


EM. v. M

NOTE

LAW SOCIETY OF SCOTLAND  
LEGAL AID

  
  
This is a taxation between the Law Society and the Assisted Person's Solicitors in a consistorial cause. The Account of Expenses is made up in terms of Chapter III of the Table of Fees in the Court of Session.

Rule 347 para. (e) provides that it shall be in the option of the Solicitor to charge an account either on the basis of the Table of Fees Chapter I or Chapter III. Here the Solicitors have opted for the Chapter III charges so that the form of the account is in order if in fact no work has already been charged other than under Chapter III. The difficulty arises because at the beginning of the action the Local Solicitor received a payment under the Advice Scheme which would normally so far as Solicitors' fees are concerned correspond to work charged under Chapter I and the Law Society have endeavoured to deduct the work paid for under that Scheme from the alternative fees by a deduction from the Instruction Fee and from the charge for precognitions.

In the opinion of the Auditor the correct way to deal with the matter is to deduct the payment made so far as it relates to Solicitors' fees and posts as if it were Chapter I charges and posts from the total of the Solicitors' fees under Chapter III and posts in the Account so that it is treated as a payment to account of the Chapter III fees and posts.

No other matter was raised at the taxation.

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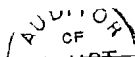
The Auditor comments that it seems strange that the Advice Assistance in this case amounted to taking instructions for an application. If so should it not be done by Section 1 application?

In the Auditor's view the statutory ten per cent deduction of the whole of the Solicitors' fees under Chapter III and posts should be made before the payment to account corresponding to Chapter III and posts is deducted.

The Account is remitted back to the Law Society to be dealt with on this basis.



*a W Kuper Smith*



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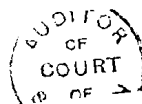
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The Auditor would appear to be upholding the ~~solicitors~~ <sup>either</sup> view that the solicitor has the option of charging the ~~work~~ account on block fees Chapter 111, or detailed charges Chapter 1. A problem arises where a previous LAA account has been claimed. Where the subsequent Section One account is charged as per Chapter 1, a properly charged account should not contain work already paid for under the LAA scheme. Whenever that work has been charged, it has been the policy of the Taxation Department to abate from the Section One Account that work already claimed regardless of whether the abated amount is more or less than the sum settled under LAA.

The Auditor would appear to be saying that the total sum to be abated in accounts charged wholly under Chapter 11 with a previously paid LAA account, should be limited to the LAA payment, suggesting that <sup>that</sup> payment be regarded as a payment to account. By allowing the same work (in particular the taking of Precognitions) to be charged twice, Taxation Department first pay the local solicitor a fee for the preliminary work and subsequently receive from the Edinburgh solicitors a ~~claim~~ <sup>claim</sup> for a sum in excess of that settled for the identical work.

Example: 3 attendances with client and witnesses taking statements - total time - 2½ hours, charge £25:00 } £34:00  
precognitions 6 sheets £ 9:00 }

Total settled under LAA £34:00.

Under the block fee the same work is charged at £51:00 plus session fee of £5:10 total £56:10.

The Auditor comments that he finds it strange that an application was allowed to be rendered under the LAA scheme when the case would obviously warrant a Section One application. <sup>As the solution in the opinion of the book-keepers</sup> ~~The easiest, and from the Taxation staff's point of view,~~ would be to disallow an LAA account being rendered if the A P is subsequently issued with a Section 1 Certificate.

This policy would also aid the recovery of expenses, as it would no longer be necessary to match up Section One accounts with previously paid LAA accounts.

DWA/JMCM

20 April 1977

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