



M 909/45

N v N

Glasgow, 19<sup>th</sup> August 1998.

the Sheriff, having resumed consideration of the Motion for the *curator ad litem*, No 7/15 of Process Allows a percentage increase of twenty per cent in solicitor's fees in terms of Regulation 5(4) of the Civil Legal Aid (Scotland)(Fees) Regulations 1989.

This motion came before me following the settlement of a difficult and acrimonious divorce case with competing craves for custody and access. Settlement followed several days of proof. Motions in similar terms were earlier made on behalf of the solicitors for both parties, and I found them entitled to an uplift of twenty per cent in their legal aid fees, in terms of Regulation 5(4) of the Civil Legal Aid (Scotland) (Fees) Regulations 1989. Such an increase was in my view justified having regard in particular to sub-heads (b), (g) and (e) of the Regulations. Those motions were intimated to the Scottish Legal Aid Board who did not oppose them, nor were they represented at the hearings. The present motion is on behalf of the *curator ad litem* to the children of the marriage, Mr Gordon. Mr Gordon is a solicitor and has acted on his own behalf throughout, rather than instructing another solicitor to represent him. The Scottish Legal Aid Board have opposed the motion, and I heard Mr Gordon on his own behalf and Mr Haggerty for the Board on 29th June 1998. Thereafter, and before I had issued an interlocutor and Note, Mr Gordon sought to address me further in respect of the extent of any uplift to be allowed, and I heard him and Mr Haggerty further on 19th August 1998.

There is no dispute (and I accept) that in the factual sense Mr Gordon's performance of his duties was no less deserving of the recognition accorded to the parties' solicitors in terms of Regulation 5(4). Both parties instructed junior counsel while Mr Gordon appeared throughout in person and negotiated in person. Mr Haggerty informed me that the Board's opposition was based on their view that it was incompetent to grant a percentage increase for a curator in terms of Regulation 5. The Regulations, he said, in terms applied only to solicitors' fees. He referred me to two unreported sheriff court decisions so holding - *L. v. Kennedy* dated 25 July 1995 (Sheriff Miller, Ayr Sheriff Court) and the other from Dundee Sheriff Court. Mr Gordon's submission was that standing his possession of a Legal Aid Certificate in his name as nominated solicitor, it was perfectly competent for him to make the motion, and that in the first instance it would be for the Auditor of court to have regard to the content of his account of expenses and to tax off any item which the Auditor deemed to be inappropriately charged.

I was addressed to some extent on the functions of a *curator ad litem*, and in particular on the practice which has grown in Glasgow of the court appointing solicitors as curators who act in their own name rather than apply for legal aid to instruct another solicitor to represent them in the litigation. I do not think it appropriate here to consider the pros and cons of the traditional and the more recent approaches but it is important to bear in mind that the offices of curator and solicitor are distinct and do not merge even when those offices coincide in the one person. There are bound to be difficulties from time to time in determining where the performance of the one duty begins and that of the other ends. There will be difficulties in determining whether some acts are performed by the individual as curator or as solicitor. Indeed difficulties of this sort may frequently be



encountered. Nevertheless I find the logic of Mr Gordon's submission compelling. I am in no doubt that *qua* solicitor he may competently apply for a percentage increase in fees and I am also satisfied that his fees *qua* solicitor should be the subject of a twenty per cent increase. The question of what fees may properly be charged *qua* solicitor (and therefore attract the percentage increase) is a matter for the Auditor in the first instance. I do not find it possible to lay down guidelines in advance. A draft account of expenses has been prepared and lodged with this motion. When that account is finalised it should be lodged with the Auditor of court for taxation. The Auditor may, of course, apply to the sheriff for directions on any matter affecting the account if he considers it necessary to do so; and whether or not he does so, on his Report being made available any interested party may lodge objections to the Report and these will be adjudicated upon by the sheriff in the usual way.



**WITH COMPLIMENTS**  
AUDITOR OF COURT  
**SHERIFFDOM OF GLASGOW  
AND STRATHKELVIN**

T. McCAFFERTY  
Auditor of Court

1 CARLTON PLACE,  
GLASGOW G5 9DA  
DX GW 203  
Telephone 0141 - 429 8888

Dear 

99.

I enclose my note in the above together with copies of the two pages of the Account which contain items being "taxed off". In the Curator work I included all Meetings and Conces. with Mrs. Mrs. Nugent, witnesses and all recognitions. I held the four meetings held. The principal Account has been returned to Process Dept. Each entry in the Account has been marked S. or C. depending on whether I considered the work Solicitor or Curator. If you wish to discuss I will not be available till Monday 16th August.

T. M. Cafferty

## DIET OF TAXATION

GLASGOW 10<sup>th</sup> MARCH 1999

This taxation arose out of a dispute between the Scottish Legal Aid Board ("The Board") and Messrs Penman Gordon & Co. Solicitors, Glasgow ("The Agents") in relation to the fees claimed by the Agents for the work in connection with the above case carried out by their Mr. Alisdair Gordon as Curator Ad Litem to [REDACTED] and others and in particular to the application of a twenty per cent increase in these fees awarded by Interlocutor dated 19<sup>th</sup> August 1998 where it can be shown the work carried out by Mr. Gordon qua solicitor, as opposed to Curator. Messrs Penman Gordon & Co were represented at the Taxation by Miss Lee Cormack and the Board by [REDACTED]. Before Listening to the parties submissions I informed them I wished to amend the final page of the Account in so far as in my opinion the uplift in fees should be applied before the addition of Value Added Tax. There is no change to the overall total of the Account. As presented the v.a.t appears only to be calculated on the basic fees of **£6,894.77**. The uplift of 20%, added at the sum of **£1,620.27**, therefore includes an element of v.a.t. I have amended the Account to show the uplift to be **£1,378.95** i.e. 20% of **£6,894.77** and the v.a.t to be **£1,447.90** i.e. 17 ½% of **£8,273.72**. As I have said there is no change to the overall total of the Account which remains at **£11,801.36**.

[REDACTED] confirmed the Boards acceptance that all work done by Mr. Gordon either in his capacity as instructed Solicitor or Curator is properly payable and the dispute relates only to application of the uplift which at present has been added to all work. [REDACTED] suggested that by using a broad brush approach the Board would be prepared to accept that the work carried out be apportioned as to qua Solicitor two-thirds and as Curator one third. This would have the effect of taxing off **£459.65**, one third of the uplift of **£1,378.95** earlier referred to. In other words allowing the uplift on two-thirds of all work.

Miss Cormack argued that if the Court work could be identified then what remains is the work carried out in Mr. Gordon's capacity as Curator and what was referred to as grey area Solicitor-Curator, then 20% of that sum is what would be in dispute. She suggested that at that point the two-thirds - one third formula be applied. Miss Cormack didn't have figures to back this proposal. By deducting a Notional sum for Advocacy/Court work supplied by [REDACTED] of **£1,724** the remaining balance was **£5,170** and to apply the two-thirds - one third formula now would have the effect of taxing off **£344.66** i.e. 20% of **£1,723.33** (1/3<sup>rd</sup> of **£5,170**).

[REDACTED] countered by suggesting that if deductions were made to the overall Account for Advocacy/Court work before making the calculation of the sum to be deducted then the two-thirds - one third formula need not apply and a 50/50 split could be more appropriate. Using the forgoing calculations this would have the effect of taxing off **£517** i.e. 20% of **£2,585** (1/2 off **£5,170**).

Whilst there is some merit in each of the foregoing methods, I have chosen not to accept any of these and having gone through the Account calculate the sum of **£5,181.82** as having been identified by me as carried out by Mr. Gordon qua solicitor. It is my view that the 20% uplift applies in the sum of **£1,036.36** and I have therefore taxed off **£342.59** (the difference between this figure **£1,036.36** and the sum shown in the Account **£1,378.95**). There is one further matter which had not been noticed by either party. On page 28 of the Account 20<sup>th</sup> October 1997, there is an entry for a telephone call **£245**. It was accepted by Miss Cormack that this charge should be **£2.45**. It has been added as **£245** and therefore the sum of **£242.55** requires to be taxed off. There is of course v.a.t. at 17 ½% to be added to the sum being taxed off. The total sum being taxed off therefore amounts to **£687.54** (**£242.55 + £342.59 + v.a.t. on both £102.40**). In accordance with my normal practice I have apportioned the Audit fee so as to find the Board liable for the fee on the Account as taxed. I have accordingly taxed the Account at **£11,654.32** (inclusive of the proportion of the Audit fee due by the Board of **£540.50**).

*T. M. Callaghan*

**AUDITOR OF COURT**  
**SHERIFFDOM OF GLASGOW AND STRATHKELVIN**  
**11<sup>TH</sup> AUGUST 1999**



SCOTTISH COURT SERVICE  
Sheriffdom of Glasgow and Strathkelvin  
Sheriff Clerk's Office  
Sheriff Court of Glasgow and Strathkelvin  
PO Box 23  
1 Carlton Place  
Glasgow G5 9DA

CIVSG.JH.12.06.R

RAMMAN  
LORDAN  
175 BRACENST.  
No 2 STM.

Your reference

Our reference PROCESS A

Date 23-8-99

Dear Sir/Madam

M809/94. [REDACTED]

I have to advise you that the Sheriff approved the Taxed Account of expenses in the above case

on 23-8-99

Yours faithfully

Sheriff Clerk Depute at Glasgow

1997

Oct

14 Wtg Pursuer's Agents advising as to our understanding as to what had occurred at Court - 2 pages 12.40

16 Att at telephone with [redacted] to set up a meeting for you 2.45

Att at telephone with the Pursuer's Agents discussing the possible compromise - 2 calls 4.90

Oct 20 Wtg [redacted] further in connection with the proof and advising that this has now been adjourned until 27th October and commenting thereon 6.20

Taxes of 6

Paid Shorthand Writers charges 183.07

-242.55

Att at telephone with Hodge and Pollock regarding the notes to be extended 245.00

Perusing and considering further Report by [redacted] and comments on the Report by [redacted] - 4 sheets 12.40

21 Att at telephone with [redacted] making arrangements for this afternoon - 3 calls 7.35

Att meeting [redacted] at Bon Secours Hospital discussing the Report by [redacted] and noting full details - 1 hr. 15 mins 87.20

Paid travelling expenses 14 miles @ 33p per mile incl. of V.A.T. 5.4

Att at telephone with the Pursuer's Agents noting their intentions 2.45

22 Att meeting at the offices of the Pursuer's Agents discussing various aspects at length - 2 hrs. 87.20

Att at telephone with [redacted] to discuss various aspects with him - 3 calls 7.35

Att at telephone thereafter with [redacted] discussing [redacted] Report fully - 15 mins 10.90

23 Wtg [redacted] further in regard to the sanction obtained from the Legal Aid Board 6.20

Att at telephone with the Pursuer's Agents regarding the Agreement reached - 2 calls 4.90

-242.55



TAXES OFF

- 242.55

11	Writing to SLAB re decision by Sheriff in relation to question of competency of motion	6.20
27	Attendance Sheriff Court at phone re case 3 calls	7.35
Aug 05	Attendance Sheriff Court at phone re further hearing 2 calls	4.90
	Attendance O'Donnell Vaughan at phone re interlocutor intimated to them	2.45
19	Attendance court for further hearing on motion Minimum fee for court attendance	28.20

- 242.55  
 - 342.59  
 585.14  
 - 102.40  
 -----  
 - 687.54

UPLIFT IN FEES 20%  
 APPLICABLE ON £5181.82 (£1036.36)

V.A.T. AT 17 1/2 %

Outlays

-----  
 2,079.74 6,894.77  
 1,378.95  
 -----  
 £ 8,273.72  
 1,447.90  
 2,079.74

£11,801.36

AUDITOR'S FEE £573.40 WHEREOF

540.50

✓ 12,341.86

TAXES OFF

687.54

£ 11,654.32

GLASGOW 11 AUG 1999  
 AND REPORTED AS £ Eleven Thousand  
 Six hundred and fifty four Pounds and  
 Thirty Two pence (£ 11,654.32p)

T. McCafferty

AUDITOR GENERAL  
 SCOTLAND  
 AND CLERK OF COURT

KES (for info)

THE SCOTTISH LEGAL AID BOARD

To: [REDACTED]  
Manager, Accounts Assessment  
Room No. F03

From: [REDACTED]  
Solicitor  
Room No. T10a  
Ext. No. 305

Ref.: JDH/SM

Date: 24 August 1998

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[REDACTED]

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I refer to our recent telephone conversation and enclose copy of the sheriff's interlocutor and note. It is important that the staff are aware of the distinction which should be drawn between a solicitor conducting the proceedings and at the same time performing functions of curator *ad litem*. It is inherent in the sheriff's decision that there is a distinction and that it is for the Auditor to fix the fee on which the percentage can be claimed, no percentage uplift being possible in respect of the balance. I will arrange to undertake the taxation and in the meantime have returned the file to [REDACTED] together with another copy of the decision.

[REDACTED]