

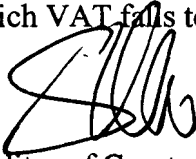
Note by the Auditor of Court at Arbroath Sheriff Court
In the
Taxation of the Account of Expenses
of Andrew Smith, Advocate
in causa

JM v AF

[REDACTED]

Arbroath, 22 August 2002.

Having considered the Account of Expenses I tax the same at the sum of £ 28,515. to which VAT falls to be added.



Auditor of Court.

NOTE

I am conscious of the passage of time since I heard parties submissions on the above and I am well aware of the importance of a decision being issued, and in order not to delay matters any further I will restrict my comments to a minimum but am quite happy to elaborate if required to do so.

This taxation came before me on 15 April 2002 and related to the fees claimed by Andrew Smith, Advocate representing the Pursuer who was legally aided in the aforementioned civil action.

Mr Smith was in dispute with the Legal Aid Board over the appropriate level of his fees and as matters had reached a deadlock he wrote to me to implement the terms of Regulation 12 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989. At the taxation he was represented by [REDACTED] Law Accountant and the Board were represented by [REDACTED].

I wish to thank [REDACTED] for taking the time to send me a written copy of the submissions he intended to make at the taxation along with copies of the cases he intended to refer to and I am grateful to him for this. I would further like to thank parties for the way they presented their arguments before me at the taxation.

The taxation fell to be dealt with in terms of Regulations 9 & 10 of the Regulations ie. Counsel may be allowed such fees as are reasonable for conducting the Proceedings in a proper manner as between Solicitor and Client, third party paying and counsels fees in the Sheriff Court shall be 90% of the amount of fees that would have been allowed in a taxation if the work had not been legal aid work..

The interpretation of the phrase "Solicitor and Client, Third Party paying was discussed at the outset and I was referred to the case of Hood v Gordon, Park v Colvilles Limited 1960 SC and McLaren on Expenses at page 509 & 511.

The views expressed in these cases are that the expenses allowed should be such as a prudent man of business, without special instructions from his client would incur in the knowledge that his account would be taxed.



██████████ submitted that a simple interpretation of the phrase in the 21st Century was that if the work had been reasonably undertaken then payment should be made. This in my view sits comfortably with the sentiments expressed although it must always be borne in mind that the Legal Aid Board is the party paying.

Basis for charging / - Market Test.

I was advised that the claim was brought by the Pursuer for personal injuries. Everything was in dispute and matters were currently at appeal. The Sheriff had certified the case as being exceptional and his written judgement ran to some 96 pages.

The pursuer had had an accident where his hand was severely cut. He alleged that it was cut on a piece of broken glass which formed part of a milking machine. The case was unusual as the Pursuer's boss who was the head dairyman, was also his brother. On liability everything was being disputed, on the question of quantum there were numerous issues. The evidence was complex and inter alia evidence was elicited from covert surveillance video film, employment experts on both sides and medical experts. In total 14 days of proof were led.

Both parties agreed there was no rigid scale for counsel's fees and the main issue to be decided was what in my discretion as an Auditor was reasonable for conducting the case in a proper manner.

The answer to this cannot be found by applying arbitrary standards or rules of thumb, but requires an appraisal of the nature and amount of services given. I further am required to have regard to an average charge for an average case, in order to consider an allowance to reflect the abnormal and difficult nature of this case and the special features of it. I have also taken into consideration that the case was heard in Arbroath.. In determining a fair and reasonable fee, each case must be decided on its merits, and I have taken into consideration - the nature of the proceedings, the exceptional complexity and the duration of the proceedings which makes it singularly unique. I wish to point out that the rates applied in this case cannot be regarded as normal rates or used to establish a market rate.

I was referred to many cases by parties and have considered them in some detail in particular some recent decisions by both parties - inter alia Auditors decisions in the cases of John Moir (Childrens Hearing Case); the case of Desmond Cheyne (Childrens Hearing case); the case of David Jack (Childrens Hearing case) the case of John Doohan (Childrens Hearing Case) but regrettably there were no recent cases on personal injuries claims.. I was further referred to the SLAB Guidelines dated 16 November 1999.

Having had the benefit of considering these cases and using my discretion and my knowledge as an auditor I have dealt with the various fee notes in what I consider to be a fair and reasonable manner in all the circumstances and I do not consider the fees allowed to be in any way extravagant.

Turning now to the various fee notes:-

Fee Note 1 issued 5/11/96 Amount £250 Allowed as not objected to.

CP

Fee Note 5 issued 14/12/98 Amount £500 This was for a Consultation but a half days preparation was done prior to this. The offer by the Board was £250. I am of the view that the sum of **£400** is reasonable under the circumstances and have allowed this sum.

Fee Note 6 issued 14/1/99 Amount £500 This fee was in respect of a necessary Consultation held prior to the Proof diet and in view that it covers preparation work and for attending the consultation **£400** is a reasonable fee under the circumstances and have allowed this sum.

Fee Note 7 issued 11/2/99 Amount £2200 This fee note is for 2 days preparation for the 5 day diet of Proof. The Board offered a payment of £1800 for same. I am of the view that 2 days at £1080 per day would not be extravagant and would be entirely reasonable and have therefore allowed **£2160**.

Fee Note 8 issued 12/2/99 Amount **£500** This fee related to a Minute of Amendment and Note. It was submitted that this had to be lodged as a result of lengthy consideration of the case and for preparation and was very important in it's nature. I am of the view that the whole fee should be allowed.

Fee Note 9 issued 25/11/99 Part 1 - **£675** This was not disputed and I have allowed it

Part 2 - **£4200** This fee arose as a result as the diet of Proof being cancelled on the Friday prior to the Monday diet. Extensive preparation had been done and Counsel's diary had been marked for a 2 week period. Three and a half days at £1200 has been claimed and in my view is reasonable.

Fee Note 10 issued 7/9/00 Amount £15000 This fee relates to excessive preparation which took 4 days with additional periods undertaken in the evenings plus work over the weekend and for the 10 day Proof diet. It is my view it would be fair and reasonable to allow a daily rate of £1395, which would take into consideration the vast amount of preparation and the complexity of the case. I have, therefore, allowed the fee of **£13,950**

Fee Note 11 issued 28/9/00 Amount £500 This fee note relates to a consultation in Glasgow and I feel £400 would be more reasonable and appropriate and therefore have allowed **£400**.

Fee Note 12 issued 24/1/01 Amount £3000 This fee relates to preparation and attendance at a 2 day diet of Proof. Again due to the special feature of this case I feel it appropriate to allow £1395 per day and have therefore allowed **£2790**.

Fee Note 13 issued 1/6/01 Amount £3000 This fee relates to preparation and attendance at a 2 day diet of Proof. Again due to the special features of this case I feel it appropriate to allow £1395 per day and have therefore allowed **£2790**.

Taxation Fees

██████████ prepared very detailed written submissions and did a substantial amount of preparation work for the taxation and since he has been highly successful I feel it

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appropriate he should be entitled to expenses for this and for his attendance at the taxation.

He advised me that his discussions, travel time and time attending the taxation amounted to 15 ½ hours.

His hourly rate is £90.

I am prepared to allow 1 ½ hour for attending the taxation, 3 ½ hours travel time and 5 hours preparation making a total of £900..

Taxation dues

The audit fee should be borne by the Legal Aid Board and the sum due is £1144.00

