

## CHAPTER 42

### TAXATION OF ACCOUNTS, ETC.

#### PART I

#### TAXATION OF ACCOUNTS

##### Remit to the Auditor

**42.1.**-(1) Where expenses are found due to a party in any cause, the court shall-

- (a) pronounce an interlocutor finding that party entitled to expenses and, subject to rule 42.6(1) (modification of expenses awarded against assisted persons), remitting to the Auditor for taxation; and
- (b) without prejudice to rule 42.4 (objections to report of the Auditor), unless satisfied that there is special cause shown for not doing so, pronounce an interlocutor decerning against the party found liable in expenses as taxed by the Auditor.

(2) Any party found entitled to expenses shall-

- (a) lodge an account of expenses in process not later than four months after the final interlocutor in which a finding in respect of expenses is made; or
- (b) lodge such account at any time with leave of the court but subject to such conditions (if any) as the court thinks fit to impose.

(2A) On lodging an account under paragraph (2)(a) or (b), any party found entitled to expenses must intimate a copy of it forthwith to the party found liable to pay those expenses.

(3) Rule 4.6(1) (intimation of steps of process) shall not apply to the lodging of an account of expenses.

##### Diet of taxation

**42.2.**-(1) Subject to paragraph (2), the Auditor shall fix a diet of taxation on receipt of –

- (a) the process of the cause;
- (b) vouchers in respect of all outlays, including counsel's fees; and
- (c) a letter addressed to the Auditor confirming that the items referred to in subparagraph (b) have been intimated to the party found liable in expenses.

(2) The Auditor may fix a diet of taxation or within such reasonable period of time thereafter as the Auditor may allow, notwithstanding that paragraphs (1)(b) and (c) have not been complied with.

(3) The Auditor shall intimate the diet of taxation to –

- (a) the party found entitled to expenses; and
- (b) the party found liable in expenses.

(4) The party found liable in expenses shall, not later than 1600 hours on the fifteenth business day before the diet of taxation, intimate to the Auditor and to the party found entitled to expenses, particular points of objection, specifying each item objected to and stating concisely the nature and ground of objection.

(5) Subject to paragraph (6), if the party found liable in expenses fails to intimate points of objection under paragraph (4) within the time limit set out there, the Auditor shall not take account of them at the diet of taxation.

(6) The Auditor may relieve a party from the consequences of a failure to comply with the requirement contained in paragraph (5) because of mistake, oversight or other excusable cause on such conditions, if any, as the Auditor thinks fit.

(7) At the diet of taxation, the party found entitled to expenses shall make available to the Auditor all documents, drafts or copies of documents sought by the Auditor and relevant to the taxation.

### **Report of taxation**

**42.3.-** (1) The Auditor must—

- (a) prepare a statement of the amount of expenses as taxed;
- (b) transmit the process of the cause, the taxed account and the statement to the appropriate Department of the Office of Court; and
- (c) on the day on which the documents mentioned in sub-paragraph (b) are transmitted, intimate that fact and the date of the statement to each party to whom the Auditor intimated the diet of taxation.

(2) The party found entitled to expenses shall, within seven days after the date of receipt of intimation under paragraph (1)(c), exhibit the taxed account, or send a copy of it, to the party found liable to pay the expenses.

### **Objections to report of the Auditor**

**42.4.-**(1) Any party to a cause who has appeared or been represented at the diet of taxation may object to the Auditor's statement by lodging in process a note of objection within 14 days after the date of the statement.

(2) A party lodging a note of objection shall –

- (a) intimate a copy of the note and a motion under subparagraph (b) to the Auditor and to any party who appeared or was represented at the diet of taxation;
- (b) apply by motion for an order allowing the note to be received; and
- (c) intimate forthwith to the Auditor a copy of the interlocutor pronounced on a motion under subparagraph (b).

(2A) Within 14 days after the date of receipt of intimation under paragraph (2)(c), the Auditor shall lodge a minute stating the reasons for his or her decision in relation to the items to which objection is taken in the note.

(3) After the minute of the Auditor has been lodged in process, the party who lodged the note of objection shall, in consultation with any other party wishing to be heard, arrange with the Keeper of the Rolls for a diet of hearing before the appropriate court.

(4) At the hearing on the note of objection, the court may-

- (a) sustain or repel any objection in the note or remit the account of expenses to the Auditor for further consideration; and
- (b) find any party liable in the expenses of the procedure on the note.

### **Interest on expenses**

**42.4A.-**(1) At any time before extract of a decree for payment of expenses as taxed by the Auditor the court may, on the application of the party to whom expenses are payable, grant decree against the party decerned against for payment of interest on the taxed expenses, or any part thereof, from a date no earlier than 28 days after the date on which the account of expenses was lodged.

(2) Paragraph (1) is without prejudice to the court's other powers in relation to expenses.

### **Modification or disallowance of expenses**

**42.5.**-(1) In any cause where the court finds a party entitled to expenses, the court may direct that expenses shall be subject to such modification as the court thinks fit.

### **Modification of expenses awarded against assisted persons**

**42.6.**-(1) In a cause in which the court finds an assisted person liable in expenses, the court may, on the motion of any party to the cause, instead of remitting the account of expenses of the party in whose favour the finding is made to the Auditor for taxation, determine to what extent the liability of the assisted person for such expenses shall be modified under-

- (a) section 2(6)(e) of the Legal Aid (Scotland) Act 1967(a); or
- (b) section 18(2) of the Legal Aid (Scotland) Act 1986(b).

(2) Where a remit is made to the Auditor for taxation in a cause in which an assisted person is found liable in expenses, an application for modification under a statutory provision mentioned in paragraph (1) may be made by motion within 14 days after the date of the report of the Auditor made under rule 42.3 (report of taxation).

### **Taxation of solicitors' own accounts**

**42.7.**-(1) Subject to section 61A(1) of the Solicitors (Scotland) Act 1980(c), the court may remit to the Auditor the account of a solicitor to his client-

- (a) where the account is for work done in relation to a cause in the Court of Session, on the motion of the solicitor or the client; or
- (b) in an action in which the solicitor or his representative sues the client for payment of the account.

(2) A motion under paragraph (1)(a) may be enrolled notwithstanding that final decree in the cause has been extracted.

(3) The account referred to in paragraph (1) shall-

- (a) be in such form as will enable the Auditor to establish the nature and extent of the work done to which the account relates;
- (b) detail the outlays incurred by the solicitor; and
- (c) be accompanied by such supporting material as is necessary to vouch the items in the account.

(4) The Auditor shall-

- (a) fix a diet of taxation not earlier than 14 days after the date on which he receives the account; and
- (b) intimate the diet to the solicitor.

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(a) 1967 c.43.

(b) 1986 c.47; section 18(2) was amended by the Legal Aid Act 1988 (c.34), Schedule 4, paragraph 7.

(c) 1980 c.46; section 61A was inserted by the Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c.40), section 36(3).

(5) On receipt of intimation of the diet of taxation from the Auditor, the solicitor shall forthwith send to his client by registered post or the first class recorded delivery service-

- (a) a copy of the account to be taxed;
- (b) a copy of the interlocutor remitting the account; and
- (c) a notice in Form 42.7 of the date, time and place of the diet of taxation.

(6) In taxing an account remitted to him under paragraph (1), the Auditor-

- (a) shall allow a sum in respect of such work and outlays as have been reasonably incurred;
- (b) shall allow, in respect of each item of work and outlay, such sum as may be fair and reasonable having regard to all the circumstances of the case;
- (c) shall, in determining whether a sum charged in respect of an item of work is fair and reasonable, take into account any of the following factors:-
  - (i) the complexity of the cause and the number, difficulty or novelty of the questions raised;
  - (ii) the skill, labour, and specialised knowledge and responsibility required, of the solicitor;
  - (iii) the time spent on the item of work and on the cause as a whole;
  - (iv) the number and importance of any documents prepared or perused;
  - (v) the place and circumstances (including the degree of expedition required) in which the work of the solicitor or any part of it has been done;
  - (vi) the importance of the cause or the subject-matter of it to the client;
  - (vii) the amount or value of money or property involved in the cause; and
  - (viii) any informal agreement relating to fees;
- (d) shall presume (unless the contrary is demonstrated to his satisfaction) that-
  - (i) an item of work or outlay was reasonably incurred if it was incurred with the express or implied approval of the client;
  - (ii) the fee charged in respect of an item of work or outlay was reasonable if the amount of the fee or the outlay was expressly or impliedly approved by the client; and
  - (iii) an item of work or outlay was not reasonably incurred, or that the fee charged in respect of an item of work or outlay was not reasonable if the item of work, outlay or fee charged, was unusual in the circumstances of the case, unless the solicitor informed the client before carrying out the item of work or incurring the outlay that it might not be allowed (or that the fee charged might not be allowed in full) in a taxation in a cause between party and party; and
- (e) may disallow any item of work or outlay which is not vouched to his satisfaction.

(7) The Auditor must—

- (a) prepare a statement of the fees and outlays as taxed;
- (b) transmit the statement and the taxed account to the appropriate Department of the Office of Court; and
- (c) send a copy of the statement to the solicitor and the client.

(7A) The solicitor shall, within 7 days after the date of receipt of the statement under paragraph (7)(c), exhibit the taxed account, or send a copy of it, to his or her client.

(8) The solicitor or his client may, where he or a representative attended the diet of taxation, state any objection to the Auditor's statement; and rule 42.4 (objections to report of the Auditor) shall apply to such objection as it applies to an objection under that rule.

## PART III

### FEES IN SPECULATIVE CAUSES

#### **Fees of solicitors in speculative causes**

**42.17.**-(1) Where-

- (a) any work is undertaken by a solicitor in the conduct of a cause for a client,
- (b) the solicitor and client agree that the solicitor shall be entitled to a fee for the work only if the client is successful in the cause, and
- (c) the agreement is that the fee of the solicitor for all work in connection with the cause is to be based on an account prepared as between party and party,

the solicitor and client may agree that the fees element in that account shall be increased by a figure not exceeding 100 per cent.

(2) The client of the solicitor shall be deemed to be successful in the cause where-

- (a) the cause has been concluded by a decree which, on the merits, is to any extent in his favour;
- (b) the client has accepted a sum of money in settlement of the cause; or
- (c) the client has entered into a settlement of any other kind by which his claim in the cause has been resolved to any extent in his favour.

(3) In paragraph (1), "the fees element" means all the fees in the account of expenses of the solicitor-

- (a) for which any other party in the cause other than the client of the solicitor has been found liable as taxed or agreed between party and party;
- (b) before the deduction of any award of expenses against the client; and
- (c) excluding the sums payable to the solicitor in respect of-
  - (i) any fees payable for copying documents and the proportion of any session fee in the Table of Fees and posts and incidental expenses under rule 42.11;
  - (ii) any additional fee allowed under rule 42.14 to cover the responsibility undertaken by the solicitor in the conduct of the cause; and
  - (iii) any charges by the solicitor for his outlays.

## PART IV

### REMUNERATION OF REPORTERS

#### **Remuneration of reporters**

**42.18.**—(1) This rule applies where any matter in a cause is remitted by the court, at its own instance or on the motion of a party, to a reporter or other person to report to the court.

(2) The party liable to the reporter or other person for payment of that person's fee, and reimbursement of that person's outlays, is—

- (a) where the court makes the remit at its own instance, the party so ordained by the court;
- (b) where the court makes the remit on the motion of a party, that party.

(3) The solicitor for the liable party is personally liable in the first instance for payment of such fee and outlays.

(4) This rule applies subject to—

- (a) any other provision in these Rules;
- (b) any order of the court; or
- (c) any agreement between a party and that party's solicitor.