

Auditor of the Court of Session

Note by the Auditor

- 7 AUG 1987

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Whether the local solicitor can recover charges for his attendance at a proof or trial in the Court of Session is in the final analysis always to be determined by the circumstances of the particular case. The Auditor has not been satisfied that the charges sought here should be allowed and as the papers made available to him at his request and the submissions at the diet of taxation have given him a picture of the case and the proof covering all the relevant considerations, he can express himself well satisfied that here the charges should not be allowed.

What must be assessed is the probable contribution of the local solicitor to the presentation of the case in Court. Some cases, particularly in the consistorial field, have a substantial background of events, disputes or negotiations which it may be impracticable to record in detail and set out for Counsel in precognition but which may emerge in some form relevantly in the course of the evidence: if the local agent has been involved in or is conversant with that background, his presence in Court may make a substantial contribution to the examination of the witnesses. The local solicitor may in the course of preparation of the case, become particularly familiar with essential expert or technical aspects and achieve a measure of rapport with and understanding of those giving expert testimony, all to a degree beyond what is achieved by the Edinburgh solicitor nominally responsible to the Court for the case. Other such scenarios can readily be imagined. In all of them a sufficient appraisal would demonstrate that the local agent's input could, and might reasonably be expected to be, materially greater than that of the Edinburgh solicitor. This could readily be set out, with sufficient explanation, in a note by Counsel: if Counsel gave no explanation, the question would remain at large for the Fund.

There is, the Auditor believes, no practice of obtaining the Fund's authority in advance for the attendance of the local solicitor. A sufficiently full note by Counsel might warrant the giving of such authority, but as it is a matter of circumstance seldom with a simple single answer, it can more easily be dealt with by the Fund when the whole case is more fully set out in the Account.

In an agent-and-client, client paying, situation, authority would be sought from the client upon the basis that the local agent's charges for attendance might not be recoverable from the opponent under a general finding for expenses, but with a fund paying, the client's authority could not be regarded as critically given.

If the local agent is regarded as properly attending, his charge will be the full time rate. The Edinburgh solicitor cannot divest himself of his responsibility to the Court for the case but in this situation, the attendance of a clerk will be sufficient and for it, half rates should be allowed.

EDINBURGH.

6th August 1987.

