

# **Taxation Report**

**20<sup>th</sup> January 2009**

WC



**7046562207**

**Cairns Brown, Solicitors**

**Summary Appeal**

**Framing fee and fee for considering /  
revising/ extending**

[REDACTED] 27 January 2009

Taxation, Dumbarton Sheriff Court 20 January 2009: [REDACTED] PP/08/7046562207  
and PP/08/7065673407

I return the papers for this taxation which I covered as both [REDACTED] were off.

The auditor accepted the principle that where formal documents were being prepared, that element should be charged on a sheetage basis and it was inappropriate to add in an additional time element for the time involved in framing drafts. Accordingly, while the agent could properly charge the £18 for framing on 25 July, he could not additionally charge the £21.10 for the entry on 24 July which was described as revising petition and drafting same as that was covered by the sheetage charge.

However, the agent then "clarified" matters with the auditor in relation to the entry of 24 July and indicated that it was an unusual case where the appropriate remedy had to be considered (there is mention of whether it should be petition to nobile officium or appeal) and that time had to be spent reviewing the case to date and deciding what the appropriate further procedure was. As I have very little experience of taxations and accounts generally, having left all that sort of stuff to my law accountant when in private practice, I was not entirely sure whether a fee is chargeable for considering matters – I had a vague recollection that as you are deemed to know the law you can't charge for simply thinking about the case but as I was not wholly sure about this didn't make any submissions in relation to it and let the point go.

The outcome was that the auditor took a broad brush and taxed off £10.55 from the 24 July entry insofar as that related to drafting formal documents, and left them with the remaining £10.55 insofar as that related to considering case to date to decide on appropriate further procedure.

Auditor: Weir  
Act: Cairns  
Alt: [REDACTED]

Wtg: 3:00 – 3:10  
Hrg: 3:10 – 3:30

Diario ✓

**TAXATION REFERRAL**

**AUDITOR DUMBARTON SHERIFF COURT: [REDACTED] v. PF**  
**January 20<sup>th</sup> 2009 @ 3:00pm.**

**Assisted Person:** [REDACTED]  
**LA reference:** PP/08/7046562.207 & PP/08/7065673407  
**Nature of proceedings:** Criminal Appeal  
**Fees to be taxed:** Cairns Brown  
**Last day for points of objections:** N/A

1. Nature of Proceedings:-

The accused was granted criminal legal aid to initiate an appeal against an order for what would appear to a reduction in the community service order imposed. In addition legal aid was granted to make an application to the Nobile Officium. All work has been charged in the principal appeal account.

2. Nature of Dispute:

This in theory is a very straightforward taxation point.

It involves one single entry in the account dated 24 July 2007 where the solicitor is electing to charge a fee for considering documents, revising and drafting a petition £21.10 and the following day a framing charge for effectively extending the document £18.00. The latter fee has been allowed in full. The account entry is flagged with an \* post it.

Attempts have been made to try and find a way to pay this account. We had hoped that the solicitor would confirm that the papers considered on the 24 July were being considered for the "first time" which would have allowed a separate perusal charge to be paid. The solicitor has however confirmed that the consideration of papers on the 24<sup>th</sup> were papers that he had previously seen and would have already been paid a perusal charge.

It is universally accepted that the solicitor cannot be paid twice for looking at the same set of papers. It is equally accepted by those involved in the framing of accounts that you are not entitled to a charge for drafting the petition and then charging a separate framing charge for fully extending that same document.

The fee chargeable, in our view, should be in line with fee <sup>4</sup>8(b) framing and drawing precognitions and other necessary papers - per sheet". The solicitor indicates that a separate time charge is allowed for the time taking the precognition and as such a time charge should be allowed for drafting and revising the papers. However, the solicitor has already been paid a separate perusal charge for considering documents and cannot be paid for that same time again in addition to the separate framing charge.

3. Previous Taxation Decisions:

As a result of the lack of clarity in what the solicitor is trying to claim it is unclear whether these taxation decisions are directly in point. We hope however that they will be of some assistance.

1. 1992 Haddington Sheriff Court – Solicitor allowed to charge a time charge (as opposed to framing) for the preparation of a welfare report. The auditor ruled however that this was on the basis that these reports cannot be treated in the same light as the preparation of pleadings etc.

2. 1993 Hamilton Sheriff Court – Informal decision from the auditor (no taxation was required) where the auditor ruled that the “drawing fee” covers the element of perusing and considering it in draft form. The auditor in a separate telephone call confirmed that that drawing fee was an “all encompassing” fee which covered both the mental and physical aspects in drawing the document.

3. 1994 Paisley Sheriff Court – Again the Auditor allowed a time charge (as opposed to framing) for the preparation of a welfare report. However it was made clear that the preparation of the welfare report is quite different from the fees chargeable for drawing a writ or motion. The auditor stated that “there is an element of gains and loss, with some chance at least of a measure of equalisation. The more difficult papers are often drawn on the basis of precognitions for which separate fees are exigible”.

4. Additional Papers

- Intimation Diet of Taxation;
- Correspondence;
- Chronology of correspondence;
- Schedule 1 Criminal Table of Fees

Referred by: [REDACTED]

Date of referral: 30<sup>th</sup> December 2008.