

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH

REPORT

by

THE JOINT AUDITOR

in a remit under the

Advice and Assistance (Scotland) Regulations 1996,  
Regulations 17(1)(a) and 18(4)

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Solicitors: Beaumont & Co

Assisted Person: PQ<sup>1</sup>

SLAB Reference: AA/8306958208

1. This taxation arose out of a dispute between the Scottish Legal Aid Board ('the Board') and Beaumont & Co, in relation to fees claimed by the latter for representing PQ in proceedings at Edinburgh Sheriff Court between 26 November 2008 and 24 April 2010.
  
2. At a diet of taxation on 4 February 2011, the Board were represented by [REDACTED] a solicitor with the Board's Legal Services Department; Beaumont & Co were represented by Miss Gillian Law, solicitor, a partner of the firm. I am indebted to both of them for the helpful arguments that they submitted and for their answers to the questions that I raised.
  
3. The Advice and Assistance (Scotland) Regulations 1996 provide:
  - Fees and outlays of solicitors
  - 17(1) ... fees and outlays allowable to the solicitor upon any assessment or taxation mentioned in regulations 18 and 19 in respect of advice or assistance shall, and shall only, be
  - (a) fees for work actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given, due regard being had to economy, calculated, in the case of assistance by way of representation, in accordance with the table of fees in Part I of Schedule 3 ...

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<sup>1</sup> As this Report mentions the personal problems of the Assisted Person, and as the Report may be read by people other than the parties to the case and their agents, it is inappropriate to disclose his name, so I refer to him by his initials.

4. Beaumont & Co represented PQ at Edinburgh Sheriff Court on 26 November 2008, for Breach of a Probation Order imposed on 29 October 2008 for a period of 18 months. They represented him again on 17 January 2009 and on 17 subsequent occasions, usually monthly but sometimes fortnightly, until the Probation Order expired in April 2010. All 19 appearances were for Drug Treatment and Testing Order ('DTTO') reviews. For preparing for these 19 occasions, Beaumont & Co claimed 20 minutes every time, usually described in the account as 'Preparing for DTTO review' but occasionally described as 'Perusing and considering report'. The Board allowed 20 minutes for the first occasion, but only 15 minutes for the 18 subsequent occasions.
5. Beaumont & Co recorded time in blocks of five minutes. If an item of business exceeded 15 minutes, but did not exceed 20 minutes, it went into the Account as '20 minutes', denoting anything between 16 and 20 minutes. There was no suggestion that any of the solicitors involved had not expended 16 or more minutes on every occasion, but the Board maintained that only 15 minutes were 'necessary and reasonable, due regard being had to economy', for 18 of the 19 occasions.
6. In all of the 18 occasions in dispute, a DTTO report was made available to Beaumont & Co not later than the morning of the Court Hearing. It usually consisted of a nursing review report, a drug screen summary, a resource worker review report, a social worker review report and conclusions and a treatment plan. Typically, the report ran to seven pages. For considering it, the solicitor involved on that day charged four units of time (= 20 minutes). Although eight different solicitors attended Court over the 18 month period, it was not suggested that additional time was chargeable against the Board for a new solicitor familiarising himself with the background material.
7. The Board's position was (1) that PQ was a known client, coming back for regular reviews in a situation that was not unduly complex, (2) that all the solicitors were experienced at reading reports, and knew what to look for, and (3) that the background was easily accessible in file notes. It was, therefore, not necessary to search back in the file; if a solicitor took longer than 15 minutes to consider the report and prepare for the hearing, that was not payable by the Board.

8. Miss Law responded that the Sheriff indicated, at the close of a Hearing, what progress she expected PQ to make before his next appearance. It was therefore essential (because the client's liberty was at stake) for the solicitor to consider, as part of the preparation for the next Hearing, whether there had been progress or regress since the last Hearing. As there was no input from the Crown, the solicitor had to be familiar with the complex and developing situation, and to present the overall picture. It was, therefore, not just a question of reading through the report, but reading it against the background and assessing how PQ was responding. From the third review onward, he was on his 'final warning', with the prospect of a custodial sentence if he did not make progress. A bad report, following an earlier bad report, could have serious consequences for PQ; it was therefore essential for the solicitor to be familiar with the overall picture, not just the content of the current report. Miss Law submitted that the File Notes, which were made available to me for all 18 occasions, demonstrated (she said) how much was involved in the preparation, beyond simply reading through the report.
9. ██████████ responded that after 'preparing for the DTTO review' (as it was usually described), the solicitor met PQ at Court, went over the terms of the report and discussed it with him, then appeared before the Sheriff, and finally met again with PQ to advise him what was expected before the next hearing. Reading the report was therefore only part of the preparation, and she reiterated that in the view of the Board, only 15 minutes should be chargeable against public funds.
10. ██████████ referred me to a Note written by the Sheriff Court Auditor at Ayr on 11 October 2007, in a case of PF v ██████████ (unreported). She (the Auditor) decided that 'given the short update reports' (as she described them), 15 minutes was 'sufficient to prepare for each calling, given the regularity of the Court dates allocated'. Miss Law distinguished that case from the present one because the Auditor at Ayr mentioned 'short update reports'; she submitted that Local Authorities had different styles of report, and that the comprehensive seven-page reports in PQ's case in Edinburgh were not 'short updates'. As neither party was able to produce the actual reports in the Ayr case, it is impossible for me to make a proper comparison. I have therefore noted what was said in PF v ██████████ but I have to decide the present taxation by looking at the papers which I have before me.

11. Although 'reading' a report would not take more than 15 minutes – for reading a typical report, [REDACTED] timed herself at six minutes and I timed myself at eight minutes – I accept that more than 'reading' it was required; the data in it had to be interpreted and applied to the ongoing situation. The solicitors were aware that the Sheriff was likely to ask specific questions about PQ's progress, or lack of progress, since the last Hearing. It was therefore necessary to consider how far, if at all, PQ had complied with the Sheriff's expectations – how many appointments he had been offered, how many he had attended, to what extent his social and domestic circumstances had changed, how he was dealing with his drug addiction, and more. Changes over the fortnight or month since the last report had to be analysed, in order to explain them to the Court. For example, the author of the File Note of 6 April 2009 recorded his analysis of the report that he had just received:

... not the best report and this will require very careful dealing in order to avoid the order being revoked and the client being sentenced to imprisonment. ... Considering the terms of this in terms of where something positive can be taken to progress matters and comparing and contrasting this to the previous report in order to see whether there has been a neutral position/progress or in fact he has got worse.

12. The File Notes for all of the 18 disputed occasions were made available to me and to the Board, and I have read them all. For the benefit of anyone reading this Report who does not have access to them, I quote (as an example) the first one:

7 January 2009

KO (qual) in attendance preparing for the DTTO review by reading the report prepared for today's hearing. Noting that the issues appear to be Mr Q's attendance. He is also drinking heavily and testing positive for heroin as well as some other drugs. One positive is that he has gained a place in a hostel and it appears that his lifestyle has stabilised somewhat since then.

Considering the factors that were raised by the Sheriff on the last calling namely that she demanded 100% attendance, writing proof would be required of failure to attend and that he had to communicate with the DTTO team.

Considering that all of these factors seem to be an ongoing difficulty and haven't been addressed in terms of this report. Clear instructions from him will be required in relation to each of these elements, how he is going to improve on this in order that we can address the Sheriff with regards to that.

Therefore considering the comments made at the last calling of the case, what the Sheriff expected of Mr Q, considering whether the DTTO report supports that and the matters and that we would need his specific instructions on.

13. It is worth noting that the solicitor, having read the report, took out of it (the underlining is mine) that:

... these factors seem to be an ongoing difficulty and haven't been addressed in terms of this report. Clear instructions from him will be required ...

Taking all the circumstances into account, I have concluded that the 18 disputed entries in this account do represent 'work actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given, due regard being had to economy'. I am not saying that more than 15 minutes will be justified in every case where ~~a DTTO report is perused, but, having regard to the length and content of the reports produced to me in this case, and having regard to the File Notes describing how the~~ solicitors dealt with the reports, it seems to me that more than 15 minutes was properly claimed on the 18 disputed occasions in this particular case.

14. The Advice and Assistance (Scotland) Regulations 1996 further provide:

Assessment and taxation of fees and outlays

18(4) If the solicitor is dissatisfied with any assessment of fees and outlays by the Board under paragraph (3) above, he may require taxation of his account by the auditor; the auditor shall tax the fees and outlays allowable to the solicitor for the advice and assistance in accordance with regulation 17, and such taxation shall be conclusive of the fees and outlays so allowable.

The account was rendered at £1,669.30. The only issue raised before me was the time charged on 18 occasions for 'Preparing for DTTO review' / 'Perusing and considering report'. In view of my decision, explained above, I sustain the account at £1,669.30.

15. Expenses

In taxations in Legal Aid and Legal Advice cases, I usually allow the successful party a fee for preparation for, and attendance at, the taxation. This one took between forty-five and sixty minutes, and it was evident that Miss Law had made considerable preparation for it. Beaumont & Co should, in addition to the £1,669.30, be compensated for two hours of time (at £10.55 per quarter hour, or whatever the Board's rate is for preparing for and attending a diet of taxation) for preparation for, and attendance at, the diet.

16. Audit fee/

## 16. Audit fee

An audit fee is normally payable in the first instance by the party calling for taxation of an account, with the right of recovery from the paying party if the account is sustained.

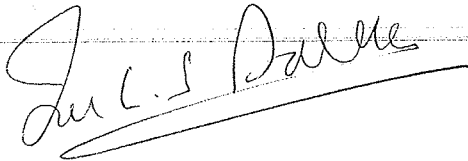
However, in other taxations involving the Board, I have been paid directly by the Board.

The audit fee is 4% of the account as taxed, rounded up to nearest £100, so the audit fee is 4% of £1,700.00    £68.00

Vat at 20%                    £13.60

£81.60

This should be paid to the firm of Balfour + Manson, and not to myself as an individual.



Ian L.S. Balfour,  
Joint Auditor, Edinburgh Sheriff Court,  
54-66 Frederick Street, Edinburgh, EH2 1LS.

10 February 2011

(Issued to the parties by Document Exchange on 10 February.)

COPY

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*For the attention of Mr Ian Balfour*  
Joint Auditor  
Edinburgh Sheriff Court  
Balfour & Manson Solicitors  
LP 12  
EDINBURGH 2

Your Ref: ILSB

Our Ref: EE/EF

14 February 2011

Dear Sirs

**SHERIFF COURT AUDIT**

**ADVICE AND ASSISTANCE REFERENCE: AA/8306958208**

I refer to the above and to your letter dated 10 February 2011 enclosing a copy of your report in respect of the above taxation that took place on Friday, 4 February 2011.

I would like to take this opportunity of thanking you for conducting this taxation and for the prompt and detailed report that you have produced. Such a report will be of great assistance to the Board in assessing future accounts of a similar nature.

I will pass your report down to our Accounts Department who will process your audit fee made payable to Balfour and Manson LLP in due course.

Yours faithfully

  
Solicitor