

DATE	08-Feb-84
AUDITOR	?
COURT	Aberdeen S.C.
SOLICITOR	Gray & Kellas
CASE	[REDACTED] AW
ACCOUNT TYPE	A&A
TAXATION HEAD	Submission of a copy of complaint with covering letter in support of criminal legal aid application.
TAXATION ISSUES	<ol style="list-style-type: none"> 1. In this court area in Aberdeen it is necessary for the solicitor to support his criminal application in this manner. The sheriff principal supports this view. 2. Under the LA &A (S) Amendment Regulations 1982, it was necessary to establish a point of principle for fees allowable for short phone calls. Unfortunately, the Auditor could not be persuaded to give a decision as after the deletion of the proposed abatements above the account now exceeded the initial authorised expenditure, but he indicated that were he to meet a similar case again he would make a gesture of a £2 abatement from a £6 claim for a 10 minute phone call.
DECISION	<ol style="list-style-type: none"> 1. In this court area in Aberdeen it is necessary for the solicitor to support his criminal application in this manner. The sheriff principal supports this view. 2. Under the LA &A (S) Amendment Regulations 1982, it was necessary to establish a point of principle for fees allowable for short phone calls. Unfortunately, the Auditor could not be persuaded to give a decision as after the deletion of the proposed abatements above the account now exceeded the initial authorised expenditure, but he indicated that were he to meet a similar case again he would make a gesture of a £2 abatement from a £6 claim for a 10 minute phone call.



THE LAW SOCIETY OF SCOTLAND

PRESIDENT
T. NORMAN BIGGART WS

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26 Drumsheugh Gardens
EDINBURGH EH3 7YR
Telephone 031-226 7411
Telegrams 'Lex Edinburgh'
Telex 72436 'Lawscog'

To All Members of the Profession

Our Ref LS.24

Your Ref

Date 27th July 1982

Dear Member,

LEGAL ADVICE AND ASSISTANCE

You will have received the letter from Mr Sutherland issued with the preceding issue of the *Journal*. That letter stated that further guidance would be given and warned members of the advisability of noting all time expended in relation to a matter on which advice or assistance was being given under the Legal Advice and Assistance Scheme, in view of the uncertainty surrounding the interpretation of the Legal Advice and Assistance (Amendment) Regulations.

These Regulations have now received further consideration from the Legal Aid Central Committee and from the Council. There is no doubt that the new Regulations leave the basis for charging and consequently the basis for taxation of accounts far from clear. One view is that time is the only competent basis of charge. The Council accordingly reiterate that time should still be recorded by members.

Until the difficulties are settled by taxation or possibly by clarifying legislation, the Council has agreed that for all charges other than attendances—such as letters, perusals, telephone calls, etcetera—the only guidance which can be supplied to Members and to the Central Committee's Taxation Department is to continue to apply the provisions laid down in Chapter I of the Table of Fees for conveyancing and general business. These rates there laid down will therefore continue to apply until further notice. Any further developments will be reported to the profession as they emerge.

Yours sincerely,

T. Norman Biggart
President

STATUTORY INSTRUMENTS

1982 No. 622 (S. 94)

LEGAL AID AND ADVICE, SCOTLAND

The Legal Advice and Assistance (Scotland) Amendment Regulations 1982

Made - - - - -	27th April 1982
Laid before Parliament	14th May 1982
Coming into Operation	4th June 1982

In exercise of the powers conferred upon me by section 15 of the Legal Aid (Scotland) Act 1967(a) and by sections 5(6) and 11(1) of the Legal Advice and Assistance Act 1972(b) and of all other powers enabling me in that behalf, I hereby make the following regulations:-

1.—(1) These regulations may be cited as the Legal Advice and Assistance (Scotland) Amendment Regulations 1982 and shall come into operation on 4th June 1982.

(2) In these regulations the expression "the principal regulations" means the Legal Advice and Assistance (Scotland) Regulations 1973(c).

2. In regulation 5 of the principal regulations, after paragraph (8) there shall be inserted the following paragraph:—

"(8A) The auditor, in taxing any account referred to him under paragraph (8) of this regulation, shall allow the solicitor so much of the deficiency in the charges or fees claimed by him as represents

(a) outlays necessarily and reasonably incurred in connection with the matter upon which advice and assistance was given; and

(b) remuneration for work necessarily and reasonably done in connection with that matter at a rate not exceeding £6 per quarter hour (time being calculated for this purpose to the nearest quarter hour);

Provided that, if the matter appears to him to be of exceptional complexity or difficulty, he may allow remuneration for such work at such rate as he considers to be fair and reasonable."

3. In regulation 7 of the principal regulations—

(a) in paragraph (2) for the words from "and shall pay" to the end, there shall be substituted:—

(a) 1967 c. 43; section 15 was extended by section 6 of the Legal Advice and Assistance Act 1972 (c. 50).

(b) 1972 c. 50

(c) S.I. 1973/390, to which there are amendments not relevant to these regulations.

"and shall allow the solicitor so much of the deficiency in the charges or fees claimed by him as represents

- (a) outlays necessarily and reasonably incurred in connection with the matter upon which advice and assistance was given; and
- (b) remuneration for work necessarily and reasonably done in connection with that matter at a rate not exceeding £6 per quarter hour (time being calculated for this purpose to the nearest quarter hour);

Provided that, if the matter appears to them to be of exceptional complexity or difficulty, they may allow remuneration at such rate as they consider to be fair and reasonable." and

- (b) in paragraph (3) the words "and shall be charged according to the Table of Fees for Conveyancing and General Business approved by the Council of the Society" are hereby revoked.

New St Andrew's House,
Edinburgh.
27th April 1982.

George Younger,
One of Her Majesty's
Principal Secretaries of State.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations amend the provisions in the Legal Advice and Assistance (Scotland) Regulations 1973 relating to the assessment or taxation of accounts submitted by a solicitor of charges or fees in respect of advice or assistance given under the Legal Advice and Assistance Act 1972 c. 50.

These regulations provide that, in taxing any such account, the Central Committee of the Law Society of Scotland or, on appeal, the Auditor of the Sheriff Court, shall allow the solicitor so much of the deficiency in the charges or fees claimed by him as represents outlays necessarily and reasonably incurred, and remuneration for work necessarily and reasonably done at a rate not exceeding £6 per quarter hour (to the nearest quarter hour). If, however, the matter appears to them to be of exceptional complexity or difficulty, they may allow remuneration at such rate as they consider to be fair and reasonable. At present, the existing regulations provide for the Central Committee allowing either the amount of the deficiency claimed or such sum as they consider to constitute fair and reasonable remuneration and make no provision as to the basis of taxation by the Auditor.

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incurred by

The Law Society of Scotland

to Messrs Gray & Kellas, Solicitors,
12 Bon-Accord Crescent, Aberdeen

under the Legal Advice and Assistance Scheme 1973
in causa -

[REDACTED] : Ref No 47/06/303895-83

Maximum expenditure: £40

Legal Aid Code: 05347

REC

- 1 FEB 1984

Ar

1983
Nov

- 2 Meeting you when we perused two summary complaints in which a trial has been fixed for 8 November 1983 and we discussed with you the charges and the evidence. You completed a form LAA3 and we telephoned to the Fiscal on your instructions and arranged that you would plead to the four charges on which you are due to go to trial but that the charge of reckless driving would be reduced to careless driving and the reference to reckless negotiation of crossroads would be completely deleted. You also completed an application for criminal legal aid. (Engd 1 1/4 hrs)

30.00

- 4 * Writing the Sheriff Clerk, Aberdeen, enclosing criminal legal aid application together with a copy of the charges and advising that the trial will not now be proceeding and that pleas to amended charges will be submitted.

3.80 *

- 0.76. * Photocopying the charges on two complaints (2 shs)

-.76 *

- 7 * Phoning Sheriff Clerk, Aberdeen, who said that your application for criminal legal aid had been refused.

1.90 *

- 2 2.0 * Phoning you reporting that your application for criminal legal aid has been refused and advising you regarding the procedure at the trial diet.
Engd 10 mins

6.00 *

42.46

Posts

2.00

Restricted to

£44.46

£40.00

(FOR OFFICE USE)

Committee reference no.:

Authorised:

NOTE: On initial completion, this form to be submitted in DUPLICATE to local committee within fourteen days.
When submitted with account, or on no claim being made, the reverse to be completed as appropriate.

Solicitors name & address

(Complete within box)

PART I: DETAILS OF APPLICANT (Use block capitals)

Surname: Mr/Mrs/Miss

Forename(s):

Address:

Subject Matter: (Full details of all matters arising to be given)

Solicitors reference:

Solicitors legal aid code no.:

PART II: DETERMINATION OF MEANS

Does the applicant receive supplementary benefit or family income supplement? ☐ YES ☐ NO (If "yes", complete capital only)

Capital:

T capital (to nearest pound)

Allowance for--

Applicant

Spouse

Spouse

Other dependants (specify)

A

B

DISPOSABLE CAPITAL (A minus B)

CONTRIBUTION

Income:

Weekly income (less income tax and national insurance contribution) £ --

Applicant

Spouse

Child benefit

C

Allowance for: Spouse

Child aged

Child aged

Child aged

Other dependants (specify)

Maintenance payments made

D

DISPOSABLE INCOME (C minus D)

PART III: DETAILS OF OTHER RELEVANT LEGAL AID (Reference number or full information to be given, on a separate sheet if necessary)

Has the applicant previously received advice and assistance on this matter under the Legal Advice and Assistance Scheme?

Has the applicant applied for or received legal aid on this matter under the civil or criminal legal aid schemes?

Has the applicant a joint, a common, or the same interest in this matter with any other person or body?

Has the applicant any other rights or facilities for assistance (such as through a trade union, motoring organisation, or insurance company) in connection with this matter?

PART IV: DECLARATION BY APPLICANT

I am over the age of 16. I am liable for and undertake to pay a contribution of £ . I understand that any money or property recovered or preserved for me in connection with this matter may be subject to a deduction in respect of my solicitors charges. I declare that the information on this form particularly in PARTS II and III, is correct to the best of my knowledge and belief and I understand that there are criminal penalties for false declarations.

Signature of applicant
(or authorised person)

Address of authorised person

Date of signature (and commencement)

PART V: CERTIFICATE (for completion by solicitor, but see NOTE)

I hereby grant the foregoing application under the Legal Advice and Assistance (Scotland) Scheme 1973 on the understanding that the information provided by the applicant in Parts II and III is correct.

Date

Signature of solicitor

NOTE: Where an applicant has had previous advice and assistance on the matter under the Scheme the Solicitor may not grant the application prior to receiving the consent of the local committee. (Regulation 2(4) Legal Advice and Assistance (Scotland) Regulations 1973)

incurred by

The Law Society of Scotland

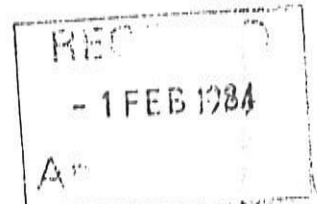
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12 Bon-Accord Crescent, Aberdeen

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30.00

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Engd 10 mins

6.00

42.46

2.00

Posts

£44.46

Restricted to

£40.00

080284 Attendance Mr P. Gray
at Laister

Find

Post

12
£52.00

2-60
£54.60

37-48

17-12

Auditor of Court,

14 Golden Square,

Aberdeen, 24th January, 1984

JASG/ER

Messrs. Gray & Kellas,
Advocates,
12 Bon-Accord Crescent,
Aberdeen.

Dear Sirs,

[REDACTED]

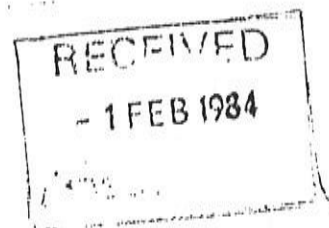
I have received your letter of 20th instant with enclosures and note the contents.

For the avoidance of doubt will you please confirm after consultation with the Legal Aid Central Committee that they propose to send someone from Edinburgh to represent them at the diet of taxation and that the sum in dispute is £6.76 less your abatement of £4.46 i.e. £2.30.

It may be that a point of principle is involved and that the proposed diet is to establish a test case irrespective of the expense involved.

Yours faithfully,

Gordon M. Lefrane.



THE SENIOR DEPUTY SECRETARY.

The Auditor of Court,
14 Golden Square,
ABERDEEN.

233

3rd February, 1984

JASG/ER

KJM/JS

Dear Auditor,

 - 47/05/303895/83


I refer to your letter dated 24th ultimo to Messrs. Gray & Kellas concerning the Taxation in this case.

I confirm that we do propose to have someone from Edinburgh represent us at the Diet of Taxation and that the sum in dispute is as indicated in your letter.

I agree it seems a very small sum to incur the costs of a Taxation, but there is a point involved on which we would wish to have a ruling. I would not pitch it as high as a matter of principle, exactly, but it would certainly be useful in providing guidance, both to ourselves and to the profession.

Messrs. Gray & Kellas have intimated that the Diet of Taxation could take place at either 12 noon or 2.30 p.m. on 8th February and I would be grateful if we could elect to have the 2.30 p.m. Diet.

Yours faithfully,


Senior Deputy Secretary (Legal Aid.)