


DATE	29-Oct-87	
AUDITOR	J Telfer	
COURT	Perth S.C.	
SOLICITOR	A C Miller & Mackay	
CASE		EM
ACCOUNT TYPE	A&A	
TAXATION HEAD	Framing / Admin work	
TAXATION ISSUES	<ol style="list-style-type: none"> 1. Point of principle re amount charged for completing advice & assistance form. 2. Charge for making up file and admin work. 	
DECISION	<ol style="list-style-type: none"> 1. The solicitor charged 12 minutes for completing advice & assistance form. The Auditor halved his charge to 6 minutes. 2. The Auditor abated this charge entirely on the ground that the work involved would be covered under the charge for posts and incidents. 	

THE SCOTTISH LEGAL AID BOARD

REPORT BY LEGAL OFFICER

LEGAL ADVICE AND ASSISTANCE - REPORT ON TAXATION

[REDACTED] 65/10/602017/86

At its meeting on 26 October, 1987, the Accounts Taxation Subcommittee decided that the account in this case should be taken to taxation (see Minute Item 11(b)).

Upon submission of the solicitor's account, the accounts department proposed abatements in respect of three entries in the account. The first proposed abatement of £4.23 was in respect of the time of 12 minutes claimed by the solicitor for completing the legal advice and assistance form. The time was felt to be excessive and was reduced to half. The second and third abatements were each of £2.82 and were in respect of charges made by the solicitor for perusing incoming correspondence. These were considered bad charges in accordance with established taxation principles. The total abatements proposed amounted to £9.87.

The solicitor, Mr Kenneth M Buchanan, of Messrs A C Miller & Mackay, Solicitors, Perth remitted the account for taxation, and at the taxation on 29 October at Perth Sheriff Court the solicitor attended and the Board was represented by [REDACTED], Head of the Civil Accounts Department.

The account remitted for taxation was not the same account as had originally been submitted to the Board. It is competent for a solicitor to reframe his account for the purposes of taxation. The original account had been framed in accordance with the guidelines previously issued by the Legal Aid Central Committee. The account appears to have been reframed so as to accord more closely with the terms of the Table of Fees prescribed in Schedule 2 of the Legal Advice and Assistance (Scotland) Regulations 1973 as amended. Legal advice and assistance was first provided prior to 1 April, 1987.

A copy of the reframed account is annexed to this report, with the Auditor's docquet appended thereto. The following comments refer to the numbered entries in the account.

1. The Auditor indicated that a solicitor of the capability and experience of Mr Buchanan should not spend 12 minutes completing the application form. The Auditor reduced this claim to £2.80, which reflected a time involvement of 6 minutes. The Auditor did, therefore, support the Board in this instance.
2. This entry was not disputed.
3. This charge based on 6 minutes time did not occur in the original account. It is concerned with the solicitor's internal administrative procedures. The Auditor abated this charge entirely, on the ground that the work involved would be covered under the charge for posts and incidents.
4. & 5. Charges for these letters in the original account were based on sheetage, but in the reframed account have been based on time. The Auditor examined the letters in question. The solicitor pointed out that the regulation fee for a formal letter, £2.20, was equivalent to a charge based on time of 4.7 minutes. The Auditor agreed that a charge based on 10 minutes for each of these letters was reasonable in this particular case.

6. The department have not accepted a charge for perusing an incoming letter, as being contrary to established principles of taxation. The view hitherto generally accepted by Auditors is that certain work, although non-chargeable, leads to work that is chargeable. In this case, however, the Auditor considered that she was bound by para 1(c) of the Table of Fees and that she had no option other than to regard the perusal of incoming mail as chargeable under the heading of "all other work". This view is similar to the view expressed by the Auditor of the Court of Session in his Opinion. A charge based on 5 minutes time was claimed and allowed by the Auditor at Perth.
7. This entry was not disputed.
8. A charge based on 5 minutes time was claimed and allowed for perusing an incoming letter. (See entry 6 above.)
9. This is a charge based on 2 minutes time for photocopying a letter. The Auditor considered it was in order to make such a charge, but had some difficulty in quantifying it. She allowed the charge as stated.
10. This entry was not disputed.
11. The solicitor claimed posts and incidents calculated as 12% of fees. The Auditor considered that this particular percentage was not justified, but allowed a charge based on 5% of fees, in accordance with the practice in legal advice and assistance cases prior to 1 April, 1987. This charge would also cover the work involved at entry 3 (making up the file etc).

The Auditor indicated that she was accustomed to dealing with the taxation of accounts of judicial expenses, and had little experience of taxations in advice and assistance cases. Although the taxation occupied a full morning, she did not propose to charge a fee for the taxation, apparently being content to put it down to experience. The Auditor is not to write a formal report.

Arrangements are being made for payment of the account as taxed.


Legal Officer

2 November 1987

MEMORANDUM

To:

[REDACTED] Esq.,
Legal Officer.

From:

[REDACTED],
Head of Civil Accounts.

REPORT ON TAXATION.

ASSISTED PERSON:

[REDACTED]

REFERENCE NUMBER:

65/10/602017/86

SOLICITOR:

A.C. MILLER & MACKAY; K.M. BUCHANAN.

AUDITOR:

J. TELFER.

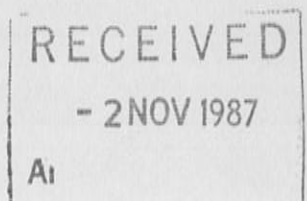
As instructed by the Civil Accounts Sub-Committee I attended the above Taxation at Perth Sheriff Court on Thursday, October 29th, 1987.

I enclose a photocopy of the account as taxed, together with internal file, for your information and for ease of reference I have numbered the entries contained in the account. I might add at this point that the Taxation commenced at 9.45am. and concluded at 12.05pm. A very full discussion took place regarding the content and presentation of what would appear, at first glance, to be a simple everyday Advice and Assistance Account. As I indicated in my telephone conversation last Wednesday the account had in fact been re-framed prior to lodgement with the Auditor and was not in fact the actual account lodged for payment by the Fund. I advised the Auditor at the commencement of the Taxation but could see no real advantage in seeking a postponement although I required to have the facility to examine the Solicitor's file during Taxation.

The original disagreement revolved around the first, sixth and eight entries contained in the account although, since the re-framing exercise, I was of the opinion that the third, fourth, fifth, ninth and eleventh entries would fall to be examined.

The Auditor indicated very early that her expertise lay in the area of Judicial Taxation and her experience of Advice and Assistance Taxations was limited.

Contd/.....



Contd/.....

In later conversation it transpired that the Auditor had taken advice from the Society of Sheriff Clerks who perform most of the local Taxations and was inclined not to regard this Taxation as a "test case" although the Board would be free to consider her views and ultimate decision. It would seem inappropriate for the current decision to determine Board policy in view of the limited experience in this area of charging.

SUMMARY OF AUDITORS DECISION

- 1) The Auditor reduced this claim to £2.80 which reflected a time
- 2) involvement of six minutes. The Solicitor's file contained a file entry relating to charges and it was the opinion that the charge for completing the LAA3 should be included in the narrative for the original meeting and reflected in the time claimed. Nevertheless the Auditor indicated that, in this case, a Solicitor of the capability and experience of Mr. Buchanan should not spend 12 minutes completing the appropriate application form.
- 3) This charge was abated entirely on the ground that the "work" undertaken would relate to the claim for Posts and Incidents.
- 4)
- 5) These entries were allowed after examination of the relevant letters. Mr. Buchanan offered, to justify the time claimed, the view that the charge for a formal letter, listed at £2.20, was equivalent to 4.7. minutes and the Auditor agreed that 10 minutes claimed in this particular account was reasonable. It was understood that I was not prepared to accept the times stated as as a norm.
- 6)
- 8) The Auditor heard submissions on the validity of these charges. I felt I had to resort to the time honoured definitions relating to "Bad Charges". I explained Auditors practice over the years (I could not refer to present thoughts in that direction) and the generally accepted view that certain work, although non-chargeable, leads to work that is chargeable. The Auditor considered that she was bound by part (c) of the Table of Fees and was of the view that she had no real option other than find that perusal of incoming mail would fall to be charged in terms of "Other Work". It was also her view that the term "perusal" was misleading. A time charge would cover reading correspondence received in response to an outgoing letter, for example, and extracting relevant information. The incoming mail would have to be considered in light of previous letters sent by the Solicitor. It might not be appropriate to charge for reading correspondence from ones own Client unless direct instructions or responses to direct questions are offered. A letter enquiring the position, for example, should not be charged or allowed.
- 9) The Auditor considered that this claim was reasonable in this case but found difficulty in quantification.


Contd/.....

Contd/.....

- 10) The final claim related to a charge for Posts and Incidents which was listed as 12% of the Fees due to the Solicitor. After discussion the Auditor could not see any justification for this claim and in terms of previous practice would allow 5%. This percentage would also cover the third entry in the Account of Expenses.

The Auditor did not charge a fee for the Taxation and indicated that she would be content to mark this one down to experience. No fee was requested or allowed on behalf of Mr. Buchanan.

I have retained the original Taxed Account and will be grateful if you could advise me whether payment can be released.



30th October, 1987.

Copy:

AMLAA13

Legal Advice and Assistance Account

Civil

Reference 65/10/602017/86

Our Client

Our File SB/Housing Benefit

21/10/86

Completing Legal Advice and Assistance Form (12 mins)

Tax off
2.80 ✓

Attndce with you on your call. Noting you have a problem with DHSS and with your Housing Benefit. Perusing terms of letters which you have had from Perth and Kinross District Council and Supplementary Benefit. Advising you that simply for some reason your certification had been taken away and therefore you were required to pay full rent. Noting, however, there appears to be some confusion here and there is no way you should not be getting at least some Housing Benefit. Agreeing to write to Perth and Kinross District Council re this and ask them for a back date of any Housing Benefit granted. Engaged 15 mins.

Making up file, twinlock and admin work in respect of this (6 mins).

23/10/86

Writing to PKDC re this matter. Advising them of our interpretation of the matter and that you should therefore be in receipt of full Supplementary Benefit and asking that they back date any Housing Benefit. 10 mins

Writing to DHSS re this matter. Asking that they confirm that you should in fact be entitled to certificated Housing Benefit. 10 mins

29/10/87

Perusing terms of letter from DHSS re our letter of 23/10/86. 5 mins

COPY ACCOUNT

64
5-60 ✓

65
7-01.

82
2-80.

4-70.

4-70.

2-35

30/10/86

Writing to DHSS in reply to their letter of 29/10/86 (formal)

2 - 20 ✓

14/11/86

Perusing letter from PKDC confirming that you are in receipt of full certificated Housing Benefit. 5 mins.

2 - 35 ✓

Photocopying this. 2 mins

- 94 ✓

18/11/86

Writing you therewith confirming the situation. (formal)

2 - 20 ✓

Total

* 34 - 85 ✓

Post and incidents

12%

Abate to 5%.

Pre 87 incl.
also includes entry #3 (page 1)

4 - 18

£ 39 - 03

Sub. Total

£ 34.85

Tax off

2.80

2.80

5.60

29.25

Post & incidents 5%

1.46

£ 30.71

Perth 29th October 1987

The foregoing account of expenses is hereby taxed to the sum of THIRTY POUNDS SEVENTY ONE PENCE (£30.71)

