

AUDITOR'S REPORT

TAXATION OF ACCOUNT SUBMITTED TO SLAB BY MESSRS WHITELOW EDGAR & BALDWIN

The Solicitors in this case submitted their account (Advice and Assistance) to SLAB for payment.

Payment was refused in respect that the solicitor had failed to comply with (1) Section 10(1) of the L.A. (Scotland) Act 1986 and (2) Section 2 of the Advice and Assistance (Scotland) (Prospective Cost) (No 3) Regulations 1988.

Section 10 allows the solicitor to give advice and assistance up to £80 and he/she shall not exceed that limit except with the approval of the Board. However in certain circumstances the solicitor may provide assistance up to the limit of £150 without the prior consent of the Board (1988 Regs). As far as this case is concerned the particular circumstance is:

"the matter on which advice and assistance is provided is likely to be resolved only by preparing for proceedings in a Civil Court."

In this case the Board maintains

- (1) that, in terms of Section 10 the solicitor should have sought approval before exceeding the limit of £80 and
- (2) in any event the solicitors account does not disclose any justification for the solicitor to have proceeded without approval up to £150 (that is self-certification).

In this case the solicitor proceeded beyond £80 without seeking approval as he maintains that the matter was one that was likely to be resolved only by preparing for proceedings in a civil court.

However his application for approval was made on 6 July when his account was already in excess of £80 albeit he restricted the sum to £80 (from £101).

Clearly/...

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Clearly he recognises the significance of this amount. Yet the 1988 Regulations provide for the figure of £150 to be substituted for the figure of £80 as already explained.

It seems to me that the solicitor has the option of applying for an increase before reaching £80 or substituting £150 for £80 if he meets the criteria in the 1988 Regulations.

While it may be difficult for a solicitor to keep track of what the running cost is in any particular case it is in his interests to do so. Section 10 clearly states that any application for an increase shall be made before the limit (£80) has been reached.

I therefore sustain the Board's submission in that respect. As to the substitution of £150 for £80 this will always be a difficult matter to assess and in the absence of obvious evidence to support such a course, here again I sustain the Board particularly where the solicitor could have taken other action to obtain remuneration.

I tax the Account at £80 and find no expenses due to or by either party.

25 November 1992


P J MCGONIGLE
Auditor of Court