

The Taxation

I conducted the above taxation in Glasgow Sheriff Court before Ken Carter on 18 July 2013. The Auditor found largely in favour of the Board, with one exception.

A copy of the account together with observations drafted by [REDACTED] are attached.

Item 2

Letter dated 9 July 2012 advising client that Board has granted funding and solicitors have requested a report.

I drew the Auditor's attention to the terms of Board guidance and suggested that this was clearly a formal letter by its nature and content. My primary argument was that the letter itself was unnecessary given that the solicitor had already presumably advised the client that he would be instructing a report and, importantly, nothing had happened between the Board and the solicitor whereby "funding" had been approved. I explained the workings of the template system.

The only observation on behalf of the solicitor was that clients didn't always understand things. I rejected the suggestion that the Board should be assuming lack of intelligence on the part of clients and that obviously the Board would take into account circumstances where a client had particular difficulties.

The Auditor commented that legal aid was the most strictly governed of all. It was agent and client third party paying and at the "more severe end" of the standards of taxation. This was clearly a £2.90 letter and he agreed with the Board.

The Auditor pointed out that Board guidance has to be taken into account by solicitors. In this respect the guidance is prescriptive. He understood the solicitors probably only look at the Table of Fees but the guidance is important in his view.

The Auditor was not with the Board in the submission that the letter was unnecessary. Throughout the taxation the Auditor did tend to go on the basis that the client, these days, should be kept informed as to the progress of the case.

Item 3

Again I referred the Auditor to Board guidance and to the particular example of a formal letter, namely a covering letter with enclosure. I drew his attention to the fact that the example used to be specifically a letter enclosing a cheque and that this has been the Board's understanding and advice for many years.

On behalf of the solicitor it was stated that the Board used to pay for such a letter at the standard rate. When pressed it was stated that [REDACTED] had said this and that his view had been that the solicitor should be entitled to the higher rate to include the drawing of the cheque. I repeated that that was not the Board view and had not been the Board view for many years. More importantly it had no basis in the Table of Fees. The charge is for a formal letter. There is no charge for drafting a cheque although there are drafting charges in the Table.

The Auditor accepted that the solicitor signs the cheque as well as the letter, although it probably takes a second. The cheque however is drafted by a member of staff. It is a wholly administrative function. There are no fees for posts and incidents under the current Table and the work of drafting a cheque is simply not chargeable against the Fund.

The Auditor observed that the two line letter falls “very squarely” within a formal letter for a basic administrative function. It did not strike the Auditor that this was something that the solicitor would “sit down with a dictating machine” to do.

Item 4

I explained that this was pretty well identical to Item 2 (above). The Auditor agreed. This was clearly a quick update, “keeping the client in the loop” and was, as such, good practice. The legal aid regime is highly regulated and may not have paid for this at all some years ago, but he felt the letter itself was appropriate, but clearly formal.

Item 5

The Auditor allowed the standard rate at £7.25 for this letter. The Auditor felt that as this was the last letter on file - passing the matter back to the client - that the solicitor had probably had more of an involvement in this. It had taken up a fee earner’s professional time and was probably worth the standard rate.

Conclusion

- The Auditor upheld the Board’s position on letters containing basic content being treated as “formal”;
- The Auditor agreed entirely with the Board in treating a letter accompanying a cheque as being formal. In particular, the Auditor pointed out that given that there was no provision for posts and incidents, that an “administrative function” like this was not chargeable against the Fund;
- On the other hand, there was a tendency to allow “updates” to the client. I had argued as regards the first letter to be taxed that the client knew fine well that a report was going to be instructed and had, indeed, signed a mandate for that purpose. There was no particular obligation, in my view, for a solicitor to update the client in everything he did - having already taken the client’s instructions on that course of action; and
- The Auditor allowed a standard rate for the last letter despite, on the face of it, the content only justifying a formal letter, in our historic view. I do not think that this applies as a matter of course to every last letter - the point the Auditor was making was the solicitor was clearly “cutting the cord” in this letter and was passing the matter back to the client and would therefore have given the letter itself some consideration. I am not entirely happy with this as a concept as it involves some sort of assessment of what a solicitor was doing outwith the narrative supporting the charge. On the other hand, it is my understanding that last letters are usually a bit longer and tie things up as it were and so where a letter is clearly the last letter and was intended as such (rather than just happens to end up as being the last letter because nothing else happens) then this is something we will have to consider at least with Derek Livingston’s accounts.

As indicated, I am pressing for the Government to include accounts issues in the A&A package which is now a priority. If we do get the go ahead then it would be helpful to have a couple of sessions on what Notes on the application of the A&A and ABWOR Schedules should look like. This would also extend to the Table of Fees.

	Outlays	Fees
22/05/2012	Attendance meeting with [REDACTED] discussing with him his appeal in respect of Employment and Support Allowance, noting full details and completing Legal Advice & Assistance application forms, 20 mins	25.50
	900	
24/05/2012	Writing Scottish Legal Aid Board requesting an increase in authorised expenditure	7.25 X
	-4-35 TEMPORARY	
11/06/2012	Writing [REDACTED] advising with regard to his Legal Advice and Assistance position, enclosing mandate, requesting him to sign same, requesting to hear from him regarding the date of the appeal, 2 pages	14.50
11/06/2012	Framing mandate	7.25
09/07/2012	Writing [REDACTED] advising with regard to us having been instructed by [REDACTED] in respect of his ESA appeal, referring to the reports previously provided by him, explaining on our understanding regarding our client's present circumstances, advising fully regarding the further report which is required, 6 pages	43.50 X
	① -43-50 FORWARDED COPY	
09/07/2012	Writing [REDACTED] advising that the Scottish Legal Aid Board have now granted funding and advising we have requested a report from [REDACTED]	7.25 X
	② -4-35 F/L A.R.	
19/07/2012	Writing [REDACTED] enclosing cheque and requesting to receive the report	7.25 X
	③ -4-35 F/L	
19/07/2012	Paid [REDACTED] fee for report	100.00 ✓
19/07/2012	Writing [REDACTED] advising that we have made payment for the report and advising that we now await same	7.25 X
	④ -4-35 F/L	
27/07/2012	Attendance at telephone with [REDACTED] secretary enquiring regarding the report	2.90
03/08/2012	Writing Scottish Legal Aid Board requesting a further increase in authorised expenditure	7.25
07/08/2012	Perusing and considering medical report by [REDACTED]	12.75
07/08/2012	Writing [REDACTED] enclosing copy of the report by [REDACTED] and advising that it is not in favourable terms, advising on us obtaining a further report, enclosing further mandate, requesting him to sign same, 2 pages	14.50

		Outlays	Fees
	Carried Forward:	100.00	157.15
07/08/2012	Framing mandate		2.90
08/08/2012	Attendance at telephone with [REDACTED] noting his position regarding the report		2.90
09/08/2012	Attendance at telephone attempting to speak with Mr [REDACTED] and noting his availability		2.90
10/08/2012	Writing [REDACTED] referring to our recent discussion, explaining further regarding us considering that the report was not completely favourable, advising with regard to obtaining a further report and requesting to know if he wishes us to proceed with same, 3 pages		21.75
13/08/2012	Attendance at telephone with [REDACTED] noting up to date details		2.90
24/08/2012	Writing [REDACTED] referring to previous correspondence, requesting to receive return of the mandate, explaining on our position in that we require full instructions		7.25
04/09/2012	Writing Mr Robertson advising we sent copy of [REDACTED] report to the Welfare Rights Office requesting to know the outcome of his appeal -4-35 F/L		7.25 X
04/09/2012	Writing Welfare Rights Office enclosing the report from [REDACTED] and requesting to know the outcome of our client's appeal		7.25
	Net Total:		212.25
	Total:	100.00	212.25
	Add Outlays:		100.00
	Grand Total:		312.25

JH/RS/171669

Advice & Assistance Account

Incurred by

Scottish Legal Aid Board

Naftalin Duncan
534 Sauchiehall Street
Glasgow
G3 3LX
LP 10 - GLASGOW 3


AA/2684409412

£900.00

SCOTTISH LEGAL AID BOARD

NOTE OF ISSUES IN DISPUTE

DIET OF TAXATION - GLASGOW SHERIFF COURT - 18 JULY 2013

We have agreed with Naftalin Duncan, at their request, that the account for [REDACTED] is to be taxed, only. This is because the issues across all four accounts are broadly similar and it made better sense to have one account taxed covering all the issues in dispute.

The issues in dispute and the reasons for the abatements are detailed in my correspondence to Naftalin & Duncan. Please, refer to the relevant extract below:

[REDACTED] AA2684409412 - Your reference: DDL/JM/ROBE15/3(MOR)

1. Entry 9 July 2012 - "Writing [REDACTED] advising with regard to us having been instructed by [REDACTED] in respect of his ESA appeal, referring to the reports previously provided by him, explaining on our understanding regarding our client's present circumstances, advising fully regarding the further report which is required". The first four paragraphs of this letter account for three pages of bespoke text chargeable at the non-formal rate of £7.25, with the remainder of the letter accounting for four pages of pro-forma text chargeable at the formal rate of £2.90. The total fee payable for this letter is £33.35. This is an abatement of £10.15. As you have been paid £30.45 for this letter, I consider a further £2.90 is due.
2. Entry 9 July 2012 - "Writing [REDACTED] advising that the Scottish Legal Aid Board have now granted funding and advising we have requested a report from [REDACTED]". We have not had sight of this letter. However, the narrative provided indicates that this letter is confirmatory of steps that you intended to take on the client's behalf which would have been discussed with him at the initial meeting on the 22 May 2012. Further, we do not consider it necessary to update the client on funding when there would not have been an issue with this. This is because the increase to cover the cost of obtaining the report is a template automated increase, which the solicitor can select without having to seek our prior approval. When the solicitor chooses to select the template increase the system automatically grants it. Any work done in accordance with the template increase and the associated cost is subject to scrutiny at the accounts stage. We have allowed a formal letter for this entry. However, based on the narrative in the account we should have abated this entry in its entirety for the reasons that it is both confirmatory and unnecessary.
3. Entry 19 July 2012 - "Writing [REDACTED] enclosing cheque and requesting to receive the report". As explained in previous correspondence there is no provision within the table of fees for administrative work involved in drawing a cheque. However, a formal letter fee of £2.90 for enclosing the cheque is chargeable. Accordingly, we have paid you £2.90.
4. Entry 19 July 2012 - "Writing [REDACTED] advising that we have made payment for the report and advising that we now await same". We have not had sight of this letter. However, based on the narrative provided this seems to be a brief letter updating the client. I would not be inclined to allow more than a formal letter for this.
5. Entry 4 September 2012 - "Writing [REDACTED] advising that we sent a copy of [REDACTED] report to the Welfare Rights Office requesting to know the outcome of his appeal". This is a brief letter updating the client. We have paid a formal fee of £2.90 for this letter.