NOTE BY THE AUDITOR OF COURT FOR THE SHERIFFDOM OF NORTH STRATHCLYDE

AT DUMBARTON

Remit for Taxation in terms of Regulation 18 (4) of the Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996

APPLICANT

ST [redacted]

REFERENCE NUMBER 6758287716

Dumbarton 13 February 2018

The Auditor of Court having resumed consideration of the Applicant's Account hereby taxes same in the sum of **THIRTY FOUR POUNDS AND TWENTY PENCE (£34.20) STERLING**.

David F Forrester

Auditor of Court

Background

1. This is a case in which Advice and Assistance was provided to [redacted] (the Applicant) by Mr Cairns of Cairns Brown, Solicitors, Alexandria wherein said solicitor is in dispute with the Scottish Legal Aid Board (the Board) in respect of the Board's assessment of allowable fees. This matter comes before me in terms of Regulation 18 (4) of the Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996. A Diet of Taxation was assigned for Tuesday 6 February 2018 at which Diet Mr Cairns appeared for the Applicant and [redacted] appeared for the Board.
2. The Account totals £48.70 but at the Diet of Taxation I was advised by parties that the only matter under dispute was a detailed letter to the Board, dated 19 October 2016, which provided additional information in support of the application following a request for same from the Board. That letter runs to two pages and is charged at £14.50 (2 x £7.25) as per the appropriate Table of Fees.

Submissions on behalf of the Board

3. Mr Haggarty advised that internal Board systems had flagged this application as a possible duplicate as Advice and Assistance had previously been provided to the same person by Mr Cairns with both applications relating to Interdict. There was some dispute between parties as to the reasons why additional information was

requested, but it does appear that the Board asked for additional information from Mr Cairns regarding the second application to which this Account refers. [redacted] noted that an application for Advice and Assistance had been made on 15 August 2016 (Ref 6717241216) with the main category being Interdict and another made on 14 October 2016 (ref 6758287716) again with the main category being Interdict.

4. [redacted] conceded that there was some confusion as to the reasons for the Board request for additional information but submitted that as essential information was missing that would help clarify whether this was a duplicate application, it was incumbent on the Board to make such a request in discharge of their functions under the Legal Aid Act. He was therefore surprised to see a charge for this when the Account was lodged and referred to Regulation 17 (1) which made it clear that fees should only be allowable to a solicitor for work necessarily and reasonably done in connection with the matter upon which advice and assistance was given with due regard to economy. He invited me to tax off the full charge of £14.50.
5. [redacted] also observed that the letter appeared to contain non-essential information and submitted that, if I was minded to allow any charge, this should be abated to only one page chargeable at £7.25.

Answers on behalf of the Applicant

6. Mr Cairns advised that the two applications related to separate and distinct matters between different parties. He noted that there was no field in the online application form to provide the additional information ultimately sought by the Board and submitted that if the Board requested information that led to additional work by the solicitor then the cost associated with that work should be recoverable in the Account.
7. Mr Cairns observed that the Board had not been specific when making the additional information request and given his knowledge of the background and history of this client, he considered it necessary to send a detailed letter that set out the whole circumstances in support of the application. He was of the view that the Board should not be entitled to what amounted to "free Accounting" and submitted that it was justifiable to recover the sum of £14.50 from the Board all as set out in the Account. He invited me to allow the charge of £14.50 in full.

8. Mr Cairns submitted that the cost of Taxation should also be added to the Account.

Decision by Auditor

9. This is a relatively straightforward matter for me to consider. Regulation 15 of the Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996 requires a solicitor who gives advice and assistance to supply the Board with such information as the Board may require for the purposes of performing its functions under the Act. In my view the provision of such information is ancillary and complementary to making the application for Advice and Assistance and is not chargeable in any Account subsequently submitted to the Board.
10. In this case the Board, quite properly in my view, requested additional information against a backdrop where a duplicate application may well have been made on behalf of the same client for interdict. The Board made that request in discharge of its statutory obligations all as set out in the 1996 Regulations. Solicitors participating in the Advice and Assistance scheme are required to provide information to the Board and in this instance Mr Cairns was under a statutory obligation to provide the information requested. He was not, in my view, then entitled to charge for providing that information to the Board. I will therefore tax off the sum of £14.50 from the Account.
11. Given my decision above, I do not need to consider [redacted] secondary submission regarding abatement of the charge. It should be noted however that at the Taxation Diet on 6 February 2018 I observed that as a general principle I considered that where a solicitor receives correspondence which contains a request for information then that solicitor should normally be entitled to charge a fee for any such work that is necessary to respond to that request and indicated that I was minded to repel [redacted] secondary submission. However, given the terms of Regulation 15 aforementioned and my decision thereon I do not now need to consider this point more fully in my Note as I have taxed off the charge in full.
12. As I have sustained [redacted] objection and taxed off the charge in the Account I will not allow the Taxation Charges to be added to same and will therefore tax the Account in the sum of £34.20.