

Taxation Report

30th March 1998

CA



R A Logan & Co

Summary Appeal

Fee for copying stated case

COPY



EDINBURGH. 30th March 1998. The Auditor taxes this account at the sum of TWO HUNDRED AND EIGHTY EIGHT POUNDS AND SIXTY THREE PENCE (£288.63).

NOTE: /

NOTE:

The Auditor has been asked in terms of Paragraph 11(3) of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 ("the Regulations") to tax a disputed duplicating charge for printing the Stated Case referred to in the foregoing Account of Expenses.

The charge is entered in the Account as an outlay, the narrative being "Paid duplicator's Account". The Scottish Legal Aid Board ("the Board") on receipt of the Account called for production of the relative voucher and was informed that, in fact, the necessary duplication had been done by the solicitors in house. The Board on learning of that rejected the charge and indicated that any claim for that item of work should be stated not as an outlay but as a fee and as such should be calculated in terms of the Regulations.

The Auditor held a diet of taxation which was attended by Mr. Alex Quinn of Messrs. Alex Quinn & Partners, Law Accountants ("Messrs. Quinn"), for the solicitors and [REDACTED] Solicitor, for the Board. Mr. Quinn explained that the charge had been calculated with reference to the "Notice anent duplication charges", published with approval of the Lord President, the latest scale being that published on 8th September 1993 which allows a rate of £7.05 per sheet for up to 15 copies of a document.

Mr. Quinn further informed the Auditor that he had, in a letter to the Board dated 8th January 1998, submitted that "It had been established practice for many many years that duplication of a Stated Case, or for that matter any other print of documentation should be taxed as an outlay."

[REDACTED] reiterated the Board's view that the item of work as done did not constitute an outlay as properly understood and that all that could be charged was an appropriate fee in terms of the relevant Table of Fees for the work which had been done having due regard to economy.

The relevant parts of the Regulations and Schedule are as follows:

1. "Fees allowance to solicitors: general provisions
4. - (1) Subject to the following provisions of this regulation and to regulations 5, 6 and 9, the fees allowable to solicitors shall be those specified in Schedule 1."
2. "Fees allowable to solicitors
7. - (1) Subject to the provisions of regulations 4, 5, 6 and 9 and paragraph (2) of this regulation, a solicitor shall be allowed such amount of fees as shall be determined to be reasonable remuneration for work actually and reasonably done, and travel and waiting time actually and



reasonably undertaken or incurred, due regard being had to economy. The fees allowed shall be at the rates provided in paragraphs 1 to 5 of Schedule 1."

3. "Outlays allowable to solicitors

8. - (1) A solicitor shall be allowed the following outlays, due regard being had to economy -

(c) any out of pocket expenses actually and reasonably incurred, provided that without prejudice to any other claims for outlays there shall not be allowed to a solicitor outlays representing posts and incidents."

4. Description of Work and Fees for calculating remuneration of Solicitors in the High, Sheriff and District Courts.

3. The fee for -

(b) Framing and drawing precognitions and other necessary papers, subject to paragraph 4(c)- per sheet (or part thereof)

(e) in each of sub-paragraphs (a) - (e) 6.00

4. The fee for -

(c) framing formal papers, including inventories and title pages - per sheet (or part thereof)

(e) In each of sub-paragraphs (a) - (e) 2.40

5. Where a document is copied and it is necessary to take a copy of more than 20 sheets (whether 20 or 1 sheet, 5 of 4 sheets or whatever), for each sheet copies a fee of

0.08"

A further dispute between the parties arose as to the number of prints of the Stated Case which required to be lodged. There was produced to the Auditor a photocopy of a pro forma letter from the Justiciary Office to another firm of solicitors which stated that six copies of the Print should be lodged.

However, [REDACTED] had made enquiries of the Justiciary Office and had been informed that only four copies required to be lodged and he produced an excerpt from the relevant Act of Adjournal (Criminal Procedure Rules) 1996, Paragraph 19.12 of which confirmed his submission.

It appears that the terms of that pro forma letter had not been revised to reflect the revised Rule.

The Auditor is of opinion that the manner in which the work was performed does not fall to be regarded as an outlay as such, notwithstanding any practice to the contrary as submitted, but



not accepted by the Board.

The Concise Oxford Dictionary, Ninth Edition, defines "outlay" as the money spent on something.

Messrs. Quinn in a letter to the Board dated 11th September 1997 appeared to accept that the work did not fall to be shown as an outlay but rather that there was printed six sheets payable at the duplicating charge rate of £7.05 per sheet. They also accepted that the remaining 19 pages are truly photocopying work and that if the Board did not accept proposals for settlement parties should "proceed to Taxation insofar as the "printing" element is concerned."

The Board submitted that whatever the standing of the published Notice re Duplicating Charges was it was not relevant to the Account before the Auditor, the only relevant charges being those prescribed in Schedule I of the Regulations, namely framing charges of £6.00 and £2.40 per sheet respectively and the remainder at the copying charge of 40p per sheet.

The Auditor is of opinion that in this case the charge shown as "Paid Duplicator's Account" was incorrect and that the work falls to be remunerated in accordance with the charges prescribed in the Schedule. The Auditor regrets that the pro forma letter issued by the Judiciary Office does not reflect the terms of the Act of Adjournal but effect must be given to the latter otherwise statutory requirements would be nullified and unnecessary expense to the public purse would ensue, and without regard to the requirement to have due regard to economy.

The Auditor, therefore, has taxed the Account on the foregoing basis and finds no expenses due to or by either party for the taxation.



Our Ref: AMQ/VHD

2 April 1998

BY FAX

URGENT

Auditor of the Court of Session
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Dear Sir



I have received a copy of your Report from my Instructing Agents. You will recall at Taxation that it was conceded by the Scottish Legal Aid Board that the appropriate copying rate to be applied for this particular Stated Case was 35p per sheet, not 8p per sheet. I am accordingly suggesting that your Report is factually incorrect. I am at a Law Society Meeting this morning but I have had my Assistant carry through pencil revisals to the final page on the assumption that this administrative error is one that can be corrected without the necessity of a Note of Objection.

Am I right in assuming that you reached the conclusion that no charge should be provided for:-

- (a) revision of the Stated Case by the Solicitors, or
- (b) collating of the Stated Case?

Yours faithfully

Dictated by ALEX QUINN
and signed in his absence
by his Secretary



AUDITOR OF THE COURT OF SESSION

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3rd April 1998

Messrs Alex Quinn & Partners
Law Accountants

Dear Sirs



The former Auditor has seen your letter of 2nd April and noted what you write. He apologises for the wrong rate having been used, this having resulted in the derelict to complete taxation by 31st March 1998.

He does not consider it now competent for him to alter his Report but trusts that the Scottish Legal Aid Board will recognize the correct rate prevailing at the time the work was done.

The taxation related to the particular Account and does not form a precedent binding on his successor before whom fresh submissions remain open to be made.

Yours faithfully

Principal Clerk