

HMA v EW

FALKIRK 18 December 1986.

The Auditor of Court, having considered the Fee Note submitted by J.M.S. Horsburgh, Q.C., in the case of H.M.A. v. [REDACTED] & Another, Taxes the same at the sum of Six Thousand Three Hundred and Fifty Pounds (£6350.00) exclusive of Value Added Tax.



Auditor of Court  
Falkirk

N O T E

At this diet of taxation [REDACTED] appeared on behalf of the Legal Aid Committee and Mr Horsburgh appeared personally. A reduced offer had been made by the Legal Aid Committee to Mr Horsburgh which had been unacceptable and accordingly the matter was referred to me for taxation under Regulation 16 of the Legal Aid (Scotland) (Fees in Criminal Proceedings) Regulations 1984 (as amended).

Initially Mr Horsburgh spoke to how the Fee Note had been calculated and at that time gave an indication of the points in dispute. He produced a short log which had been prepared by him showing the dates upon which preparation and consultation took place and the length of time involved each day. [REDACTED] then spoke to the reasons for the Criminal Accounts Sub-Committee reducing the fee and Mr Horsburgh thereafter gave his points of view/

view relating to their recommendations. The points in dispute related to the fee for preparation, the number of consultations and the daily rate charged for the days of the trial. I shall deal with each independently in the following paragraphs.

There is no preparation fee provided for in the Regulations. Apparently it is understood that the fee provided for trials per day is taken to include a measure of preparation. On the face of it therefore, it would seem to me that the allowance for the trial time should be increased to allow for preparation or preparation should be allowed for as a separate item. This case was a particularly complicated embezzlement trial in which there were a vast number of separate sheets of documents produced by the prosecution. It was agreed at today's diet that considerable advance preparation was necessary in order to have the defence well prepared and to have a sound knowledge of the documents produced. Accordingly it is my opinion that preparation should be allowed for as a separate fee and I shall do that.

As an element of preparation is contained in the trial fee, then the trial fee falls to be reduced. In all the circumstances therefore I feel the fairest approach is for me to start afresh in the calculations of the fees claimed. The appropriate trial fee for Counsel amounts to £252 and in this case a certificate under Regulation 13(4) was granted on the grounds of length, complexity and difficulty. The reference to 25% increase relates back to the Solicitors' fees, but using that as a guideline, fee for Counsel would then increase to £315. I am satisfied that the Regulations leave Counsel's fee open to negotiation and that any increase should be correspondingly greater than a Solicitors. The claim included an element of further preparation during the adjournment period once the trial had commenced. Mr Horsburgh conceded that Miss Rae, his Junior, had been in attendance at Court during the adjournment period and that the benefits of the adjournment were extremely limited, although the papers had to be examined in order to exclude them. It seems to me that a further increase /

increase is necessary due to the complexity of the trial but not to the extent claimed. Using the rough guideline of the difference between Counsel conducting a trial in the Sheriff Court and a Solicitor in the same Court, on a pro rata basis, I shall increase Counsel's daily rate to £350.

We should now consider the preparation fee which is in dispute. Although not referred to in the Regulations, I believe that it is unrealistic not to allow for preparation as a separate item. The rate as claimed is based on the fee for the conduct of a trial, although Mr Horsburgh in his calculations has allowed for an eight hour day which is more than would be expected in any Court. The trial in question lasted for some five hours each day. On that basis, some six days could be claimed. There was no argument that the work had not been done and accordingly as I have reduced the fee for the conduct of the trial partly to allow for preparation, then a fair fee requires to be set for this case.

Such a fee cannot be calculated on the same basis as the conduct of a trial, which has its own pressures, but is more akin to a consultation. As the number of hours of preparation are not in dispute, I have chosen to use an hourly rate based on the consultation fee. Assuming a consultation is a two hour fee, then the hourly rate would be £39.50. Multiplied by 32½ hours, the number of hours involved, the fee would become £1283.75 which I would round up to £1300. As there is no provision for such a fee in the Regulations at all, I do not think that the fee that I allow attracts any increase. Accordingly I shall allow a preparation fee of £1300.

The consultation fees were not argued and the explanation that the variance in fee was due to the time spent, the preparation required and consultations on Saturdays, seemed to me to be satisfactory. Again there was no dispute that the work was done and the reduction in the claim as recommended by the Criminal Accounts Sub-Committee could not be justified. I shall accordingly allow the consultation fees as claimed. /

claimed.

The fee for the Note of 23 September 1985 was not in dispute.

The fee note breaks down in the following manner:-

Preparation		£1300.00	
Consultations	1 x £100		
	2 x £150		
	2 x £200	£800.00	
Note		£50.00	
First day of trial		£350.00	
Eleven days of trial thereafter		<u>£3850.00</u>	<u>£6350.00</u>

*EL.*  
*19/12/86.*