

AUDITOR OF THE COURT OF SESSION

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NOTE

re

Disputed Items in Legal Aid Account

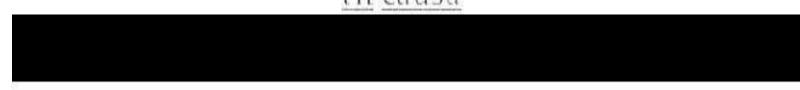
of

Messrs Balfour & Manson, Solicitors, Edinburgh

to

Scottish Legal Aid Board

in causa



TS v OI

PURSUER

against



DEFENDERS

EDINBURGH. 12th February 1998.

The Auditor has been asked to determine the reasonableness of two outlays incurred by [redacted] solicitors in the above cause. These items are as follows.

(FIRST) PROOF CHARGES OF [redacted]

[redacted] who gave opinion evidence for the Pursuer, was certified as a skilled witness by the Court. He submitted a fee for his attendance at Proof on 16th October 1996 and the following four days as brought out in his Fee Note 96/05 dated 25th October 1996 which is in the following terms:-

[REDACTED]

Fee note for expert witness time and expenses spent on the above case after the first day of proof.

Court time 5 days 16/10/96 - @ 8 hrs = 40 hours

Fee charged 40 Hours @ £50.00 = £2,000.00

Expenses:

| | | |
|-------------------------------------|--------------|--------|
| Edinburgh Hotel 15/10/96 - 18/10/96 | £473.80 | |
| Return rail fare Aberdeen Edinburgh | 33.00 | |
| Lunch 15/10/96 | 15.60 | |
| Lunch 18/10/96 | 18.90 | |
| Edinburgh Hotel 23/10/96 - 24/10/96 | 133.24 | |
| Lunch 24/10/96 | <u>15.30</u> | |
| | £689.84 | 689.84 |

TOTAL £2,689.84"

The Board objected to [REDACTED] claim for 8 hours on each of the five days, being of opinion that only the customary 6 hours of a Court Sederunt Day were appropriate.

The Auditor has not been asked to tax any other fees claimed by [REDACTED]

The Minute of Proceedings in the cause records that the Court sanctioned Mr [REDACTED] presence in Court during evidence led on behalf of the Pursuer, Mr [REDACTED]. That evidence commenced on 15th October and continued on 16th, 17th and 18th, and again on 22nd, 23rd and 24th October, on which day, after Mr [REDACTED] evidence had been concluded, the Pursuer's case was closed.

Although it appears that [REDACTED] does not seek to charge a fee in respect of the first day of the Pursuer's Proof (i.e. 15th October), he has apparently omitted to charge a fee in respect of the sixth day (24th October) in the afternoon of which he finished giving evidence.

It was explained to the Auditor that [REDACTED] work did not conclude each day when the Court rose because he spent half an hour or so with Counsel thereafter to discuss with them the evidence adduced that day and additionally

in the evening he prepared notes of matters which he wished to discuss further with Counsel before the Court commenced the following day.

On the basis of that information, the Auditor considers that the time charged, namely 8 hours per day is reasonable in the circumstances and, although it was not challenged, he likewise considers that the rate charged, namely £50.00 per hour, to be reasonable for a skilled witness certified as such by the Court.

For the avoidance of doubt, it is exclusively for the Court to rule on the appropriateness of a witness being certified as a skilled witness, not the Auditor, who is concerned only with the reasonableness of the charges made by the witness.

The expenses charged by [REDACTED] were not disputed.

The Auditor sustains [REDACTED] Note of Fee.

(SECOND) CHARGE FOR PREPARATION OF JUDICIAL ACCOUNT

A fee charged by Messrs Alex Quinn and Partners, Law Accountants, Edinburgh, was included as an outlay in the solicitors' Legal Aid Account (Page 110) in respect of the following item of work:-

| | Net Value | VAT | TOTAL |
|---|------------|-----------|---------|
| "Fee preparing Judicial Account to include the following:- | | | |
| (a) Undertaking preparation of detailed Judicial Account being some 180 pages in length over a period of over 2 weeks amounting to a time element of 62.5 hrs. | 1770.44 | 309.83 | 2080.27 |
| (b) Meeting with [REDACTED] (2 hrs 15 mins); telephone calls with [REDACTED] and Agents; preparing various Mandates, extending and having same signed and all work undertaken in regard to expenses (3 hrs) - total 5 hrs 15 mins - NO CHARGE | 0.0 | 0.0 | 0.0 |
| | NETT TOTAL | £1770.44 | |
| | Total VAT | 309.83 | |
| | TOTAL DUE | £2080.27" | |

It was explained by [REDACTED] solicitors in a letter dated 14th November 1997:-

“1. That not only were the Law Accountants instructed to prepare judicial accounts but also to mediate between the solicitors and their client.

2. That the Law Accountants entered into extensive correspondence with the pursuer [REDACTED] with a view to resolving matters.

3. That the Law Accountants held a lengthy meeting with [REDACTED] and his wife to discuss the issues of expenses which arose. This was instrumental in saving a substantial area of expense. It led to [REDACTED] signing a number of Mandates as did this firm and Messrs Burnside Kemp Fraser, all in an attempt to find a compromised solution to avoid a substantial cost of a full taxation.

4. That the cost of the solicitor preparing the account himself would have been significantly in excess of Messrs Alex Quinn & Partners' charges.”

The solicitor prepared a Judicial Account against the paying party to recoup as much as possible of [REDACTED] expenses to mitigate a shortfall to his client arising in consequence of additional, and permissible, items of charge being payable out of the Legal Aid Fund but not recoverable expenses from the losing party on the restricted Party and Party basis. [REDACTED] as an assisted person, is in terms of subsection (3)(b) of Section 4 of the Act obliged to pay into the Fund any sum recovered under an award of a court or an agreement as to expenses.

In the Judicial Account the solicitor claimed £1,500.00 for its preparation at the Court Rate (restricted to 25 hours.) It is understood that the paying party accepted that item of charge subject to an abatement of £150.00.

It was submitted on behalf of the solicitors that the charge was a reasonable one for inclusion in the Legal Aid Account payable on a solicitor and client, third

party paying basis.

It was further submitted on behalf of the solicitors that a Judicial Account of Expenses is not a formal document but the Auditor notes that it is so treated in the Court of Session Judicial Table of Fees.

According to the statutory provisions relating to legal aid work, the solicitor for an assisted person is entitled, in terms of Section 4(2) of the Legal Aid (Scotland) Act 1986 ('the Act'), to be paid out of the Scottish Legal Aid Fund ('the Fund') such sums as are due out of the Fund in respect of fees and outlays properly incurred by him, in connection with the provision, in accordance with the Act, of legal aid or advice and assistance.

Reference was made to the Civil Legal Aid (Scotland) (Fees) Regulations 1989, General Regulation 4 of which is in the following terms:-

"4. Subject to the provisions of regulations 5 and 7 regarding the calculation of fees, regulations 6 and 7 regarding the calculation of outlays, and the provisions of regulation 8 regarding the submission of accounts, a solicitor shall be allowed such fees and outlays as are reasonable for conducting the proceedings in a proper manner, as between solicitor and client, third party paying."

Regulation 5 states:-

"5. - (1) A solicitor's fee in relation to proceedings in the Court of Session shall be calculated in accordance with either Schedule 1 or 3 but it shall not be competent to charge fees partly on the basis of Schedule 1 and partly on the basis of Schedule 3."

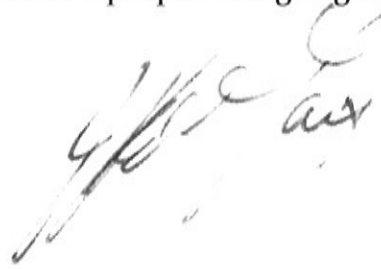
Schedule 3 (Detailed Charges) has an item 5(c) -

"5. The fee for -
(c) Framing formal papers such as inventories, title pages and accounts

of expenses per sheet (or part thereof) £2.45"

The Legal Aid Account was prepared on a detailed basis to enable the assisted person's solicitor to receive payment in respect of all his work for his client as distinct from the more restricted amount which he is able to recover from the paying party in a Judicial Account. However, a solicitor is entitled to be paid for preparation of the Judicial Account but only at the prescribed rate per sheet in accordance with Schedule 3 of the Regulations. He is not entitled to charge for such work by way of an outlay incurred to a third party for doing that work, charged on a time basis, at non-legal aid rates.

The Auditor, therefore, is of opinion that the disputed outlay representing expenses of the preparation and adjustment of the solicitors' Judicial Account and discussion of it with the assisted person, is not a proper charge against the Legal Aid Fund.

A handwritten signature in black ink, appearing to be 'J. H. C. Ait', is written over the printed name of the Auditor.

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