

NOTE BY THE JOINT AUDITOR of EDINBURGH SHERIFF COURT
with regard to
Legal Advice and Assistance Account

CP [REDACTED]

Reference 63/05/89447/88

This Account rendered under the Legal Advice and Assistance Scheme was submitted to me for Taxation in terms of Regulation 17 (3) of the Advice and Assistance (Scotland) (Regulations) 1987. The Account falls to be taxed in accordance with the Regulation 16.

At the Taxation which took place on 6th September 1989 the Assisted Person was represented by R.G. Burnett of Drummond & Co W.S. The Scottish Legal Aid Board was presented by Mr Keith Marshall Director of Application of the Legal Aid Board.

The Legal Aid (Scotland) Act 1986, Section 10 of which provides:

1. Where at any time (whether before or after advice and assistance has begun to be provided to a client) it appears to the Solicitor that the cost of giving it is likely to exceed the limit applicable under this section-

(a) the Solicitor shall determine to what extent that advice and assistance can be provided without exceeding that limit; and

(b) shall not give it (or, as the case may be, not instruct Counsel to provide it) so as to exceed that limit except with the approval of the Board.

(2) The limit applicable under this section is £50.00.

REGULATION 11 PROVIDES:

(1) Where at any time it appears to the Solicitor that the cost of giving the advice and assistance is likely to exceed the limit applicable under Section 10 of the Act or under paragraph (2) below he shall apply to the Board for its approval to an increased limit, stating the reasons for the excess, the likely amount, and giving such other information as may enable the Board to consider and determine that application.

2. The Board, if it approves an application made under paragraph (1) above-

(a) shall authorise such increased limit as it thinks fit; and

(b) may require that the advice and assistance be subject to such conditions, and limited to such subject matter, or, in the case of assistance by way of representation, such proceedings (or stages of proceedings) as it thinks fit.

3. The Board shall inform the Solicitor of its decision in regard to an application under paragraph (1) above.

It was a matter of agreement between the parties that if the interpretation preferred by the Legal Aid Board was appropriate then the Account should be taxed at the sum of £222.54. It was also agreed that in the event of the interpretation by Messrs Drummond & Co for the Assisted Person being preferred then the Account should be taxed at the authorised increase of £250.

Reference is also made to a decision of the Auditor of the Court of Session in a case called London. A copy of the Decision was produced to me dated 7th December 1938. Mr Burnett adopted the reasoning given by the Auditor of the Court of Session in that Note.

Briefly stated, the issue between the parties was as to whether the Legal Aid Board were entitled to tax the Account on the basis that the expenditure charged in the Account could not properly be charged without the Solicitor for the Assisted Person having obtained before carrying out the work the approval of the Legal Aid Board. Mr Burnett made reference to the passages in Maxwell on Interpretation of Statute dealing with consolidating statutes at pages 20 and 21 the question of literal construction at page 33 etc., the purpose of the legislation at page 45., construction by reference to earlier legislation at p.64. Restrictive Construction at p105, and the fact that the more reasonable construction should be adopted in case of dispute at page 203. The relevant decisions referred to in that work were considered.

It seems to me that giving a proper construction to section 10 of the Act it is incumbent upon the Solicitor for the Assisted Person to consider ~~it~~ carefully the likely cost of the work to be carried out on behalf of an Assisted Person. It seems to me also that the said section contains a specific and express admonition to the Solicitor for the Assisted Person not to proceed to incur addition expense without obtaining approval from the Legal Aid Board. It seems to me that to give any kind of realistic meaning to that section this must have the result that the approval of the Board must be sought before the expenditure is incurred. In deciding the way I have, I have considered very carefully the opinion given by the Auditor of the Court of Session in the case of London referred to above. I have also considered carefully the

reasoning given by my co-Auditor Mr J.M. Tait in the decision of a similar issue.

I accordingly sustain the representation on behalf of the Legal Aid Board and Tax the Account at the sum of £222.54.

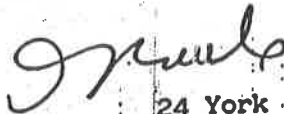


S.S.C
24, York Place, Edinburgh
JOINT SHERIFF COURT AUDITOR

Edinburgh

September 1989

The Joint Edinburgh Sheriff Court Auditor taxes the foregoing account in
the case of [REDACTED] at the sum of £222.54 exclusive of VAT



S.S.C.
24 York Place, Edinburgh
JOINT SHERIFF COURT AUDITOR

SCOTTISH LEGAL AID BOARD

M E M O R A N D U M

To: [REDACTED]
Manager
Advice & Assistance

From: [REDACTED]
Manager
Special Projects

DRUMMOND & CO - [REDACTED] 63/05/898447/88

I refer to the proposed taxation in the above case and will be grateful if you could advise me when notification of the diet is received. It is important that Accounts Registration immediately pass on this information as soon as it is received.

[REDACTED]

31st August, 1989

c.c. [REDACTED]

Taxation
Wed 6/9/89
3pm

[REDACTED]

Original papers
with DWA

DRUMMOND & Co. W.S.

SOLICITORS & ESTATE AGENTS
31/32 MORAY PLACE EDINBURGH EH3 6BZ
TELEPHONE 031-226 5151 FAX Tel. No. 031-225 2608

OUR REF: FJFC/FLM

28th August 1989

R.E.104 Edinburgh

YOUR REF:

The Scottish Legal Aid Board
Rutland Exchange Box ED250
EDINBURGH

CODE NO 00523

SENT BY FAX

Dear Sirs

██████████ - 63/05/894-7/88

We enclose copy of our Account which has been submitted to the Auditor of Court for taxation.

Yours faithfully



Enc

Offices at:
Bathgate: 66 South Bridge Street, Tel: 0506 54662
Dalkeith: 11 White Hart Street, Tel: 031-663 9568
Edinburgh: Centre House, 43 Rose Street, Tel: 031-226 5151
Edinburgh Property Centre: 43 Rose Street, Tel: 031-225 3387
Kirkcaldy: 47 Whytescauseway, Tel: 0592 205000
Musselburgh: 151/155 High Street, Tel: 031-665 9505/6 & 665 7393

R. G. RITCHIE W.S.
E. ANN COUPER W.S.
R. J. C. GARDNER
A. D. BUCHANAN
A. J. BURLEIGH

J. K. BURLEIGH W.S.
R. G. BURNETT S.S.C.
J. CARLIN
E. J. WILLIAMSON S.S.C.
FIONA I. MURRAY

J. I. WILSON S.S.C.
A. G. McCULLOCH S.S.C.
J. P. ROBERTSON
ISABEL J. ANDERSON
D. C. MITCHELL

THE SCOTTISH LEGAL AID BOARD

ADVICE AND ASSISTANCE ACCOUNTS

Messrs. Drummond & Co.,
Solicitors,
RE Box 104,
EDINBURGH.

44 Drumshaugh Gardens, Edinburgh EH3 7SW
Telephone: 031-226 7061 Ext: 135
Rutland Exchange No: ED250
Fax No: 031-220-4882

PLEASE ATTACH THIS REFERENCE SLIP TO YOUR REPLY

██████████
63/05/89447/88
KF/AC

Your ref: FJFC/LAS

Dear Sirs,

29th June, 1989

I refer to your letter of 14th April, 1989 and would advise you that the Board adheres to its view that increases in authorised expenditure are effective only from the date of grant. The Board's view is supported by the recent decision of the Joint Auditor of Edinburgh Sheriff Court in the cases of ██████████ C & L

The original offer of £222.54 accordingly stands and I look forward to hearing from you further in due course.

Yours faithfully,

AC

PP

ACCOUNT OF EXPENSES

Incurred by

THE SCOTTISH LEGAL AID BOARD

to

MESSRS. DRUMMOND & CO, W.S.
EDINBURGH

██████████ (A.P.)

Legal Advice and Assistance
Reference No. 63/05/898447/88

Legal Aid Code 00523

1988

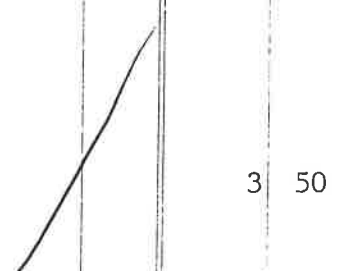
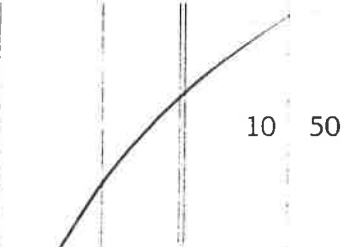
Jan	28	Writing you referring to your claim against Cheynes Hairdressers enclosing Legal Advice and Assistance Form for completion you, advising you fully thereon and requesting you return same as soon as possible	3 50
		Agency partially completing form AA/1	-- --
Feb	1	Writing Messrs Thomsons advising we have been consulted by Client in connection with her leaving the employment of their Clients, giving full details of our understanding of version of events, giving details of wages due to our Client and confirming if we do not receive any proposal for settlement within 14 days we shall not hesitate to raise an action against their Clients, 2 pages	7 00
	3	Writing Scottish Legal Aid Board submitting form AA/1	-- --
	8	Writing Messrs Thomson acknowledging their letter of 4th February confirming our Client gave written notice on Monday 28th of September to end on 24th October but /	-- --
		£	10 50

£

10 50

1988

Feb	8	confirming she was however asked to leave on 3rd October and requesting to hear from them with a view to settlement	3	50
	17	Writing Scottish Legal Aid Board returning form AA/1 together with a duplicate copy and apologising for the inconvenience caused	2	30
	17	Writing Messrs Thomsons acknowledging and noting	2	30
	22	Attendance at telephone with you requesting you to call	-	--
	24	Attendance with you discussing up to date position of case, taking details for your precognition and advising you as to further procedure, Engaged 40 minutes (20 minutes in this connection)	11	84
		Fee for your precognition, 2 sheets	29	60
		Agency preparing Legal Aid Application Form	2	96
		Agency preparing Memorandum	2	96
		Making 2 copies, 1 sheet each		98
		Agency preparing intimation Legal Aid papers	2	96
Mar	2	Writing Scottish Legal Aid Board submitting Form AA/1A detailing further work to be undertaken and requesting an increase in Authorised Expenditure to £150 (granted)	3	50
		Writing you referring to our recent meeting confirming we require a corroborating statement from a witness before we can submit your Legal Aid application and discussing fully thereon	3	50
	9	Attendance with your witness taking details /		
			£	76 90



1988

£

76 90

Mar 9 for his precognition

Fee for precognition of [redacted], over 1 sheet

11 Writing Scottish Legal Aid Board submitting Legal Aid application form and detailing papers sent

Intimating same

Making copy of documentation for Scottish Legal Aid Board, 1 sheet

31 Writing you advising you should be contacted shortly by the Legal Aid Board in connection with your financial position and requesting you complete any forms as soon as possible

Apr

7 Writing Messrs Thomsons acknowledging their letter of 28th March noting their suggestion that this matter be submitted to either ACAS or the Wages Counsel confirming we will take our Client's instructions and let them know as soon as possible, acknowledging receipt of their notice of objection and advising we had not intended to raise this matter in the Court of Session but as a Summary Cause and further thereon

Agency engaged perusing notice of objections received

Writing you advising we have now heard from Messrs Thomsons that their Clients are willing to negotiate on this matter and have suggested submitting our claim to ACAS or the Wages Counsel and requesting your further instructions

Writing the Scottish Legal Aid Board advising we understand that objections to our Legal Aid application have been submitted by the Defender's agents, confirming we did not intend raising this action in the Court of Session but as a Summary Cause and further thereon

£

122 35

22 20

3 50

2 30

49

3 50

3 50

2 96

3 50

3 50

2

£

122 35

1988

Apr	12	Attendance at telephone with you discussing regarding referring the matter to ACAS or the Wages Counsel and advising you fully thereon, Engaged 5 minutes	2	96
	14	Agency engaged perusing copy statements received from Thomsons	2	96
	21	Writing you acknowledging your recent letter noting you are prepared to submit this matter to ACAS confirming we have heard further from Thomsons who have sent us a schedule of your holidays indicating the periods over which you were on holiday and further thereon	3	50
		Writing Messrs Thomsons acknowledging and noting confirming we will take our Client's instructions and revert to them as soon as possible and confirming our Client would be amenable to submitting this matter to arbitration	3	50
May		Attendance with you going over documentation received from Thomsons and noting your further instructions thereon, Engaged 30 minutes	14	80
	10	Writing you referring to our recent meeting advising we have now heard from the Legal Aid Board that they wish production of your contract of employment, discussing fully thereon, confirming we have also made a calculation of your loss to date, giving full details thereon and requesting confirming that this is in order; confirming we have spoken further to Messrs Thomsons giving full details thereon and requesting to hear from you in this connection, 2 pages	7	00
		Agency engaged making calculations, Engaged 10 minutes	5	92
		Attendance at telephone with Messrs Thomsons negotiating further, Engaged 5 minutes	2	96
	12	Writing Messrs Thomsons acknowledging and noting	2	30
			£	168 25

£

1988

May 18 Writing Messrs Thomsons referring to our recent telephone conversation enclosing breakdown of our Client's claim and requesting further discussion one they have had the opportunity of taking their Client's instructions, 3 pages

Attendance with you discussing up to date position of case going over calculations and noting your instructions thereon, Engaged 20 minutes

Writing the Scottish Legal Aid Board referring to their letter of 4th May confirming we have now had the opportunity of taking our Client's further instructions, giving details of our Client's exact calculation of alleged losses confirming she had no form of contract with her employers and requesting they contact us should they require any further information

31 Writing you advising we have now heard from Thomsons that they are taking instructions relative to our position in this matter and further thereon

June 17 Writing Messrs Thomsons acknowledging and noting

Writing you advising we have now heard further from the solicitors acting on behalf of Cheynes giving full details thereon and requesting your instructions as soon as possible, 2 pages

July 4 Attendance at telephone with you discussing up to date position of case and noting your further instructions, Engaged 3 minutes

6 Writing you referring to our recent telephone conversation confirming we have written to Thomsons indicating that an informal discussion between solicitors would perhaps be most advantageous and further thereon

Writing Messrs Thomsons confirming we have taken our Client's further instructions/

£

168 25

10 50

11 84

3 50

3 50

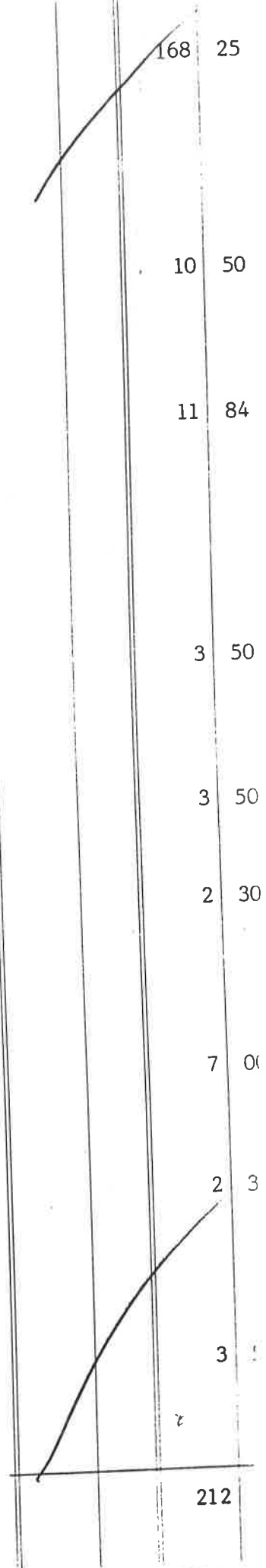
2 30

7 00

2 3

3 1

212



£

1988

July 6 confirming she is willing to compromise in this matter, suggesting the most fruitful way of proceeding may be for our Mr Christie to discuss the matter informally with your Mr Thomson and further thereon

212 69

28 Attendance at telephone with Thomsons discussing case further, Engaged 6 minutes

3 50

2 96

Aug 1 Writing Scottish Legal Aid Board submitting form AA/1A detailing further work to be undertaken and requesting an increase in Authorised Expenditure to £250 (granted) 2 pages

9 00

Writing Messrs Thomsons referring to our recent telephone conversation confirming our Client's claim basically falls under 1 headings, giving full details thereon, advising we hope there can be some discussion in relation to the third claim as we note from the other 2 claims there is probably very little room for compromise between our respective Clients and further thereon. 3 pages

13 50

Writing you confirming we have now been in discussion with the solicitors acting on behalf of Cheynes Hairdressers, giving full details thereon and confirming we will contact you as soon as we have anything further to report in this connection

4 50

c.16.15 Pay £150 authorised - income not effective until date granted

30 Writing you advising we have now heard that your application for Legal Aid has been refused and discussing fully thereon

4 50

Sept 6 Attendance with you discussing Legal Aid position and noting your further instructions Engaged 15 minutes

9 48

15 Writing you referring to our recent meeting advising it is possible for an application for review of Legal Aid to be submitted discussing fully thereon and requesting your further instructions as soon as possible

9 00

£

269 13

1988

		£	269 13
Sept	15	Writing Messrs Thomsons referring to our letter of 1st August and requesting they advise if they have yet had the opportunity of taking their Client's instructions	1 80
		Attendance with you discussing up to date position of case and having you sign application for review of refusal of Legal Aid, Engaged 5 minutes	3 16
Oct		Attendance with you discussing regarding change in your financial circumstances	3 16
	4	Writing you confirming we have now submitted your application for review of refusal of Legal Aid but are not particularly hopeful about succeeding and further thereon	4 50
		Writing Messrs Thomsons enclosing copy REV/CIV	1 80
		Writing Scottish Legal Aid Board submitting form REV/CIV together with relative papers	1 80
		Writing Cheynes Hairdressers enclosing copy form REV/CIV	1 80
Nov	25	Writing you advising we have now heard from the Legal Aid Board that they are not prepared to reconsider their original refusal of Legal Aid and discussing fully thereon	4 50
Nov	30	Attendance at telephone with you discussing matters further	1 80
Dec	5	Writing you referring to our recent telephone conversation advising we feel that we should have a further meeting in order to discuss further procedure due to the fact that Legal Aid has been refused and requesting you contact us in this connection	1 80
	13	Attendance with you discussing options open to you and noting your further instructions, Engaged 20 minutes	12 64
		£	307 89

£

307 89

1988

Dec 20 Writing you referring to our recent meeting noting you do not wish to give up proceedings against Cheynes Hairdressers giving details of options open to you and confirming we will keep our file open for a further 1 month when we shall check the position with yourself again

4 50

1989

Jan 26 Writing you referring to our letter of 20th December requesting confirmation of your further instructions in this matter and requesting you advise if you wish us to take any further action on your behalf failing which we shall simply arrange to close our file

4 50

Feb 28 Writing you advising that as we have not heard from you we assume that you do not wish to take any further action in this matter and accordingly are arranging to close our file

1 80

Add Reasonable Outlays

4 71

- 1 Letter at 35p
- 20 Letters at 18p
- 5 Letters at 13p
- 1 Telephone Call at 11p

*covered by restricted £150
NO Pds from 1/8/88*

35
60
65
11

ADD OUTLAYS

*Other
Case £222.54*

£

4

71
£

318 69
4 71

£

323 40

Authorised Expenditure £250
Client's Contribution NIL

THE SCOTTISH LEGAL AID BOARD
M E M O R A N D U M

Judith:

*Judicial
Review.*

TO: CHIEF EXECUTIVE
DIRECTOR OF FINANCE
[REDACTED] HEAD OF LEGAL SERVICES
[REDACTED], MANAGER, SPECIAL PROJECTS ✓

FROM: DIRECTOR OF APPLICATIONS

ADVICE & ASSISTANCE - RETROSPECTIVE CHARGES - CASE OF [REDACTED]

I enclose for your information a copy of the Petition which Drummond & Co are lodging against the Auditor's decision. I have not, as yet, received service of the Petition; this copy has been passed to me by Robbie Burnett for information. I have passed a copy to [REDACTED] so he can consider what Counsel we may wish to instruct.

KJM
16.01.90

./

That in terms of the Advice and Assistance (Scotland) Regulations 1987, (hereinafter "the regulations") provision is made for the funding by the Scottish Legal Aid Board (hereinafter "the Board") of advice and assistance given by solicitors. The limit of the said funding is £50, in terms of regulation 11, and section 10 of the Legal Aid (Scotland) Act 1986 (hereinafter "the Act"). Regulation 11 provides, inter alia:-

11.- (1) Where at any time it appears to the solicitor that the cost of giving the advice and assistance is likely to exceed the limit applicable under section 10 of the Act or under paragraph (2) below he shall apply to the Board for its approval to an increased limit, stating the reasons for the excess, the likely amount, and giving such other information as may enable the Board to consider and determine that application.

(2) The Board, if it approves an application made under paragraph

(1) above, -

(a) shall authorise such increased limit as it thinks fit;...."

3. That the regulations 16 and 17 provide as follows:-

"Fees and Outlays of Solicitors

16. (1) Subject to paragraph (2) below, fees and outlays allowable to the solicitor upon any assessment or taxation mentioned in Regulations 17 and 18 in respect of advice or assistance shall, and shall only, be:

(a) fees for work actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given, calculated, in the case of assistance by way of representation, in accordance with the table of fees in Part I of Schedule 3 and, in any other case, in accordance with the table of fees in Part II of Schedule 3; and

(b) outlays actually, necessarily and reasonably incurred in connection with that matter.

(2) The fees and outlays allowable to the solicitor under paragraph (1) above shall not exceed the limit applicable under section 10 of the Act as read with Regulation 11.

/.....

...../

Assessment and taxation of fees and outlays

17. (1) Where the solicitor considers that the fees and outlays properly chargeable for the advice or assistance exceed any contribution payable by the client under the provisions of section 11 of the Act together with any expenses or property recovered or preserved under the provisions of section 12 of the Act as read with Regulation 15, he shall, within 6 months of the date when the giving of advice and assistance was completed, submit an account to the Board.

(2) Where the Board receives an account in accordance with paragraph (1) above, it shall assess the fees and outlays allowable to the solicitor for the advice or assistance in accordance with Regulation 16 and shall determine accordingly any sum payable out of the Fund and pay it to the solicitor.

(3) If the solicitor is dissatisfied with any assessment of fees and outlays by the Board under paragraph (2) above, he may require taxation of his account by the auditor; the auditor shall tax the fees and outlays allowable to the solicitor for the advice and assistance in accordance with Regulation 16, and such taxation shall be conclusive of the fees and outlays so allowable."

4. That the Petitioners gave certain legal advice and assistance to a client, [REDACTED] (hereinafter "the applicant"). The Petitioners were first consulted by the applicant in or about January 1988. It became apparent to the Petitioners that the work which they required to do on the applicant's behalf would necessitate their charging a fee in excess of £50, as provided in terms of section 10 of the Act. On or about 2nd March 1988, the Petitioners wrote to the Board, making application for increase in authorised expenditure in terms of Regulation 11 of the Regulations. The Petitioners continued to provide the applicant with advice and assistance. Thereafter, on or about 1st August 1988 the Board authorised an increase in expenditure to a maximum of £250. To that date, the Petitioners had provided legal advice and assistance such that their fees and outlays were

..../were in excess of £50.

5. That on or about 13th March 1989 the Petitioners sent their account to the Board, seeking payment of the sum of £250, which was the extent of the increased authorised expenditure. The Board refused to make payment in that sum, and in terms of Regulation 17(3), the matter was referred to the Respondent for taxation.
6. On or about 6th September 1989, a hearing was held for taxation of the account. On behalf of the Board, it was argued that the Petitioners fees and outlays in excess of £50 could not properly be met by the Board, on account of the fact that the said work carried out was carried out without the prior approval of the Board.
7. That the Respondent agreed with the argument presented on behalf of the Board. Copies of his decision and the Petitioners' account of fees and expenses are produced, the terms of which are held as repeated and incorporated herein brevitatis causa.
8. That the Respondent erred in law in his interpretation and application of the provisions of the Advice and Assistance (Scotland) Regulations 1987. In terms of the said regulations, the Petitioners were entitled to have their account taxed on the basis that they were entitled to payment in respect of inter alia the works done by them prior to the approval of the Board of the increase in authorised expenditure.
9. In these circumstances the said decision of the Respondent should be reduced. The Petitioners seek reduction of the said decision, and declarator that they are entitled to have their account taxed to indicate their entitlement to payment of £250; and declarator that they are entitled to payment inter alia in respect of all of their fees and outlays incurred

...../incurred prior to the approval by the Board of the increase in authorised expenditure. The Petitioners therefore seek reduction and declarator, or such further order, decrees of orders as may seem to the Court to be just and reasonable in all the circumstances of the case.

PLEA IN LAW

The said decision being erroneous in law, decree of reduction and declarator should be pronounced in respect of the respondent's said decision.

ACCORDING TO JUSTICE ETC.