

COST OF EXECUTING FINANCIAL SETTLEMENT.

AUDITOR OF THE COURT OF SESSION

PARLIAMENT HOUSE, EDINBURGH, EH1 1RQ

031 225 2595 Extn. 306

20th December 1983

The Secretary,
Legal Aid Central Committee,
Box No 250,
Rutland Exchange,
EDINBURGH

DR

Dear Sir,

Legal Aid Reference: 37/22/029416/80
Mrs Audrey Rutherford (AP) v [REDACTED] (AP)

The Assisted Person was in right of a Legal Aid certificate for his defence to an action of divorce, special reference being set out as "Defence on Capital Payment." After evidence heard, the Lord Ordinary continued the case "for financial matters to be resolved." Parties agreed that in return for a certain financial benefit, the wife would not insist in her claim for a capital sum. When the wife was assured, by completion of a formal agreement, that the benefit would be forthcoming, a Joint Minute was lodged and decree granted. The reciprocity of the agreed benefit and the abandonment of the claim for a capital sum was recorded in correspondence between the agents.

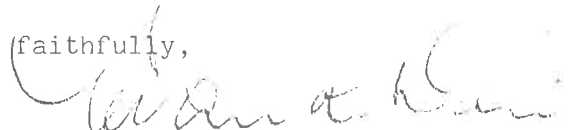
The negotiation of the agreement and the solicitors' charges in that connection were accepted on all hands as falling within the cover of the Legal Aid certificate.

The issue principally referred to the Auditor was whether the Fund required to meet the charges of the solicitors for work done to achieve the agreed benefit to the wife and the fee incurred by them to a firm of accountants in realising that benefit.

The Auditor is aware that the Fund frequently meets solicitors' charges for legal work necessary to give effect to an agreed transfer of property to an Assisted Person when the transfer satisfies in whole or in part a claim for a capital sum and /or periodic allowance ancillary to the conclusion for divorce. The Auditor was assured that each such case was carefully considered on its merits, and informed without specification that certain tests were applied. There was not enunciated to him any principle giving rise to the criteria applied in determining the attitude of the Fund to a particular case. The Auditor appreciates that a principle may emerge and develop only from the careful application of an alert discretion to a number of particular cases, but he feels that as time goes on and more special cases arise, there is a substantial danger of injustice being done if confidence is too readily or too long reposed in rule-of-thumb tests which may appear to have been satisfactory but in reality are only accidentally so.

The Auditor suggests that you and the solicitors arrange with Mrs Gill a further convenient diet at which he may be more fully advised on the Fund's approach to its long-established concession.

Yours (faithfully,



The Auditor Evan H. Weir, W.S.
Principal Clerk James W. Hastings

*Compromise reached with
Sols in this case, so it
never went back to Auditor.*