

AUDITOR OF THE COURT OF SESSION

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SM v RM

[REDACTED]

EDINBURGH. 21st January 2000.

This dispute has arisen in terms of the Civil Legal Aid (Scotland) (Fees) Regulations 1989, Regulations 12(1). At the taxation on 12th October 1998 the Board was represented by [REDACTED] and Messrs. Digby Brown, Solicitors, by [REDACTED] [REDACTED] Law Accountant. Points of Objection had been lodged and the Auditor was provided with a full set of papers. [REDACTED] referred to a case *Benjamin Neill v. The South-East Lancashire Insurance Company Limited* 1931 S.C. p. 600.

The entries to which objection is taken are:

- (a) 26<sup>th</sup> January 1999, in relation to the outlay incurred of £194.00 to McNeill & Cadzow at page 3 of the Solicitor's Account, and
- (b) 3th March 1999 in respect of duplicating charges incurred by Messrs. Digby Brown, Solicitors, for printing Appeal incorporating the Sheriff's Note for £540.20.

[REDACTED] referred to Regulation 4 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989 which states, "...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". Under this standard, only expenses which the prudent man of business without special instructions from his client, would incur in the knowledge that his account would be taxed can be allowed.

The Auditor Neil J. Crichton W.S.  
Principal Clerk Mrs Janet P. Buck

He accepted that the outlay of £194.00 to Messrs. McNeill & Cadzow was properly vouched. It was not reasonable to instruct Messrs. McNeill & Cadzow. In terms of the test, set out in Regulation 4, it was not reasonable to instruct outside agents. Messrs. McNeill & Cadzow's charge of £7.40 and £2.40 per sheet were not fees in the Regulation and were, therefore, irrelevant in feeing Legal Aid cases. Solicitors were entitled to use an outside agency but they must use Legal Aid rates. If they chose this course of action they were under a duty to investigate and compare the cost from duplicating agencies. The Agent should be paid to frame the first page and index and then photocopy the rest.

In dealing with Messrs. McNeill & Cadzow's account, [REDACTED] contended that the Solicitor was acting reasonably and within the test set out in Regulation 4, if he were to instruct Duplicators. The Rules of Court set down strict rules as to the nature and content of documentation which required to be lodged. It was essential that such documentation is correct to conduct the proceedings in a proper manner. It is standard practice for Duplicators to be instructed to prepare formal Court documents, such as Open Records, Closed Records and Records in Appeals. This firm has the expertise and the equipment necessary to produce documentation to the high standard expected by the Court. The charges were allowed in party and party matters and should certainly be allowed in an Account where a different test of reasonableness might apply. The prudent man of business would incur this expense in the knowledge that his Account would be taxed. The fees for duplication were set by the Auditor and approved by the Lord President. Until November 1998 the Board had paid these charges without demur. If there were to be a policy change it should be introduced through the Law Society of Scotland.

The Auditor is satisfied that the instruction of McNeill & Cadzow for the work shown in their invoice is reasonable for conducting the proceedings in a proper manner as between Solicitor and client, third party paying. The Solicitor must comply with the Rules of Court and lodge documentation of the highest quality. To comply with this

duty it is practice to instruct duplicators. Their charges are set by the Auditor of the Court of Session and approved by the Lord President. They are a reasonable recovery in a Party and Party Account and even more so in an Agent and Client Account. It is unreasonable to expect a Solicitor to cast around to discover duplicators who would be prepared to work at a lower rate. There are time limits in the Rules of Court. The Solicitors are entitled to rely on the experienced offices which handle this work, whose accounts would form good and recoverable judicial charges. Accordingly, the Auditor allows the outlay of £194.00 to Messrs. McNeill & Cadow.

In dealing with the outlay to Messrs. Digby Brown, Mr. Quinn submitted that the outlays were properly vouched. Messrs. Digby Brown's Account of 7<sup>th</sup> October 1999 was for in-house duplicating. The Auditor should allow the fee for in-house duplicating. In *Benjamin Neil v. The South East Lancashire Insurance Company Limited* the Court had upheld the Auditor's discretion in allowing charges as a necessary and proper expense of process although the form in which the Account was stated might be open to objection. The same applied here and Messrs. Digby Brown were entitled to payment at the rates applicable to Duplicators.

██████████ submitted that this was clearly a simple photocopying exercise. The Agents were not entitled to charge at the duplicator's rates. The account was out of proportion to the work undertaken.

The Auditor does not accept that the invoice of 7<sup>th</sup> October 1999 is reasonable. It is based on what Duplicators might charge but is in reality an invoice for work done in house by Messrs. Digby Brown. The work done is largely a photocopying exercise and the Auditor allows charges as follows:

30 minutes for collation of the Appeal Print (Schedule 3 part 2(a) or (b)).

Copying (Schedule 3 part 6)

Revisal charge (Schedule 3 part 5(b)).

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