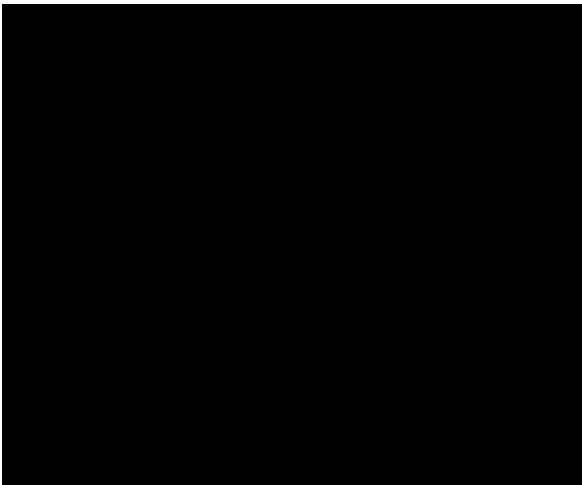



AUDITOR OF COURT GLASGOW (INTERIM)
REPORT ON TAXATION IN FEES DISPUTE BETWEEN
BILKUS & BOYLE, SOLICITORS, CARDONALD, GLASGOW
AND
SCOTTISH LEGAL BOARD
RELATING TO IMMIGRATION ACCOUNTS/ VISITS TO DUNGAVEL IRC

10 accounts in dispute:



SA & Others

INTRODUCTION AND BACKGROUND

1. This matter was first brought to my attention as Glasgow Auditor in June, 2012 by Mr C Porter (CP) of Bilkus & Boyle (B&B), relating to what he described as the Scottish Legal Aid Board (SLAB) not adhering to an agreement with his firm which dated back to around December, 2011. Thereafter there was protracted correspondence between myself and B&B and SLAB on whether a taxation diet was necessary at that time. I did fix a diet for **10 December, 2012** which was attended by Mr R McKinnon (RM) with Leanne McCrone (LM) both of B&B, and by  (CG) from SLAB. After hearing parties' partial submissions, it was agreed by all that the taxation diet that day should be adjourned to enable further discussions between both parties as at that time there appeared to be much common ground and little in dispute, certainly not enough material disagreement between the parties to justify continuing with a formal taxation diet on that date.

2. The parties then had a long meeting on 10.12.12 in the Auditor's Office (without me attending) and came to a further apparent 'agreement' on how these immigration accounts should be claimed and paid. A letter from SLAB (DH) to B&B dated 28.1.13 was later sent which contained 9 points which had been discussed at their meeting on 10.12.12. The first paragraph of that letter refers to 'an earlier agreement between the two parties on or about December 2011'. That December 2011 'agreement' and the subsequent further purported agreement of 10.12.12 are the source of the dispute which is now before me for taxation.
3. In June, 2013 I was again contacted by CP of B&B as the purported 10.12.12 'agreement' had not been adhered to by SLAB, in his view, and that he sought another taxation diet to deal with x 3 "sample " accounts ([REDACTED]) in dispute with SLAB. After several email exchanges between myself and the two parties to be sure that a further taxation diet was appropriate, I fixed a further taxation diet for 15.8.13. This second diet was fixed at the insistence of B&B though SLAB did not agree that it was appropriate that another taxation diet be fixed at that time. In particular, I received from DH at SLAB on 13.8.13 an email which included the following comment, *"..I do not believe that a taxation is the appropriate forum to revisit and dissect an agreement or to seek to enforce the Board's understanding of such an agreement..."* In my opinion, DH's comment was well-founded and, as I have said before to both parties, I do not think it is a primary function of an Auditor to interpret a form of words which parties may have agreed upon and then apply that to an account in dispute. An Auditor's function is usually to apply fees regulations and interpret and apply those to accounts lodged for taxation.
4. The taxation **diet of 15.8.13** was attended by CP and LM and by DH and CG for SLAB. It lasted 90 minutes and lengthy submissions were made. The list of "sample " accounts in dispute had by then increased to x 10, all of which are listed at the heading of this report. The main thrust of the submissions on 15.8.13 focussed on the misunderstanding(s) or different interpretations by parties relating to their purported agreement(s), particularly relating to (i) reasonable travel claims to/from Dungavel IRC depending on how many 'clients' i.e. existing or potential were being seen on such visits; (ii) apportionment of travel costs between multiple accounts ; (iii) SLAB's emphasis on the importance of solicitors' awareness of the precise detail within their Advice and Assistance Guidance, and the distinction between that category of legal aid and the Regulations and Guidance which applies to Criminal or Civil Legal Aid accounts. I was also provided with 3 of the relevant 10 case files from B&B and I was provided with 37 pages of L.A. Regulations and Statutes to consider by SLAB. At the close of the diet of 15.8.13 it was agreed that a continued diet be assigned to enable parties to consider their opponent's submissions of 15.8.13 and to see if issues could be narrowed or agreed. The continued date chosen was 27.9.13, which later transpired to be unsuitable and a further date was then fixed for 14.11.13.

5. On 14.11.13 at the continued taxation diet, B&B were represented by CP and LM and SLAB by solicitor [REDACTED] (EG) and CG. SLAB had sent me written submissions (a further 5 pages) since the last diet. B&B had by then provided me with all 10 files now included in this dispute i.e. the 10 accounts listed at the head of this report. Further submissions were made by parties on 14.11.13, including parties summarising their main points for a decision by the Auditor. At this diet both parties appeared to agree [according to my notes] that the disputed 10 accounts, although only a random sample of B&B's several files now awaiting payment, that those 10 were all historical and that the issues being discussed at the taxation diets appeared to be resolved now for the more recent and current similar Dungavel IRC accounts. This was partly due to changes made by Dungavel IRC management to the interviewing and appointments system in place there.

B&B indicated that they would provide me with their written response and submissions (i.e. responding to SLAB's written submissions received by B&B and myself just prior to 14.11.13). I received B&B's written submissions (15 pages) on 17.1.14, which brought to an end the written material I was to consider (now 57 pages) as well as the oral submissions made at 3 taxation diets spanning 11 calendar months.

6. I have read carefully all of SLAB's written submissions on all 10 disputed accounts, in conjunction with the LA accounts copied to me and have also read those together with the separate B&B written responses to each submission item by item. It remains my view as expressed earlier to Parties that this exercise should have been carried out between the 2 parties more fully before involving an Auditor in the entry by entry minutiae of 10 such accounts, but I have been asked to decide upon the issues in dispute within these 10 accounts and provide a workable decision to assist in that exercise. I therefore find myself almost in the position of 'doing the job' of the SLAB Assessors and therefore have to substitute my own knowledge and experience as Auditor of Court of taxing various categories of accounts and applying what I consider to be fair and reasonable judgements in all accounts.

Applying that experience and crucially also applying the general principles of fairness in taxation of accounts by allowing expenses which are proper and reasonable, I have found that every point of objection raised by SLAB has been answered systematically in the 15 pages of B&B's written submissions, in which they detail a satisfactory explanation (to me at least) by way of their written explanations from a solicitor which enables me to rule in B&B's favour in all of the points in all 10 accounts. I also find it difficult on the basis of what I heard coupled with written submissions to disagree with a solicitor's assessment [a solicitor being an officer of the Court] of the degree of urgency they consider appropriate relating to their own clients (or potential clients).

7. In view of my decision to uphold all of B&B's submissions on the detailed abatements proposed by SLAB, I consider that my function as Auditor (in lieu of SLAB's assessors) is complete relating to this taxation exercise of all 10 accounts. I do not propose to take the taxation exercise to the next step of detailing precisely how much each account is to be taxed at after the abatements proposed by SLAB are all restored to the 10 accounts. I will leave the detail of that task to those at SLAB and B&B who deal with that routinely, perhaps even daily ?
8. I turn now to the subject of travel to/from Dungavel which was the subject of the lengthiest submissions by all 6 professionals with whom I have had dealings in these 3 taxation diets. There is no doubt that the very extensive Legal Aid Regulations and Statutes to which I was referred give very precise detail of when travel costs can and cannot properly be claimed and also provide great detail as to when these should be apportioned between 2 or more clients/ accounts. Interpretation of those Regulations was the crux of the issue in dispute in these accounts. On one hand, it was difficult to rule against SLAB on their strict adherence to and application of those Regulations which they do routinely apply stringently, however, in the circumstances of this remit to me for taxation there is a very important additional and complicating element, namely the purported 'agreement' between SLAB and B&B which was apparently reached around December 2011 and was then discussed and apparently "adjusted " between them again in the Glasgow Auditor's room on 10.12.12.
9. It was an unusual remit to the Auditor in my opinion as detailed at para (3) of this report in the sense that I was being asked to decide on these accounts on the basis of that purported agreement. I consider that it would be inconsistent of me to accept B&B's submissions [explanations effectively] relating to the abated entries described in para. 6 and 7 above in their 15 page submissions, and then not to accept their submissions on their apparent understanding of that purported agreement and on how they applied that understanding and interpreted that relating to their subsequent travel claims. B&B repeatedly emphasised that their accounts were submitted 'in good faith' and in accord with not only the terms of the agreement but in the spirit of that agreement.
10. My decision is therefore to uphold B&B's sub missions on their interpretation of that agreement on the travel issue with the following proviso, namely that they would not be entitled to travelling at all, unless visiting Dungavel to see 2 or more detainees on the same day. That proviso also has a caveat though, i.e. that the 'minimum of 2 detainees' "rule " would not apply where urgency to visit one only has been demonstrated. For the avoidance of doubt urgency was demonstrated [to me at least] for all visits detailed in the 10 accounts disputed as narrated in B&B's written explanatory submissions responding to SLAB's abatement notes.

11. I emphasise that the purported agreement appears to have confused and complicated the issue of SLAB's usual strict interpretation of their own Regulations. I believe SLAB have assumed a different "starting- point" for multiple-client visits than B&B have. SLAB staff have the advantage of their complete familiarity with their own Guidance. B&B may have been [at that time] less familiar ,although I accept that they are a firm of legal professionals and thus not to be equated to lay persons or of similar status, but B&B's first point of reference in their whole argument from the outset in this taxation was the purported agreement and the spirit and terms of it, not how that "agreement " could be interpreted if read in conjunction with the detailed L A Regulations. I understand that the 'agreement' covered more than these 10 B&B "sample " accounts over a period in 2012 but that the issues covered in this taxation, do not arise for accounts lodged more recently than 2012. My reason for referring to this, is that I consider that this Report/ decision should apply to these 10 accounts and any other similar accounts in dispute for the period up to the date of the first taxation diet of 10.12.12, but that this decision should not necessarily be taken as a precedent to be followed for any accounts for work after that date. I cannot be sure of the precise date when the respective parties' positions changed relating to the purported agreement, but I believe it may have been initiated by their meeting of 10.12.12.
12. I have issued this Report to both parties but have not completed precise calculations on what I consider to be the correct sums 'as taxed' on all 10 accounts. For that reason I do not intend to issue fee certificates for any "account as taxed" but will leave it to parties to agree the revised sums due for all 10 accounts. The total sum in dispute across all 10 accounts was £696.85, that being 32% of the overall sums of the accounts of £2,178.81. Accordingly, the taxation fees would have been payable by SLAB as the unsuccessful party in the taxation diet(s). In all the circumstances of this highly unusual taxation procedure, however, I will waive all taxation fees.

Report issued by email to all parties on 20th June, 2014

K Carter
Auditor of Court (interim)
Glasgow
20 .6.14

DIET OF TAXATION

GLASGOW SHERIFF COURT

14 NOVEMBER 2013 @ 14:30 PM

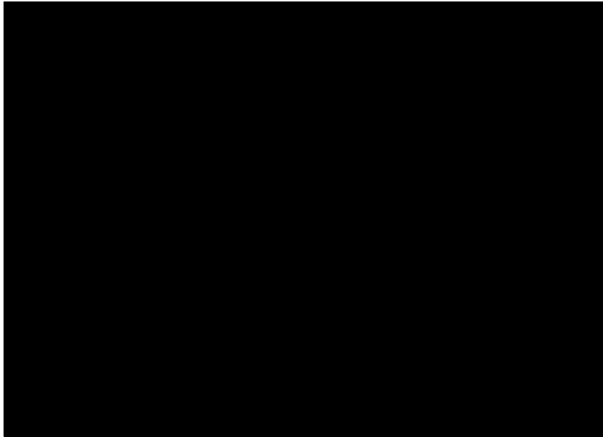
SUBMISSIONS FOR THE SCOTTISH LEGAL AID BOARD

RE: ACCOUNTS LODGED FOR TAXATION BY BILKUS & BOYLE, SOLICITORS

The Scottish Legal Aid Board respectfully asks the Auditor to consider in coming to his decision:

1. The Board's submissions and the supporting documentation including the accounts of expenses attached.
2. The solicitors file notes for those entries, which form the basis of the dispute.
3. Having regard to Regulation 17 of the Legal Advice and Assistance (Scotland) Regulations 1996; and the Board's published guidance (attached) - whether it is necessary and reasonable, due regard being had to economy, for the solicitor to receive payment for travelling to Dungavel Detention Centre to see one client when there (a) urgency has not been demonstrated; and (b) the solicitor has attended within a few days of seeing the client, to see other clients?
4. At the initial meeting with the client whether any actual advice was given on a matter of 'Scots Law' as defined within Section 6 of the Legal Aid (Scotland) Act 1986; and therefore whether the initial entry is chargeable, including any travel incurred.
5. If travel is considered appropriate and therefore chargeable - where the solicitor has travelled to see more than one client, but has chosen to charge all the travel to one client (a client already in receipt of advice and assistance) - regard should be given to the Board's guidance, Section 10.9 on apportionment of travel (attached) and whether it is reasonable for one client to subsidise another.

Accounts in dispute:



1. Points of dispute:

- 1) Clients are visited in respect of mainly non urgent matters and all the travel is charged to the existing client.
- 2) Not only is the matter often not urgent, it is contrary to the Board's guidance, which makes it clear that travel should be apportioned between all cases, whether legally assisted, privately funded or pro bono. At the time of travel if the person is not in receipt of advice and assistance any travel is pro bono or privately funded and the travel should be apportioned accordingly.
- 3) Mr Porter's position at the last Diet of Taxation was that a person only became a client as and when admitted to advice and assistance - the travel being apportioned on the returned journey, but not the outward journey. This is not correct. The person is a client to whom the solicitor has travelled to provide advice to, whether legally assisted, privately funded or pro bono.
- 4) From the information detailed in the solicitor's file notes, no advice seems to have been given at the initial meeting. We are concerned that the only information obtained from the client was for the purpose of assessing eligibility for advice and assistance, which is not chargeable. Otherwise we would have expected the solicitor to have taken details of the client's case at the initial meeting unless there was a reason why this was not possible. The time claimed for the initial meeting in each case is exactly 10 minutes. This pattern is reflected in all the cases listed below. This represents an unnecessary duplication of effort and cost.

Procedure

The procedure for a client detained in Dungavel for instructing a solicitor is as follows:

- The person chooses a solicitor from the list of solicitors provided.

- Dungavel faxes the solicitor of choice with the person(s) details.

If the client is instructing a solicitor for the first time the solicitor either has the choice of:

- Contacting the person by telephone to establish if they are eligible on all the relevant criteria to receive advice and assistance; and if they are satisfied that the person is eligible can grant advice and assistance; or
- The solicitor can travel to Dungavel to see the potential client in person to establish if they are eligible.

In the first scenario the solicitor will be entitled to be paid for travelling to Dungavel to meet with the client; but in the second scenario travel will not be chargeable as eligibility will not have been established.

Where a solicitor has travelled to meet with a client we would need to be satisfied before making payment that a meeting was actually reasonable and necessary; and that the work carried out was done due regard being had to economy, in accordance with the test laid down in our Regulations. We would therefore expect a solicitor to arrange their business in the most cost effective way, i.e. if the meeting is not urgent and there are other clients to be seen then the solicitor should make arrangements to see all potential new and existing clients on the same day. Most firms who attend Dungavel arrange their business in this way. Further, persons detained in Dungavel all have the use of mobile telephones therefore the solicitor can contact them. It is not always necessary to travel to see them in person.

Where we are satisfied that the matter was urgent and it was appropriate for the solicitor to travel to see the client then we would not have a difficulty with this even if the solicitor was seeing only one client. For example, if removal directions had been fixed and deportation was imminent. The Board's position on this has been made clear throughout.

2. Fees allowable to solicitors

Solicitors are entitled to payment in terms of regulation 17 of the Advice and Assistance (Scotland) Regulations 1996.

17. (1) Subject to paragraph (2) below, fees and outlays allowable to the solicitor upon any assessment or taxation mentioned in regulations 18 and 19 in respect of advice or assistance shall, and shall only, be -

- (a) fees for work actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given, due regard being had to economy, calculated, in the case of assistance by way of representation, in accordance with the table of fees in Part I of Schedule 3 and, in any other case, in accordance with the table of fees in Part II of Schedule 3; and

(b) outlays actually, necessarily and reasonably incurred in connection with that matter, due regard being had to economy, provided that, without prejudice to any other claims for outlays, there shall not be allowed to a solicitor outlays representing posts and incidents.

(2) The fees and outlays allowable to the solicitor under paragraph (1) above shall not exceed the limit applicable under section 10 of the Act as read with regulation 12.

3. Board Guidance

10.1 Travel

As a general rule the client should travel to the solicitor.

You should only need to travel to see a client if the client

- is unable to attend your office through disability or ill-health; or
- is being detained, for example, in prison or under the mental health legislation.

The cost of travel will not otherwise be chargeable to the Fund except in the most exceptional circumstances.

In undertaking travel you should consider the most economic method taking into consideration the time taken against the cost. For example:

The journey may be cheaper by train but may take longer than it would travelling

- by car thereby increasing the time cost.

On the other hand it is likely that travel from one city centre to another would be

- cheaper by train than by car.

In some circumstances a cheap flight may be the most economic way of travelling

- taking into account the total costs involved.

10.2 When is travel chargeable?

Travel to the client under advice and assistance is only chargeable if you are satisfied, having been in contact with the client and taken basic information, that:

- the client is financially eligible;
- the advice is to be given on a matter of Scots law; and
- the nature of the advice is such that the likely cost of giving it is reasonable.

Unless you are satisfied on these matters at that stage, you cannot make a charge until, having travelled to the client, you have taken enough information from them to satisfy you as to their basic eligibility for advice and assistance.

10.8 Apportionment

It is important that one publicly-funded client does not subsidise advice or representation provided to another client, whether legally-aided or not. It must be clear and transparent in your accounts that travel and, where appropriate, waiting time, has been properly apportioned to ensure that

- one client does not subsidise another client, as some certificates may be subject
- to a contribution or clawback; and
- there is no duplication of charging.

We have to deal with many thousands of individual accounts and it must be clear on the face of each account what proportion of travel (and waiting time) has been allocated to that account (see sections 10.10 to 10.16 below).

10.9 Apportionment of travel

Where you need to travel, whether to see a number of clients or conduct a number of hearings, you must apportion travel time by the number of cases dealt with - for example:

travel to and from hearing	$1\frac{1}{2} \text{ hr} \div 3 \text{ cases} = \frac{1}{2} \text{ hr each}$
waiting time	10.00 to 10.15 am
conduct time	10.15 to 1.00 pm

The total time allowed in the case in this example, three cases having called on this day, is $3\frac{1}{2}$ hrs only (three hours conjoined waiting and advocacy time, plus the one half hour travel attributable to this case). Other cases on the day covered by an ABWOR certificate would be dealt with in the same way. Waiting time is allocated to the next case calling where advocacy is involved (see [paragraph 9.10](#)).

You must apportion all travel and mileage costs equally across all cases, whether legally assisted, privately funded or pro bono, and whether the cases involve the same client or different clients. You must not charge travel and mileage against one case and nothing against the others as all costs must be apportioned equally across all cases. As indicated, some cases may be subject to clawback or have contributions. Each case should reflect the actual cost incurred.

Any mileage charge should also be apportioned by the number of cases dealt with, dividing the total cost between each of the cases.

4. Disputed accounts

The issues detailed above are common to all the accounts listed below.

Case No1:

Client Name	
Reference	3857723713
Subject Matter	Asylum
Authorised	£950.00

Expenditure	
Account Claim	£244.95
Paid/Offered	£166.05
Sum in dispute	£79.00

The disputed entries of £79.00 are in respect of travel time and mileage for the meeting on 27/02/13.

25/02/13 - Advice and Assistance commences, with a 10 minute meeting at which according to the file note no advice appears to have been provided.

3853929513 - These details appear on the file note as visiting this client on the same day. However the online account submitted states that the meeting with this client is on 22/02/13 & not 25/02/13.

27/02/13 - The file entry narrates that the client had his screening interview in the morning. Details were taken from the client following this when a statement was taken. The client had previously been represented by a solicitor in London prior to being transferred to Dungavel. (The substantive interview normally takes place within 2-3 weeks of the screening interview having taken place and after a caseworker has been appointed to the client. A solicitor is not present at the screening interview and the substantive interview, as they are not permitted to have any input to any questions put to the client).

Reason for abatement - There is no urgency until the client has had a decision in respect of the Asylum application. We have paid for the meeting to obtain details from the client. However, we are not satisfied that it is reasonable to meet the cost of travel to see one client when there is nothing urgent to discuss 'due regard being had to economy'. The client could have been seen on the same day the firm travelled to Dungavel to see other clients, i.e. on 26 & 28 February 13.

Initial meeting on 25/02/13 is 10 mins, further meeting to ingather information.

Case No 2 :

Client Name	
Reference	2779461012
Subject Matter	Asylum
Authorised Expenditure	£950.00
Account Claim	£181.63
Paid/Offered	£128.13
Sum in dispute	£53.50

The disputed entries of £53.50 are in respect of travel time and mileage for the meeting on 25/10/12.

18/10/12 - Advice and Assistance commences, with a 10 minute meeting at which according to the file note no advice appears to have been provided.

25/10/12 - One hour meeting with the client to ingather information.

Reason for abatement - There is no urgency until the client has had a decision in respect of the Asylum application. Neither the screening interview nor the substantive interview have taken place. Whilst a meeting to ingather information is not considered unreasonable and has been paid for, it is the cost of travel which is not considered to have been undertaken having due regard to economy nor being reasonable in terms of Regulation 17. The firm also attended Dungavel on 19,22,23 & 24 October 12.

Again the issue arises of the initial meeting being 10 mins.

Case No 3 :

Client Name	
Reference	3875890213
Subject Matter	Asylum
Authorised Expenditure	£950.00

Account Claim	£260.60
Paid/Offered	£181.60
Sum in dispute	£53.50 (not all matters appear to be in dispute)

The disputed entries of £53.50 are in respect of travel time and mileage for the meeting on 22/03/13.

22/03/13 - Advice and Assistance commences, with a 10 minute meeting at which according to the file note no advice appears to have been provided.

Reason for abatement- This matter is not urgent and no other clients have been visited, as such the whole return travel is charged to this account. The firm also attended Dungavel on 26, 27 & 28 March 13.

26/03/13 - One hour meeting with the client to ingather information.

On this occasion the travel was paid as the meeting has been apportioned with other clients. However, the pattern of an initial 10 minute meeting with the client at which no advice appears to be given followed by a further meeting to ingather information continues.

Case No4 :

Client Name	
Reference	3859390213
Subject Matter	Bail
Authorised Expenditure	£300.00

Account Claim	£295.20
Paid/Offered	£175.45
Sum in dispute	£119.75

The disputed entries of £119.75 are in respect of travel time and mileage for the meeting on 28/02/13.

27/02/13 - Advice and Assistance commences, with a 10 minute meeting at which according to the file note no advice appears to have been provided. The client's papers are given to the solicitor which clearly shows he has been made an offer of SOS bail.

28/02/13 - A 40 minute meeting with the client to go over the offer and explain the application will hopefully be submitted today.

Reason for abatement- There had been no change in circumstances from the previous day, at which point the solicitor did not deem it sufficiently urgent that the issue be dealt with immediately. Whilst a meeting to ingather information is not considered unreasonable and has been paid for, it is the cost of travel which is not considered to have been undertaken having due regard to economy nor being reasonable in terms of Regulation 17.

Again the issue arises of the initial meeting being 10 mins.

Case No 5 :

Client Name	
Reference	3824124613
Subject Matter	Asylum
Authorised Expenditure	£950.00

Account Claim	£126.19
Paid/Offered	£104.59
Sum in dispute	£ 21.60

The disputed entries of £21.60 are in respect of travel time and mileage for the meeting on 08/01/13. Please note solicitor has been requested to submit a supplementary payment for the meeting time on 08/01/13, no charge was made when the original account was submitted. As this is online only the solicitor can make amendments such as these.

07/01/13 - Advice and Assistance commences, with a 10 minute meeting at which according to the file note no advice appears to have been provided.

08/01/13 - A one hour meeting with the client to ingather information.

Reason for abatement - There is no urgency until the client has had a decision in respect of the Asylum application. Neither the screening interview nor the substantive interview has taken place. Whilst a meeting to ingather information is not considered unreasonable and will be paid for, it is the cost of travel which is not considered to have been undertaken having due regard to economy nor being reasonable in terms of Regulation 17. The firm also attended Dungavel on 09 & 10 January 2013.

Again the issue arises of the initial meeting being 10 mins.

Case No 6 :

Client Name	
Reference	3861073013
Subject Matter	Asylum
Authorised Expenditure	£950.00

Account Claim	£221.85
Paid/Offered	£142.85
Sum in dispute	£ 79.00

The disputed entries of £79.00 are in respect of travel time and mileage for the meeting on 04/03/13.

01/03/13 - Advice and Assistance commences, with a 10 minute meeting at which according to the file note no advice appears to have been provided.

04/03/13 - A 30 min meeting with the client, the client is advised the removal has been cancelled due to the intimation submitted to UKBA that the client wishes to claim Asylum. There is no file note/letter in the file to confirm how the solicitor became aware the removal directions had been cancelled. However, the client is informed direct by UKBA and as both the screening interview and substantive interview will now be held there is again no urgency at this point. The client then

decides they wish to go home, this matter is dealt with direct by UKBA and a solicitor's involvement is no longer required. The firm also attended Dungavel on the 6 March 2013.

Again the issue arises of the initial meeting being 10min.

Case No 7:

Client Name	
Reference	2808198312
Subject Matter	Asylum
Authorised Expenditure	£950.00

Account Claim	£217.79
Paid/Offered	£124.79
Sum in dispute	£79.00

The disputed entries of £79.00 are in respect of travel time and mileage for the meeting on 11/12/12.

04/12/12 - Advice and Assistance commences, with a 10 minute meeting at which according to the file note no advice appears to have been provided.

11/12/12 - A one hour meeting with the client to ingather information.

Reason for abatement - There is no urgency until the client has had a decision in respect of the Asylum application. Neither the screening interview nor the substantive interview has taken place. Whilst a meeting to ingather information is not considered unreasonable and has been paid for, it is the cost of travel which is not considered to have been undertaken having due regard to economy nor being reasonable in terms of Regulation 17. The firm also attended Dungavel on 5,6 & 7 December 2012.

Again the issue arises of the initial meeting being 10 mins.

Case No 8:

Client Name	
Reference	2808198312
Subject Matter	Asylum
Authorised Expenditure	£950.00

Account Claim	£207.13
Paid/Offered	£128.13
Sum in dispute	£66.25 (an additional payment of fees £15.95 & o/l £10.80) has been processed, please see below

The disputed entries of £66.25 are in respect of travel time and mileage for the meeting on 02/04/13.

28/03/13- Advice and Assistance commences, with a 10 minute meeting at which according to the file note no advice appears to have been provided.

02/04/13 - A one hour meeting with the client to ingather information.

Reason for abatement - There is no urgency until the client has had a decision in respect of the Asylum application. Neither the screening interview nor the substantive interview has taken place. Whilst a meeting to ingather information is not considered unreasonable and has been paid for, it is the cost of travel which is not considered to have been undertaken having due regard to economy nor being reasonable in terms of Regulation 17. However, as detailed above an additional payment has been made, as the return travel is now apportioned by this client and one other.

Again the issue arises of the initial meeting being 10 mins.

Case No 9 :

Client Name	
Reference	3852478313
Subject Matter	Asylum
Authorised Expenditure	£950.00

Account Claim	£213.44
Paid/Offered	£147.19
Sum in dispute	£ 66.25

The disputed entries of £66.25 are in respect of travel time and mileage for the meeting on 19/02/13.

18/02/13 - Advice and Assistance commences, with a 10 minute meeting at which according to the file note no advice appears to have been provided. There is no copy of the removal directions in file but there is a letter from

19/02/13 - A one hour meeting with the client to ingather information. This client does have removal directions as there is a letter from UKBA cancelling these. After an Asylum claim is made, it is normally the procedure that removal directions are cancelled.

Reason for abatement - It is normally the procedure that if Asylum is claimed the removal directions are cancelled. Evidence of urgency has not been confirmed as there is no detail of when then the removal was set down for. The firm also attends Dungavel on 20 February 2013.

Again the issue arises of the initial meeting being 10 mins.

Case No 10 :

Client Name	
Reference	2812895912
Subject Matter	Asylum
Authorised Expenditure	£950.00

Account Claim	£210.03
Paid/Offered	£ 62.19 + £51.00 meeting time pd 27/09/13
Sum in dispute	£79.00

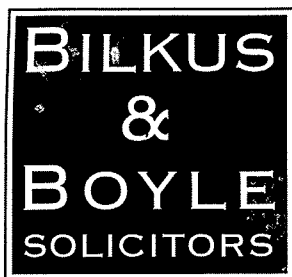
The disputed entries of £147.84 are in respect of travel time and mileage for the meeting on 13/12/13. *The meeting time was not paid within the original offer, £51.00 has now been processed in respect of this.*

11/12/12 - Advice and Assistance commences, with a 10 minute meeting at which according to the file note no advice appears to have been provided.

13/12/13 - A one hour meeting to ingather information.

Reason for abatement - There is no urgency until the client has had a decision in respect of the Asylum application. Neither the screening interview nor the substantive interview has taken place. Whilst a meeting to ingather information is not considered unreasonable and has been paid for, it is the cost of travel which is not considered to have been undertaken having due regard to economy nor being reasonable in terms of Regulation 17. The firm also attended Dungavel on 14/12/12.

Again the issue arises of the initial meeting being 10 mins.



Partners:

Campbell J. Porter
Margaret M. Boyle

Consultant:

Robert McKinnon

Associate:

Katherine J. Wilson

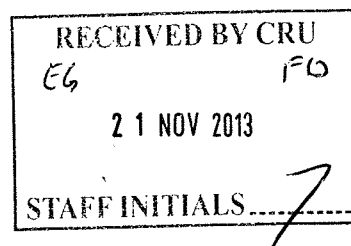
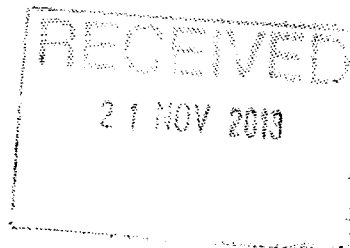
Our ref: CJP/LM

Your ref:

LM/JC

21 November 2013

Scottish Legal Board
Accounts Verification Unit
Scottish Legal Aid Board
DX 555250
EDINBURGH 30



Dear Sirs

No LARNS.

IMMIGRATION CASES

We enclose herewith our written submissions as discussed at the Taxation Diet on 14th November 2013.

We look forward to hearing from you in due course.

Yours faithfully

Bilkus & Boyle
Enc

Please reply to:

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Cardonald, Glasgow G32 8TP
Tel: 0141 - 882 3221
Fax: 0141 - 883 4848
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DIET OF TAXATION

SUBMISSIONS FOR BILKUS & BOYLE SOLICITORS

Bilkus & Boyle Solicitors respectfully asks the Auditor to consider in coming to his decision:

1. Bilkus & Boyle's submissions and the supporting documentation including the accounts of expenses and our detailed reasons for charging those entries.

As you are well aware, the history of this matter begins in December 2011. The first Diet of Taxation was arranged for 10 December 2012, however, at this diet an agreement was reached between ourselves and the Board and it appeared that all outstanding matters had been clarified and procedures put in place which were acceptable to both parties. However, as you also aware there now seems to be an issue which has arisen in relation to travel to Dungavel House IRC.

At the meeting in December 2012 it was agreed that we would not visit Dungavel House IRC unless we had two or more clients to see. This was confirmed in a letter from the Board on 30 December 2012, which stated that "no payment for mileage or travel time will be paid when only one client has been seen". It was not agreed that these clients had to be existing clients. It was also agreed that the Board will only pay for advice given to a client, where no advice is given to any other client at the same time, in circumstances where it is clearly shown to be exceptional urgency.

On occasions, we have been attending at Dungavel House IRC to see one existing client along with various new clients. This simply depends on the faxes coming into our office on a daily basis. We would like to make clear that what we do not do, if for instance we receive four faxes, is to see these clients on four consecutive days to maximise attendance at Dungavel House IRC. It is our understanding that we are adhering to the terms of Regulation 17(1) of the Advice and Assistance (Scotland) Regulation 1996 in "ensuring that such work is actually, necessarily and reasonably done and outlays actually, necessarily and reasonably incurred, due regard being had to economy". We are also adhering to the regulations in that we try to plan travel as far in advance as possible to ensure that we are not travelling to the same destination over consecutive days and combine journeys wherever possible. We visit clients based on the faxes that we receive and consider that this should be viewed in the swings and roundabouts manner favoured by the Board.

We should point out that Dungavel House IRC has altered their process in how to obtain new clients. The open surgery has now been replaced with an appointment only system. Therefore we must have a pre-arranged appointment before attending at the removal centre. For example, we may have one existing client to see along with a fax from one or various other new clients. Therefore our attendance note may show that four clients have been seen on that day. We disagree with the Board's comment that we are "technically attending to see one client", when in fact we have seen four clients. Again, we believe that we are adhering to the Board's guidelines and disagree that we are subsidising one publicly-funded client for another. In the example given, where we have visited one existing client and various new clients, it was necessary to see the existing client to provide advice to further his case. It is our understanding that we should be able to charge the travel down to Dungavel House IRC to the existing client as it was necessary for them to be seen and thereafter apportion the travel back between the existing client and the new clients admitted to Advice and Assistance that day. We also understand that the meeting with the existing client should be chargeable in line with Paragraph 6.10 of the Board's guidelines as it can be shown that we have "given or received material advice which advances the proceeding for which Advice and Assistance (or ABWOR) is available."

We accept that when visiting a new client only, the travel down to Dungavel House IRC cannot be charged, however, if the client is admitted to Advice and Assistance then the travel back can be charged to this account. This is in line with chapter 6.1 of the Board's guideline where you "cannot charge for any time travelling to meet an applicant with a view to granting Advice and Assistance before you are satisfied that the statutory tests are met."

As previously stated, we do not agree with the Board's argument that we are attending at Dungavel House IRC to see one client, when we are in fact visiting one existing client and one new client, which totals two clients for the day. The Board are refusing to pay our travel in this instance and state that "this is not an urgent matter, travel to see one client is not reasonable or necessary in terms of Regulation 17". The existing client required to be seen to take further information to advance his case and the new client required to be seen on an urgent basis. We must remember that we are dealing with a removal centre here and all faxes that come into the office are treated as urgent due to the nature of these cases. On the other hand, when we are travelling to see two existing clients and one new client, the Board are also unhappy and refusing to pay the full travel costs and state that "as per discussions at the Auditor's office, this travel should be apportioned by the total number of clients you are visiting, all travel cannot be attributed to the legally assisted clients." These statements are contradictory and the Board cannot have it all their own way.

When visiting a new client it is not always the case that you admit the client to Advice and Assistance, for example, they may not have a case. As you are well aware financial eligibility is only part of the assessment process. Whilst financial eligibility may be established, the client may not have a case and we do not sign them up and again thus swings and roundabouts. Therefore how can we charge travel to this client as the Board state, when we did not admit the client to Advice and Assistance.

We would like to make clear that we do not visit clients at Dungavel House IRC on the basis of padding out time, but see clients as and when they need to be seen. As stated at the last meeting with the Board, the circumstances have now changed and we are no longer in attendance at Dungavel House IRC on a regular basis due to the new appointment only system in place. Again this is entirely dependent upon the fax requests coming into the office.

We try to book to see as many clients as possible, however, it is important to take into account time constraints and a duty to carry out the work properly. Taking statements can be a lengthy process and if a number of new clients need to be seen, it would be uneconomic to book an interpreter to take statements which may not through time constraints be possible. In booking visits we obviously require to consider this.

A new issue seems to have arisen from the written submissions lodged by SLAB. This is in relation to the initial meeting with the client being for a period of 10 minutes and whether any advice was given at this meeting. This issue has never arisen before and all of our previous accounts detailing this entry have been paid. We do not understand why this meeting now seems to be a problem. Financial eligibility is established at the initial meeting as well as advice being provided to the applicant. In most of the disputed cases, the applicant has decided to claim asylum at the initial meeting and advice has been provided on this matter. Therefore we believe that this entry should continue to be chargeable along with any travel incurred.

After the initial meeting an asylum claim is then lodged to the UKBA and we return to meet with the client for a second meeting to obtain full details of his asylum claim and give advice on the asylum process and the procedure thereon. The most important part of the asylum process is the applicant's full asylum interview as a decision is taken after this interview based on the information provided by the applicant at the interview. It is necessary for us to go over the asylum interview process in detail in

order to give the applicant the best opportunity in being successful at the interview stage. This meeting is necessary to further the applicant's case and SLAB have paid for this meeting stating "a meeting to gather information is not considered unreasonable". However, SLAB are refusing to pay the travel and mileage in this instance. We disagree with SLAB's comment that this is not an urgent matter as client's are very often moved to a different detention centre after lodging an asylum claim. The English detention centre's are not run in the same way as Dungavel House IRC and client's often find it difficult in obtaining an English solicitor until after their asylum interview. It is the applicant's right to receive full advice on the asylum procedure before taking part in both the screening and full asylum interview.

It is our position that we have been co-operating fully with the Board and seeking a solution to this matter. We consider we are carrying out work which is necessary and doing so in a professional and competent manner. We confirm that in our view we are not only adhering to the terms of the agreement but to the spirit of same.

DISPUTED ACCOUNTS

[REDACTED] - 3857723713

Sum in dispute - £79.00 (travel and mileage to Dungavel have not been paid for 27 February 2013)

Advice is always provided at the initial 10 minute meeting. At this meeting on 25 February 2013 applicant advised that he wished to claim asylum and the asylum process was thereafter explained to him.

In relation to [REDACTED] 3853929513, this client was visited on the same day. The online account must have inputted the date of 22 February 2013 in error.

On 27 February 2013, we had a second meeting with the applicant in order to gather full details of his asylum claim. The applicant had just undergone his screening interview and required advice on the process thereon. This procedure is new to the applicant and therefore requires in depth advice into how the asylum process works. On this date we also attended at the centre to see one new client [REDACTED] 3859390213.

There is urgency for the second meeting as the applicant can be removed from the centre at any time and may be placed on the asylum fast track procedure. The applicant is entitled to receive full advice on the asylum process and should be knowledgeable about the full asylum interview as this is what makes or breaks their case.

2. [REDACTED] - 2779461012

Sum in dispute - £53.50 (travel and mileage to Dungavel have not been paid for 25 October 2012)

Advice is always provided at the initial 10 minute meeting. At this meeting on 18 October 2012 applicant advised that he wished to claim asylum and the asylum process was thereafter explained to him.

On 25 October 2012, we had a second meeting with the applicant in order to gather full details of his asylum claim. The applicant required advice on the asylum process and the procedure thereon. This procedure is new to the applicant and therefore requires in depth advice into how the asylum process works. On this date we also attended at the centre to see two new clients [REDACTED] 2784209712 and [REDACTED] 2784201312.

There is urgency for the second meeting as the applicant can be removed from the centre at any time and may be placed on the asylum fast track procedure. The applicant is entitled to receive full advice on the asylum process and should be knowledgeable about the full asylum interview as this is what makes or breaks their case.

3. [REDACTED] - 3875890213

Sum in dispute - £53.50 (return travel and mileage have not been paid for 22 March 2013)

Advice is always provided at the initial 10 minute meeting. At this meeting on 22 March 2013 applicant advised that he wished to claim asylum and the asylum process was thereafter explained to him. This was the only client we visited this day as no other clients were due to be seen. This was a new client who had faxed our office looking for an urgent appointment. We accept that we visited the centre on 26, 27 and 28 March 2013, however, this was four days after we received this fax and the client could have been removed from the centre over this four day period.

There is urgency to travel to see this client as he required advice on claiming asylum in the UK. The applicant could have been issued with removal directions had we waited a further four days before attending to see him at the removal centre. We did not charge any travel or mileage to Dungavel on this date and after admitting the applicant to Advice and Assistance should be entitled to claim the travel and mileage on the return journey.

4. [REDACTED] - 3859390213

Sum in dispute - £119.75 (travel and mileage to and from Dungavel have not been paid for 28 February 2013)

Advice is always provided at the initial 10 minute meeting. At this meeting on 27 February 2013 applicant advised that he had an urgent offer of SOS bail from the UKBA and the process was thereafter explained to him including the required documentation, which the applicant did not have. It was explained to the applicant to

have the required documents from his surety ready for the following day and we would come back to meet with him to ingather the documents and required information for the offer of SOS bail.

On 28 February we attended at Dungavel to see the applicant due to the urgent nature of the offer. No other clients were due to be seen on this day. However, the agreement reached with SLAB was that they would have no difficulty in paying travel to see one client if the matter was urgent. The offer of SOS bail from the UKBA has a bold heading stating URGENT. It is not our fault that the applicant did not know what documents were required at the initial meeting and after having this meeting the applicant obtained the documents from his surety and provided them to us at the meeting the following day.

The file note of 28 February states that the application **will** be submitted today and we would hopefully receive a reply in the next few days. It does not state that the application will '**hopefully** be submitted today' as stated in SLAB's written submissions.

We disagree with SLAB's statement that there had been no change in circumstances from the previous day, as the applicant was now fully informed of the SOS bail process and what was required of him and his surety. As previously stated the applicant had no surety at the initial meeting and no documents to provide to the UKBA. After explaining the process to the applicant he then obtained the required documents for the following day. We disagree with SLAB's comments that we 'did not deem it sufficiently urgent that the issue be dealt with immediately'. We dealt with the issue as best as we could due to the applicant having no paperwork to submit to the UKBA. We believed the matter to be sufficiently urgent and was why we attended at the centre the following day. The offer of SOS bail was also submitted to the UKBA the same day

5. [REDACTED] - 3824124613

Sum in dispute - £21.60 (mileage to Dungavel on 8 January 2013 has not been paid)

Advice is always provided at the initial 10 minute meeting. At this meeting on 7 January 2013 applicant advised that he wished to claim asylum and the asylum process was thereafter explained to him.

On 8 January 2013 there was an hour meeting with applicant to gather information on his asylum claim. The applicant required advice on the asylum process and the procedure thereon. This procedure is new to the applicant and therefore requires in depth advice into how the asylum process works. On this date we also attended at the centre to see one new client [REDACTED] 3825014813.

There is urgency for the second meeting as the applicant can be removed from the centre at any time and may be placed on the asylum fast track procedure. The applicant is entitled to receive full advice on the asylum process and should be knowledgeable about the full asylum interview as this is what makes or breaks their case.

6. [REDACTED] - 3861073013

Sum in dispute - £79.00 (travel and mileage to Dungavel have not been paid for 4 March 2013)

Advice is always provided at the initial 10 minute meeting. At this meeting on 1 March 2013 applicant advised that he wished to claim asylum and the asylum process was thereafter explained to him. Noting that applicant had removal directions in place for 5 March 2013.

A telephone call with the UKBA confirmed that the removal directions had been cancelled. However, there is no file note in the file and this call has not been charged for in the online account. We thereafter attended at the centre on 4 March 2013 to inform applicant that his removal directions had been cancelled and to gather information on his asylum claim. The applicant required advice on the asylum process and the procedure thereon. This procedure is new to the applicant and therefore requires in depth advice into how the asylum process works. However, at this meeting the applicant informed us that he was very confused with the whole situation and had now decided to withdraw his asylum claim. Thereafter, explaining that we would contact the UKBA on his behalf to confirm this in writing. On this date we also attended at the centre to see one new client [REDACTED] 3862072113.

There is urgency for the second meeting as the applicant believed that he would be removed from the UK on 5 March 2013. We attended at the centre to inform him that the flight had now been cancelled and to discuss the asylum process with him. Applicant was not aware that the flight had been cancelled at this stage and we therefore believe that this meeting was of an urgent nature. When applicant decided to withdraw his asylum claim we informed the UKBA of this and no further work was done on the file as we are aware that a solicitor's involvement is no longer necessary at this stage

7. [REDACTED] - 2808198312

Sum in dispute - £79.00 (travel and mileage to Dungavel have not been paid for 11 December 2013)

Advice is always provided at the initial 10 minute meeting. At this meeting on 4 December 2012 applicant advised that he wished to claim asylum and the asylum process was thereafter explained to him.

On 11 December 2012, we had a second meeting with the applicant in order to gather full details of his asylum claim. The applicant required advice on the asylum process and the procedure thereon. This procedure is new to the applicant and therefore requires in depth advice into how the asylum process works. On this date we also attended at the centre to see two new clients [REDACTED] 2812892512 and [REDACTED] 2812895912.

There is urgency for the second meeting as the applicant can be removed from the centre at any time and may be placed on the asylum fast track procedure. The applicant is entitled to receive full advice on the asylum process and should be knowledgeable about the full asylum interview as this is what makes or breaks their case.

8. [REDACTED] - 2808198312

Sum in dispute - £66.25 (travel and mileage to Dungavel have not been paid for 2 April 2013)

Advice is always provided at the initial 10 minute meeting. At this meeting on 28 March 2013 applicant advised that he wished to claim asylum and the asylum process was thereafter explained to him.

On 2 April 2013, we had a second meeting with the applicant in order to gather full details of his asylum claim. The applicant required advice on the asylum process and the procedure thereon. This procedure is new to the applicant and therefore requires in depth advice into how the asylum process works. On this date we also attended at the centre to see one new client [REDACTED] 3880904413.

There is urgency for the second meeting as the applicant can be removed from the centre at any time and may be placed on the asylum fast track procedure. The applicant is entitled to receive full advice on the asylum process and should be knowledgeable about the full asylum interview as this is what makes or breaks their case.

9. [REDACTED] - 3852478313

Sum in dispute - £66.25 (travel and mileage to Dungavel have not been paid for 19 February 2013)

Advice is always provided at the initial 10 minute meeting. At this meeting on 18 February 2013 applicant advised that he wished to claim asylum and the asylum process was thereafter explained to him. Noting that applicant had removal directions in place, however, could not provide us with a copy of same.

On 19 February 2013, we had a second meeting with the applicant in order to gather full details of his asylum claim. The applicant required advice on the asylum process and the procedure thereon. This procedure is new to the applicant and therefore requires in depth advice into how the asylum process works. Due to the removal directions in place we also discussed what would happen in the event of them being cancelled. On this date we also attended at the centre to see three new clients

[REDACTED] 3853941913 and [REDACTED]
[REDACTED] 3853948513.

There is urgency for the second meeting as the applicant had removal directions in place. The applicant is entitled to receive full advice on the asylum process and should be knowledgeable about the full asylum interview as this is what makes or breaks their case. It was not until 20 February 2013 that we were informed by the UKBA that the removal directions had been cancelled due to the lodging of his asylum claim. It is not always the case that the UKBA cancel a flight due to the lodging of an asylum claim as SLAB state in their written submissions. On occasions the UKBA may ask for full details of the asylum claim before making the decision on whether or not to cancel the flight. Therefore we required to obtain full details of his asylum claim on an urgent basis.

10. [REDACTED] - 2812895912

Sum in dispute - £96.84 not £79.00 as stated by SLAB (travel and mileage to and from Dungavel have not been paid for 13 December 2012)

Advice is always provided at the initial 10 minute meeting. At this meeting on 11 December 2012 applicant advised that he wished to claim asylum and the asylum process was thereafter explained to him.

On 13 December 2012, we had a second meeting with the applicant in order to gather full details of his asylum claim. The applicant required advice on the asylum process and the procedure thereon. This procedure is new to the applicant and therefore requires in depth advice into how the asylum process works. On this date we also attended at the centre to see two new clients [REDACTED] 2815244512 and [REDACTED] 2815252812.

There is urgency for the second meeting as the applicant can be removed from the centre at any time and may be placed on the asylum fast track procedure. The applicant is entitled to receive full advice on the asylum process and should be knowledgeable about the full asylum interview as this is what makes or breaks their case.

For the attention of Robert McKinnon
Messrs Bilkus & Boyle
Solicitors
DX 500300
CARDONALD

Fax Number: (0131) 225 3705

Ext No. 689

Your

Our Ref: JDH/CS

28 January 2013

Dear Mr McKinnon

IMMIGRATION ACCOUNTS – TAXATION 10 DECEMBER 2012

I refer to our meeting within the Auditor's Office, following the adjournment of the taxation itself, with a view to resolving the outstanding accounts issues between us. Firstly, can I apologise for the delay in setting down what I noted as being the principal points of understanding. Between the Christmas and New Year holidays and a recurring infection, I regret that I have not had the opportunity sooner to follow up the meeting.

The main points are as follows:

- The Board shall pay the first and second meetings in all cases where an interpreter required to be instructed. This is only qualified to the extent that the first meeting shall only be payable subject to the earlier agreement between us on or about December 2011. My understanding is that all first meetings which took place on or after 1 January 2012 are chargeable and that first meetings which took place prior to that date are not chargeable, unless there is a file note to support that a solicitor granted A&A over the phone;
- All precognitions shall be paid on a time basis (unless they are taken in terms of our guidance). For the avoidance of doubt framing charges shall not be allowed;
- As regards cases which have been referred to throughout as "fresh representation" cases, the Board shall pay the first meeting (again as qualified above), the second meeting and, if appropriate, other meetings in the course of which relevant advice was given to the client. "Fresh representation" letters will not be paid unless there are realistic prospects of success;
- All letters by way of a mandate shall be paid at the formal rate;

- Any work involved in booking interpreters is administrative and, therefore, not chargeable. No payment shall be made in respect of this work;
- In respect of cases referred to throughout as “third country” cases the Board shall draw a line on relevant accounts at the second meeting unless a legal issue has clearly been identified. For the avoidance of doubt the Board shall pay the second meeting for the purpose of ingathering information in these circumstances. But as from the date of the meeting, we would not expect to see any of these unless there are clear exemptions present;
- In what I recall was referred to as “voluntary actions”, that is where the client wishes to return to the country of origin, again the Board will make payment up to and including the second meeting but no further. The only qualification to this is where it can be established that the client had a clear change of mind deciding, for example, to seek asylum. Again, as from the date of the meeting, we would not expect to see any of these cases;
- As regards abortive visits, I note that there is now a new system in place at Dungavel in relation to checking if a client remains detained. Bearing this in mind there should in the future be less cases in which this is an issue. We shall make payment of abortive visits prior to the date of our meeting; and
- As from the date of our meeting, in respect of fresh advice, the Board will only pay for advice given to a client, where no advice is given to any other client at the same time, in circumstances where it is clearly shown to be exceptional urgency. We agreed that when Leanne is on holiday or indisposed etc we will allow a solicitor to attend one client, but only if it is urgent.

I look forward to hearing from you confirming the position. We have already started working our way through the cases applying the agreement set out above.

Yours sincerely

