

Taxation Report

16th February 2001



8125868698

Jim Friel

Solemn Time and Line

Precognitions

Framing Notes

**SCOTTISH LEGAL AID BOARD
MEMORANDUM**

To:

Date: 23 February 2001

From:

Ref: JDH/SMcS

TAXATION NOTE

H.M.A. -v- [REDACTED]

8125868698

DM

I attended a taxation at Dumfries Sheriff Court on 16 February 2001 in connection with a Jim Friel & Company account.

Essentially two issues were raised:-

Failure to use local precognition agents to precognose case

Mr Friel had a great deal to say about this particular issue, as can be expected. He concentrated on the fact that his in-house staff were highly trained and highly motivated. He was in a position to maintain a tight control over the conduct of the case and the staff were available on a regular basis to discuss the case and to obtain the in depth information which he required for the purpose of running the case. He produced a fairly hefty document headed "the work of precognition agents in criminal cases". This is a report by the Scottish Executive. The Report drew attention to the fact that precognition agents (or precognition officers) were, generally speaking, not the subject of any prescribed standards. Training was mixed, backgrounds were mixed. The point was made that there was no check for criminal convictions etc. I will copy the document and make it available to the Accounts Division. The Auditor was, to a certain extent, impressed by the fact that training was being given to staff by this firm.

On the other hand, the Auditor was clearly concerned that a solicitor in Glasgow could take on a case involving a client in Ayr in Dumfries Sheriff Court. I made it clear to the Auditor that the Board had no locus at all to avoid such a situation. If a criminal legal aid application is received from a solicitor in Glasgow it cannot be refused on the basis of the solicitor's place of business. I explained that the Board could refuse a transfer from a local solicitor to a solicitor far removed from the sheriff court on the basis that there would probably be no "good reason" (in terms of the regulation) for such a transfer. The Auditor was, to a certain extent, unimpressed by all this and, I think, was initially of the view that if a solicitor could act at distance then the Board should expect to have to pay more.

However, over the course of the taxation he appeared to accept the premise that if a solicitor does take on such work then the onus is all the greater on that solicitor to conduct the case with due regard to economy. No attempt had been made to identify local precognition officers and if Mr Friel wanted to use his own officers then why should that be at the cost of the public purse.



The Auditor eventually came to the conclusion that if the solicitors wished to use their own in-house staff then they were free to do so but it should not cost the Board any more than 25% more than it would have cost using local agents. Accordingly, it was agreed, we would require to identify the costs of travel involved (I think we agreed 3½ hours return to Dumfries) plus the mileage 75% would be deducted. Accordingly, for every £100 spent in conducting this exercise the solicitor would only reap £25. This is not entirely satisfactory in as much as it does not vindicate the Board's stand that you should use local agents. However, it should not do much to encourage solicitors to use their own in-house staff in as much as it does seem to strike at the profit element in such an exercise.

The Auditor did not write on the issue. I do not think the decision can be taken as being any more than a fairly pragmatic approach to the circumstances of this particular case. I think the Auditor would have been more impressed with the use of local agents if there was a register of local agents and if a solicitor could be satisfied that all agents on that list attained certain minimum standards. This is probably something we should attempt to do because if we did, I suspect that this same auditor would have arrived at a different conclusion. Equally he was not saying that it was in order for solicitors to use their own staff. It was appreciated that there might be difficulties in identifying precognition agents in Dumfries.

I think the strength of this decision is that if we are unable to persuade a solicitor that he should have used his own staff then it does seem to open the door to a compromise in individual cases whereby we can allow 25% of the costs. That may not satisfy other solicitors but Mr Friel did express the view that he would not be appealing the decision and we will be proceeding to apply this to all Mr Friel's "out of town" cases.

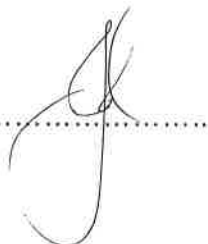
Framing notes on video tape and Crown productions

In this particular case this work was done by an unqualified assistant. Mr Friel stated that it was his firm's policy that if the work had been carried out by a solicitor that there would have been no framing. The solicitor would have relied on his notes unless the document was being produced to the court which we both agreed would be an exception. Mr Friel, on the other hand, argued that this was not a file note trying to define a "file note" from the Board's taxation guidelines.

I made it clear that the Board did not restrict the file note to meetings with a client although that might have been the example used in the guidelines. A file note was simply a note taken by a solicitor with regard to whatever he was doing during a period where he was incurring a time charge. It was also for the solicitor to establish that there was a need to frame such a file note (or "note" if that is more accurate) and to be able to establish to the Board's satisfaction that this is a "necessary document" in terms of Schedule 1 of the Criminal Fees Regulations.

The Auditor accepted Mr Friel's argument that by sending a qualified assistant they were incurring half the cost which they would otherwise have incurred by sending a solicitor. The Auditor felt that in these circumstances given that the Board was only paying half the fees that it was arguable that a qualified assistant's writing may not be all that legible or that it might be taken down fairly hurriedly and that the framing of these notes for the use of the solicitor would be a reasonable charge.

This is a fairly interesting decision. Although I think we should apply this to all Jim Friel cases I do not think that we should be adopting the stand point that whenever notes are taken which may be illegible that we should be allowing a framing charge. It could be taken as being merely an example of a situation where the framing may be a "necessary document". On the other hand, Mr Friel did appear to accept that if a solicitor was taking these notes then it would not be a necessary document and I think that is a fair indication of the Board's present stance.



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