

DATE	Dec-73
AUDITOR	W Rufus Smith
COURT	Court of Session
SOLICITOR	Allan McDougall & Co
CASE	[REDACTED] FM
ACCOUNT TYPE	A&A
TAXATION HEAD	Framing / Precognitions
TAXATION ISSUES	Charges for completion of the application form LAA3. Charges for precognitions
DECISION	Under the LAA Scheme, the Auditor decided that work for completing the application form and assessing the clients contribution should be included in the time occupied by the Solicitor at the first meeting in giving advice & assistance to the client, and that no separate charge for completion of the form should be allowed. The Auditor also considered the question of fees for precognitions and other statements of matters on which those who were likely to be called as witnesses would give evidence then, it was a precognition for the purpose of deciding the basis of a charge. The Auditor also adhered to his earlier decision that precognitions should be allowed at the Court Table of Fees. The Auditor also defined a precognition as being "a written statement of matters which are likely to be used in evidence.

Legal Aid MARCH 1974

Lists of solicitors in civil proceedings

The Legal Aid Central Committee have resolved that the lists of solicitors maintained by the Society, of solicitors who hold a current Practising Certificate and are entitled to practise on their own account, save any such solicitor in respect of whom a determination has been made by the Society in terms of Section 6 (2) of the Legal Aid (Scotland) Act, 1967, shall be regarded as the lists of solicitors to be prepared and maintained by the various Local Legal Aid Committees, of solicitors willing to act for assisted persons in civil causes in terms of Article 12 of the Legal Aid (Scotland) Scheme, 1957. The same list restricted to those who carry on and have a place of business in Edinburgh will be regarded as the list to be maintained by the Supreme Court Committee.

The effect of this is that Legal Aid Committees will not henceforth maintain separate civil lists, and solicitors undertaking legal aid in civil proceedings need not apply to go on the list, but of course they must have a current Practising Certificate and contribute to the Guarantee Fund. This brings the position of lists in civil proceedings into line with the Legal Advice and Assistance Scheme.

The above provisions do not relate to legal aid in criminal proceedings. Lists will still be maintained under this Scheme, and solicitors undertaking criminal legal aid work will require to have their names on the appropriate criminal list as before.

Legal Advice and Assistance (Scotland) Scheme, 1973

Charges for completion of the application form

Charges for precognitions

In a recent remit to the Auditor of the Court of Session for taxation of a solicitor's account under the Advice and Assistance Scheme, the Auditor decided that work for completing the application form and assessing the client's contribution should be included in the time occupied by the solicitor at the first meeting in giving advice and assistance to the client, and that no separate charge for completion of the form should be allowed.

The Auditor also considered the question of fees for precognitions and other statements. He decided that if the document was a statement of matters on which those who were likely to be called as witnesses would give evidence, then it was a precognition for the purpose of deciding the basis of charge. The Auditor also adhered to his earlier decision that precognitions should be allowed at £1 per sheet.

[The Court Table of Fees]

1012
[REDACTED]
TAXATION - DECEMBER 1973

This is a Remit from the Law Society and Messrs. Allan McDougall & Co., S.S.C. It arises from an application for legal advice and assistance under the Legal Advice & Assistance (Scotland) Scheme 1973.

The account which is to be taxed is framed on the basis of an application for legal aid being framed and extended and signed by the client. The first five entries in the account deal with that aspect and are in the form which is usually present in the case of an application for a Section 1 Legal Aid Certificate. The Law Society, who are in this matter represented by the Central Committee, have taken the view that the completion of the application form and subsidiary form should be included in a time charge and they submit that no separate charge should be allowed for completion of the forms. They also submit that in any event the charges suggested by Messrs. Allan McDougall & Co. are excessive. This is a new form of legal advice and to obtain the benefit of it the client fills in an application form No. LAA3. The Auditor understands that the method under which the client obtains legal aid under this scheme is to complete the form, sign it, and then the Solicitor indicates to the client what the maximum contribution will be as is indicated in paragraph 9 of the form. The Solicitor then completes and sends in to the Law Society the form with an assessment of contribution. The Solicitor then gives the appropriate advice.

The Law Society's view of this matter is that there should be no question of framing or extending the form but simply completing it, if indeed the Solicitor does so. It would be competent for the client to do this himself and hand it to the Solicitor. They further contend therefore /

therefore that, if the Solicitor is asked to assist in the completion of the form, the time taken to do this should be included in the time occupied with the client. The Solicitors whose account is submitted state that it was proper for them to frame the account in the way in which they normally do this for a Section 1 Legal Aid Certificate.

The procedure for this form of Legal Aid is new, and the Law Society are anxious for a decision as to how any fee for completion of the application form and ancillary form should be dealt with by the Solicitor.

The Auditor, having considered the matter, is of the view that as it would normally be work done when the client came to see the Solicitor with a view to obtaining advice the correct method is to charge for the time engaged in the operation of completing the form or assisting the client to do so, assessing the contribution, and giving the appropriate advice. The time which this takes will differ in each case, but it should not form a large part of a time charge. It may be, for example, that it took the Solicitor 20 minutes to complete the form and assess the contribution and 50 minutes to give the appropriate advice. In the view of the Auditor, the charge should be the usual time charge for one and a half hours.

Accordingly, the Auditor has taxed off the items for framing the application, extending it, and completing the form of entitlement and assessing the contribution, but in the circumstances of this particular case, having heard the Solicitors' views on the matter, adds £3.25 to the time element to represent the time taken for the whole operation.

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The taxation of the account as lodged raises another matter, namely, the fee for framing a statement from the client, Mr. McDougall. This is charged in the account on the basis of the general Table of Fees provided by the Law Society of Scotland. In this particular case, the advice required was in connection with a complaint in Court, and the account clearly demonstrates that this is so. In these circumstances, the Auditor is of the opinion that the statement in this case which is charged for is a written statement of matters which are likely to be used as evidence, and so is a precognition. The Auditor therefore is of the opinion that the Table of Fees in the Court should be the basis of charge for framing the statement and he has taxed the account accordingly.

The Law Society submitted to the Auditor at the Hearing that precognitions should be allowed at £1 per sheet. They produced a copy of a Sheriff Court Auditor's Interlocutor and Note. In that particular case, the Auditor in the Sheriff Court felt he could not pre-suppose that a Court Action was to be the likely outcome of a consultation with the Solicitor, and accordingly the Auditor of the Sheriff Court allowed the charge at the General Table rate.

It is the view of the Auditor of the Court of Session that if the document is a written statement of matters on which those who are likely to be called as witnesses are expected to give evidence on oath, based either on the facts within their knowledge or on their opinion upon facts where this is competent, then the document is a precognition.

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There are many forms of statement and in many cases it is difficult to ascertain whether they would be precognitions or not, but the Auditor takes the view that, if the work done was of such a nature as to indicate that some application to a Court might follow, then the document would be a precognition.

H. Rogers Smith

7th December, 1973.