

Taxation Report

23rd March 2005

KM



Balfour & Manson

Solemn Time & Line

Perusal / Preparation

Travel

IN THE COURT OF SESSION

REPORT

by

AUDITOR OF THE COURT OF SESSION

in the cause

[REDACTED]

Appellant

against

PROCURATOR FISCAL

Respondent

EDINBURGH: 23rd March 2005

1. In attendance at the Diet of Taxation on the 28 February 2005, [REDACTED]
[REDACTED] Solicitor, represented the Scottish Legal Aid Board and [REDACTED]
[REDACTED] of Alex Quinn & Partners, Law Accountants
attended on behalf of Messrs. Balfour & Manson, Solicitors.
2. The items in dispute are as follows:
 - documentation that had been prepared/perused by the correspondent and then
perused by the Edinburgh solicitor; and

- travel time to and from Edinburgh High Court.

3. The Auditor having heard submissions from [REDACTED] is not persuaded that these items of work are properly chargeable in the Edinburgh solicitor's account and agrees with SLAB's interpretation of the regulations, which are referred to for their terms:

Regulation 4 (3) of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 states that "*where a nominated solicitor requires another solicitor, whether an Edinburgh solicitor in connection with an appeal or on a remit for sentence, or a solicitor at the place of the prison or the court, or a local solicitor for the purpose of local precognitions or inquiry, nevertheless only one account shall be submitted by the nominated solicitor (payment of the other solicitor being a matter for adjustment between the nominated solicitor and the other solicitor out of the fees payable hereunder), but in determining the sum to be allowed to the nominated solicitor account shall be taken also of the work carried out by that other solicitor*".

The regulation makes it clear that only one account can be submitted by the nominated solicitor (payment of the other solicitor being a matter for adjustment between the nominated solicitor and the other solicitor...). The Auditor is satisfied that the meaning of the regulation is that there should be no duplication and, therefore, the same work cannot be charged for twice. This is further

supported by the published guidance in the Boards Criminal Taxation Guidelines, which makes the Board's position clear. Accordingly, the Auditor rejects the argument that framing and perusing the same document are two separate functions and are separately chargeable. The Auditor, therefore, disallows the items in dispute being the entries dated 14 October 2003 for 'perusing the Sheriff's report' and 1 March 2004 for perusing 'written submissions' totalling £10.50.

With regard to the travel time the Auditor refers to Regulation 7 (1) and (2) of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989:

"subject to the provisions of regulations 4, 5, 6 and 9, and paragraph (2) of this Regulation, a solicitor shall be allowed such amount of fees as shall be determined to be reasonable remuneration for work actually and reasonably done, and travel and waiting time actually and reasonably undertaken or incurred, due regard being had to economy. The fees allowed shall be at the rates provided in paragraphs 1 to 5 of Schedule 1".

Regulation 7 (2):

"In determining the fees specified in paragraph (1) above there shall be taken into account:-

(b) the time necessarily spent in travelling to and from the court at which the accused appears or the trial or appeal takes place (not being a court in the town or place where the solicitor has a place of business) and to and from the prison

any place visited for the purpose of preparing or conducting the defence or appeal:

Provided that it would not have been more economical to use a local solicitor unless it was reasonable in the interests of the client that a nominated solicitor or a solicitor assisting the nominated solicitor in terms of regulation 4 (3) should attend personally”.

The Regulations are clear and the agents are bound by them. No travel time can be allowed, the Edinburgh solicitor having a place of business in the same town as the court. Accordingly, the Auditor disallows the entries dated 30 September 2003 and 9 February 2004.



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in the causa



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