

[REDACTED]

[REDACTED]

Importance:

High

JC

[REDACTED]

Firstly can you circulate this to all relevant staff.

You will be aware that we had a taxation in Dumbarton yesterday with Cairns Brown. This was the 4th taxation on the identical issue of "pro-forma" letters. The letters in the case that proceeded to taxation was word for word identical to one that the firm openly admit to using for around 2 dozen clients. Our record before the Auditor in Dumbarton Sheriff Court is truly woeful. We had however hoped that given that we had three different auditors decisions to support us on this one we would have been successful. Regrettably we have lost again!

The auditor as I understand it was faced with identical arguments to the auditor in Glasgow namely that a formal charge was only allowable in circumstances where the letter was a "short letters of a formal nature, intimations and letters confirming telephone calls". In Glasgow though the auditor was reminded that he has a very wide discretion and was entitled to look beyond any strict interpretation of the regulations as the ultimate test is to ensure 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". The Dumbarton Auditor has taken the view that because the letter was 7 pages (even although it is identical in its terms) it is not a "short formal letter" and as such he allowed the letter in full.

I have attached a copy of the taxation referral and would be grateful if you could arrange for payment of the accounts which remain in dispute. I am unclear whether we are going to get any written decision but if we do I will obviously share this with you.

Sadly this one again creates an anomaly for staff whereby you are being asked to assess accounts differently for solicitors due to the sheriffdom in which they practice. We can take steps to amend the regulations to cover this (probably by simply removing the word "short" before formal letter) but this will need to be discussed with the Law Society and Scottish Government.

[REDACTED]

The message is ready to be sent with the following file or link attachments:

DIET OF TAXATION - John Crawford 2 October 2012

Tom Brown LLB

Bill Cairns LLB MBA

Roddy Boag LLB

Bert Thomson LLB
Solicitor Advocate

CAIRNS BROWN

Solicitors

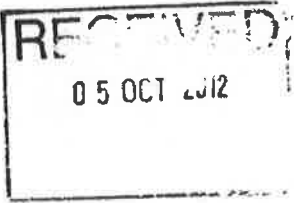
Our Ref: BC/DV/D293/42
Your Ref: JB/JB

4th October 2012



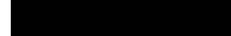
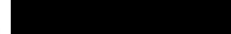

112 Main Street, Alexandria G83 0NZ
Tel: 01389 756979 Fax: 01389 754281
Legal Post - LP2 Alexandria



The Scottish Legal Aid Board
Advice & Assistance Accounts
LP 2
EDINBURGH - 7


- NOW PROCESSED IN £55.00 TAXATION



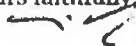
Dear Sirs,


-  - AA/1560740311
-  - AA/2616473112
-  - AA/1541022811
-  - AA/2625442512
-  - AA/261635712

You will be aware that in the taxation of the account in relation to  the Auditor at Dumbarton on 2nd October upheld our account and rejected the Board's argument that a formal rate should be applicable to the particular letter which is the subject of the dispute between us. We would be grateful therefore in the cases of  you would immediately let us have payment of the shortfall, together also with the outlays associated with the taxation which the Auditor confirmed of £55.00 and which we have already settled.

In the case of  you had also sought to abate the first entry in our account but that is also unacceptable. Whilst the narrative referred also the granting of Legal Aid, it also makes abundantly clear that we were perusing details of the claim. It is evident from the account that the instructions had come by post - the client is referred to as being in custody - and frankly we think that it is absurd for you to suggest that the entire entry be deleted. The entry does not fall to be apportioned and therefore the sum which is due by you is the amount in the account.

In view of the delays between the date the accounts in each case were rendered and the date when a final payment will be made, we believe that in each instance the Board should also pay us the statutory penalty of £40.00 for late payment in terms of the regulations under the Late Payment of Commercial Debts (Interest) Act 1998, together with interest at the current appropriate rate which is 8.5%, calculated from a period of one month after each account was rendered.

Yours faithfully,


P.S. Since dictating the above we have received your letter of 2nd October regarding  with account synopsis, etc and all of which we return. Your proposed abatement appears to be covered by this taxation decision. There is a sentence at the foot of your covering letter which we are simply unable to understand. There seems to be some question of taking instructions. As you know, we granted Advice & Assistance on 13th February, having taken instructions initially by post as the client was in custody. However just exactly what is it that you are asking?

Also at 45 High Street, Dumbarton G82 1LS
Tel: 01389 742777 Fax: 01389 742888 Legal Post - LP3 Dumbarton

e-mail: mail@cairnsbrown.co.uk

www.cairnsbrown.co.uk

SOLICITOR REFERRAL – DIET OF TAXATION

Assisted Persons Name : 

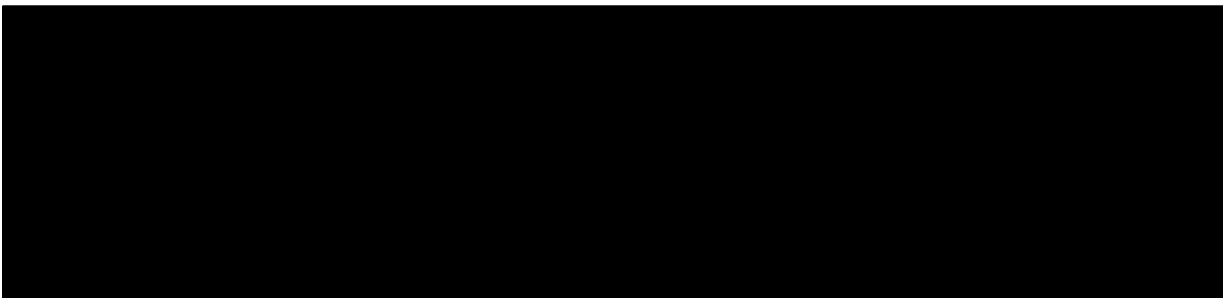
Civil Reference : AA/1560740311

Solicitors Name : Cairns Brown

Date of Taxation & Location: Auditor Dumbarton Sheriff Court 2 October 2012 @ 02:15pm

Type of Case : Advice & Assistance Account – Reparation claims against the Scottish Prison Service

1. Nature of Dispute:



The matter in dispute in these cases relates to letter charges which, in our view, appears to be completely pro-forma narrative. The solicitor has nevertheless elected to claim for 7 pages (the length of the letter) at the non formal rate of £7.25

Although in financial terms the sum in dispute is relatively small their method of charging is contrary to how three separate auditors of court have taxed this issue.

2. Fees allowable to solicitors

Solicitors are entitled to payment in terms of regulation 17 of the Advice and Assistance (Scotland) Regulations 1996.

17. (1) Subject to paragraph (2) below, 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 and, in any other case, in accordance with the table of fees in Part II of Schedule 3; and

(b) outlays actually, necessarily and reasonably incurred in connection with that matter,

due regard being had to economy, provided that, without prejudice to any other claims for outlays, there shall not be allowed to a solicitor outlays representing posts and incidents.

(2) The fees and outlays allowable to the solicitor under paragraph (1) above shall not exceed the limit applicable under section 10 of the Act as read with regulation 12.

3. Board Guidance

The Civil Legal Assistance Handbook Part V, paragraph 6.13 & 6.14 sets out the basis on how the Board determine formal from non formal letters.

6.13 Letters

While giving advice, especially following investigation or during negotiations, you may have to write your client in circumstances where, unlike the formal letters described in 6.14, more than minimal thought and legal expertise is required in the drafting. Whilst, in principle, such a letter is an entirely reasonable charge, you should always set out the advice briefly, in plain English and focus it on the specific, material issues. We do not consider it necessary, or reasonable, to send a client a lengthy letter repeating much of the advice given at a meeting, or during a telephone conversation, especially where the stated purpose of the letter has been that the client may not have readily understood the initial advice.

A number of issues arise in the assessment of charges for letters in the course of the giving of advice and an understanding of our position, as third party paying, may reduce continuations for further information or the abatement of your accounts in this area.

6.14 Formal letters

A formal letter is a letter that requires little thought, legal expertise or specialised knowledge. Although not an exhaustive list, examples of letters that we consider to be formal include:

- an acknowledgement;
- a reminder;
- a letter with an enclosure; and
- a letter of basic content.

These should be charged at the formal rate prescribed in the Table of Fees.

Paragraph 6.20 deals with pro-forma letters and the relevant fee chargeable.

6.20 Pro-forma/template letters to the client

Pro-forma letters are letters used on a regular basis tailored to reflect a client's circumstances. To the extent that these letters can be seen to be of the same/similar content they will be chargeable at the formal rate, per page. The higher rate per page will apply only to any individually composed element of the letter that reflects the client's own particular circumstances outwith the standard content.

Pro-forma letters should be adopted where possible, especially where you are undertaking the same type of work for a large number of clients. If you choose to write an individually composed letter to a client where this is not necessary and a pro-forma letter could be used – for example, to explain the law as it affects them or the application of a legal test that has to be satisfied – we may restrict the fee to a charge that we consider reasonable in the context of the advice.

4. Disputed Entry

Cairns Brown have lodged only one account for taxation although we have identified and attached another two related cases where the letter (which is the subject of dispute) that they have sent in the [REDACTED] case has also been used to send to other clients [REDACTED]. The disputed entry in the [REDACTED] case is as follows:-

Date		Claim	Offer
27/03/2012	Detailed letter to client explaining unsuccessful attempts to pursue matters generally, including applications to slab for counsel's opinion, the issues involved and the Court procedures to pursue an action, no full legal aid going to be granted and although small claims could be pursued exp the difficulties in doing so. Work undertaken by qualified solicitor BC	£50.75	£20.30

Note: Although the account has made an offer of one page at £2.90 I have called and spoken to Mr. Cairns (13/9/12) and explained that we would be prepared to offer £2.90 x 7 = £20.30, but unsurprisingly this has not made any difference. He has confirmed that he would still prefer to have his local auditor consider this matter. He also confirmed that although we have managed to identify 3 cases here the issue is much broader than that and he has confirmed that he has around 2 dozen case where the same letter has been written. Some cases have been paid (they must have slipped through as single cases) but most have still to be fee'd. He is arguing the point of principle that the letter should be allowable at full rate and not on any issue that we have inadvertently paid some cases.

Solicitors Position

Put simply as the letter is a “full” rather than “formal” letter at 7 full pages that is what he should be entitled to charge.

Accounts Position

Accounts have taken the view that given the repeat nature of the narrative the letter is clearly of a pro-forma nature, is identical to the three clients that it has been sent and the letter has not been written solely for the purposes of the client then the formal letter rate should apply.

Our position is a “full” letter charge should not be allowed for elements which are standard in nature and used across a broad range of cases and which therefore are not individual to the clients case. The Board to avoid the time, expense and uncertainty of taxation have therefore offered 7 pages at the formal rate which amounts to £20.30 in addition to other charges which have been claimed by the solicitor..

The account which has been lodged for taxation is attached at **Appendix 1**. The “disputed” entry is highlighted in blue and marked as **Appendix 3**.

A copy of a letter used by Cairns Brown in two other cases [REDACTED] and [REDACTED] is attached for your information and marked as **Appendix 4 & 5** respectively.

5. Previous Taxation Decisions or Similar Cases Which May Be Relevant:

The counter proposal we have made for payment is broadly in line with the decisions we have received from the following auditors.

- [REDACTED] AA/8330491308 report by the Auditor Aberdeen Sheriff Court (where the auditor allowed lengthy letters which contained an element of generic narrative as part formal and part non formal) – **Appendix 6**.
- Various Cases report by the Auditor Glasgow Sheriff Court where the auditor applied the same rationale as above – **Appendix 7**.
- [REDACTED] 1505263211 report by the Auditor Livingston Sheriff Court endorsing the same approach as his fellow auditors above – **Appendix 8**.

Referred by: [REDACTED]

Date: 13-09-2012

Our Ref: BC/DM/D293/42
Your Ref: JB/JB

CAIRNS BROWN
Solicitors

11 September 2012

112 Main Street, Alexandria G83 0NZ
Tel: 01389 756979 Fax: 01389 754281
Legal Post - LP2 Alexandria

[REDACTED]
Senior Assessment Officer
Scottish Legal Aid Board
Accounts Assessment
LP 2
Edinburgh 7



Dear Sirs

[REDACTED] - AA/07/1560740311

We refer to your letter of 20 August and enclose copy of intimation from the Auditor of Court of a Diet of Taxation fixed in this matter for 2.15 on 2 October. We would be grateful if you would please acknowledge receipt of the intimation.

Yours faithfully

A handwritten signature in black ink, appearing to be "C.B.", written in a cursive style.

Enc

Advice and Assistance Accounts

Division

Cairns Brown
Solicitors
LP - 2
Alexandria

Ext:267

Fax:0131 220 4895

Direct dial:

Ref:BD/DV/D293/42 & D293/42 & D293/42

Our ref:JB/JB

20 August 2012

Dear Sirs,

[REDACTED] V07/1560740311

[REDACTED] - AA/07/2616473112

[REDACTED] AA/07/1541022811

I refer to the above cases and previous correspondence.

The 7 page letters claimed in each case are being offered at the formal rate given the standard identical pro forma content of these letters. The abatement's are being proposed on the basis of recent Auditors decisions in Taxation cases which have taken place in Aberdeen, Glasgow and Livingstone on the subject of pro-forma letters. I enclose offers of payment for each account and confirm the undisputed sums are being processed for payment.

I hope this clarifies the position.

Yours faithfully,

[REDACTED]
Senior Assessment Officer
Accounts Assessment

**ACCOUNT OF EXPENSES INCURRED TO THE SCOTTISH LEGAL AID BOARD BY
CAIRNS BROWN SOLICITORS, 45 HIGH STREET, DUMBARTON, G82 1LS, IN
CAUSA:**



Certificate ref: 1560740311
Branch code: 1
Our ref: D293/42
Nom sol code: 340571

17-Nov-2011

Description
Detailed letter to client discussing general principles of proceeding with damages claim or alternatively just satisfaction claim
Work undertaken by qualified solicitor BC.

4.00 pages

Outlay | **Fee**
£29.00

27-Mar-2012 Detailed letter to client explaining unsuccessful attempts to pursue matters generally, including applications to slash for counsel's opinion, the issues involved and the Court procedures to pursue an action, no full legal aid going to be granted and although small claims could be pursued exp the difficulties in doing so
Work undertaken by qualified solicitor BC.

£50.75 *

-47.85

7.00 pages

Sub-totals
Deductions
Net total

*pro forma letter
£290 allowance*

£0.00	£79.75
	£0.00
	£79.75

-47.85

31.90

ohv