

IN THE COURT OF SESSION

NOTE OF OBJECTIONS
under and in terms of reg.12 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989

by Tim Haddow, Advocate

Noter

in the Petition of [redacted] for Judicial Review

1. The Noter objects to the report by the Auditor of Court dated 11 April 2018, in respect of the items narrated hereinafter for the reasons hereinafter condescended upon.

Background

2. In November 2016, Stephen Winter, Advocate was instructed as counsel for the Petitioner in a proposed Petition for Judicial Review. A legal aid certificate had been granted for the proceedings. The Petition having been drafted, presented and answered, a hearing as to whether or not permission should be granted for the Petition to proceed was appointed in terms of s.27B of the Court of Session Act 1988.
3. The rules of court then in force required the hearing on permission to be fixed within 7 days. As is the practice of the court, the hearing on permission was fixed without reference to the diaries of counsel principally instructed. Mr Winter was not available to appear at the hearing on permission. Agents for the Petitioner instructed the Noter to appear for the Petitioner at the hearing on permission. The Noter had had no previous involvement in the case.
4. The Petition averred 5 separate errors of law in the decision under challenge. The Petition identified one important principle or practice and six grounds for there being

a compelling reason for the Petition to proceed. The note accompanying the interlocutor ordering the hearing on permission did not limit the scope of the hearing but invited "such limited submissions as the parties may consider appropriate".

5. The Noter prepared for and conducted the permission hearing. He spent three hours reviewing the Petition, Answers and productions. He spent one hour preparing his submissions and references to appropriate authorities. This preparation was reasonably required for the Noter to responsibly appear on behalf of the Petitioner. The Noter appeared at the hearing on permission. The Secretary of State for the Home Department opposed the grant of permission. Counsel appeared at the hearing on permission to argue, on behalf of the Secretary of State, that permission to proceed should be refused.
6. The Noter submitted a fee note to the Scottish Legal Aid Board ("SLAB"), seeking payment of £310: namely, £110 for the hearing, and £200 for preparation therefor.
7. SLAB disputed the Noter's entitlement to be paid for preparation. The matter was accordingly referred to the Auditor of the Court of Session in terms of reg.12 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989 ("the 1989 regulations").
8. By Report dated 11 April 2018, the Auditor ruled that the Noter was not entitled to be paid for preparation for the hearing. The Noter contends that the Auditor's decision is wrong in law.

The legal framework.

9. So far as relevant to the present dispute, the Noter's entitlement to payment from the legal aid fund is governed by the 1989 regulations. The relevant aspects thereof provide as follows:

> Reg 9: "...the fees allowable to counsel shall be fees for such work as shall be determined by the Board to have been actually and reasonably done, due regard being had to economy."

Reg 10(1): "Counsel's fees in relation to proceedings in the Court of Session ... shall be calculated in accordance with Schedule 4."

Schedule 4.

Para 4: "Subject to paragraphs 5 to 7, the fees prescribed in the Tables of Fees in this Schedule include all associated preparation work."

Para 5. "Subject to paragraph 6, an additional fee for preparation shall only be allowed if it relates to a proof, debate or like hearing and the hearing—

... (b) does not exceed a day in duration."

Regulations 6 and 7 go on to stipulate further conditions for the charging of preparation time, and the rates payable therefor.

Table of Fees A.

Para 2: "Oral hearing at permission stage or procedural hearing.

(a) where the hearing does not exceed 30 minutes £60.00

(b) where the hearing exceeds 30 minutes, for each subsequent half hour or part thereof £50.00."

Parties' contentions before the Auditor.

10. The Noter contended that time spent on preparation was payable in terms of Schedule 4, para 5 – the permission hearing meeting the description of "a proof, debate or like hearing". SLAB argued to the contrary.

The Auditor's Report.

11. By Report dated 11 April 2018, the Auditor rejected the Noter's argument and accordingly taxed his fee at £110 (namely that applicable for the hearing alone, with no allowance for preparation). The Report is produced herewith. The sole reason given by the Auditor was stated thus:

"[The Table of Fees] clearly prescribes the fees of Counsel for an "Oral hearing at permission stage ... " in connection with petitions for judicial review, and

Schedule 4, paragraph 4 states that "Subject to paragraphs 5 to 7, the fees prescribed in the Table of Fees in this Schedule include all associated preparation work". Given the unambiguous terms [of the Table of Fees] the Auditor does not accept the submission made on behalf of Mr Haddow that Schedule 4, paragraph 5 can be invoked."

The Noter's Challenge

12. In the reasoning discussed above, the Auditor has erred. Whilst it is correct that Schedule 4, paragraph 4 stipulates that the fees prescribed in the Table of Fees include all associated preparation work, that stipulation is expressly subject to paragraphs 5 to 7 of the same Schedule. The Auditor seems to have considered that because permission hearings are expressly covered by the Table of Fees, paragraph 5 could not be invoked. That is wrong in law. The same reasoning would preclude payment of a preparation fee for a proof or debate, each of which is expressly dealt with in the Table, notwithstanding the similarly express terms of paragraph 5. That would be nonsensical. Likewise, it would preclude a preparation fee for a hearing on the Summar Roll, or a Substantive Hearing in a Petition for Judicial Review. Indeed, it is unclear from the Auditor's reasoning when a fee for preparation would ever be payable under paragraph 5.

13. Counsel instructed in oral permission hearings require to prepare for such hearings if they are responsibly to appear. Oral permission hearings are fixed where the court determines that a decision on permission cannot be made on the papers alone and that oral submissions are required to allow the grant of permission to be properly determined. Determination of permission to proceed requires succinct legal argument on the merits of the Petition and may include discussion of the importance legal principles on which it relies. Such hearings are inevitably contested. The outcome of a hearing on permission may conclusively determine the Petition. For all

these reasons, the term "proof, debate or like hearing" is capable of including a hearing on permission.

14. The decision of the Auditor accordingly raises two important points of principle.

14.1. In the first place, if it be the case that the express mention of a type of hearing in the Table of Fees means that time spent on preparation is never payable under paragraph 5 of Schedule 4, many situations presently understood by the profession to qualify for payment for preparation do not in fact so qualify.

14.2. In the second place, if it be the case that permissions hearings are likewise excluded for preparation, this will cause significant difficulties with access to justice. Such hearings are generally expected to be concluded within half an hour: cf RCS 58.9; Practice Note No.3 of 2017 at para 12. This requires counsel to distil and condense factual narration and legal argument. It is not possible for the objectives of permission hearings and of the Practice Note to be met if counsel do not prepare therefor. To require such hearings for be prepared for and conducted for £60 – the fee payable where the hearing concludes in the expected 30 minutes – would not provide a reasonable fee; would thus exclude such work from the cab rank rule; would create difficulties in securing counsel to attend to such hearings; and would thus be detrimental to access to justice.

Disposal

15. The Auditor having erred as aforesaid, he did not go on to consider whether or not the conditions for payment of a preparation fee under paragraph 5 were met or, if so, what level of remuneration was appropriate.

16. Accordingly, the Noter moves the Court to sustain this Note of Objections, and to remit the matter to the Auditor to consider the Noter's claim under paragraph 5 of new.

17. The Noter seeks an award of expenses against any party opposing this Note.

IN RESPECT WHEREOF

IN THE COURT OF SESSION

NOTE OF OBJECTIONS
under and in terms of reg.12 of the Civil Legal Aid (Scotland)
(Fees) Regulations 1989

by Tim Haddow, Advocate

Noter

in the Petition of [redacted] for Judicial Review

Drummond Miller
Glenorchy House
20 Union Street
Edinburgh
Agents for the Noter

AUDITOR OF THE COURT OF SESSION

POINTS OF OBJECTION

for

THE SCOTTISH LEGAL AID BOARD

In the Petition

of

[redacted] (Assisted Person)

for

Judicial review of an undated decision of the Upper Tribunal (Immigration and Asylum Chamber) sent by covering letter dated 5th September 2016 refusing permission to appeal to itself

Diet of Taxation: 28 March 2018 @ 12:00 noon

Auditors Reference: 70045

In terms of Rule of Court 42.2.1A, the Auditors attention is respectfully drawn to the following Points of Objections made by the Scottish Legal Aid Board in relation to the fee incurred by Tim Haddow, Advocate issued on 18 January 2017.

Introduction

1. The Civil Legal Aid (Scotland) (Fees) Regulations 1989 (the "Civil Fees Regulations"), Schedule 4 prescribes Fees of counsel for proceedings in the Court of Session, Sheriff Appeal Court, Sheriff Court and Upper Tribunal for Scotland.

2. Regulation 9 of the Civil Fees Regulations states that the provisions of regulation 8 regarding the submission of accounts, and the provisions of regulation 10 regarding the calculation of fees, the fees allowable to counsel shall be fees for such work as shall be determined by the **Board** to have been actually and reasonably done, due regard being had to economy. No provision is made for the auditor to determine the level of fee payable. It is for the Board to assess whether a fee is allowable or not, provided the assessment is done in accordance with the regulations. In this regard a copy of the decision of Lady Rae in the *Note of Objections of Mark Stewart QC to the Report to the Auditor of the Court of Session,* is attached for information.

3. Regulation 10 provides that counsel's fees in relation to proceedings in the Court of Session shall be calculated in accordance with Schedule 4.

4. Regulation 12 (1) of the Civil Fees Regulations, provides that where any question or dispute arises between the Board and a solicitor or counsel as to the amount of fees or outlays allowable to the solicitor, or as to the amount of fees allowable to counsel, from the Fund

under these Regulations, other than regulation 11, the matter shall be referred for taxation by the auditor.

5. Regulation 12(2) of the Civil Fees Regulations, provides for a reference to the auditor under paragraph (1) at the instance of the solicitor concerned or, where the question or dispute affects the fees allowable to counsel, of the counsel concerned, or of the Board, and the auditor shall give reasonable notice of the diet of taxation to the solicitor or counsel as appropriate and to the Board.

6. Counsel has elected to exercise his right under Regulation 12(1), of the Civil Fees Regulations.

Procedural background

7. The Petition for Judicial Review was drafted by Stephen Winter, Advocate on or around 28 November 2016.

8. The petition was served on the Office of the Advocate General on or around 6 December 2016, and answers were lodged on or around 28 December 2016.

9. On the 11 January 2017, Lord Armstrong, having considered the petition and answers assigned a hearing for 17 January, for a duration of 30 minutes, to determine whether to grant permission for the petition to proceed for the reasons given by Note (below).

   "Note:

   Concerning the petition of [redacted] *for Judicial Review:*

   On the basis of the documentation currently in process, I am minded to refuse permission to proceed on the following basis:

   (1) that, in considering the petitioner's application for permission to appeal, the Upper Tribunal was entitled to approach the matter as it did. Its decision does not disclose any error in fact or law. The First-tier Tribunal applied the correct tests, took properly into account all material and relevant considerations, including the available evidence, the country information, and case law. The conclusions which it reached, including that the petitioner would not be at risk on return to Ethiopia, were ones which were reasonably open to it; and, accordingly,

   (2) that the petition has no real prospects of success.

   (3) that the petition discloses no important point of principle or practice, or some other compelling reason for the exercise of the supervisory jurisdiction.

   That being so, I order an oral hearing in terms of RCS 58.7(l)(b), to allow such limited submissions as the parties may consider appropriate."

10. Stephen Winter, Advocate appears to have been unavailable due to a competing court commitment to attend the oral permission hearing and Tim Haddow, Advocate duly accepted instructions to appear on behalf of the Petitioner.

11. At the oral permission hearing on 17 January 2017, an Interlocutor was pronounced in the following terms:

"The Lord Ordinary, having hard (sic) counsel at the oral hearing, for the reasons given orally, refuses permission for the petition to proceed and decerns; finds the petitioner liable, as an assisted person, to the respondent in the expenses of process; modifies the liability for expenses of the petitioner as an assisted person to Nil In terms of Rule of Court 42.6 and Section 18(2) of the Legal Aid (Scotland) Act 1986."

Counsels legal aid fees

12. The fees payable for Junior Counsel in relation to Petitions for Judicial Review are prescribed in Schedule 4, Table of Fees A, Part 1, Chapter 3. That chapter prescribes fees for:

1.	*Petition for judicial review*	£350.00
2.	*Oral hearing at permission stage or procedural hearing*	
	(a) where the hearing does not exceed 30 minutes	£60.00
	(b) where the hearing exceeds 30 minutes, for each subsequent half hour or part thereof	£50.00
3.	*Substantive hearing*	
	(a) junior alone	£900.00
	(b) junior with senior	£650.00
4.	Written statement of arguments	£200.00
5.	*All other work*	

The fees prescribed in Chapter 6 shall apply

Counsels fee in dispute (Fee of Tim Haddow, issued on 18-01-2017)

13. The fee submitted by Stephen Winter for framing the Petition has been agreed and paid at the rate prescribed in paragraph 1 of Chapter 3 of the Table of Fees - £350.00.

14. The fee submitted by Tim Haddow includes time engaged:

- Reviewing papers and legal research (3 hours);
- Preparing submissions (1 hour); and
- Appearance at Court (40 minutes).

A fee of £310.00 has been charged. £110.00 for the appearance at the permission hearing (paragraph 2 of Chapter 3) and an additional £200.00 in respect of preparatory work in respect of the first two bullet points above.

15. There is no dispute in relation to the fee which is payable for the attendance at court which is stated in Counsel's fee as 40 minutes. That attracts a fee of £110.00 in terms of paragraph 2 of Chapter 3 of the Table of Fees and that element of the fee has been paid as claimed. The terms of Counsel's clerk's letter to the Auditor dated 26 January 2018, is misleading in that it suggests SLAB *"simply offer £60 for an appearance of up to 30 minutes"*. That is incorrect.

16. **The only question or dispute relates to the time engaged in preparation for reviewing papers, legal research and preparing submissions which has been claimed at £200.00.** SLAB and Counsel appear to be in agreement that this is work which may be more accurately described, for feeing purposes, as case preparation. That said, SLAB's view is that standing the terms of the regulations, no additional fee (Schedule 4, paragraph 6) for preparation can be payable in the particular circumstances of this case.

Submissions in support of SLABs approach to the assessment of counsels fees

17. The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2011, ("the 2011 regulations") significantly modified the role of the Auditor to determining the level of fee, in circumstances where the level of fee involves the exercise of discretion, such as where a range of fees is prescribed (Schedule 4, paragraph 2) or where no fee is prescribed for an item of work or class of proceedings (Schedule 4, paragraph 3).

18. Schedule 4 of the 2011 regulations introduced a largely standard fee based system of payment for counsel who are content to accept instructions in a legally aided funded case. In addition, the schedule introduced detailed provisions which underpin the Table of Fees and set out the basis of payment. The terms of Schedule 4, paragraph 4 of the Civil Fees Regulations, are unambiguous and make it clear that *"subject to paragraphs 5 to 7, the fees prescribed in the Tables of Fees in this Schedule include all associated preparation work"*.

19. Schedule 4, Table of Fees A, Part 1, Chapter 3, Paragraph 2 is equally explicit and prescribes a fee for an *"Oral hearing at permission stage or procedural hearing"* in relation to proceedings for Judicial Review. A fee for an oral permission hearing (item of work) in Judicial Review proceedings (class of proceedings) is a standard fee clearly provided for within the Table and one which may be subject to increase but only where the actual time engaged at that hearing exceeds 30 minutes. Accordingly, it is respectfully submitted that neither the Board nor the Auditor, has any statutory authority to fix a separate preparation fee in such circumstances standing the terms of Schedule 4, paragraph 4.

20. It is suggested in Counsel's clerk's letter 26 January 2018, that an additional fee for preparation may be engaged in this case if the Auditor was so minded *"to treat an oral permission hearing as a hearing "like" a debate"*. Thus it would engage the *"proof, debate or like hearing"* test under Schedule 4, paragraph 5. It is respectfully submitted that for the reasons outlined in paragraphs 17 to 19 above and the following paragraphs that it would not be appropriate to so treat an oral permission hearing.

21. It is recognised that Schedule 4, paragraph 5 makes provision for an additional fee for preparation but it *"shall only be allowed if it relates to a proof, debate or like hearing and the hearing-*

    (a) does not proceed (a date or dates having been assigned for the hearing);
    (b) does not exceed a day in duration;
    (c) does not exceed four days in duration, and the Board is satisfied that the case is abnormal in magnitude, difficulty or any other respect; or

(d) exceeds four days in duration, and the Board is satisfied that the case is abnormal in magnitude, difficulty of any other respect, and also that counsel required to consider an abnormally large quantity of documentation."

22. Schedule 4, paragraph 5 is drafted by reference to days or dates assigned for a hearing. The inference, and indeed intention, of the regulations was that these provisions can only be engaged in relation to the substantive hearing in the proceedings which will routinely be set down by the court for a day or more. The fee levels for all such substantive hearings are set at a level that reflects a standard *per day* or *daily fee* payable to counsel rather than by reference to the actual duration of the hearing. All other preparation is incorporated into the prescribed fees by dint of schedule 4, paragraph 4, as part of the "swings and roundabouts" nature in which the fee tables have been structured.

23. The term "*proof, debate or like hearing*" reflects the terms of regulation 11(2)(a) or 3(a) respectively of the Civil Fees Regulations (**Appendix A**), prior to the 2011 regulations coming into force. Regulation 11, is the statutory provision for payments to account for counsel. A payment to account at that time could be made by counsel in terms of Regulation 11(2) and (3)(a) but only where a period of at least 24 months had elapsed since the grant of legal aid (and each 12 months thereafter) or where "*the number of days on which a diet of proof, debate or like hearing is held exceeds 20 days*". That was intended to reflect the substantive nature of such hearings in a case of significant duration. That provision does not apply to ancillary hearings or procedural callings throughout the lifetime of the proceedings even where such hearings, as in this case, may bring the proceedings to an end.

24. The 2011 Regulations allowed for agreement to be reached between the Scottish Legal Aid Board and the Faculty of Advocates on the range of circumstances where counsel could make a claim for a payment to account. The protocol (**Appendix B**) agreed between the Scottish Legal Aid Board and the Faculty of Advocates continues to include a provision for a claim to be made where "*the number of days on which a diet of proof, debate or like hearing is held exceeds 20 days*".

25. The "*proof, debate or like hearing*" is a reference to hearings that attract a standard per day fee as prescribed, for example, in Schedule 4, Table of Fees A, Chapter 6, Paragraph 10 i.e. "*Procedure roll, proof or jury trial (per day)*" or in the case of Petitions for Judicial Review Schedule 4, Table of Fees A, Chapter 3, Paragraph 3 "*Substantive hearing*". Accordingly, where the court grants permission to proceed, preparation for the substantive hearing in those proceedings will be payable in circumstances where the provisions of Schedule 4, paragraphs 5 and 6 are met.

26. A debate in the Court of Session will ordinarily be set down for the procedure roll and to the best of our knowledge will rarely, if ever, be set down for a period of 30 minutes, the standard duration fixed by the courts for oral permission hearings (Court of Session Practice Note 3 of 2017, paragraph 12 and RCS 58.9). That said, even in the unlikely event that a debate was fixed by the court for a duration of 30 minutes the standard "*per day*" fee payable in such cases would be engaged. The hearing does not then revert to a fee payable by reference to the actual time engaged. This once again reflects the "swings and roundabouts" nature of the Tables of Fees.

27. Furthermore, Schedule 4, paragraph 7, which governs the calculation of the fees payable for preparation on the basis that it "*shall be calculated.....into units of 8 hours, each unit being payable at the rate of two thirds of the* ***daily rate*** *(emphasis added) applicable to that hearing as prescribed in the Table of Fees*". It is submitted that this is further clear authority for the position that an additional fee for preparation can only be

engaged in circumstances where the fee payable relates to a hearing for which a daily rate or per day fee is prescribed for that hearing.

28. As previously stated permission hearings are, as a matter of routine, set down by the court for a period of 30 minutes. There is no prescribed *per day* or *daily rate* for such hearings the fee payable being solely by reference to the actual duration of the hearing. That being so, it is respectfully submitted that the **daily rate** fee in relation to preparation for a "*proof, debate or like hearing*" cannot be engaged in circumstances where the preparation undertaken is in relation to an oral hearing at permission stage as prescribed in Schedule 4, Table of Fees A, Chapter 3, Paragraph 2.

29. Moreover, in terms of R58.3(3) of the Court of Session Rules, the Petition must address the basis on which requirement for permission is met. Stephen Winter, advocate has set out the arguments as to why permission should be granted in paragraphs 11-15 of this Petition.

30. The Petition should also (Court of Session PN 3 of 2017, paragraph 9) list the documents necessary for the determination of permission. Those documents were attached to the schedule for service of the petition on page 8.

31. Accordingly, in the event that permission is refused and an oral hearing takes place, the preparation and arguments in support of permission will or should, in the main, have already been considered at the stage of drafting the petition. That appears to be recognised by the interlocutor 11 January 2017, which sets out the reasons why his lordship is minded to refuse the petition and orders an oral hearing to allow "*such limited submission as the parties may consider appropriate*". That reflects the short duration of permission hearings. The oral hearing for the most part is an amplification of what is already provided for in the petition and answers.

32. The payment for a Petition for Judicial Review is set at an enhanced level to any other initiating court document in the legal aid Table of Fees in recognition of the limited scope for pleadings, the need to obtain permission to proceed and the shorter duration of judicial review proceedings. The prescribed fee, itself unambiguous, should be considered in the round taking into account the usual work preceding a permission hearing, and, if granted, which it should be in the context of proceedings raised where the court is satisfied that the petitioner has a sufficient interest in the subject matter, it has a real prospect of success and that the petition raises an important point of principle or practice or that there is some other compelling reason for allowing the application to proceed, the conduct of the proceedings to a conclusion.

33. In the particular circumstances of this case there was a change of counsel between the drafting of the Petition and the oral permission hearing. Whilst that is not unusual it is respectfully submitted that it is a consequence of that change that will have necessitated the level of additional preparation that has been undertaken in this case.

34. The payment system is largely based on a standard fee system and operates on a "swings and roundabouts" basis. In looking at whether a balance has been struck, it is necessary to look beyond an individual fee or indeed an individual case and consider the payment arrangements across the whole spread of the work which counsel undertake by way of civil legal assistance over a given period.

The Auditor for the reasons outlined above is therefore invited to tax off the preparation charges of £200.00 as referred to in paragraph 14 and 16 above.

IN RESPECT WHEREOF

[redacted]

Thistle House,
91 Haymarket Terrace,
EDINBURGH EH12 5HE.

Appendix A

Payments to account (prior to the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2011)

11. (1) A solicitor acting for, or counsel instructed on behalf of, a person receiving civil legal aid may prior to the completion of the proceedings for which the legal aid was granted submit a claim to the Board, in such form and complying with such terms and containing such information as the Board may require for assessment purposes, for payment of sums to account of his fees necessarily and reasonably incurred in connection with these proceedings.

(2) A claim may be made under this Regulation only in relation to any case where -

(a) in the proceedings for which the civil legal aid was granted the number of days on which a diet of proof, debate or like hearing is held exceeds 20 days; or

(b) a period of 2 years has elapsed since the date on which the Board gave notice in writing of the grant of civil legal aid

(3) A second or subsequent claim may be made under this Regulation -

(a) where the number of days on which a diet of proof, debate or like hearing is held exceeds 20 days in any period subsequent to that covered by the immediately preceding claim; or

(b) where the period mentioned in paragraph 2(b) has elapsed, after an interval of not less than 12 months has elapsed since the immediately preceding claim was made.

(4) The amount of any payment in respect of a claim under this Regulation shall be 75 per cent of the fees that will become eligible for payment and earned during the period covered by the claim.

(5) The making of a claim under this Regulation shall not be regarded as an account of expenses nor shall the claim affect in any way the provisions of regulation 8 above with regard to the submission and acceptance of accounts prepared in respect of fees and outlays allowable to solicitors.

(6) Where payment has been made in accordance with the provisions of this Regulation but the payment made exceeds in the case of any solicitor acting for the assisted person the total fees and outlays allowable to that solicitor in respect of the legal aid or in the case of any counsel instructed on behalf of the assisted person the total fees allowable to that counsel in respect of the legal aid, the excess shall be repaid to the Fund by such solicitor or counsel as the case may be:

Provided that where by reason of a failure to comply with the requirements of regulation 8 above with regard to submission of an account of his fees and outlays the amount of the fees and outlays allowable to a solicitor to whom payment has been made under this Regulation cannot be ascertained, the Board may require such solicitor to repay to the Fund the whole amount paid under this Regulation or such part thereof which it is satisfied may have been overpaid to the solicitor.

Appendix B

PROTOCOL BEWEEN THE SCOTTISH LEGAL AID BOARD & FACULTY OF ADVOCATES IN RESPECT OF PAYMENT TO ACCOUNT CLAIMS IN TERMS OF THE CIVIL LEGAL AID (SCOTLAND) (FEES) AMENDMENT REGULATIONS 2011

1. This protocol applies only in respect of work done or outlays incurred on or after 1 April 2011.

2. A claim by counsel may be made only in relation to any case where the proceedings have not concluded and:-

(a) A period of no less than 6 months has elapsed since the date on which the Board gave notice in writing of the grant of civil legal aid;
(b) An interval of no less than 6 months has elapsed since the immediately preceding claim was made; or
(c) Counsel reasonably anticipates not receiving further instructions in the proceedings;
(d) Where the number of days on which a diet of proof, debate or like hearing is held exceeds 20 days in any period subsequent to that covered by the immediately preceding claim.

3. The amount of any payment that will become eligible for payment and earned during the period covered by the claim by counsel under this protocol shall be:-

    - **100% of the prescribed fees; or**
    - **The base fee where the work relates to a fee within a range; and**
    - **During the relevant period, no other fees, including preparation will become eligible for payment until the conclusion of the proceedings and the submission of the solicitors and counsels final account.**

4. The intention of the payment to account provisions is to make payment to counsel as quickly as possible. In the time available, it will not be possible or appropriate, to undertake the same sort of detailed scrutiny that is made when the full and final account (including the solicitors account) is submitted. Where a payment to account is made, this does not imply that the payment is accepted as a valid charge under the civil legal aid certificate. If it is subsequently determined either through negotiation with counsel's clerk or taxation that any fee(s) is not properly allowable, or allowable in part only, counsel will be required to make the necessary repayment to the Legal Aid Fund.

5. Where counsel elects to make a claim for a payment to account this does not affect counsels right, where appropriate, to accept the fees recovered by way of judicial expenses in lieu of any legal aid claim. Where a claim for such fees is made the Board shall deduct from the sum payable the amount of any payment made, or due to be made, by it to Counsel, or any other Counsel who previously acted for that person, in respect of those proceedings under the legal aid certificate(s).

6. The previous arrangements will continue to apply to work done or outlays incurred prior to 1 April 2011.

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G2 4JR

Date of Issue 18-01-2017

FSL Reference K013/WO160043/002

Contact Name DARIUS KATANI

Contact Ref 1359/4

Case [redacted] -V- UPPER TRIBUNAL (SECRETARY OF STATE FOR THE HOME DEPARTMENT)

Client [redacted]

Correspondent: D500 DRUMMOND MILLER LLP

Advocate H55 Tim Haddow

Case Type CIVIL LEGAL AID

Legal Aid Certificate No. CI/C094331116

Issued

VAT Reg No. 241 0481 47

E/R 23/11/16.

Date	Details	Amount
17-01-2017	Receive instructions; review papers and legal research (3 hours); prepare submissions (1 hour); appear before Lord Armstrong (40 mins). This appearance was for an oral permission hearing. The court (given the constraints imposed by the rules of court regarding time limits for the permission stage) has adopted the practice of fixing oral permission hearings without reference to the availability of counsel principally instructed. The inevitable consequence is that it	

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Sort Code 80-02-24 Account 00373977

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CLAIM	ORDER	ABT
£310.00	£110.00	£200.00

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Legal Aid Certificate No. **Issued**
CI/C094331116
Correspondent: D500 DRUMMOND MILLER LLP
Advocate H55 Tim Haddow
VAT Reg No. 241 0481 47

Date	Details	Amount
	is necessary for agents to instruct counsel who have no previous knowledge of the case. The oral permission hearing, albeit generally brief, is a hearing on the merits of the case and, if unsuccessful, will determine the case. In these circumstances (which applied to this case) it is both necessary and reasonable for counsel instructed to fully read-in to the case, develop a comprehensive understanding of the case in the petition and answers, and prepare submissions. In	

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Advocate H55 Tim Haddow

Case Type CIVIL LEGAL AID

Legal Aid Certificate No. CI/C094331116

Issued

VAT Reg No. 241 0481 47

Date	Details	Amount
	this case, the note of issued by the Lord Ordinary ordering the permission hearing did not substantially narrow the issues in focus, requiring the full breadth of the petitioner's case to be prepared. In these circumstances, it is reasonable that a fee be paid to reflect the necessary time spent in preparation. A fee of £200 is proposed for this work, in addition to the normal fee for appearance. NO PREPARATION PAYABLE OR 'READING IN' FEE ALLOWABLE. ATTENDANCE FOR ONLY RECRETABLY.	310.00

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Contact Name DARIUS KATANI

Contact Ref 1359/4

4 of 4

Case [redacted] -V- UPPER TRIBUNAL (SECRETARY OF STATE FOR THE HOME DEPARTMENT)

Client [redacted]

Correspondent: D500 DRUMMOND MILLER LLP

Advocate H55 Tim Haddow

Case Type CIVIL LEGAL AID

Legal Aid Certificate No. CI/C094331116 **Issued**

VAT Reg No. 241 0481 47

Date	Details	Amount
	Case is now Complete	

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Net Total	310.00
VAT @ 20%	62.00
FEE TOTAL	372.00

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FSL Reference K013/WO160043/002

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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.