

Sheriffdom of South Strathclyde Dumfries and Galloway at Airdrie

Taxation – Procurator Fiscal, Airdrie v [REDACTED]

JM

Airdrie 26 September 2014

I tax the expenses submitted to the Scottish Legal Aid Board by JBM Solicitors Ltd. Airdrie in respect of the accused [REDACTED] at the sum of £242.50.



J Hamilton

Depute Auditor of Court

The diet of taxation was held on 29 May 2014. Mr McGeechan appeared for JBM, Solicitors Ltd. and Mr Haggarty, appeared on behalf of the Scottish Legal Aid Board.

[REDACTED] helpfully provided a written note of submissions which is attached hereto.

This is a case affected by Regulation 4(5B) of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999.

Regulation 4(5B) states:

"The amount payable under (as the case may be) paragraph 1 of Part 1 of Schedule 1 or paragraph 1 of Schedule 1A is half the amount that would otherwise be payable if the assisted person –

- (a) was represented by a solicitor arranged by the Board to provide criminal legal aid pursuant to regulation 7(1) of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 at the first diet at which the assisted person was called upon to plead;
- (b) tendered a plea of not guilty at that diet; and
- (c) before the commencement of the trial tendered a plea of guilty."

written submissions contained an extract of the Executive Note which accompanied the aforementioned Regulations which explained the purpose of this particular regulation which is stated in the following terms:

"The sixth policy objective is to reduce by half the new prescribed fees in Schedule 1 and 1A of the principal Regulations in the following circumstance: where the accused person appears from custody, is represented by the duty solicitor (whether or not the case is subsequently taken forward by the duty solicitor), a plea of not guilty is tendered and that plea is then changed to guilty before the start of the trial. Where a trial goes ahead, the full fees will be payable. The aim is to deliver the required savings by reducing the very significant discrepancy between the level of fees paid for a guilty and not guilty plea for solicitors operating under the duty scheme and to ensure that the appropriate plea is made at the earliest possible stage in the proceedings on the basis of the best possible advice from the solicitor. This also recognises that the duty scheme can, in some cases, provide new business to solicitors. It is of course always within the gift of the solicitor who will be acting for an accused person to attend the court personally. This amendment does not affect the fees set out in Schedule 1B which relate to ABWOR, where a plea of guilty has been tendered. Regulation 5 gives effect to this policy objective."

Mr McGeechan submitted that in his view, the regulation referred to the appropriate plea at the appropriate time. In this case the injury libelled was to have included reference to the narrative by the Procurator Fiscal to a broken thumb being sustained by the complainer. After obtaining disclosure and negotiating with the Procurator Fiscal, the agent was able to establish that it was likely that the broken thumb had already been sustained by the complainer in a fall, unconnected with and sometime before the incident with the accused. Mr McGeechan further submitted that the appropriate plea was tendered at the Intermediate diet when the full facts had been established following investigation. He had prepared for the trial diet and had investigated the disclosure. It was his opinion that that the Regulation would be properly interpreted if the fee reduction was only applied when a guilty plea was tendered with no deletion to the charges faced, or as in this case where there has been a deletion to the narrative where an unspecific injury has been libelled. A significant reduction in the complaint had been achieved and it was his view that the full fixed fee was payable. In relation to the savings referred to in the aforementioned Note, Mr McGeechan contended that had a guilty plea been tendered from custody to an assault causing such an injury as originally narrated, it may well have resulted in a sentence of imprisonment. The work undertaken had potentially avoided such an outcome which would have saved prison costs and any subsequent benefit

payments to the accused following their release as they would have not been able to maintain their current employment.

██████████ narrated the terms of legislation and the Executive note referred to above. In his view the matter was quite clear and the terms of the legislation should be applied. It did not matter whether a plea of guilty as libelled or one under deletion had been tendered, Regulation 4(5B) applied and only the half fee was appropriate.

I was also referred to the decisions made by Sheriffs in relation to similar cases at Dumbarton, Kirkcaldy and Cupar.

Auditor's Decision

Whilst I have a degree of sympathy with the agent in this matter, I am bound to apply the literal interpretation of the regulation. In this case there was a deletion to the narrative where an unspecific injury had been libelled. However there is no provision in the legislation for such a situation and accordingly I will only allow half of the fee sought.

DM