

NOTE re Taxation of Advice and Assistance Account re [REDACTED]

The foregoing Legal Advice and Assistance Account was submitted to me for taxation. [REDACTED] appeared for the Scottish Legal Aid Board and Mr [REDACTED], of Messrs Stewart Mullan, Law Accountants, Edinburgh, for the solicitors, Messrs Lindsay Duncan & Black, W.S., Edinburgh.

There was also submitted to me for taxation a Judicial Account incurred by the same client to the same Solicitors in respect of work carried out under a Legal Aid Certificate and which work followed on that charged for under the Legal Advice and Assistance Certificate.

There was no dispute as to the work carried out in either Account.

Advice and Assistance Account

In terms of the Regulation 16 of The Advice and Assistance (Scotland) Regulations 1987, the fees allowable to the solicitor shall, and shall only be: "(a) fees for work actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given".

Section 7 (2) of the Legal Aid (Scotland) Act 1986 provides that Part II of that Act (which deals with the giving of advice and assistance) shall not apply to advice and assistance provided to a person in connection with proceedings before a Court or tribunal at a time when he is receiving legal aid in connection with those proceedings (my emphasis).

As/



As the advice and assistance work was carried out at a time before the client received legal aid in connection with the consequent Court proceedings it follows that Part II of the Act applies and the solicitor is entitled to payment for work done under it.

It was submitted, however, that because of the wording of the first entry in the subsequent judicial account which had been prepared on the inclusive fee basis, the charges for recognitions in the Advice and Assistance account should be disallowed. I have rejected this submission for the reasons given in the portion of my note relating to the judicial account.

Judicial Account

The Judicial Account was charged under Chapter I Table A of Schedule 2 of The Legal Aid (Scotland (Fees in Civil Proceedings) Amendment (No. 2) Regulations 1987.

In terms of paragraph 3 (1) of Schedule 2 of the Regulations a solicitor is given the option to charge an account on the basis of the inclusive fees of Chapter 1 of the Table of Fees in that Schedule, which in the instant case he has elected to do, and having done so he is, in my opinion, entitled to payment under Table A (being the appropriate Table in this case) of the sum specified in Column 2 for each item of work specified in Column 1 of the Table.

The first entry in the Judicial Account is the narration of Item 1 in Column 1 of Table A, namely "All work to and including the period of notice". It was submitted/




submitted that that narrative necessarily implied that it covered charges for precognitions which, in this case, had already been charged for in the Advice and Assistance Account and that, therefore, I should tax off the precognition charges from the latter Account which the Scottish Legal Aid Board had proposed to do.

If a client proceeds without an advice and assistance Certificate before obtaining a Legal Aid Certificate the solicitor is entitled to charge the client for the relevant work, including the taking of precognitions, and the subsequent grant of a Legal Aid Certificate for Court proceedings does not alter that position.

As I construe the terms of each of the items specified in Column 1 of that Table the solicitor is to be paid the appropriate inclusive fee for each item without regard to how little or how much work he requires to perform to reach the stage indicated in the item.

The Accounts

For the foregoing reasons I have sustained both Accounts in full.

A handwritten signature in black ink, appearing to be 'J. H. L.' or similar, written in a cursive style.

1958

C I V I L A C C O U N T S P A Y A B L E

Report on Taxation

Assisted Person: [REDACTED]

Reference Number: 33\65\728729\87 & 63\01\846271\88.

Solicitor: Lindsay Duncan & Black.

Nature of Proceedings: Divorce on the Grounds of Unreasonable Behaviour.

Auditor: J. Haldane Tait, Edinburgh

Taxation Date: 27 April 1989

Total Civil Claim (excl VAT) 412.93

Sum Taxed At: (excl VAT) 412.93

Total A & A Claim (excl VAT) 116.82

Sum Taxed at (excl VAT) 100.00 (Sum of AE)

BACKGROUND

The Solicitor submitted two accounts for the above case; one under the Advice & Assistance Certificate in connection with obtaining instructions to proceed with a divorce action, taking precognitions and completing legal aid forms, the other against a Civil Legal Aid Certificate prepared on the basis of the inclusive fees for an undefended action of divorce contained in Schedule 2 Chapter I, Part II,

The precognition work was abated from the Advice & Assistance account on the basis of the Board's policy on the implementation of the amendments to Regulation 17(1) of the Advice & Assistance Regulations which came into force on 1st August 1988. The amendment regulation was designed to give the Board power to disallow any work charged under the Advice & Assistance account which is charged under civil legal aid, however the Board had doubts as to whether the amendment gave it any locus.

The Solicitor's view was simply that civil legal aid only became effective on the date of grant and as it is no longer possible to claim for pre grant work under civil legal aid (with the exception of Regulation 18 work) the civil legal aid inclusive fee commenced from the effective date of civil legal aid and accordingly there was no duplicated charges

Cont/d...

2/...

TAXATION

The Joint Auditor of Edinburgh agreed with the view expressed by the Solicitor and a photocopy of the Auditors note is attached hereto.

20 July 1989

BUSINESS ACCOUNT

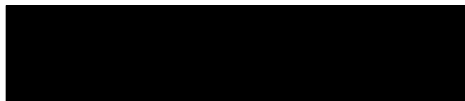
incurred by

SCOTTISH LEGAL AID BOARD

to

MESSRS LINDSAY DUNCAN & BLACK
SOLICITORS, EDINBURGH

In causa



PURSUER

against



DEFENDER

LEGAL AID REF NO: 33/65/728729/87

LEGAL ADVICE REF NO: 63/01/846271/88

LEGAL AID CODE NO: 00850

We hereby certify that no agency is passing in respect of this Account

Legal Aid effective from 29.3.88

1988					
July	4	Paid Registrar fee for extract marriage certificate	5	50	
	21	Fee for all work to and including the period of notice			138 25
		Add Process Fee thereon			13 00
		Paid court dues	40	00	
Aug	9	Paid Sheriff Officers' fee	13	42	
Oct	11	Fee for all work from the period of notice to and including swearing affidavits			103 00
		Add Process Fee thereon			10 00
		Notarial fee - 2 affidavits	16	00	
		VAT thereon	2	40	
Dec	1	Fee for all work from swearing affidavits to and including sending extract decree			30 95
		Add Process Fee thereon			3 00

C/Fwd £ 77 32 299 65

1
Dec

1. Reports and Incidents (17")

B/Fwd £ 7730. 299.65

3596

113.28 299.65

113.28

add Outlays

Total

412.93

Edinburgh 19th May 1988

The foregoing Account is
closed at the sum of Four hundred
and twelve pounds and ninety-three pence
(£412.93) Net

Gordon Fair
Joint Auditor
Edinburgh Sheriff Court

LEGAL ADVICE AND ASSISTANCE ACCOUNT

incurred by

SCOTTISH LEGAL AID BOARD

to

MESSRS. LINDSAY DUNCAN & BLACK
SOLICITORS, EDINBURGH

acting on behalf of

LEGAL ADVICE REF NO: 63/01/846271/88

LEGAL AID CODE NO: 00850

AUTHORISED EXPENDITURE £100

1987					
Nov	25	Attendance with you assisting you in completion of advice and assistance papers, discussing matters with regard to divorce and fully advising thereon, going over the circumstances, taking details and thereafter obtaining your precognition eng - 1 hr (restricted to 30 mins)	14	80	
		Framing your precognition - over 2 sh	37	00	
		Writing the Scottish Legal Aid Board with completed AA/IA requesting an increase in authorised expenditure	3	50	
	26	Writing you referring to recent meeting and enclosing your precognition for signature, further discussing and explaining steps to be taken	2	30	
Dec	15	Agency framing legal aid application eng - 6 mins	2	96	
		Agency framing legal aid memorandum - eng 6 mins	2	96	
		Writing you discussing matters with regard to the legal aid application and fully advising of steps to be taken, requesting your instructions	3	50	
1988					
Jan	26	Attendance with you having you sign legal aid papers, thereafter discussing and advising of further procedure - eng 15 mins	8	88	
		Attendance with Isobel Tonner taking details for her precognition - eng 30 mins	-	-	
		Framing precognition of Isobel Tonner over 1 sh	22	20	
	27	Writing Isobel Tonner enclosing copy of her precognition or signature, further discussing and explaining steps to be taken	2	30	
		Photocopies enclosed - 1 sh	0	46	

1988

Jan

27 Writing you discussing matters with regard to the proposed divorce action, going over your financial circumstances

3 50

Feb

1 Writing the Scottish Legal Aid Board enclosing complete legal aid application together with full supporting papers

3 50

Writing your husband enclosing intimation copy legal aid application together with copy memorandum, fully advising with regard to same, explaining options and further discussing

3 50

Photocopies enclosed - 1 sh

0 49

Writing you advising we have now submitted your legal aid application, discussing the circumstances and further explaining

3 50

June

14 Full legal aid certificate issued, therefore no further entries included in this account

Add Provision for Postages

8 letters at 18p per letter

Add Provision for Incidentals

(telephone calls)

- telephone calls at 10p per call

144

144 115 38

144

Add Outlays

Less Contribution payable

Total

116 82

OFFER

Fees £81.09

Postage 08

£82.17

Edinburgh 19th May 1988

The foregoing Account is correct at the sum of One hundred and sixteen pounds and eighty-two pence (£116.82) Netting exclusive of Value Added tax.

Note

M. J. Stewart
Solicitor
Edinburgh Sheriff Court