

DECISION OF AUDITOR – COUNSELS' FEES – CRIMINAL

DATE OF DECISION	16.02.90
NAME OF CASE	HMA –V- [REDACTED] RS
CASE TYPE	Offences under Companies Act, Finance Act & Value Added Tax Act – Sheriff & Jury Glasgow Sheriff Court
AUDITOR	A McDougall, Glasgow Sheriff Court
COUNSEL/SOLICITOR ADVOCATE	Leading JC & JC
AMOUNT(S) AWARDED	£188 per day (Leading JC) – conduct of trial £125 per day (JC) – conduct of trial £34 per hour (25 hours) (Leading JC) – to peruse and consider Crown productions NB: Sheriff overturned this after hearing Note of Objections on 27.07.90 and awarded:- £400 per day (Leading JC) – conduct of trial £200 per day (Leading JC) – preparation £266 per day (JC) – conduct of trial
FEATURES	Trial began on 23.01.89 and lasted 28 days. Case involved 9 charges of VAT Fraud, theft and breaches of the Companies Act. 159 page Indictment with lengthy Schedules. 249 Crown witnesses (Crown led 46 witnesses). 1594 productions. Total VAT alleged to have evaded was in excess of £165,000. Sanction granted for expert accountant report. Joint Minute of Admissions agreed reducing and the number of Crown witnesses.

FEATURES

Sheriff (who had in fact heard the trial) was satisfied that this was an exceptional case and justified a pre-trial preparation fee.

Sheriff regarded the fact the Leading JC had only ever gone to taxation in one previous case as a strong indicator of his proper and reasonable approach to the matter of feeing.

In courts of trial, 43 objections to evidence were argued and 10 "trials within a trial" were heard.

Lengthy legal submissions resulted in the case being resolved without the need to go to the jury.

Client was an accountant.

Sheriff at the conclusion of the trial certified that the case had necessarily been of exceptional length, difficulty and complexity.

JC was second JC instructed after third day of trial and after authority sought from the Board for a second JC. JC did not attend any consultations nor examine any productions.

Board offered Leading JC £315 per day to include all preparation and JC £215 (usual two thirds basis).

Leading JC took Silk shortly after trial ended but accepted that at all material times he was a member of the junior Bar.

NB: Counsel took a Note of Objections re this decision which was heard in Glasgow Sheriff Court on 27.07.90. The Sheriff upheld the objections and awarded Leading JC and JC their total amounts sought.

Sheriff held that the Auditor could not arrive at a fair charge for perusal and consideration of the productions without examining them and that the Auditor did not explain how he arrived at his decision re the total number of hours spent in preparation and the hourly rate.

Sheriff held the Auditor was bound to consider the agreed practice between the Board and Faculty re starting figure for Leading JC and to state reasons if he did not follow this practice.