PAISLEY, 9 August 1985. The Sheriff, having resumed consideration of the objections to the auditor's report herein, Sustains the objections taken to the auditor's failure to allow an increase of 25% in respect of the solicitor's court time; quoad ultra Repels the objections; Remits the account of expenses to the auditor of court to tax of new in accordance with the decision herein.

(Sgd) AKT Hunter

NOTE: The auditor in this case had a gargantuan and unenviable task with regard to this and 6 other similar accounts. He is bound by Section 12(2) of the Legal Aid (Scotland) Criminal Proceedings Regulations 1975 which states "a solicitor shall be allowed such amount as may be determined to be reasonable remuneration ..... for work actually and reasonably done, due regard being had to economy". There is also a certificate granted in the case of the objector under Section 13(2) and 13(6) of said regulations which instructs the auditor to add an extra sum to the fees which would otherwise represent fair remuneration up to a maximum of 25%.

The objector takes exception to the auditor's report on two grounds (1) that he has taxed off the 25% extra sum claimed in respect of court attendances and copying and (2) that he has abated the sums claimed for perusals.

With regard to the abatement of the perusal charges, there were startling differences between the accounts submitted by the various solicitors in respect of the fees for perusal of documents. The auditor set about trying to deal with these anomalies and keeping in mind that relevant factors in the determination of the sums to be allowed were the amount of time involved and "having due regard to economy", I consider that he has arrived at a fair and equitable result and I approve of this aspect of the report.

The last point was the auditor's refusal to allow the 25% extra amount claimed in consequence of the 13(2) certificate in respect of (a) court attendances and (b) copying.

With regard to (b) above, I consider that the auditor is correctly exercising his discretion when he does not allow any extra sum over the amount charged for copying, just as he is correct in not allowing any extra on travelling

time. There cannot be any element of difficulty or complexity in copying or in travelling and in my opinion these amounts are fairly taxed off.

In respect of (a) above, I find myself in disagreement with the auditor. Although he is not enjoined to allow a percentage increase in the circumstance of the 13(2) certificate but to allow a further sum up to but not exceeding 25%, he has in fact allowed 25% extra on all fees with the exceptions noted above. He has in particular allowed no additional sum on the fees for court attendances. The reasoning he uses to arrive at this decision is that the agent concerned instructed counsel and therefore the difficulty and complexity of the case were transferred to counsel and the solicitor's fees should not be enhanced. Although he claims that he did not disallow the 25% claim on this general ground, it is all too clear to me that the fact that counsel was instructed was central to his reasoning. I consider that he has misdirected himself in this respect. A solicitor should be ready to assist counsel when in court. He is entitled to an attendance fee for doing so, and is entitled to an enhancement if the case is certified under 13(2). As the enhancement allowed by the auditor with regard to other fees is 25%, I consider that the amount taxed off the account under this heading should be reinstated.

Otherwise, I approve of the auditor's report.

SHERIFFDOM OF NORTH STRATHCLYDE AT PAISLEY

ANSWERS

to

NOTES OF OBJECTIONS

by

FRANK P McCORMICK, THOMAS GERALD BRADSHAW, PETER WATSON and W GRAEME ST CLAIR

to

the report of the Auditor of Court taxing their fees

in causa

HM Advocate v [redacted] and Ors

With reference to the Notes of Objections referred to I beg leave to reply as follows -

1 The certificate granted by the presiding Sheriff in terms of section 13(2) of the Act of Adjournal (Criminal Legal Aid Fees) 1964 as amended that the case has necessarily been one of exceptional length has the effect of releasing the solicitor from the limitations of the block fees prescribed in earlier sections of the Act of Adjournal and allows him to charge his account in an itemised fashion on the basis of the charges set out in Chapter III of the Table of Fees of Solicitors in the Sheriff Court. I taxed the account on that basis.

2. So far as the certificate under section 13(2) to the effect that the case has necessarily been one of exceptional complexity and difficulty is concerned, the point perhaps should be made that section 13(6) enacts that "the determination of what is fair remuneration .... shall be made in accordance with paragraph (5) of this section, with the addition of such further sum ..... as appears in the particular circumstances appropriate, being a sum up to, but not exceeding, 25 per cent of the remuneration that would, apart from this paragraph, have been determined to be fair remuneration". It is clear, therefore, that 25% is not an automatic increase which an auditor is bound to allow, albeit I understand that the Law Society in its day to day scrutiny and payment of accounts proceeds on a rule of thumb to the effect that if either exceptional complexity or exceptional difficulty is present an increase of 15% is allowed by them and if both are present 25% will be

allowed without further enquiry. That may operate satisfactorily for all concerned in the general run of cases but when, as in this case, the Law Society baulks at remunerating the solicitor on that basis an Auditor cannot be bound by such informal arrangements. The Auditor's task is to fix such sum by way of additional remuneration as appears appropriate in the particular circumstances and in my Report I set out the basis on which I proceeded and my reasons for the approach I adopted. I need not rehearse these.

3. So far as the abatements made to the charges for perusal of documents are concerned I had regard to section 13(1) of the Act of Adjournal where it says "The determination of the sum to be allowed to a solicitor shall take into account all the relevant circumstances including the nature, importance, complexity or difficulty of the work and the time involved ..... and shall include such amount as may be determined in accordance with the provisions of paragraphs (5) and (6) of this section, to be fair remuneration for the work actually and reasonably done, due regard being had to economy." Paragraph (5) directs one to Chapter III of the Table of Fees of Solicitors in the Sheriff Court as the basis on which the determination of what is fair remuneration will be made. Paragraph (6) deals with the increase of up to 25% already referred to. It is my respectful submission that, in measuring the nature of the work actually involved in perusing the documents (many of which as I point out in my Report were relatively minor) against the time involved, I discharged the duties imposed on me by the section and the sums I allowed are, at the very least, fair.

4. With regard to the reduction made in the charges for travelling time in Mr Bradshaw's account, my notes do not disclose that the Law Society had made an issue of this matter and then withdrawn their objections but I accept that it is possible that my notes on the point are deficient. Nevertheless, even if Mr Bradshaw's recollection of the matter is correct, I do not accept that an Auditor is precluded from raising or considering matters which are not at issue between the parties to a taxation. The Auditor's function is to scrutinise all charges. In this case the apparent difference between the solicitor's estimate of the mileage in question and that of the Automobile Association was so great as to attract my attention.

Auditor of Court

Messrs T G Bradshaw, Solicitors, Bellshill.

PAISLEY: 14 May 1985. Having resumed consideration of the foregoing Account, I hereby tax same at the sum of TWENTY THOUSAND FOUR HUNDRED AND NINE POUNDS NINETEEN PENCE STERLING ..... as more fully set out in the Summary appended hereto.

Auditor of Court

Summary

Fees etc	£ 17,054.45
VAT	2,460.74
Audit fee	894.00
	£ 20,409.19

NOTE: This account is one of 17 accounts generated by a 54 days sheriff and jury trial - HMA v [redacted] & Ors. The case was long and involved and the taxation of the accounts has proved to be equally so for a variety of reasons, not least of which, so far as the solicitors' accounts are concerned, is the fact that there are significant variations from one account to another. For example, there is a difference of £10,500 between the highest and the lowest of the accounts submitted by the solicitors and the highest charges were incurred by a solicitor acting for one of the minor participants. By that I mean an accused featured on only one of the 7 charges.

Faced with such and other anomalies I set about an analysis of the various accounts with a view to identifying the common elements and comparing the fees charged against these elements as between accounts. Such an exercise threw up as many questions as it answered. For instance, why was it that one solicitor required to make £900 worth of copies more than another solicitor; why did one solicitor's perusings come to £2000 more than another's; why did one solicitor require to run up a till in respect of precognitions £900 in excess of that run up by another solicitor? These and many more questions arose. It was only in those areas where the solicitors 'guestimated' the fee that there was any unanimity, namely on the general and daily preparation fee fronts. However, even with regard to these elements there were significant exceptions. Furthermore, my confidence in the accuracy of the entries in the accounts was not strengthened when in the course of my enquiries I discovered that in that area which allows of direct comparison with the court records, namely the daily court

times for the trial, not one of the solicitors got all the times right. Some accounts, however, were worse than others in this respect. Nevertheless the exercise was valuable if only to reveal to me those areas in any particular account to which I should give special attention.

To begin with I would like to make one or two general observations. The first is that one of the main features of this case was the large number of documentary crown productions (344 in all) and the equally large number of crown witnesses (97 listed on the indictment). Not surprisingly the consideration of the import of the productions and the nature of the potential testimony of the witnesses assumed significant proportions in the preparation of the defence of each accused and generated a lot of activity. Whether the amount of activity was justified in each case is open to question, particularly as I have already pointed out there is a difference of £2000 as between one account and another so far as perusings are concerned and £900 (excluding mileage charges) of a difference in respect of obtaining precognitions. So far as precognitions are concerned, apart from taxing off particular charges for specific reasons, I have not, on this occasion, arbitrarily reduced any of the fees claimed, although I was sorely tempted to do so in respect of one account and, had it not been for the fact that the account was otherwise reasonably moderate by comparison with other accounts, I would have done so. So far as perusings are concerned I have arbitrarily reduced the fees in a minority of cases. Where I have done so the fees allowed have not been reduced below the level of the fees claimed in the majority of cases. I did not take such a course of action lightly. There were one of two factors which weighed with me in arriving at such a decision. The first was the fact that many of the productions were minor documents and as such required little in the way of perusal, eg cheques, cheque stubs, invoices, work sheets, requisition orders and the like. Many of these would require little more than a glance on the part of the solicitor to determine its relevance to his client and, when one bears in mind the fact that the table of fees prescribes a fee of £3 in relation to perusal of a document not exceeding 2 sheets (500 words) in length, it will be seen that the remuneration for the perusal of such documents as a cheque etc is out of all proportion to the work involved. One solicitor in fact adopted the approach which a case of this kind, to my mind, demands and that was to charge according to the time taken to peruse the documents and not on the basis of £3 per document, however small. That approach resulted in a fee approximately ⅓ of that which might otherwise have been charged. The second factor, so far as perusings are concerned, is that there is a real question as to whether or not all the

activity in this area was necessary. It is apparent from the accounts that some solicitors perused and copied everything in sight, as can be seen from the fact that some attempts were even made to charge for perusing the informal list produced by the crown to advise all concerned as to the order in which the crown proposed to lead the witnesses. This also applied to copyings. One solicitor managed to get by on a minimal number by having counsel share his copy but the other solicitors copied the productions extensively and at £0.70 for the first copy and £0.30 per copy thereafter the exercise can be quite remunerative when done in volume. However, I have not arbitrarily taxed anything off copyings. Where the fees for copying have been reduced there have been specific reasons for doing so.

Turning to the general preparation fee I found a fair degree of consensus regarding the time taken to prepare for the trial. However, at taxation it appeared that the figure for general preparation was arrived at by scaling up what was normally allowed by the Law Society for general preparation in relation to an average trial and not by reference to actual time taken to perform specific work. Accordingly I have arbitrarily reduced the fees claimed to what I regard as reasonable levels having regard to the other charges in the account, taxing off little or more by reference to whether or not these other elements appeared to me to be modest or otherwise. One particular factor I have had regard to is whether or not the precognition work was carried out by the solicitor or his unqualified assistant. Where the work was carried out by the latter I have allowed more for general preparation on the basis that in the case of the latter the solicitor in question would require to familiarise himself with the contents of the precognitions whereas in the case of the former the solicitor would already be acquainted with these and preparation time should accordingly have been shorter. I also had regard to the charge for perusings. Where this was high I allowed less for general preparation as, in addition to the comments previously made regarding perusings, there is necessarily an interaction between perusings and preparation.

As to the daily preparation fee this was also a case where, with one or two exceptions, the fee was plucked out of thin air. I consider that the unsubstantiated claim for one hour per day is, in the context of the leisurely pace at which this trial proceeded, excessive and I have reduced it to 2 hours per week. Even at that I have probably been generous.

Where I have taxed off various amounts in respect of attendance at the trial I did so on the basis of the court times as recorded by the clerk of court. A comparison of these with the consensus of times as recorded by the solicit on any particular day did not reveal that the clerk of court had erred at an time.

With regard to the percentage by which the fees should be increased I have not applied a flat rate, of whatever percentage, to all the accounts. I have however, adopted the same approach to all the accounts. That approach was to allow a 25% increase on all the elements of the account save copyings and attendances at court during the trial (including travelling time but excludin preparation and consultation fees). It seems to me that there is nothing exceptionally difficult or complex about copying productions or whatever and for that reason these should be excluded from the 25% increase, especially in a case like this where the volume of copyings constituted its own reward. My reason for excluding the court attendances from the 25% increase in this case is that the burden of the conduct of the trial fell on counsel. It is evident, from the fact that in many cases solicitors were switched from day to day or within the day or were represented by an unqualified assistant, or on occasions were not even present, that the solicitors' roles were relatively minor and not attended with that degree of complexity or difficulty which needs to be present to attract an enhanced fee. Although I did not require to make my decision on this basis, I find it difficult to envisage a case where a solicitor instructs counsel that the court attendances would ever attract an enhancement of that particular element of the fee. It seems to me that when a solicitor calls in counsel he is in effect acknowledging that the conduct of the trial is too difficult or complex for him and that he wishes the responsibility for it transferred to broader legal shoulders. Accordingly, a solicitor who does involve counsel must realise that his own role will be thereby diminished, with attendant consequences. Be that as it may, I repeat that I did not make my decision on the basis of that general consideration but on the basis of the degree of apparant attention, or lack of it, that each solicitor brought to the trial. Some solicitors did stick manfully to the task of providing continuity of support to counsel but I consider that the mere presence of the solicitor each day from start to finish does not make the task per se exceptionally difficult or complex and I saw no reason to distinguish between one solicitor and another on that basis.

This particular account was significantly greater than any of the other accounts submitted by the solicitors in the case. Every major component, bar one, was above average, especially the trial fees and perusings. The former is explained to a great extent by the fact that the solicitor in question had further to travel than any of the other solicitors in order to get to court on each of the trial days and furthermore that no use was made of an unqualified assistant at the trial in place of the instructing solicitor. So far as travelling time is concerned I allowed 2 hours per day although I understood Mr Bradshaw as maintaining that 2½ hours were necessary. In view of the fact that the AA assess the distance between Bellshill and Paisley at 34 miles (round trip) I consider that 2 hours is sufficient for the journey. Mr Bradshaw assured me that in order to save travelling time the route he took involved M-way driving of some 50 miles and he charged mileage accordingly. Whilst I accept his assurance as to the distance travelled I consider that I am bound to allow only those miles necessarily covered to get from Bellshill to Paisley and back again.

So far as perusings are concerned these are twice that of the majority of other claims. Accordingly, I have had little hesitation in reducing these arbitrarily by half.