

AUDITOR OF THE COURT OF SESSION

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PARLIAMENT HOUSE, EDINBURGH, EH1 1RQ
RUTLAND EXCHANGE No. 304
031 225 2595 Extn. 309

NOTE

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Fees for Robert B Anthony, Esq, Advocate

HM ADVOCATE v. [REDACTED] DC

EDINBURGH. 19th October 1993

The Auditor has been requested, in terms of paragraph 3 of Schedule 2 of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989, as amended, to increase the fees set out in the Table of Fees contained in the Schedule, payable to Junior Counsel for [REDACTED] to provide reasonable remuneration for Counsel in preparing for and assisting in the conduct of [REDACTED] defence to an Indictment against [REDACTED] and others in respect of (1) a number of charges of forming fraudulent schemes and obtaining goods without paying and not intending to pay therefor to a cumulative value in excess of £1 million and attempting to obtain goods to a cumulative value in excess of £800,000 (2) a number of charges of attempting to pervert the course of justice and (3) committing crimes while on bail.

The Scottish Legal Aid Board was represented at the diet of taxation and Counsel, Mr Anthony, appeared personally.

The diet of taxation had been necessary because Counsel had not been prepared to accept the Board's final offer of an increase of the prescribed Trial fee, per day in Glasgow, to include all work of preparation, from £203.50 - Junior with Senior Counsel (the rates in force during the latter part of the trial) to £230.00. Counsel also claimed a higher fee of £200.00 for one consultation for which the prescribed fee for Junior Counsel appearing with Senior Counsel was one of £102.00. It consequently fell to Counsel to justify the fees claimed for (1) preparation which is not separately prescribed in the Table of Fees, and (2) the higher consultation fee and daily Trial fees.

Before increasing a prescribed fee, the Auditor requires to be satisfied that because of the particular complexity or difficulty of the work or any other particular circumstances of the case, such an increase is necessary to provide reasonable remuneration for the work done.

In support of his submissions that these various factors were present in this case Counsel requested the Auditor to take into account inter alia the following:-

- a. That the trial lasted some 87 days. It had been probably the longest-lasting trial ever heard in the High Court.
- b. That the Indictment, which ran to 53 pages including Schedules, was complex and related to matters spanning a period of some five years listed 757 Crown witnesses and a very substantial number of productions.
- c. That the case was of considerable difficulty because of the number and variety of charges against [REDACTED].
- d. That preparation of the case had required many consultations and detailed consideration of the material, a substantial amount of information and documentation contained in bulky files much of which required to be collated and cross-referenced and related to observation logs.

Counsel provided the Auditor with information about the work which had been carried out by him in preparation for the trial.

Background

The number of charges alleging various forms of fraud involving obtaining goods and not paying for them nor intending to pay for them and extending over a period of years made for complexity and difficulty. The case was aggravated by the further charges of attempting to pervert the course of justice.



The Pre-trial Preparations

Counsel's Fee Note records that the fee claimed for pre-trial preparation £4,000.00 represents twenty days preparation at £200.00 per day. In addition there is a claim of £200.00 for preparation over Easter Weekend 1992 of submissions of no case to answer on all charges, making a total charge of £4,200.00.

Consultations

Counsel also provided the Auditor with a note of the consultations held. It was not suggested that the consultations were unnecessary or too lengthy.

The fees claimed by Counsel for the consultations totalled £400.00.

With the exception of an all-day consultation held in Greenock Prison, and charged at £200.00, the remaining consultations were charged at £100.00 each.

The Auditor understands that towards the end of the trial there was a joint consultation held in the evening, with the Advocate Depute, and other Counsel involved in the case, to discuss and agree which parts of the Schedules had been proved. This does not appear to have been separately charged from the daily Trial fee. The Auditor has therefore recognised it in the amount fixed for preparation work.

The Trial

Counsel sought a daily Trial fee of £400.00, exclusive of the preparation fees separately claimed.

Payments made

The Board has made interim payments to Counsel pending the outcome of this taxation.



The Fees allowed

Pre-trial Preparation Fees

The Auditor recognises that fees in respect of preparation are apparently treated in the Table as being included in the daily Trial fee. However in a case such as this, where it is acknowledged that the prescribed daily Trial fee is inadequate, the Auditor is entitled to, and indeed must, look at the whole of the work performed by Counsel in the discharge of his responsibilities. In a case of this magnitude with its attendant difficulties, it is of considerable help to the Auditor, that the pre-trial preparation be separately identified, to assist him in considering the proper fees to be allowed to provide reasonable remuneration to Counsel.

From the information given to the Auditor on this item of work the Auditor is satisfied that the amount of time stated is reasonable having regard to the number and complexity of the charges and considers that a fee of £3,465.00, to include the joint consultation with the Advocate Depute, is both proper and reasonable in the circumstances of the case.

The Consultation Fees

The Auditor is of opinion that fees charged for the consultations are reasonable in this case.

Daily Trial Fee

The Auditor has already outlined the work for which Counsel seeks a daily trial fee of £400.00.

The Auditor has already noted that the prescribed daily Trial fee is regarded as containing an allowance for both pre-trial and on-going preparation throughout the trial, but having regard to this case he regards such allowance as wholly inadequate.

The Auditor having taken account of Counsel's responsibility in assisting leading Counsel in a case of difficulty, complexity, and demanding nature



throughout a uniquely lengthy trial, and involving a multiplicity of charges, is satisfied that it is necessary, notwithstanding the separate recognition of pre-trial preparation, to increase the daily Trial fee to £325.00 to provide reasonable remuneration to Counsel for his work in this case.

The Auditor understands that Counsel has accepted the Board's offer to pay Counsel two-thirds of the relevant prescribed daily trial fee in respect of two waiting days.

A handwritten signature in cursive script, appearing to read "M. H. Stewart", written in dark ink. The signature is fluid and somewhat stylized, with a long horizontal stroke at the end.

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21 OCT 1993

Crim A/c
2/10 km

20th October 1993

Scottish Legal Aid Board
DX ED250

Date and Tax Point

VAT Reg. No. 553 7981 04

5626

VAT Invoice No.

HM Advocate v. [REDACTED]
Fees for Robert B Anthony, Esq, Advocate

The Auditor's Fee herein is £	150.00
VAT thereon @ 17½ %	<u>26.25</u>
£	<u>176.25</u>

The papers submitted are returned
by Rutland Exchange
herewith
by post

The papers submitted await collection from
Room J11, Door 2, Parliament House.
Please return fee note with cheque.

The Auditor J. Haldane Tait, S.S.C.
Principal Clerk Mrs Janet P. Buck