

H.M.A. v [REDACTED] PM
FERGUSON & FORSTER, SOLICITORS

TAXATION 30 & 31 OCTOBER 2000
COURT OF SESSION

HMA -v- Peter Maude: TAXATION RESULT

Main Agents: **Ferguson & Forster.**

Fees claimed - £99,484.09	Outlays claimed - £6497.17
Fees offered - £34,168.20	Outlays offered - £4098.51
Fees taxed - £64,220.03	Outlays taxed - £7520.51

Total fees & outlays claimed (excluding Maidments account) - £105,981.26

Total fees & outlays taxed (excluding Maidments accounts) - £71,740.54

= Approximately 29% taxed off the amount claimed.

English Agents: **Maidments**

Fees claimed - £84,056.45	Outlays claimed - £2778.85
Fees offered - £21,987.95	Outlays offered - £504.35
Fees taxed - £37,537.90	Outlays taxed - £2003.33

Total fees & outlays claimed - £86,835.30

Total fees & outlays taxed - £39541.23

= Approximately 55% taxed off the amount claimed.

Combined totals

(Claimed)	(Taxed)
£ 183,540.54 fees	£ 101,757.93 fees
£ 9,286.02 outlays	£ 9,523.84 outlays
£ 192,826.56	£ 111,281.77

= In total 42+% taxed off Ferguson & Forster's legal aid account.

H.M.A. v [REDACTED]

Solicitor: Paul Feeney, Messrs Ferguson & Forster

Background

[REDACTED] was charged with 8 charges of frauds and attempted fraud spanning from May to December 1991. The majority of the charges relate to the accused, through his company Montrose Consolidated, defrauding and attempting to defraud various parties by way of guaranteeing a substantial return on an initial investment in a short period of time. This type of fraud is known as "advanced fee" fraud and in this case involved a number of complainers, four of whom invested \$400,000 each into the scheme. The scheme was to produce substantial profits for both investor and those organising the scheme. While the four investors did receive return of their money plus additional sums, it transpired that these payments were not made through the success of the scheme but rather through [REDACTED] solicitor, [REDACTED] embezzling his own client account for the purpose of making payment. The crown also alleged that those receiving monies through [REDACTED] included [REDACTED] who received £500,000. [REDACTED] actions were the subject of an earlier police investigation, which resulted in him receiving 7 years imprisonment for misappropriation of client's funds. It was as a result of this earlier investigation that [REDACTED] involvement was revealed.

The agents who acted on behalf of [REDACTED] prior to him being charged with any offence in Scotland were Messrs Maidments of Manchester. Following [REDACTED] arrest and appearance before Stranraer Sheriff Court, Maidments instructed Ferguson & Forster of Stranraer to represent him. After the grant of Legal Aid, Ferguson and Forster in turn instructed Maidments to act in an agency capacity for the purpose of obtaining English witness statements. This involvement also extended to an intermediary role for the purpose of receiving instructions from the client who actually resided in Cheshire. However, Maidments' account, which is effectively an outlay incurred by the Scottish solicitors, is also the subject of dispute and is dealt with separately.

The case against Maude required the precognition of a significant number of witnesses (in excess of 100) and the perusal of a substantial number of documentary productions that ran to approximately 10,000 sheets.

On the 28th day of the trial (9 November 1998) the case was deserted *pro loco et tempore* due to the ill health of the accused. At that time the crown was granted an 8-month extension to re-indict the matter. The accused was re-indicted but the matter was again deserted on 10 January 2000 for similar reasons with the crown being granted a further extension of time. [REDACTED] was re-indicted for a second time but again the matter was deserted on 17 March 2000 with the crown granted a further 6 months extension to re-raise matters.

Ferguson & Forster's Account

The principal agent's account and supporting documentation was received in this office on 16 December 1998. Due to the size of the claim and the likelihood that the assessment would take some time, a payment to account of £25,000.00 was made at the time of receipt and then a further payment of £30,000.00 was authorised on 19 January 1999.

The agent's claim is made up of 7 separate accounts which have been numbered '1-7' and 7 further accounts which the solicitor has detailed as "appendices". For ease of reference these have been marked as 'A-G'. The appendices A-G details the bulk of the perusals claimed together with claims for photocopying. Accounts '1-7' detail all other work undertaken including claims for preparation. These accounts total **£64,859.18** fees while A-G total **£29,083.23** fees, making a combined total of **£93,978.41** as opposed to the figure of £99,484.09 that has actually been claimed.

Preparation & Perusals

Of the £99,484.09 claimed by the agents, **£22,387.10** relates to **perusals** (*see Appendix 2*) and **£25,805.30** to **preparation** (*see Appendix 3*). This combined figure accounts for over 50% of the claim made and also equates to 1142 hours of qualified time. The offer made to the agents of **£34,168.20** was arrived at mainly as a consequence of the Board not being in a position to make any kind of offer of payment for the bulk of the perusals and preparation claimed for. In spite of the claims made equating to such a significant amount

of qualified time, there was a notable absence of file notes supplied to support the relevant entries. While the solicitors had provided substantial documentation in the form of precognitions and productions, it was necessary to write to the agents on 16 February 1999 and request sight of the relevant file notes. Files were then subsequently forwarded to the Board and an examination of these revealed an internal memo from the offices of Ferguson & Forster (*see Appendix 4*), which suggested that the file notes which had been provided had been created from memory. This made an assessment of the sums claimed in respect of preparation and perusal impossible as any figure which could have been offered would not have been based on any supporting evidence showing “work actually and reasonably done”. Our position was made clear to the solicitors in our letters of **30 July and 1 September 1999** (*see Appendices 12 & 19*).

There were other abatements proposed to the account, the majority of which were discussed by way of Ferguson & Forster’s letter of **19 October 1999** and our response of **10 December 1999**.

Qualified time

Of the other abatements made, those applied to qualified time spent other than in preparation and perusal totalled **£8325.36**. The bulk of this was in relation to travel time spent on attending consultations in Manchester and Carlisle, a commission attended upon in Manchester without any sanction in place and the substantial time incurred as a consequence of the solicitors’ overnight arrangements during the conduct of the trial.

It is the Board’s position that, particularly in respect of the attendance in Manchester for the commission on 10 September 1998, prior sanction in line with Regulation 14(d) of the Criminal Legal Aid (Scotland) Regulations 1996 should have been in place for work which is clearly of an unusual nature and also involves a large expenditure.

Correspondence (*see Appendix 5*) from the solicitors proves that there was an awareness of Regulation 14 and its purpose.

Photocopying

The principal agents claim for photocopying totalled **£4809.52**. This figure equates to **60,119** sheets at 0.08p per sheet. However, the many volumes of productions and precognitions, which were submitted to the Board and subsequently recorded and

catalogued, totalled **13,870** sheets (*see Appendix 1*). Allowing 2 sets of copies, one for each counsel, makes a total of 27,740 sheets and a fee payable of **£2,219.20**.

Advocacy rate

The various days at court during the trial have been claimed at the advocacy rate i.e. £13.70 per quarter hour. However, when a solicitor is sitting behind counsel during the conduct of a trial, the time charged should be at the non-advocacy rate i.e. £10.55 per quarter hour. Due to an oversight at the assessment stage, no abatement was applied. The adjustment, which should have been made, totals **£1695.80**.

Other abatements

Other abatements proposed to Ferguson & Forster's account totalled £1364.60. This was made up of £948.00 in relation to various framing charges, £322.10 for correspondence and £94.50 in unqualified time.

In our letter of 10 December (*see Appendix 6*) it was again emphasised that we were unable to alter our position in respect of the issues of preparation, perusal and the areas of qualified time referred to. It was further confirmed that we remained of the opinion that, overall, this would be an account that would ultimately require to be presented before the auditor. However, in respect of other matters which had been subject to abatement, efforts were made by the Board at that stage to reach agreement by way of a compromise which, to date, has never been responded to.

Outlays

The total claim for outlays (excluding Maidments' account) was **£6497.17**. This element was offered at a total of **£2341.61**. This figure was arrived at by allowing **£1718.64** for the mileage element (5208 miles at 0.33p per mile) and £622.97 in respect of miscellaneous outlays. The breakdown of the outlay element is attached (*see Appendix 22*).

Maidments' Account

The other major issue in dispute is the level of fee payable to Messrs Maidments, Solicitors who are based in Manchester. The background to Maidment's involvement is

explained previously. It would appear, from correspondence received from and entered into with the instructing agents, that Maidments' role was to act in a local capacity for the purpose of obtaining statements from witnesses residing in England (*see Appendices 7-13*). They also acted in an intermediary role between client and Scottish solicitors, taking instructions etc, which the Board has not, in the main, challenged on the grounds that this is clearly reasonable and reflects due regard being had to economy. However, Maidments also undertook work and steps that were clearly beyond their remit as instructed by Ferguson & Forster. Indeed the account submitted by them was also substantial with their claim being **£86,835.30** without VAT. Of this figure, **£20,530.30** related to perusal of the productions and **£36,207.45** related to preparation. The work classed as "Preparation, Attendances" actually included substantial other work distinct from preparation such as attendances on the client and other witnesses, telephone calls, consideration of letters etc. Of the **£36,207.45** claimed, an abatement of **£24,840.40** was applied. The claim for "Consideration of Evidence" was abated in its entirety. Substantial other abatements were applied to this account with some being made as a consequence of what the Board consider to be inappropriate charges such as the framing of "observations" on certain witnesses. Other abatements, such as those proposed to "Letters and Telephone Calls", were due to insufficient information and details being supplied. In that particular instance a reasonable estimate was allowed. The offer made to Ferguson & Forster in respect of Maidments' account was for a total of **£22,492.30 without VAT**. It is the Board's position that there exists a situation where work has been duplicated, in particular with the perusal of documentary evidence and preparatory work. Maidments' letter of 1 September 1997 (*see Appendix 15*) shows the English agent's position prior to undertaking the work that is now in dispute. It would appear that the instructing solicitor did *not* take steps to correct his English agent's understanding of the position. From an examination of the correspondence entered into between the two solicitors, it is clear that there did exist a certain amount of confusion. In Ferguson & Forster's letter of 4 March to the English agents (*see Appendix 14*) they advise that, not only have they applied for sanction to employ Maidments, but have also sent reminders to SLAB on 9 January and 25 February 1997. However, the Application file would suggest that, while there has been no *formal* application for sanction to employ Maidments, the Board did receive correspondence dated 9 January 1997 enquiring as to whether or not we would be prepared to pay the qualified rate for precognition work undertaken by Mr Maidment.

Unfortunately it would appear that the Board never responded to that enquiry and the solicitor's letters of 21 and 30 May 1997 (*see Appendices 17 & 18*) confirm that Ferguson and Forster have taken this lack of response as being approval in itself to proceed accordingly. While it is regrettable that we did not respond to this enquiry, it does not appear reasonable to suggest that non-response is, by default, authorisation from SLAB. However, it is clear that the letter of 9 January (*see Appendix 20*) is not a reminder nor is the other letter of the same date (*see Appendix 21*) which is actually in respect of sanction to obtain the transcript of the Giles Davies trial. The letter of 25 February (*see Appendix 16*) is an application for sanction to obtain copies of the papers for counsel.

In any event it seems apparent that Maidments undertook work which was outwith their remit and the figure which the Board has offered is to reflect reasonable precognition work and necessary consultations with the client.