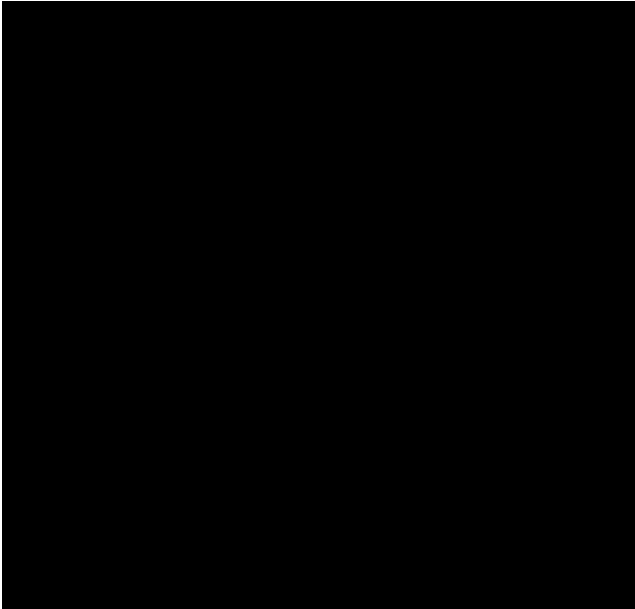
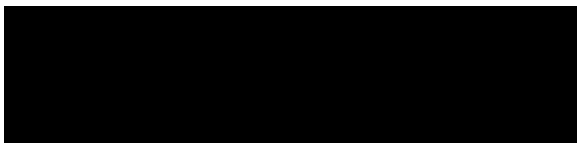


Sheriffdom of Glasgow and Strathkelvin at Glasgow

Taxation of Advice and Assistance accounts – Legal Aid and advice and assistance under the Legal Aid (Scotland) Act 1986 Regulations 17 and 18



EC & Others



- Case withdrawn as Hamilton case.

Diets of taxation in relation to the above were commenced and held on 16 January 2018, 13 February 2018 (at which diet no appearance or representative attended on behalf of Thompson Family Law, [redacted] Solicitor attended on behalf of the Scottish Legal Aid Board with the diet requiring to be adjourned further) and 21 March 2018. At said first and third diets Ms S Grant and Ms A Connor, solicitors, appeared on behalf of Thompson Family Law, Solicitors, Glasgow and [redacted] solicitor, appeared on behalf of the Legal Aid Board.

In relation to the above cases the issues raised at taxation before the auditor by parties can in essence be categorised within the following categories:-

- 1.Premature applications for advice and assistance.

2. Abatement of claimed fees in relation to Precognitions

3. SLAB guidance relating to precognitions and the interpretation and application thereof.

At the taxation diet I was advised by Ms Grant/Ms Connor of a previous taxation decision by my colleague auditor at Glasgow in April 2015 wherein the auditor had required to deal with effectively issues on point with the current lodged cases for taxation. In effect within that decision Scottish legal Aid Board were advised of a need to revisit their issued 'guidelines' to practitioners to assist in clarifying perceived anomalies relating to allowable charges and issuing reasons for abatements made to submitted accounts. It was conceded at the taxation diet by [REDACTED] that SLAB had to date not issued any updated guidance to practitioners but same was on a 'to do' list. I was also advised that in that decision the auditor had supported the submissions of the agent and made no abatements to any of their accounts. I was further advised that the agents had previously been paid in earlier/other cases fees for advice and assistance with little or no abatements being applied. However in recent times there appeared to be a new structure adopted by SLAB in their decision making processes in fee assessments particularly in relation to precognitions. This change appeared to have been applied with little or no intimation having been made to the practitioners requiring to submit accounts and had resulted in many abatements now being applied to accounts with scant information providing appropriate reasoning for applying the abatement. In response [REDACTED] suggested that the current guidelines in relation to precognitions were still relevant and contained sufficient guidance to allow practitioners to frame an accurate, relevant and concise precognition. In aid of this submission he provided a 'prepared style of precognition' which met the Board's requirements as a comparator to one of the precognitions provided by Messrs Thompson Family Law. The Board suggested that Thompson family Law had previously been advised at taxations that they continue to provide lengthy precognitions which also contain passages that are irrelevant to the particular advice and assistance application submitted. As an example he suggested that

in a family contact application the precognition can drift in to other areas of family law (financial craves and claims etc) making the precognition lengthy. He also advised of precognitions that were repetitive and also containing 'hearsay' evidence. Whilst this prepared style proved an interesting and helpful exercise it had not been adopted by SLAB or published by them to assist practitioners in the preparation of precognitions. [REDACTED] also advised that the majority of practitioners had sufficiently applied the current guidelines and achieved the framing of a precognition which proved acceptable to SLAB with little or no need to apply an abatement. He advised that Thompson Family Law currently appeared to be 'out of step' with the guidelines and the mainstream of practitioners in this regard. Messrs Thompson Family Law provided at taxation copies of the precognitions abated in the foregoing cases in order that they can be perused. Ms Grant/Ms Connor importantly advised that SLAB do not advise agent of the reasoning applied by their fee assessors of the detail and specifics of abatements made to precognitions which proves to be difficult in attempting to understand the precise nature of the fee assessors decision to allow better framing of precognitions leading to a 'best practice' scenario. The current style of feeing has created a suspicious environment for practitioners on the verge of cost cutting by SLAB.

Premature applications- It is disputed as premature that three of the above applications fall in to this category namely [REDACTED]
[REDACTED]

Given produced correspondence from 11 January 2018 by e-mail, the oral submissions made at the diets of taxation and in particular on 21 March 2018 I am content that these applications have now moved through the two stage process to reach the stage for consideration at taxation given the adjournment periods in the taxation exercise and no equitable resolution having been reached between SLAB and Thompson Family Law with no motions to withdraw applications from taxation. These cases will be included in the decision to follow.

SLAB guidelines to practitioners

In written and oral submissions reference has been made to my colleague auditors decision of 14 April 2015 and the particular passages therein referring to the consideration by SLAB in issuing updated guidance to practitioners to address issues raised with the taxation exercise resulting in his decision. We now find that the same opponents are again before the auditor canvassing effectively the same issues and disputes for a decision thereon. This in itself suggest that there is now a 'flag' requiring to be addressed by SLAB to issue revised guidance and assistance in early course given that we are now 3 years plus since that decision. SLAB should be working with practitioners to enhance standards and best practice giving sound and reasoned decisions in relation to the feeling of legal advice and assistance cases and providing an understanding of the reasoning in applying abatements.

AUDITORS DECISION

Having carefully considered the full written and oral submissions I am of the view having perused all of the precognitions referred to in the respective submitted accounts to SLAB that the content is fully chargeable and that no abatements should be applied. I am satisfied that there is little or no repetition and that the content is relevant and consequently I allow the fees for same in full. I would comment that if the guidelines provide clear instruction as to what precognitions should and should not contain in terms of content then taxation exercises such as this would probably not come to pass. Surely given the decision of April 2015 and the passage of time since and the revisiting of 'on point' issues should be an indicator of urgent consideration of a revision of the guidelines.

A Crombie

Auditor of Court

28 August 2018