

██████████
LEGAL ADVICE & ASSISTANCE: AA/07/2123200402

Airdrie 22 March 2004. Having resumed consideration of the account of expenses in this case, I tax the account at £58.55.



Jim Hamilton
Auditor of Court

This diet of taxation took place on 12 March 2004. Mr Kelly appeared on behalf of Mark Burke, ██████████ appeared on behalf of the Scottish Legal Aid Board.

At the outset of the diet, I was advised of the sole objection to the account. This related to the fee charged for the letter of 30 July 2002 sent to ██████████. This correspondence provided detailed information regarding the Prison Complaints Procedure

Mr Kelly kindly lodged a copy of the Advice and Assistance (Scotland) Regulations 1996 and an extract from the Scottish Legal Aid Handbook – January 2004 Section B13, Part II Advice & Assistance – Section 6.

Mr Kelly referred to the following case- 2002 SC Scott Davidson -V- Scottish Ministers and a subsequent Reclaiming Motion. This matter related to a Judicial Review of a decision to continue to detain Mr Davidson in inhuman and degrading prison conditions.

Mr Kelly referred to comments by Lord Johnston in his interlocutor of 26 October 2001 and by Lords Marnoch and Hardie in their respective interlocutors of 18 December 2001 in relation to the Reclaiming Motion.

Lord Marnoch stated “.... As I see it, at least two other aspects of doubtful competency arising out of the fact that in this case the petitioner chose to eschew recourse to the procedure for complaints by prisoners set out in Rules 104 *et. seq.* of the Prisoners and Young Offenders Institutions (Scotland) Rules 1994 (as amended). Had this procedure been followed there is, I think, little doubt that the Governor’s decision, if adverse to the Petitioner, would have been subject to judicial review.”

Lord Hardie stated “Had the reclamer pursued his remedies under the Prison Rules, the present application might have proved quite unnecessary.”..... “It is a matter for future consideration whether the court should dismiss at the earliest opportunity any similar such petitions unless the petitioner has had recourse to and exhausted his remedies under the Prison Rules.”

Mr Kelly argued that in light of these comments it had been necessary to repeat the terms of the relevant Prison Rules to his client. These were involved procedures, his client was inarticulate and it was significant for him to have this information in a self-contained letter. Had he simply appraised his client of the content of the Rules at a meeting, it would have been more than likely that the client would have made further contact with him.

Mr Kelly also indicated he had taken care only to provide the necessary information and not all of the rules referred to had been fully narrated. In addition, following the narration of each rule, he had provided supporting information.

Mr Kelly was of the view that all of this work fell within the scope of Regulation 17 (1) (a) of the 1996 Regulations and accordingly the account of expenses should be approved in its full terms.

██████████ stated there was no budget allocated to this particular area of work and went on to provide information on the annual number of advice and assistance certificates granted to solicitors. He then went on to provide an indication of what the annual cost would equate to should such lengthy letters be approved.

██████████ submitted the letter was long and complicated and did not really say anything. He further submitted that either the client should have been advised if he had a claim or not and if there was one, how this should have been pursued. Most of the letter had been a re-statement of the Rules and that it was entirely unreasonable to spend so much of the letter on the Rules.

There was joint agreement that since no application had been made to the Scottish Legal Aid Board for authority to exceed the financial limit in terms of Regulation 12 of The Advice and Assistance (Scotland) Regulations 1996, any approval of the account of expenses would require to be abated to a maximum amount of £80.00.

At the conclusion of the submissions, I advised parties that I would reserve judgement on the matter.

Decision

I am of the view, that given the comments made by their Lordships in the Judicial Review and Reclaiming Motion, it is clear that complaints by prisoners should be taken forward in terms of the procedures laid down in the Prison Rules.

I am not of the view however that it is necessary for the relevant rules to be narrated as contained in the letter of 30 July 2002. Mr Kelly referred to the significance of having such information in a self contained letter. There was general agreement that the Rules were quite involved but I can see no reason why the relevant extracts could not have been photocopied and attached as an appendix to the letter itself which would provide the necessary advice and, where appropriate, any supporting information regarding the Rules.

JA

I was not persuaded by [REDACTED] argument regarding the lack of budget and financial implications of any future lengthy correspondence. I am of the view that each case is required to be considered on its own merits.

Therefore, I have decided that the letter should be restricted to 8 sheets which precludes the entries relating to the Prison Rules.

AM