



Statement

18/10/11

Andrew Smith QC v Scottish Legal Aid Board - Opinion of Lord Menzies

We would like to make clear that this case is on-going and has been put out By Order to call in court on 15 November to discuss further procedure. At present there is no final decision in the case overall.

Both parties were agreed that when the matter came before Lord Menzies at debate, that his Opinion should address issues of legal principle, rather than the specifics of the claim which will be addressed at a later stage in proceedings.

Mr Smith QC abandoned his initial argument that interest was due from 30 days after he sent the fee-note to his instructing solicitors. The court said that it considered that the decision not to advance this argument at debate was well made as there is no suggestion that the fee note was issued to the Board at this time, nor that we received an invoice or equivalent request for payment.

Mr Smith QC's primary position instead was that interest became payable on the full amount of the fee-note indicated in a regulation 11 application from 30 days after the submission of it. He was unsuccessful on that point and the court observed that, given the use of the future tense in the regulation - that it was in respect of fees which will become eligible for payment - this meant that the fees were not due in full at the point the regulation 11 application was made.

Mr Smith QC's secondary position was that interest was payable on the sum which was 75% of the fees and which should have been paid in response to the Regulation 11 application, from a date thirty days after the receipt of the Regulation 11 application. Lord Menzies has agreed with this point in his opinion.

The Board is carefully reviewing Lord Menzies' Opinion and considering the appropriate way to proceed.

Ends

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