



SHERIFF CLERK'S OFFICE  
Sheriff Court Fort William PH33 6EE

Telephone 0397 (Fort William) 2087

[REDACTED]

Legal Aid Central Committee  
PO Box 123  
44 Drumsheugh Gardens  
Edinburgh EH3

Please reply to The Sheriff Clerk  
Your reference

Our reference  
BC/JM/C60/85

Date  
9 December 1986

Dear Sir

VM

PROCURATOR FISCAL, FORT WILLIAM v [REDACTED]

I enclose a copy of my Report with regard to fees claimed by Senior and Junior Counsel in this case namely Mr Boag Thomson and Mr Lamb.

In terms of Section 16(2) of the Legal Aid (Scotland) (Fees in Criminal Proceedings) Regulations 1984 you have fourteen days from the date of issue of said Report to state written objections, if any, to the Sheriff in relation to the Report.

Yours faithfully

*Brian Carroll*

Brian Carroll  
Sheriff Clerk Depute

PROCURATOR FISCAL, FORT WILLIAM v [REDACTED]

Originally on petition - Legal Aid Granted and Senior and Junior Counsel authorised by Legal Aid Committee.

FEEES CLAIMED BY BOAG-THOMSON QC

14	04	85	Prep and consideration of voluminous productions	£250.00
15	04	85	" " " " " "	£250.00
16	04	85	" " " " " "	£250.00
17	04	85	" " " " " "	£250.00
18	04	85	" " " " " "	£250.00
01	05	85	Travel to Fort William	£150.00
02	05	85	Trial at " "	£400.00
03	05	85	examining further extensive productions and inspections	£400.00
06	05	85	examining, assimilating and accounting in respect of further productions, discussions with Procurator Fiscal and negotiating	£400.00
07	05	85	Further examining and assimilating	£400.00
30	06	85	Travel to Fort William	£150.00
01	07	85	Trial Fort William extra late sitting	£450.00
02	07	85	" " " " " "	£500.00
09	07	85	Preparation fee one day	£200.00
10	07	85	Travel to Fort William	£150.00
11	07	85	Trial at Fort William	£400.00
01	09	85	Travel Fort William	£150.00
02	09	86	Trial Fort William	£400.00
03	09	85	" " "	£400.00
04	09	85	" " "	£450.00
05	09	85	" " "	£400.00
Total fees claimed for Boag-Thomson QC				£6,650.00 =====

FEEES CLAIMED BY A J LAMB ESQ ADVOCATE

21	06	85	Preparation including examination and calculations on voluminous productions	£170.00
26	06	85	" " " " "	£170.00
27	06	85	" " " " "	£170.00
28	06	85	" " " " "	£170.00
30	06	85	Travelling to Fort William - special journey	£150.00
01	07	85	Trial Fort William extra late sitting	£300.00
02	07	85	" " " " " " and consultations	£350.00
10	07	85	examining and considering additional documentary productions	£150.00

Examining productions, preparation 9 July 1985	£200.00 claimed - <u>£200.00</u> allowed for examining productions
10 July 1985	£150.00 claimed for travelling - reduced to <u>Nil</u> as per reason stated before
Conducting trial 11 July 1985	£400.00 claimed - <u>£400.00</u> allowed as per reason stated before
1 September 1985	£150.00 claimed for travelling - reduced to <u>Nil</u> as per reason stated before
Conducting trial 2 to 5 September 1985	£400.00 per day claimed for 2, 3 and 5 September 1985 - £400.00 allowed £450.00 claimed for 4 September 1985 £450.00 allowed as Sheriff on Bench until after 6 pm and I considered this to be late sitting  Therefore £400 x 3 = £1,200 + £450.00 = <u>£1,650.00</u>

Total amount allowed for Mr Boag Thomson £5,800.00

Mr Lamb Advocate - Junior Counsel

Examining productions etc 21, 26, 27 and 28 June 1985	£170.00 claimed per day - allowed £140.00 per day, being two thirds of what Senior Counsel was allowed.  Therefore 4 x £140.00 = <u>£560.00</u>
30 June 1985	£150.00 travelling claimed - reduced to <u>Nil</u> as per reason stated before for Senior Counsel.
Conducting trial 1 and 2 July 1985	£300.00 claimed for 1 July 1985 - £270.00 allowed as this fee is approximately two thirds of the fee allowed for Senior Counsel. £350.00 claimed for 2 July 1985 - £330.00 allowed as this fee is approximately two thirds of the fee allowed for Senior Counsel.  Therefore <del>£270.00</del> + £330.00 = <u>£600.00</u>
Examining productions etc 10 July 1985	£150.00 claimed - £140.00 allowed as per reason stated before  Therefore <u>£140.00</u>
1 September 1985	£150.00 travelling claimed - reduced to <u>Nil</u> as per reason stated before for Senior Counsel.
Conducting trial 2 September 1985 to 5 September	

01 09 85	Travelling to Fort William - special journey	£150.00
02 09 85	Trial Fort William	£275.00
03 09 85	" " "	£275.00
04 09 85	" " " extra late sitting	£300.00
05 09 85	" " " nototiating and adjusting and plea in mitigation	£275.00
	Total fees claimed for A J Lamb Esq Advocate	<u>£2,905.00</u>

DIET OF TAXATION - 22 AUGUST 1986 at 2 p.m.

Present: for Legal Aid Committe

Mr Boag-Thomson QC

Mr Lamb - Advocate

██████████ on behalf of the Legal Aid Committe commenced by stating that the account submitted by Mr Boag-Thomson and Mr Lamb was submitted to the Criminal Account Sub-Committee who were of the view that the Fees claimed were excessive.

Accordingly, the Sub-Committee offered Mr Boag Thomson £3,200 and Mr Lamb £2,130.00.

This was based on 8 days trial at £400/ day, the total of which is £3,200 and Mr Lamb was allowed two thirds of this fee which amounted to £2,130.

It was submitted by ██████████ that no fees would be paid to either counsel for preparation or travelling as no fees were laid down for this and that he was firmly of the view that the fee laid down in Schedule III of The Legal Aid (Scotland) (Fees in Criminal Proceedings Regulations 1985) is to cover attendances plus additional preparation and travelling.

██████████ further submitted that a fair and reasonable figure for the work done had been offered and as the charge had been reduced from petition to summary complaint, only one counsel, senior or junior would be allowed.

Mr Boag Thomson submitted that he knew that the accepted practice was that only one counsel is usually allowed in a summary matter and that the case was original in that senior and junior counsel had been used.

However, he did submit, in great length and referred me to, the number of productions that had been lodged in this case, a copy of which list is attached hereto.

He referred me in particular to the number of delivery books, productions 1 - 9, 30, and 31, and to productions 10, 13, 14, 15, 16, 28, 29 35, 36 and label productions 3 which all had to be cross checked with each other and that this needed the help of a third party.

He/

/He also submitted that he was entitled to remuneration for lost days in travelling to Fort William to conduct the trial.

Further, he referred me to Section 14(1) of the Legal Aid (Scotland) (Fees in Criminal Proceedings) regulations 1984 which states "Counsel shall be allowed such fee as appears to the Auditor to represent reasonable remuneration, calculated in accordance with Schedule 3, for work actually and reasonably done, due regard being had to economy".

Mr Boag Thomson drew my attention in particular to the words "Work actually and reasonably done" and submitted that in view of the number of productions lodged that had to be checked and cross checked that the work had in fact been "actually and reasonably" done.

Mr Lamb concurred in what Mr Boag-Thomson had submitted previously.

After hearing both sides submissions I decided viz:

Mr Boag-Thomson QC, ~~Senior~~ Counsel

examining productions and preparation 14 to 18 April 1985 inclusive

reduced from £250.00 per day to £210.00 per day as work done in Edinburgh, and based fee on prescribed fee for trial as there was no other way of calculating said fee and I deemed this to be appropriate.

Therefore £210.00 x 5 = £1,050.00

1 May 1985

£150.00 claimed for travelling - reduced this claim to Nil as prescribed fee for conducting trial probably takes into account travelling time

Conducting trial ,  
2 and 3 May 1985 and 6 and 7  
May 1985

£400.00 claimed per day - allowed this on the basis that if trial held in Inverness £341.50 claimed but with Fort William being more remote plus travelling time involved I did not think that £400.00 per day excessive.

Therefore £400.00 x 4 = £1,600.00

30 June 1985

£150.00 claimed for travelling - reduced to Nil as per reason given before

Conducting trial 1 July 1985 and  
2 July 1985

£450.00 claimed for 1 July 1985 as Sheriff on bench until 5.30 pm. I thought that claiming an extra £50.00 excessive as I did not consider this as being extra late sitting. £400.00 allowed, £500.00 claimed for 2 July 1985. Allowed this as trial commenced until after 6.30 pm and I considered this to be a late sitting.

Therefore £400.00 + £500.00 = £900.00.

PRODUCTIONS.

1. Milk Delivery Record Book.
2. Milk Delivery Record Book.
3. Milk Delivery Record Book.
4. Milk Delivery Record Book.
5. Milk Delivery Record Book.
6. Milk Delivery Record Book.
7. Milk Delivery Record Book.
8. Milk Delivery Record Book.
9. Milk Delivery Record Book.
10. Advice Slips.
11. Weekly Returns.
12. Book containing breakdown of milk received and sold.
13. List of customers not in books or shewn as getting less milk than actually receiving.
14. List of customers where amounts of milk shewn in books increased in week ending 5.11.83.
15. List of customers entered in books for first time in weeks ending 29.10.83 and 5.11.83.
16. List of customers where extra Saturday deliveries not marked in books.
17. Deliveries to School Canteens.
18. List of sums paid into bank.
19. Calendar.
20. 8 Cheques. [REDACTED]
21. 1 Cheque [REDACTED]
22. 43 Cheques [REDACTED]
23. 11 Cheques ([REDACTED])
24. Statement.
25. Book Debts at 12.11.83.
26. Book Debts at 1.1.83.
27. Letter.
28. List of Milk Tokens.
29. Monthly Accounts.
30. Milk Delivery Record Book.
31. Milk Delivery Record Book.
32. Book containing details of monies collected by [REDACTED]
33. School Milk Orders.

34. Report dated 23.5.85 by [REDACTED] and related papers.
35. Records of Sales of Milk (Creamery, Nairn).
36. Records of Sales of Cream. (Creamery, Nairn).

Label No. 1. £389. 55 in notes and coin.

" No. 2. £224. 81 in cheques.

" No. 3. 12 Milk Tokens.

Conducting trial 2 September 1985 to 5 September 1985 inclusive £275.00 claimed per day for 2, 3 and 5 September 1985. Reduced to £270.00 per day as this fee is approximately two thirds of what Senior Counsel allowed. £300.00 claimed for 4 September 1985. £300.00 allowed as this was two thirds of Senior Counsel's fee.

Therefore 3 x £270.00 = £810.00 +  
£300.00 £1,110.00

Total amount allowed for Mr Lamb £2,410.00

In conclusion - The work done by Mr Boag Thomson in preparing for this trial, was in my opinion "actually and reasonably done, with due regard to economy".

In considering this I had to take into account that to give his client a fair and proper trial a full investigation had to be done into the background of the case plus investigations and checking of productions etc.

X In view of the complexity in checking the productions etc, I think it reasonable that Junior Counsel was involved. Two matters which I think support this was the fact that Legal Aid was granted while accused was still on petition, and that a certificate in terms of 13(1) of the Legal Aid (Scotland) (Fees in Criminal Proceedings) regulations 1984 was granted and in terms of said Section "a counsel may immediately at the conclusion of the trial, make an oral application to the presiding judge for a certificate certifying that the case has necessarily been of exceptional length or complexity or difficulty".

Also, in terms of Schedule 3, where no fee has been prescribed, I have allowed such fee as it appears to me to be appropriate to provide reasonable remuneration for the work carried out with regard to all the circumstances and I am satisfied that because of the particular complexity or difficulty of the work, I have provided a reasonable fee for the work carried out by Mr Boag-Thomson and Mr Lamb.

Brian J Carroll.

Auditor of Court

Fort William  
9 DEcember 1986



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Deputy Secretary



Head of Criminal Accounts Dept

VINCENT McKNIGHT

I thank you for your memo dated 11 December with enclosure.

I confirm it will be in order for you to make the additional payment to both counsel.

I note, and agree with, what you say about the Auditor's apparent misunderstanding of the position regarding the employment of more than one counsel in a summary case. I think the Auditor also displays a misconception of the Regulation 13 procedure, when, in the penultimate paragraph of his Note, he refers to counsel making an application for a certificate. I really do not understand what the Auditor is meaning there.

.....

11th December,  
..... 1986

THE LAW SOCIETY OF SCOTLAND  
LEGAL AID CENTRAL COMMITTEE

MEMORANDUM

From ....  
Head of Criminal Accounts

To .....  
Deputy Secretary

VINCENT McKNIGHT

Please find attached a copy letter from the Sheriff Clerk dated the 9th December together with enclosures which I received this morning.

If my recollection is correct I think the Committee agreed that the Auditor's figures were acceptable and that no note of objection should be taken. In these circumstances it would be my intention to authorise the balance of the outstanding fees due to Counsel in this case.

The only mistake which I think the Auditor has made is in the fifth paragraph on page 2 of his notes and it maybe that he did not fully understand the position. What I actually explained to him was, that in a normal Summary Criminal case only one Counsel can be employed, who may be Senior but as the application for Senior and Junior Counsel was made at the time when the case was on petition the Committee were of the view that they would require to pay both Counsel. - As per S/C minute 1/9/86

Perhaps you would be good enough to confirm that it is in order for me to authorise the additional payment.

