



14 April 2011

Information about solemn criminal legal aid payments where clients are remanded in custody

The Criminal Legal Aid (Scotland) (Fees) Amendment (No.2) Regulations 2010 introduced significant changes to the way solicitors are paid in solemn criminal legal aid cases. The regulations followed extensive tripartite discussions between the Scottish Government, the Law Society of Scotland and the Scottish Legal Aid Board and were approved by Parliament. The amendments apply to proceedings commenced on or after 5 July 2010.

The new payment arrangements create a hybrid fee structure for solicitors including a mixture of detailed fees for certain designated stages of the process, and block fees for other stages. The revised fee structures were expected to encourage greater efficiencies in the handling of cases, remunerating solicitors for advancing the case rather than simply on the basis of the carrying out of individual items of work, whilst maintaining the priority to protect, as much as possible, existing levels of access to justice.

In proceedings where the accused person is remanded in custody the solicitor is entitled to claim block fee “for arranging and attending all meetings, including consultations, in prison with the client after full committal for trial up to the conclusion of the case”. The fee payable varies depending on the seriousness of the charge and the court in which the proceedings are heard. The fees vary from £152 for sheriff and jury proceedings to £437 for the most serious High Court offences. These fees are not arbitrary but were the product of a robust costing exercise based on accumulated data from previously assessed cases. In addition to the block fee, the solicitor is also entitled to claim a fee in respect of travel time to and from prison in respect of each separate prison attendance.

In circumstances where the solicitor considers “*that the case raised unusually complex issues of fact*” (note the past tense) an application can be made to us which allows the solicitor to be funded outwith the block fee regime and charge for attendances on a detailed basis. It was our recommendation that discretion be allowed for prison visits in complex cases. The solicitor may make such an application at any point up until 4 months from the conclusion of proceedings. This allows solicitors to take an informed view, at the accounting stage, as to whether or not the block fee payable adequately remunerates the solicitor.

There are similarities with the fixed payments regime in summary criminal cases where a solicitor can ask us to exercise our discretion to treat the case as an exceptional case, taking it out of the fixed payments regime and allowing payment on a detailed basis. (A solicitor can ask us to exercise our discretion at any stage during the proceedings which, in some cases may have started off looking quite unexceptional but, for some reason, take a different turn).

Recognising that the discretion to be exercised in connection with the prison block is at the conclusion of the proceedings, on the lodging of the solicitor’s account, we stated that we were prepared to issue what is described as a “letter of comfort” to solicitors in circumstances where it becomes quite apparent, on the information available to us, that the number of necessary prison attendances is likely to fall outwith the range which the fee can reasonably be expected to cover. Even if we are not initially satisfied, there is nothing to stop a solicitor reverting to us at a later stage where it becomes more apparent that the case is going to become one appropriate for the lodging of a detailed fee (albeit a fee which would

itself be subject to assessment and possible abatement). We have to be satisfied on submission of the final account that “the case raised unusually complex issues of fact”, and so it would be pointless to issue a letter of comfort during the course of the proceedings without sufficient information at that stage to indicate that it would be likely to accept a detailed account.

If a client is out on bail, or where prison visits are to be funded outwith the block fee, that does not give them unlimited access to a solicitor. Although the solicitor can charge on a time and line basis, any charges need to be approved by us as work actually and reasonably done, due regard being had to economy before being paid. Under the former detailed arrangements a solicitor was never assured of being paid for all work done as it always fell on us to be satisfied on application of the standard of taxation. It was (and will remain where prison visits are assessed on a detailed basis) the case that some work may be subject to abatement.