

4.15 Deputy T.M. Pitman of the Attorney General regarding lawyers' fees and expenses:

What requirement, if any, is in place to ensure that lawyers provide itemised bills to their clients?

Mr. T.J. Le Cocq Q.C., H.M. Attorney General:

Rule 5 of the Code of Conduct of the Jersey Law Society provides that members of the Society, when accepting new clients, must advise the client in writing of the terms of engagement. This will include the basis on which fees and expenses are to be charged and what circumstances may affect the level of fees including, among a number of other circumstances, the hourly rates. The client has a right at any time to inquire and be informed of the fees to date. When a person has been ordered to pay the costs of another party in litigation, in the absence of agreement on how much will be paid, the costs claimed are subject to a process of taxation which means that they are scrutinised by the Judicial Greffe to ensure that they are in a sum that is properly incurred and is properly payable. In those circumstances, the party claiming costs will provide an itemised bill which sets out on an item by item basis the costs claimed.

4.15.1 Deputy T.M. Pitman:

I thank the Attorney General for his answer. There is only one problem with that. Going to taxation costs people money and to use a constituent's example, because I think it is helpful, the constituent had work done by a dentist, a builder and had his car serviced. All trades provide detailed bills of how those costs were incurred yet a lawyer refuses point blank to do so for a sum that dwarfs all those bills by perhaps 20 times. Does that not suggest that some lawyers, and it is some not all, are completely out of control?

The Attorney General:

I am not sure that it is a useful comparison to compare, for example, dental fees with the costs incurred in legal proceedings. In the first case, that is a cost charged by the dentist and patient. In the second case, it is an adversarial system in which someone has been required to pay the costs of another party and it is that mechanism in which a fully detailed and itemised bill of costs needs to be prepared in order that it can be quantified.

4.15.2 Deputy T.M. Pitman:

Is the Attorney General effectively saying then that ... and I do not like to use the pun, that lawyers are a law unto themselves because that is what it would seem to be. Surely common law would suggest that any person has a right to know what they are paying for. Certainly if I was told I could not know what I was paying for, I would have to have grave suspicions as to whether such a bill would be even valid.

The Attorney General:

There are 2 things which have been included in my answer. The first is the circumstance in which a lawyer is charging his own client and, in those circumstances, the client is perfectly entitled to find out what the up-to-date fee position is and to have sufficient information to satisfy himself that those fees are properly payable by him. The second circumstance is where, as I mentioned before, the individual has been subject to an adverse costs order made in connection with litigation. That client does not owe duties to the party who is to pay the bill. The lawyer has to comply with the system, as I say, relating to taxation. That is a system set out in practice directions issued by the court and it is those circumstances which give rise to an itemised bill which can be scrutinised. It is the fact that taxation can be a costly system. Generally speaking, the costs of taxation, if a figure cannot be arrived at by agreement, are down to the paying party but there is discretion for the Judicial Greffe to make a different taxation costs order.

4.15.3 Connétable M.P.S. Le Troquer of St. Martin:

I hope it is not off the question but could the Attorney General tell the Assembly who people can complain to and whether those complaints can be dealt with locally if the lawyer is not a locally recognised local lawyer or solicitor but offering advice and services on the Island?

The Attorney General:

It is a little outside the general ambit of the question that I have come down prepared to answer. The position is obviously with a local lawyer, a complaint can be made to the Jersey Law Society.

The Bailiff:

I am sorry, Attorney General, could you stop. Apparently we are inquorate. Could you summon Members back please? Very well, we are now quorate again. I think the question was who can you complain to?

The Attorney General:

Yes. It is my understanding that the lawyers who practise who are not members of the Jersey Law Society are nonetheless subject to their individual professional body and in those circumstances a complaint I am sure can be made to, for example, the English Law Society or something of that nature. But essentially what costs should be paid between a client and anyone who provides professional services to a client is a matter of contract between that client and the provider of professional services.

4.15.4 Deputy M.R. Higgins:

I would like to draw Members' attention to the written answer that the Attorney General has given me, question 8 and part of it did relate to this topic. In his answer to me, the Attorney General says that itemised bills would not generally be published as they contain information that may be commercially sensitive to the firms or individuals involved. My question was asking about the cost of the action taken by the States on the Low Value Consignment Relief and I have been told as part of this answer that the cost of that one judicial review of a case that was brought in the United Kingdom was £656,000. But we have got no breakdown and have no knowledge of what that money was spent on and, as a matter of public interest, and certainly if this is public money, does the Attorney General not think that legal firms acting on behalf of the States should provide itemised bills?

The Attorney General:

As I mentioned before, it is certainly the case that anyone who employs a lawyer is entitled to know what fees have been incurred, the basis on which it has been incurred, and what the lawyer has done to give rise to the bill that is raised to the extent that that is an itemised bill of costs. Yes, of course one should in those circumstances be prepared and available. There is a distinction in my mind as to what should be revealed in the public domain and what remains a matter of commercial sensitivity between the lawyer involved and his client.

4.15.5 Deputy M.R. Higgins:

The reason why I am pressing this point is the fact that if I remember correctly from previous meetings in this Assembly, we are told the expected court action on L.V.C.R. (Low Value Consignment Relief) going forward if necessary even to the Court of Appeal and to the Supreme Court in the U.K. was going to be in the order of £660,000 and yet here we have got one case here, one court appearance which comes out at £656,000 so I think it is in the public interest that we do know what the money was spent on. Does the Attorney General not agree?

[11:45]

The Attorney General:

I do not feel able to answer that question in the context of the question set out to me about general itemisation for lawyers and clients.

4.15.6 Deputy T.M. Pitman:

I nearly strayed on to that issue; I think it is very valid. However, it seems to me, with due respect to the Attorney General's answers, that this system of people who perhaps have to pay costs is open to huge abuse so I would like the Attorney General to tell me and the public what possible sanctions exist for lawyers who are found to have put together huge wholly unwarranted bills and then these are worked down by taxation?

The Attorney General:

The mechanism for taxation is that the party who is to be paid procures from their lawyers a detailed and itemised bill of the fees that they would be charged by their lawyer for the action the lawyer has conducted on their behalf. That bill then goes to the Judicial Greffe and the Judicial Greffe scrutinises it against certain tests which the court has prescribed over a period as to what should be paid by someone who has received an adverse costs order and is therefore the paying party. That is not the same amount as the client himself will pay. Therefore there is a margin between what the lawyer will charge his client and what the paying party who has received an adverse costs order will ultimately be required to pay following the taxation proceeding, and the difference between them depends upon the basis on which the court has ordered the payment of costs.