

AUDITOR OF COURT
SHERIFFOM OF GLASGOW
AND STRATHKELVIN

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T McCafferty
AUDITOR OF COURT

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My Ref: TMcC/
Your Ref:

[Redacted]
Scottish Legal Aid Board
LP-2
Edinburgh-7

8th May 2012

GM; LD; JM; IA & BB

Dear [Redacted]

[Redacted]

- AA/10/1370662911
- AA/1250478510
- AA9312680909
- AA9308068309
- AA/1303411110

Having now concluded the above taxations I enclose my Note on the matter which has also to-day been forwarded to Peacock Johnston together with their business files which had been lodged with me for the purposes of the taxation. You will note I have restricted the Audit Fee to £19 in each case. For your information I also enclose a copy of Peacock Johnston's letter of 2nd December to the Board accepting the abatement to the letter to [Redacted] of 15th June 2011.

Finally, I apologise for the delay in concluding this matter caused in part by my move to The Royal Faculty of Procurators.

Yours faithfully

T. McCafferty

Sheriffdom of Glasgow and Strathkelvin at Glasgow

Note by Auditor of Court, Sheriffdom
of Glasgow and and Strathkelvin in Remit by
Messrs Peacock Johnston, Solicitors, Glasgow
in connection with the provision of
Legal Advice and Assistance under the
Legal Aid (Scotland) Act 1986

To

AA/10/1370662911
AA/1250478510
AA/9312680909
AA/9308068309
AA/1303411110

This taxation arose out of a dispute between the Scottish Legal Aid Board (the Board) and Messrs Peacock Johnston, Solicitors, Glasgow in relation to fees claimed by the Solicitors for providing Legal Advice and Assistance under the Legal Aid (Scotland) Act 1986 to the above five clients.

At the diet of taxation which took ^{place} on 27th January 2012 Messrs Peacock Johnston were represented by Mr. Andrew Pollock a partner in the firm and [REDACTED] Law Accountant. The Board were represented by [REDACTED]

Regulation 18 (4) of the Act provides that:

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 or assistance in accordance with regulation 17, and such taxation shall be conclusive of the fees and outlays so allowable.

Regulation 17 (1) (a) of the Act provides that 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 1 of Schedule 3, and in any other case, in accordance with the table of fees in Part II of Schedule 3.

[REDACTED] provided me with copies of Reports by the Joint Auditor of Court, Edinburgh dated 31st May 2000 in a Remit by Messrs Mowat Dean & Co and the Board and by the Auditor of Court, Aberdeen dated 10th December 2008 in a Remit by Messrs Woodward Lawson and the Board.

Although all five Accounts have been presented for taxation the parties were agreed that the items in dispute were the letter of instruction to the nominated expert in each case (the Hunter v. Hanley letter of instruction). In addition in the case of [REDACTED] a letter to her dated 15th June 2011 advising all paperwork forwarded to the

expert and in the case of Irene Arenas a letter to her dated 26th August 2009 (not 3rd August 2009), being a confirmatory letter following the initial meeting. These are all detailed in the Board's letter of 11th January 2012 (not 2011) to Messrs Peacock Johnston which Mr. Pollock advised me he was seeing for the first time at to-days taxation. It is my understanding these are the only items in dispute between the parties, other abatements within all five accounts having been agreed. As I have no detail of these other abatements and to minimise the cost of taxation I have not docketted the accounts but dealt with the disputed items within this note and shown my determination on the Board's of 11th January 2012 a copy of which is attached to this note. ^{letter}

Dealing firstly with the letter of instruction to the expert in each case. The dates of these letters shown on the Board's letter of 11th January 2012 are not all correct. Where the wrong date is shown I have amended this to the correct date. The Board's position here is that in all five cases there are elements of these letters that are the same or the content similar and note unique to the individual circumstances of the client, which elements they maintain be charged at the formal rate of £2.90 per page (para 6.14 of the Board's guidelines). The Board accept that in each case the majority of the letter is properly chargeable at standard letter rate of £7.25 per page (para 6.13 of the Board's guidelines). In each case the accounts have been prepared on the basis of the standard letter rate per page being charged in full.

Mr Pollock advised that these cases involved complex issues and that parts of the letters particularly in formulation of the issues can involve an inordinate amount of time, including what he referred to as "thinking time". He is of the view that one cannot differentiate between the "hard bits" or "easy bits" and that the letter requires to be looked at as a whole and the fee calculated on the basis of standard letters. In addition Mr. Pollock advised that the letter of instruction to an expert in a Medical Negligence claim required to explain the legal test for professional negligence laid down by the Court in the case Hunter v. Hanley. The letter further explains how the Hunter v. Hanley test is satisfied and what the report needs to state having regard to that test. Therefore the entire letter is necessary including all reference to the Hunter v. Hanley case otherwise the report may not contain all information that is required.

In the [REDACTED] case a letter to her dated 15th June 2011 has been charged in the account at 5 pages, at standard letter rate. The Board's position is that this is effectively a letter to the client which has simply copied the list of ten questions that have been sent to the expert on the same day. As there is no legal thought involved in that process they are of the opinion that only a formal letter rate ought to be allowed. However, in the circumstances a one page letter seems reasonable and that is what the Board have proposed. Further the Board advised me that Messrs. Peacock Johnston accepted the principle of this in the [REDACTED] case and accepted the Board's restriction.

My notes from the taxation do not contain Mr. Pollock's response to this disputed item and a review of the Agents file would seem to suggest this item is no longer in dispute. Explained further at paragraph 'B' of my opinion.

In the Irene Arenas case a letter to her dated 26th August 2009 following the initial meeting with her on 3rd August is charged in the account at 12 pages at standard letter rate. The Board's position is that this is a confirmatory letter following the initial meeting and as such is chargeable at one page. It is the Board's position that the letter contains information that is confirmatory in nature, contains a page which details "terms of business", a page on fees, effectively "terms of business", and around 2 pages on "claim for damages" all of which is non-chargeable. I was referred to para 6.7 of the Board's guidelines which details the Board's practice in such matters.

Mr. Pollock again referred to the complex issues involved in medical negligence claims and to the emotional aspects and substantive advice which requires to be given to the client. In his view the letter is not confirmatory and requires to be charged at standard letter rate.

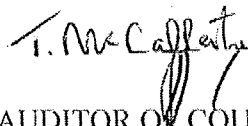
Having heard the parties on these matters, considered the authorities produced by the Board, having regard to the Board's guidelines and perused the Agents business file in each case I am of the opinion that:-

A). In relation to the letters of instruction which are of a pro-forma nature with sub-headings for "Background", "Papers enclosed", "Your Report", all being unique to the individual case. Further sub-headings "The Law in Scotland – what is negligence?" "Whose standard?", "Current or previous standard?", "Your costs" are all similar with little if any change in content. The pages unique to each case are properly chargeable at standard letter rate of £7.25 per page. The remaining pages being similar should properly be chargeable at the formal letter rate of £2.90 per page. In all five cases I am of the opinion that four pages of the letter are chargeable at the formal letter rate of £2.90 per page. The remaining pages, unique to each case and a different number of pages in each case are chargeable at the standard letter rate of £7.25 per page. The Board's position is therefore upheld.

B). In the [REDACTED] case and the letter to her dated 15th June 2011. My perusal of the Agent's business file following the diet of taxation disclosed a letter by the Agent to the Board dated 2nd December 2011 which accepts the abatement in relation to this letter. In the circumstances it would seem this item is no longer in dispute and accordingly the Board's position is also upheld.

C). In the [REDACTED] case and the letter to her dated 26th August 2009. The letter is undoubtedly 12 pages in length based on a word count. However, having regard to the Board's guidelines and the fact that certain content of the letter is non-chargeable and a great deal is confirmation of what was discussed at the meeting, I am of the opinion that the Board's offer of one page is inadequate and have allowed four pages at standard letter rate.

Finally, I calculate that the audit fee for all five accounts at £505 + v.a.t. As I have only dealt with specific points in dispute and not taxed the accounts in full I have restricted the audit fee payable to the minimum in each case. The total audit fee payable therefore is £19 x 5. £95 + v.a.t at 20% £19 a total of £114. There was no discussion as to liability for this fee. However, in view of the Board's overall success in this matter I cannot determine that this be paid by the Board. The liability for payment is that of the Agent subject to the Board possibly accepting part or all liability.



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GLASGOW
8TH MAY 2012

