

SHERIFFDOM OF TAYSIDE CENTRAL & FIFE AT DUNDEE

NOTE OF TAXATION





By Craig Donald

In causa

LS


HMA v



1. This is the Note of Taxation from the taxation diet held on 27 September 2013 in respect of an Account of Expenses submitted to the Scottish Legal Aid Board by Muir Myles Laverty, Solicitors, Dundee in connection with the Accused  under the SLAB Account Ref: SL/2708490412. Mr S Forsyth of Muir Myles Laverty appeared on behalf of the Accused and  appeared on behalf of the Scottish Legal Aid Board.
2. Prior to the taxation I was given various documents from  Contained within those documents was a decision by Sheriff Robertson at Stirling that went against the Legal Aid Board.  and Mr Forsyth both confirmed that this decision was on the same point as today's taxation. Therefore, both agreed that, as this was a decision made by a Sheriff within Tayside Central & Fife and I was an Auditor of Court within the same Sheriffdom, I was bound by that decision. Therefore, I will allow the two £38.00 preparation fees on 15 April 2013 and 7 May 2013 for "BLOCK FEE 4B PREPARATION FOR DEFERRED DIET".
3. I was not asked to "tax" the account, simply to come to a view on the two £38.00 fees. The final figure for the account is to be agreed between the Solicitors and SLAB. The Audit fee is a total of £90.00 and I consider that that amount should be added to any amount agreed.

4. Notwithstanding the above, [REDACTED] asked me to look over the information submitted and asked me to state a view as if I wasn't bound by the Sheriff's decision. Mr Forsyth was content for me to do so as he was basing his opposition to those two abatements made by SLAB upon the decisions of the Sheriffs and the Interim Auditor of Court at Dumbarton.

5. Having looked over the legislation and all the information provided I would have come to the same conclusion as the Sheriffs and the Interim Auditor of Court at Dumbarton even if not bound by the Sheriff Robertson's decision. I don't think I can usefully add anything to the reasons given by the Sheriffs and Interim Auditor of Court.



Mr. C L Donald

Auditor of Court

30 September 2013

SCHEDULE 1⁴²
FEES OF SOLICITORS

Notes on the operation of Schedule 1

- 1.—(1) In relation to solemn criminal proceedings the fee for—
all work falling within a block of work prescribed in Part 2 of the Table of Fees
- (a) is the fee specified in the relevant column of that Part;
any item of work that does not fall within a block of work prescribed in Part 2 of the Table of Fees is to be calculated in accordance with Part 1 of the Table
- (b) of Fees.
- (2) In a case in which an indictment has been served, the relevant column of Part 2 of the Table of Fees for the purposes of sub-paragraph (1)(a)—
- for proceedings in the High Court of
Justiciary which relate to an offence listed in
Schedule 2, Part I, Chapter 1—
- (a)
- (i) paragraph 3(a) is column A;
(ii) paragraph 3(b) or (c) is column B;
for proceedings in the sheriff court is column
C.
- (b)
- (3) In a case in which an indictment has not been served, the relevant column of Part 2 of the Table of Fees for the purposes of sub-paragraph (1)(a)—
- is column A if the proceedings relate to any
of the following offences:—
- (a)
- (i) murder;
(ii) multiple attempted murder;
(iii) culpable homicide;
(iv) rape;
(v) assault and robbery involving commercial premises;
(vi) importation of controlled drugs;
an offence under section 1 of the 1988 Act (causing death by dangerous
(vii) driving);
(viii) an offence under the Explosive Substances Act 1883;
(ix) a firearms offence;
(x) incest;
(xi) sodomy;
(xii) sedition;
(xiii) treason;
(xiv) torture; and
(xv) war crimes;
- is column C if the proceedings do not relate to any of offences specified in sub-paragraph (a).
- (4) For the purposes of sub-paragraph (2)(a), where the proceedings relate to an offence which is not listed in paragraph 3(a), (b) or (c) of Chapter 1 of Part I of Schedule 2 the offence is deemed to be listed in whichever of those sub-paragraphs the Board, or as the case may be the auditor, considers appropriate having regard to all the circumstances.
- (5) Without prejudice to the generality of sub-paragraph (1), the following items of work do not fall within any block of work prescribed in Part 2 of the Table of Fees—
- (a) travel;
(b) attending locus visits;
(c) work in connection with the taking of a witness precognition;
perusing, for the first time, the indictment, witness lists, statements,
(d) productions and labels received from the Crown and defence precognitions;
(e) instructing expert witnesses;
conducting, or attending court when counsel is conducting, a
(f) hearing;

- (g) time spent waiting;
post conviction work, except for the work described in paragraph 5 of Part 2 of
- (h) the Table of Fees; and
the work described in paragraph 3 of Part 2 of the Table of Fees, where the
- (i) Board is satisfied that the case raised unusually complex issues of fact.

2. In relation to summary criminal proceedings, including appeals, the fee for any item of work is to be calculated in accordance with Part 1 of the Table of Fees.

3. Without prejudice to the discretion of the Board or auditor in relation to summary proceedings, in solemn proceedings no fee is chargeable for-

- (a) making a telephone call that is not answered;
making a telephone call that is answered only by an automated device or
- (b) system that allows the caller to record a message, except on cause shown;
- (c) framing a file note;
- (d) framing a precognition following a meeting where a file note would suffice;
- (e) perusing correspondence;
a letter of acknowledgement, unless expressly requested or
- (f) required;
- (g) more than two consultations, except on cause shown;
a meeting with the client, unless it is clear from a brief narrative in the
account that information was received from or imparted to the client at the
- (h) meeting advancing the case;
more than one solicitor attending a meeting with the client, without the prior
- (i) sanction of the Board;
- (j) preparing for a hearing, except as provided for in Part 2 of the Table of Fees;
preparing for a hearing to which paragraph 4(a) of Part 2 of the Table of Fees
- (k) relates unless-
- (i) the indictment, containing a libel against the client, proceeds to trial; or
- (ii) on or after the day fixed for trial, the Crown withdraws any libel against the client.
preparing for a hearing to which paragraph 4(a) of Part 2 of the Table of Fees
relates if a fee under that paragraph has already been charged in respect of
- (l) the case;
preparing for a subsequent day of trial or diet of deferred sentence if more
than two fees have already been charged under paragraph 4(b) of Part 2 of
- (m) the Table of Fees;
more than one solicitor attending a hearing, without the prior sanction of the
- (n) Board;
during the court's lunch break, time spent at court for a hearing or travelling
- (o) to or from court, except on cause shown;
settling with witnesses in respect of a trial where a fee is charged in terms of
- (p) paragraph 4(a) of Part 2 of the Table of Fees.

Time spent waiting and travelling

4. A fee for time spent waiting is chargeable only for time necessarily spent waiting at court for a hearing, provided that time has not been occupied in connection with another case (legally aided or not).

5.—(1) Subject to sub-paragraph (2), a fee for travelling time is chargeable only for time necessarily spent travelling to and from-

- (a) court, provided that-
- (i) a fee is chargeable for the work undertaken at the court; and
- (ii) the court is not in a town or place where the solicitor has a place of business;
- (b) a meeting with the client-
- (i) in prison; or
- (ii) elsewhere, if the client is unable to travel on medical grounds;
- (c) a meeting with the Procurator Fiscal or Advocate Depute at their office;
- (d) a consultation with counsel or an expert witness;
- (e) a locus inspection;

(f) an examination of productions.

(2) A fee for travelling time is chargeable in circumstances other than those listed in sub-paragraph (1) only if the Board, or as the case may be the auditor, is satisfied that it was necessary for the advancement of the case that the solicitor be physically present at the place travelled to.

(3) A fee for travelling time is not chargeable if it would have been more economical to use a local solicitor, unless it was reasonable in the interests of the client that the nominated solicitor, or a solicitor assisting the nominated solicitor in terms of regulation 4(3), attended personally.

(4) The fee chargeable for travelling time is the fee for time necessarily spent travelling divided by the number of cases (legally aided or not) in connection with which the travel was undertaken.

Transfer of agency

6. Where agency is transferred from one solicitor to another—
the fee for a block of work commenced and completed by the same solicitor is
(a) payable to that solicitor;
the fee for a block of work commenced by one solicitor but completed by another is to be apportioned equally between the solicitors who undertook
(b) work falling within that block.

Uplifts

7.—(1) The fee for time spent by a solicitor travelling and taking a statement in connection with a precognition to which this paragraph applies is £12.67 for each quarter of an hour.

- (2) This paragraph applies to a precognition in relation to solemn proceedings if—
(a) it is the first precognition of the client; or
(b) cause is shown that the statement had to be taken by a solicitor.

Interpretation

8. In this Schedule—
"court" means the Supreme Court, the High Court of Justiciary, the sheriff court, the justice of the peace court or any remaining district court as the case may be;
"hearing" includes diet;
"quarter of an hour" will be read as if immediately followed by the words "(or part thereof)";
a "sheet" shall consist of 250 words or numbers; and
a "page" shall consist of 125 words or numbers.

PART 1 DETAILED FEES

	Summary Procedure	Solemn Procedure
1. In connection with the conduct of a hearing—		
in summary proceedings, the fee for –		
any time up to the first half hour spent by a solicitor conducting the hearing	£27.40	—
each quarter hour spent, subsequent to the first half hour, conducting the hearing	£13.70	—
In solemn proceedings, the fee for each quarter of an hour spent by a solicitor conducting the hearing		£19.00

2. The fee for any of the following:—	£6.00	£7.20
each citation of a witness, including execution; framing and drawing necessary papers other than those referred to in paragraph 3(c); instructing messengers at arms and sheriff officers, including examining execution and settling fee; lengthy telephone calls (of over 4 and up to 10 minutes' duration), subject to paragraph 4(e); and letters, including instructions to counsel, per page (or part thereof), subject to paragraph 3(b).		
3. The fee for any of the following:—	£2.40	£2.88
attendance at court offices for performance of formal work including each necessary lodging in or uplifting from court or each necessary inquiry for documents due to be lodged; short formal letters, letters of acknowledgement, letters each having a similar nature, intimations and letters confirming telephone calls; framing formal papers, including inventories and title pages, per sheet (or part thereof); revising papers drawn by counsel or where revisal ordered by court, per 5 sheets (or part thereof); and subject to paragraph 4(e), short telephone calls (of up to 4 minutes' duration) and telephone calls (of any duration) where the intended recipient is not reached or insufficient narrative is provided in the account to ascertain the duration of the call.		
4. In connection with taking a precognition in relation to solemn proceedings—		
subject to paragraph 7 of the notes on the operation of Schedule 1, the fee for each hour (or part thereof) spent—		
travelling	—	£12.00
taking a statement	—	£12.00
the fee for—		
framing the precognition, per sheet		£2.50
each letter making arrangements for taking a statement		£1.50
a telephone call, of any duration	—	£1.00
5. Where a document is copied and it is necessary to take a copy of more than 20 sheets (whether 20 of one sheet, 5 of 4 sheets or whatever) for each sheet copied a fee of	£0.08	£0.09
5A.¹ The fee for each quarter of an hour spent travelling —	£5.28	£6.34
(a) by a solicitor	£2.63	£3.17
(b) by a solicitor's clerk		
6. The fee for each quarter of an hour spent carrying out work other than that prescribed in the preceding paragraphs—		
by a solicitor, provided the time is additional to the total time charged for under paragraph 1	£10.55	£12.67
by a solicitor's clerk	£5.25	£6.33

¹
Inserted by S.S.I. 2011 No. 41 (in force from 28 February 2011 but only in respect of travel commenced on or after 28 February 2011)

PART 2
INCLUSIVE FEES FOR SOLEMN FIRST INSTANCE PROCEEDINGS

	<i>Column A</i>	<i>Column B</i>	<i>Column</i>
1. The fee for all work from the taking of initial instructions up until the client is admitted to bail or committed until liberated in due course of law, where—			
at the first examination the client is either—			
not committed for further examination; or	£152.00	£133.00	£57.00
committed for further examination and admitted to bail.			
at the first examination the client is committed for further examination and not admitted to bail.	£228.00	£209.00	£133.00
2. The fee for all work preparing for a bail appeal hearing including any continued diet and, where necessary, instructing Edinburgh agents	£57.00	£57.00	£57.00
3. The fee for arranging and attending all meetings, including consultations, in prison with the client after full committal for trial up to the conclusion of the case	£437.00	£304.00	£152.00
4. The fee for preparation, including citing and settling with witnesses, perusing evidence and preparing lines of enquiry and submissions but excluding relative consultations, in respect of—			
a first day of trial	£399.00	£285.00	£152.00
a subsequent day of trial or diet of deferred sentence	£152.00	£114.00	£38.00
5. The fee for all work in connection with post conviction discussions and advice, including advising and giving an opinion on the prospects of any appeal	£152.00	£152.00	£76.00
6. Unless dealt with in the course of the preliminary hearing, the fee for all work in connection with any of the following:—	£152.00	£152.00	£152.00
a devolution issue, in terms of Schedule 6 to the Scotland Act 1998(6);			
a vulnerable witnesses application, in terms of section 271A, B, C or D of the 1995 Act;			
a specification of documents;			
a precognition on oath;			
an evidence on commission;			
(f) an application to lead evidence relating to sexual offences under section 275(1) of the 1995 Act;			
(g) a proof in mitigation; and			
(h) an examination of facts.			

List of documents attached

1. Report by Alan Johnston, Auditor of Court at Stirling dated 6 February 2012
2. Note of Objection to Auditor's Report from Dalling, Solicitors dated 14 March 2012
3. Note by Sheriff Robertson (undated)
4. Note of Appeal by SLAB dated 16 April 2012
5. Sheriff Dunlop QC'S Judgement
6. Note by Dumbarton Sheriff Court
7. Note of Objections by SLAB in the case of Elizabeth McKeen
8. Note by Sheriff Dunlop QC dated 2 May 2013
9. Note by Interim Auditor in the case of Paul Owen dated 8 August 2013
10. Note of Objections by SLAB in the case of Paul Owen