

TAXATION OF LEGAL ADVICE AND ASSISTANCE ACCOUNTS

DONALDSON AND COMPANY

VERSUS

THE SCOTTISH LEGAL AID BOARD

DIET OF TAXATION 19/9/01

Present - Mr Liddle and Mr Ogston, Donaldson and Company, Solicitors, Dundee
[REDACTED] Scottish Legal Aid Board

This taxation was fixed at request of Donaldson and Company, Solicitors, Dundee in terms of Regulation 18(4) of the Advice and Assistance Regulations 1986.

The first diet of taxation fixed took place on the 19th September 2001. This diet did not proceed and was adjourned to the 2nd October 2001. It was adjourned on the basis that Regulation 18 (4) requires an assessment of the account(s) to have taken place prior to any remit to the Auditor of Court.

The Scottish Legal Aid Board gave an undertaking that all of the accounts would be assessed for the 2nd October 2001.

It was noted, at the request of Donaldson and Company, on the 19th September that the basis of the request for the remit was

- The delay, by the Scottish Legal Aid Board, in processing the claims submitted. (3 months)
- The fact that no offer of payment in relation to the majority of the accounts had been made.

At the end of this diet of taxation Donaldson and Company submitted that the Scottish Legal Aid Board should be found liable in the expenses of the abortive diet of taxation, the expenses allowed to include waiting time of 15 minutes.

I am not prepared to make such a finding on the basis that the diet was incompetent. I refuse the motion.



Mrs O McShane
Depute Auditor of Court
19/10/01

TAXATION OF LEGAL ADVICE AND ASSISTANCE ACCOUNTS

DONALDSON AND COMPANY

VERSUS

THE SCOTTISH LEGAL AID BOARD

DIET OF TAXATION 2/10/01

Present - Mr Liddle and Mr Ogston, Donaldson and Company, Solicitors, Dundee
Mr Logan, representative for Donaldson and Company
[REDACTED] Scottish Legal Aid Board

This diet of taxation opened with submissions/objections by parties.

Mr Logan requested that I tax each of the accounts in terms of Regulation 18(4) on an individual basis.

In response the Scottish Legal Aid Board made the following submissions: -

- Only some of the accounts before me could be taxed on an individual basis
- The remainder of the accounts would require to be taxed collectively.

Further they submitted that they had made offers of payment in respect of some of the files, which had been rejected by Donaldson and Company. The files, in respect of which offers had been made, were not before me for taxation today, albeit they formed a part of their argument in respect of the collective objections.

[REDACTED] then went on to identify the standard which should be applied by an Auditor of court when taxing the accounts. In doing so he referred to the following: -

1. Regulation 17 of the Legal Advice and Assistance Regulations 1976 which details the work/outlays which should reasonably be allowed by the Auditor.

"Fees for work actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given, due regard being had to economy".

"Outlays actually, necessarily and reasonably incurred in connection with that matter, due regard being had to economy".

2. Various reported cases, which state the test that, should be applied by any Auditor of Court when taxing an account. Namely

- (a) that accounts should be taxed as if the client or a third party were paying, and
- b) What a prudent man of business would have done in the circumstances.

These cases include: -

William Park, Pursuer v Collvilles Ltd, Defenders and the Scottish Legal Aid Board, Noters (1960 S.C. 143; 1960 S.L.T 200)

HMA v Daniel Gray (1992 SCCR p883)

James Hood and Another v John Edward Gordon (Court of Session reported cases 1896 No 126 p675)

██████████ thereafter referred me to Section 6 of the Legal Aid (Scotland) 1986, which defines Legal Advice and Assistance. Additionally he informed me of regulations, governing claims, which may be placed before the Board and the financial limits that exist. The restrictions on payment were quoted as follows: -

(a) A maximum of £80.00 will be allowed in respect of each claim unless prior approval to exceed the limit is sought.

(b) Authorisation to exceed the £80.00 limit would be granted on the question of reasonableness and such an application may be submitted by telephone or fax if it is a matter of urgency.

(c) Approval to exceed the £80.00 limit cannot be granted retrospectively

Objections to Multiple Accounts

██████████ then turned to the rules applied by the Legal Aid Board when approving multiple applications.

I was referred to paragraph 1.9 of the Commentary on Advice and Assistance and Legal Aid, which defines when a multiple claim would not be appropriate. In particular it states that

"There may unusually be circumstances where more than one grant of advice and assistance can be made. In deciding whether to make separate grants the solicitor should have regard to whether the advice being sought is sufficiently distinct as to be a wholly separate set of circumstances. Solicitors should expect these situations to be the exception rather than the rule."

The Commentary also provides that instances of when one grant as opposed to multiple grants would be more appropriate e.g. when the client's problems are all debt related.

In the boards opinion

- The multiple applications lodged by Donaldson and Company related to similar subject matter.
- It would have been more cost effective to deal with the client's problems in one account.
- A fee maximisation strategy was being adopted by Donaldson and Company

All of these matters highlighted the need to tax the accounts collectively as opposed to individually in order that the Auditor may assess whether all of the work carried out was done so reasonably.

Thereafter the Scottish Legal Aid Board made the following general observations on the accounts submitted to them for assessment: -

- All meetings are of approximately the same length, with there being no proper time note.
- In the majority of circumstances the fees claimed go over to next block.
- There are many instances where the first attendance results in nothing happening.
- There is no apparent attempt to work effectively or cost effectively.
- No advice provided on DIY packages available.
- Separate meetings on separate matters would not happen on private client basis.
- In addition they questioned how much of the advice was sought by the client and how much was generated by Donaldson and Company.
- Whether the advice claimed for was actually provided at all.
- A private client would not pay 5 separate accounts.

Mr Logan in response

Mr Logan responded to the Scottish Legal Aid Boards submissions as follows: -

- Some of the accounts submitted for payment exceeded the threshold of £80.00. It was accepted that they would receive only the maximum payment from the board, albeit they had provided services worth more than that amount.
- It was not accepted that the multiple grants related to the same subject matter.
- Some of the general observations made by the representatives of the board were defamatory and there was no factual basis for them or indeed any justification.
- The Scottish Legal Aid board did not request to see any of the files relating to the claims submitted, as they are empowered to do so in terms of Regulation 15.
- No enquiries were made by the board in ascertain whether the advice provided to the client related to the same subject matter or not.
- The board were provided with information which it was hoped would assist them in assessing the claims lodged.
- The advice provided, in respect of each client for whom multiple applications were granted, was clearly different. Each grant dealt with a different problem and could have resulted in different consequences.
- The defamatory speculation that file entries were created by Donaldson and Company was to be totally disregarded by the Auditor as this would be more appropriately placed before the Police.
- The Legal Advice and Assistance scheme does not require a time recording sheet, work is carried out on the basis of assertion.
- 6 meetings with a client may be necessary, and that to deal with all matters at one time would cause confusion to the client. There is a limit to what can be absorbed by the client. Donaldson and Company would also adopt this approach with a private client.
- The fees chargeable for telephone calls fall into 2 categories. The first being calls which endure for 4 minutes or less and the second those which run for a period of between 4 and 10 minutes. In their submission the claims submitted do not creep over to the next block.
- If a client has two matters which must be dealt with by a solicitor it is for the solicitor to decide whether they can be dealt with together, and in doing so to take into consideration the guidance provided by the board. In their submission there

would require to be close connection between the debts if all of the matters were to be dealt with less than one grant of advice and assistance. (paragraph 1.9 of the Commentary on Advice and Assistance and Legal Aid.

- Multiple grants of Legal Advice and Assistance cannot be avoided in certain situations. For instance authorisation to exceed the limit cannot be granted after the event. An example of this would be a client consulting for the first time on one matter and a few days later on another unrelated matter - an advice and assistance grant would be provided for each consultation. In such an instance it would be the solicitors discretion as to whether another grant of Advice and Assistance is allowed.
- There would require to be compelling evidence to suggest that multiple applications in respect of one client were not appropriate.
- The provision of DIY packages can more often than not increase the level of advice sought/ required by the client.
- The most common approach adopted by Donaldson and Company is to provide all of the advice required in one meeting which in the majority of instances deals with the client's problem once and for all.

The submissions and arguments from parties took two and a half-hours to be heard.

I shall now turn to the accounts that were taxed by me on the 2nd October 2001.

Accounts Taxed

A separate report is attached in respect of each of the accounts for which arguments/submissions were heard.

In all four individual and four multiple claims were taxed on the 2nd October. Parties adjourned after arguments had been heard in respect of the individual accounts in order that negotiations could take place. These negotiations were very not fruitful.

Upon conclusion of the arguments pertaining to the taxation of the four multiple claims parties agreed that it would not be necessary to proceed with the taxation of any other accounts until the decision of the Auditor was available in respect of those cases. On that basis the taxation was adjourned until the Auditors written decision was available for consideration.

It is hoped that my findings in these cases will bring parties back to the negotiating table in respect of all other accounts that remain untaxed.

Motion for expenses

Finally I was faced with a motion from each party to find the other liable in the expense occasioned by the taxation. Submissions were heard from each party in their favour.

Seventeen grants of advice and Assistance were taxed. The total being claimed by Donaldson and Company was £1302.85. I have taxed all seventeen grants in the sum of £561.64.

I find Donaldson and Company liable to the Scottish Legal Aid Board in the expenses occasioned by the taxation hearing that took place on the 2nd of October 2001. There will be no charge from the Auditor of Court.

McShane

Mrs O McShane
Depute Auditor of Court
Dundee Sheriff Court
19/10/01

REPORT OF TAXATION
DONALDSON AND COMPANY

Versus

THE SCOTTISH LEGAL AID BOARD

Account reference AA/07/1073975601
[REDACTED] SS

Dundee 19th October 2001

I certify that I have taxed this account in the amount of £50.60.

O M McShane

Mrs O M McShane
Depute Auditor of Court

Note: -

When taxing this account the following arguments were heard.

The offer tendered to Donaldson and Company by the Legal Aid Board in respect of this account was £25.00. This offer was rejected.

In this particular case the Legal Aid board were of the opinion that I should reserve judgment on the basis that this was a client for whom Donaldson and Company had submitted multiple accounts, whereas only one of these accounts was placed before me for taxation:

Donaldson and Company were of the opinion that the taxation must take place as requested as they had exercised their right under the regulations.

Having heard parties I chose to proceed with the taxation. If any other account submitted in the name of this client is brought to taxation in the future this report may be taken into consideration by dealing with the case.

In taxing the account I heard the following arguments from the Legal Aid Board: -

File entry dated 30/5/01

- In the legal Aid Boards submission the fee that should be allowed for this account should be no more than £25.00 in total on the basis that Donaldson and Company generated the business.

- This file entry should only be allowed at $\frac{1}{2}$ hour. There was no need to extend the call over to a second unit of time.

File entry of 4/6/01

- The length of the telephone call is excessive.

File entry dated 6/6/01

- The length of the meeting was excessive.
- Was the meeting necessary? Could the problem have been dealt with by way of letter?

File entry dated 10/6/01

No objection was taken

Donaldson and Company responded as follows: -

File entry dated 30/5/01

- This was a legal enquiry under the Housing Scotland Act; the client was awaiting a visit from housing officials nothing could be taken forward until the exact nature of the problem could be identified.
- Donaldson and Company accepted that this entry should be abated by £10.55. The Legal Aid Board accepted the offer.

File entry of 4/6/01

- Donaldson and Company was not able to recollect the exact circumstances of the telephone call. On the basis of the file entry I was not prepared to tax down this entry.

File entry dated 6/6/01

- Donaldson and Company was not exactly clear on the advice, which was provided at this meeting. They were of the opinion that the advice that had been provided would have included matters such as tenants Rights/details of the Complaints procedure/with holding rent/court procedures. In short there were different stages to the meeting.

I taxed down the entry of the 6th of June 2001 to £21.10. I took this decision for the following reasons: -

1. The file record of the meeting did not contain a great deal of information.
2. The advice provided by Donaldson and Company, as narrated by Mr Liddle seemed to me excessive when taking into consideration the extent of the problem with which the client was faced with. **Due regard was not given to the terms of Regulation 17(1)(a) of the Legal Advice and Assistance Regulations 1976.**

As an aside I would recommend that detailed file notes be maintained in future cases in order that it may be ascertained at a glance what work the solicitor carried out.

REPORT OF TAXATION
DONALDSON AND COMPANY

Versus

THE SCOTTISH LEGAL AID BOARD

Account reference AA/07/1072913701

MM

Dundee 19th October 2001

I certify that I have taxed this account in the amount of £52.75.



Mrs O M McShane
Depute Auditor of Court

Note: -

When taxing this account the following arguments were heard.

The offer tendered to Donaldson and Company by the Legal Aid Board in respect of this account was £31.65. This offer was rejected.

In taxing the account I heard the following arguments from the Legal Aid Board: -

File entry dated 25/5/01

- In the legal Aid Boards submission the length of the meeting was excessive and the advice tendered was not necessary.
- This file entry should only be allowed at $\frac{1}{2}$ hour.

File entry of 6/6/01

- The length of the telephone call is excessive. Paragraph 2.2.6 of section C of the Scottish Legal Aid Board taxation guidelines were quoted as an authority for any abatement allowed.

Donaldson and Company responded as follows: -

File entry dated 25/5/01

- The client required to understand the whole picture before she would be able to take a decision on whether to proceed with a court action or not.

I allowed one hour for the meeting that took place on the 25th may 2001, therefor taxed of £21.10. I took this decision for the following reasons: -

1. The file record of the meeting did not contain a great deal of information.
2. The advice provided by Donaldson and Company as narrated by Mr Liddle seemed to me appropriate, but the length of time claimed excessive. Due regard was not given to the terms of Regulation 17(1)(a) of the Legal Advice and Assistance Regulations 1976.

I allowed the entry of the 6th June on the basis that the call would have taken some time given the subject matter.

As an aside I would recommend that detailed file notes be maintained in future cases in order that it may be ascertained at a glance what work the solicitor carried out.

REPORT OF TAXATION
DONALDSON AND COMPANY

Versus

THE SCOTTISH LEGAL AID BOARD

Account reference AA/07/1073946701

ND

Dundee 19th October 2001

I certify that I have taxed this account in the amount of £52.75.

O M McShane

Mrs O M McShane
Depute Auditor of Court

Note: -

When taxing this account the following arguments were heard.

The offer tendered to Donaldson and Company by the Legal Aid Board in respect of this account was £0.00. This offer was rejected.

In this particular case the Legal Aid board were of the opinion that I should reserve judgment on the basis that this was a client for whom Donaldson and Company had submitted multiple accounts, whereas only one of these accounts was placed before me for taxation.

Donaldson and Company were of the opinion that the taxation must take place as requested as they had exercised their right under the regulations.

Having heard parties I chose to proceed with the taxation. If any other account submitted in the name of this client is brought to taxation in the future this report may be taken into consideration by the Auditor dealing with the case.

In taxing the account I heard the following arguments from the Legal Aid Board: -

File entry of 30/5/01

- The length of the meeting was excessive.
- The discussion, which took place between the solicitor and client, was very general: .
no actual resolution was sought to the problem.

Donaldson and Company responded as follows: -

File entry of 30/5/01

- I was given with a checklist titled "Bankruptcy" which provided a breakdown of the advice that would have been provided to the client. Donaldson and Company are of the opinion that it is essential in cases of potential bankruptcy that all avenues are clearly explained to the client in order that he/she has a clear picture of the consequences that they may face.

I allowed one-and $\frac{1}{4}$ hours for the meeting that took place on the 30th May 2001, and taxed of £10.55. I took this decision for the following reasons: -

1. The file record of the meeting did not contain a great deal of information.
2. The checklist, which detailed all of the advice that would be provided in such an instance, was very complex. I accept that the client would require to be provided with as much detail as possible but feel the time claimed need not exceed 1- $\frac{1}{4}$ hours. **The time claimed is excessive and due regard was not given to the terms of Regulation 17(1)(a) of the Legal Advice and Assistance Regulations 1976.**

As an aside I would recommend that detailed file notes be maintained in future cases in order that it may be ascertained at a glance what work the solicitor carried out and precise detail of the advice given.

*REPORT OF TAXATION
DONALDSON AND COMPANY*

Versus

THE SCOTTISH LEGAL AID BOARD

Account reference AA/07/1069626101

DR

Dundee 19th October 2001

I certify that I have taxed this account in the amount of £42.20.

O M McShane

Mrs O M McShane
Depute Auditor of Court

Note: -

When taxing this account the following arguments were heard.

The offer tendered to Donaldson and Company by the Legal Aid Board in respect of this account was £31.65. This offer was rejected.

In this particular case the Legal Aid board were of the opinion that I should reserve judgment on the basis that this was a client for whom Donaldson and Company had submitted multiple accounts, whereas only one of these accounts was placed before me for taxation.

Donaldson and Company were of the opinion that the taxation must take place as requested as they had exercised their right under the regulations.

Having heard parties I chose to proceed with the taxation. If any other account submitted in the name of this client is brought to taxation in the future this report may be taken into consideration by the Auditor dealing with the case.

In taxing the account I heard the following arguments from the Legal Aid Board: -

File entry dated 23/5/01

- In the Legal Aid Boards submission the length of the meeting was excessive.
- This file entry should only be allowed at 10 minutes.

File entry of 30/5/01

- The length of the meeting is excessive and should be abated to $\frac{1}{2}$ hour.

Donaldson and Company responded as follows: -

File entry dated 23/5/01

- The amount claimed is the block fee applicable to opening entries on accounts of this nature.

File entry dated 30/5/01

- I was given with a checklist titled "Single Creditor debt" which provided a breakdown of the advice that would have been provided to the client.

I allowed $\frac{3}{4}$ of an hour for the meeting that took place on the 30th May 2001, and taxed of £31.65. I took this decision for the following reasons: -

1. The file record of the meeting did not contain a great deal of information. This was supplemented by Mr Liddle clarifying the nature of the debt in question e.g. goods ordered by his wife via a mail order catalogue of which he had no knowledge.
2. The checklist, which detailed all of the advice that would be provided in such an instance, was very complex. There was no need for this client to be provided with all of the advice as stated on the list. It is excessive that this client was provided with advice on sequestration procedures given the nature of the original query. **Due regard was not given to the terms of Regulation 17(1)(a) of the Legal Advice and Assistance Regulations 1976.**

As an aside I would recommend that detailed file notes be maintained in future cases in order that it may be ascertained at a glance what work the solicitor carried out.

REPORT OF TAXATION

DONALDSON AND COMPANY

Versus

THE SCOTTISH LEGAL AID BOARD

*Account references - AA/07/1109803601, AA/07/1109750901,
AA/07/1109758301, AA/07/1121583801, AA/07/1121569801*
[REDACTED] AH

Dundee 19th October 2001

I certify that I have taxed grants *AA/07/1109803601, AA/07/1109750901,
AA/07/1109758301, AA/07/1121583801, AA/07/1121569801*
as one grant in the sum of £80.00.

McShane

Mrs O M McShane
Depute Auditor of Court

Note: -

This is an example of a multiple claim submitted for payment to the Legal Aid Board. In this instance five grants of Legal Advice and Assistance have been submitted for payment in respect of the one client.

Submissions tendered on behalf of the Scottish Legal Aid Board

- This is an example of an incompetent multiple grant of Legal Advice and Assistance.
- There should only have been one grant of advice and assistance, with authority being sought by Donaldson and Company to exceed the £80.00 threshold by telephone or fax.
- In the board's opinion the five areas of advice are not sufficiently distinct and do not indicate that there are five wholly separate sets circumstances and therefore do not merit separate grants of Legal Advice and Assistance. Each of the grants deals with matters that relate to debt.
- The approach in this instance that was adopted by Donaldson and Company does not reflect the approach that would be adopted by "a prudent man of business".
- The application which relates to the client receiving sight of his credit file should never have been granted at all. There is a DIY package available to assist members of the public with matters such as this. The total cost to the client would have been £2.00 if he had been provided with advice on where to obtain the information. In any event this is relates to debt.

Donaldson and Company's submissions

- The five separate areas on which advice was provided are distinct as they could each have resulted in separate legal consequences. E.g. Consumer Debate, dispute with

community charge, bankruptcy proceedings, payment of a student loan, right to see credit file.

- The student loan matter was dealt with separately as it is a contingent debt and therefor would no form a part of any bankruptcy proceedings.
- £40.05 was offered in payment for all of the claims by the Legal Aid Board.
- The provision of a DIY package creates more questions as opposed to providing answers.

My findings are as follows: -

1. Grant number AA/07/1109803601, relates a consumer dispute.

The client first contacted Donaldson and Company on the 25th June 2001 when minimal advice was tendered on the basis that the client had not produced the paperwork discussed. The client then telephoned on the 29th June 2001 seeking further advice having received a letter from the creditor. The final file entry relates to a meeting that took place on the 2nd July that lasted for one hour and 20 minutes. The loan agreement was discussed in detail. The final outcome was that the loan may form a part of the clients debts which would be included in a future sequestration package.

In my opinion the advice provided was excessive. The time taken to provide the advice was excessive. The advice required here was minimal.

2. *Grant number AA/07/1109750901 relates to a community charge dispute.*

The client also discussed this matter with Donaldson and Company on the 25th June 2001. There after the client attended for a short meeting on the 2nd July 2001, when no progress could be made as the client did not have any paper work available. There after the client attended for a meeting on the 9th July 2001 that lasted for 1 hour and 10 minutes. The matters upon which advice was given included proving whether the client was actually resident in the premises for which he was being required to pay community charge. Ultimately the client was advise that he would have to pay the sums due, as he could not prove non- residence, and that this could be included in a bankruptcy application in the future.

In my opinion the advice provided and the duration of the meeting was excessive. At the closing stages of the meeting the client was informed of that the debt could be included in bankruptcy application in the future and no further action was taken.

3. *Grant number AA/07/1109758301 relates to bankruptcy.*

The client sought advice in the first instance on the 25th June, when she did not have any paper work available. The client also discussed this matter with Donaldson and Company on the 27th June 2001. A meeting took place on the 29th June at which bankruptcy was discussed.

There was nothing produced by the client, which would suggest that a creditor had raised court proceedings. The client was not "apparently insolvent". It would not be

possible to commence with bankruptcy proceedings at this stage as a decree had not been obtained by a creditor.

In my opinion the advice provided was excessive and not necessary. There was no question of a sequestration application being lodged at this stage albeit the advice was provided. I would have expected the minimal advice to be provided at this stage with greater detail being provided when proceedings are imminent.

4. *Grant number AA/07/1121583801 relates to a student loan.*

The client attended for a meeting on the 5th July 2001 when the clients student loan was discussed, the meeting lasted 1 hour and 10 minutes. The client was informed that the loan would become an ordinary debt and be swallowed up in the sequestration procedure at some point in the future. Summary Cause procedure was then discussed in detail. Thereafter a further meeting took place on the 16th July when matters such as how a decree could be enforced were discussed. Ultimately no action was to be taken as the client was not in position to offer payment by installments given the other debt problems he had.

In my opinion the advice provided was excessive and not necessary. The client was not in position to make an offer regarding the payment of the loan. No other action could be taken at this stage. The advice provided on summary cause procedure, court decrees and enforcement action was inappropriate and not required.

5. *Grant number AA/07/1121569801*

The client first attended re this matter on the 5th July 2001 and again on the 6th July 2001. The matters discussed include a credit search in the name of the client to ascertain the extent of his debt, this would allow a full declaration in a bankruptcy application. It was agreed a mandate would be signed by the client which would allow Donaldson and Company to carry out the credit reference search.

In my opinion the advice provided was excessive and not necessary. The client could have taken all of these steps himself using the DIY package available.

Having carefully considered submissions received from parties at the beginning of the hearing on the subject of multiple grants and immediately prior to this account being taxed. Having also considered the terms of paragraph 1.9 of the Commentary on Advice and Assistance excerpts of which are quoted below.

"There may unusually be circumstances where more than one grant of advice and assistance can be made. In deciding whether to make separate grants the solicitor should have regard to whether the advice being sought is sufficiently distinct as to be a wholly separate set of circumstances. Solicitors should expect these situations to be the exception rather than the rule."

" Where a client is seeking advice on financial difficulties and, in particular, in relation to a number of debts, it is not appropriate for a solicitor to make a grant of advice and assistance in relation to each individual debt. In particular it is not appropriate to claim a minimum fee for advice on each debt."

I do not find that this case is one, which merits five multiple applications. We are dealing here with a client who has overwhelming debt problems. In each of the five cases the ultimate way of dealing each of the problems is a sequestration petition, albeit that may be some way down the line. The client attended for a total of 6 hours and 34 minutes with no end result. The advice tendered was very complex and premature. There should only have been one grant of advice and assistance.

I find that the work was not carried in terms of regulation 17 of the Advice and Assistance (Scotland) Regulations 1996 the terms of which are quoted below.

"Fees for work actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given, due regard being had to economy".

I also note that in circumstances such as this the Legal Aid Board could have been approached to authorise an increase in the limit, by telephone or fax, but this was not done. I am therefore bound to tax the two grants before me as one. Additionally in terms of Section 10 of the Legal Aid (Scotland) Act 1986 and Regulation 12 of the Advice and Assistance (Scotland) Regulations 1996 I am restricted to the limit of £80.00.

I tax all five grants of advice and assistance in the sum of £80.00.

REPORT OF TAXATION
DONALDSON AND COMPANY

Versus

THE SCOTTISH LEGAL AID BOARD

Account references AA/07/1113403801

Aa/07/1113401201

S=

Dundee 19th October 2001

I certify that I have taxed the above grants of Advice and Assistance as one grant and in the sum of £80.00.



Mrs O M McShane
Depute Auditor of Court

Note: -

This is an example of a multiple claim submitted for payment to the Legal Aid Board. In this instance two grants of Legal Advice and Assistance have been submitted for payment in respect of the one client.

The first file, reference number, AA/07/1113401201, relates to advice provided in connection with council tax arrears.

The second file, reference number AA/07/1113403801 refers to advice provided in connection with rent arrears.

Each file contains opening entries dated the 29th June 2001.

Parties agreed that the second entry of £10.55 in the claim numbered AA/07/1113401201 should be abated. Similarly parties agreed that the first entry of £5.25 in the claim numbered AA/07/1113403801 should be abated. Thereafter arguments were heard from each party.

Submissions tendered on behalf of the Scottish Legal Aid Board

- This is an example of an incompetent multiple grant of Legal Advice and Assistance.
- There should only have been one grant of advice and assistance, with authority being sought by Donaldson and Company to exceed the £80.00 threshold by telephone or fax.
- In the board's opinion the two areas of advice are not sufficiently distinct and do not indicate that there are two wholly separate sets circumstances and therefore do not merit separate grants of Legal Advice and Assistance.

Donaldson and Company's submissions

- The two areas on which advice was provided are distinct as they could each have resulted in separate legal consequences. E.g. eviction and sequestration.
- In their opinion this was also the general view of the board given that they supply two separate codes for use when completing application forms with clients.

My findings are as follows: -

1. Grant number AA/07/1113401201 relates to council tax arrears.

The client first contacted Donaldson and Company on the 29th June 2001 when minimal advice was tendered on the basis that the client had not produced the paperwork discussed. The client then telephoned on the 29th June 2001 seeking further advice whilst reading from the paperwork referred to at the initial meeting. The final file entry relates to a meeting that took place on the 2nd July and lasted for one hour and 10 minutes. Matters such as current council policy, proceedings in the Scottish Parliament regarding poindings, warrants sales were discussed.

From reading the file notes it appears that the client was in arrears with his council tax, but that a poinding, as at 29/6/01, was not imminent.

In my opinion the advice provided was excessive. There was no question of a poinding taking place when the advice was provided. I would have expected the advice provided to deal with the immediate problem of the arrears of council tax.

2. Grant number AA/07/1113403801 relates to rent arrears.

The client also discussed this matter with Donaldson and Company on the 29th June 2001, but did not have the necessary paper work with him. There after the client attended for a meeting on the 6th July 2001. The meeting lasted for one hour and twenty minutes. The matters discussed included housing benefits applications, court actions for eviction, the attitude of the council re rent arrears, negotiation of a payment plan with the council.

In my opinion the advice provided was excessive. There was no question of a court action being raised. I would have expected the advice provided to be restricted to the immediate problem of the rent arrears.

Having carefully considered submissions received from parties at the beginning of the hearing on the subject of multiple grants, and in particular the terms of paragraph 1.9 of the Commentary on Advice and Assistance excerpts of which are quoted below.

"There may unusually be circumstances where more than one grant of advice and assistance can be made. In deciding whether to make separate grants the solicitor should have regard to whether the advice being sought is sufficiently distinct as to be a wholly separate set of circumstances. Solicitors should expect these situations to be the exception rather than the rule."

"Where a client is seeking advice on financial difficulties and, in particular, in relation to a number of debts, it is not appropriate for a solicitor to make a grant of advice and assistance in relation to each individual debt. In particular it is not appropriate to claim a minimum fee for advice on each debt."

I do not find that this case is one, which merits multiple applications. We are dealing here with a client who is in arrears with council tax and rent. Neither of the files indicates that any court or other type of recovery action is imminent. In one of the cases a threat of poinding is made but not until after the file is closed. The immediate problem in respect of each grant is the fact that the client is in arrears with payments namely the client is in debt. Three hours of advice have been tendered when no real action can be taken at this time. One grant of Advice and Assistance would have been appropriate.

Additionally I find that the work was not carried in terms of regulation 17 of the Advice and Assistance (Scotland) Regulations 1996 the terms of which are quoted below.

"Fees for work actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given, due regard being had to economy".

I also note that in circumstances such as this the Legal Aid Board could have been approached to authorise an increase in the limit, by telephone or fax, but this was not done. I am therefor bound to tax the two grants before me as one. Additionally in terms of Section 10 of the Legal Aid (Scotland) Act 1986 and Regulation 12 of the Advice and Assistance (Scotland) Regulations 1996 I am restricted to the limit of £80.00.

I therefor tax the grants numbered AA/07/1113403801 and Aa/07/1113401201 as if they were one grant in the sum of £80.00.

REPORT OF TAXATION

DONALDSON AND COMPANY

Versus

THE SCOTTISH LEGAL AID BOARD

*Account references - AA/07/1095186301, AA/07/1095620101, and
AA/07/1095622701*

DI

Dundee 19th October 2001

I certify that I have taxed grants AA/07/1095186301 and AA/07/1095622701 as one grant in the sum of £69.30. Further I tax grant AA/07/1095620101 in the sum of £37.65.



Mrs O M McShane
Depute Auditor of Court

Note: -

This is an example of a multiple claim submitted for payment to the Legal Aid Board. In this instance three grants of Legal Advice and Assistance have been submitted for payment in respect of the one client.

Submissions tendered on behalf of the Scottish Legal Aid Board

- This is an example of an incompetent multiple grant of Legal Advice and Assistance.
- There should only have been one grant of advice and assistance, with authority being sought by Donaldson and Company to exceed the £80.00 threshold by telephone or fax.
- In the board's opinion the three areas of advice are not sufficiently distinct and do not indicate that there are three wholly separate sets circumstances and therefore do not merit separate grants of Legal Advice and Assistance.

Donaldson and Company's submissions

- The three separate areas on which advice was provided are distinct as they could each have resulted in separate legal consequences. E.g. poinding, sequestration and raising a protection from harassment order.

My findings are as follows: -

1. Grant number *AA/07/1095186301* relates to bankruptcy advice.

The client first contacted Donaldson and Company on the 8th June 2001 when minimal advice was tendered on the basis that the client had not produced the paperwork discussed. The client then telephoned on the 11th June 2001 seeking further advice. The final file entry relates to a meeting that took place on the 15th June and lasted for one hour and 5 minutes. The bankruptcy process was discussed in great depth.

No creditor had raised court proceedings and the client was not "apparently insolvent". It would not be possible to commence with bankruptcy proceedings for another 5 or 6 weeks, if not more.

In my opinion the advice provided was excessive. There was no question of a sequestration application being lodged at this stage albeit the advice was provided. I would have expected the minimal advice to be provided at this stage with greater detail being provided when proceedings are imminent.

2. Grant number *AA/07/1095620101* relates to harassment.

The client also discussed this matter with Donaldson and Company on the 8th June 2001. The client then telephoned on the 12th June 2001 seeking further advice and providing information. A letter was then written to Ms Grube on the 15th June 2001 returning original documentation, copies having been retained for file purposes. There after the client attended for a meeting on the 18th June 2001. The meeting lasted for one hour and twenty minutes. The matters upon which advice was given include the nature of the harassment being experienced, protection from Harassment orders, Interdict and police involvement. Each of these subjects was gone through in depth.

In my opinion the advice provided was excessive. At the closing stages of the meeting the client was informed of her rights as a debtor and harassment in her own home. This advice appeared to satisfy her and would have been adequate.

3. Grant number *AA/07/1095622701* relates to council tax arrears.

The client also discussed this matter with Donaldson and Company on the 8th June 2001. The council tax arrears were discussed and the debtors fears about losing her furniture. The concept of poinding was explained in detail as well as the council policy.

In my opinion the advice provided was excessive. The client had already had bankruptcy explained to her. The information provided re poindings was also excessive especially given that at the end of the meeting it was suggested that poinding would be unlikely.

Having carefully considered submissions received from parties at the beginning of the hearing on the subject of multiple grants, and in particular the terms of paragraph 1.9 of the Commentary on Advice and Assistance excerpts of which are quoted below.

"There may unusually be circumstances where more than one grant of advice and assistance can be made. In deciding whether to make separate grants the solicitor should have regard to whether the advice being sought is sufficiently distinct as to be a wholly separate set of circumstances. Solicitors should expect these situations to be the exception rather than the rule."

"Where a client is seeking advice on financial difficulties and, in particular, in relation to a number of debts, it is not appropriate for a solicitor to make a grant of advice and assistance in relation to each individual debt. In particular it is not appropriate to claim a minimum fee for advice on each debt."

I do not find that this case is one, which merits three multiple applications. Firstly we are dealing here with a client who is in arrears with council tax and owes another creditor £2043.00. (Grant references AA/07/1095186301, AA/07/1095622701). Neither of the files indicates that a sequestration application or recovery action is imminent. I also note that 2 hours and 58 minutes was spent with the client with there being no real end result. The immediate problem in respect of each grant is the fact that the client is in debt. The advice tendered was very complex and premature. These 2 grants should have been dealt with as one.

Additionally in respect of these 2 accounts I find that the work was not carried in terms of regulation 17 of the Advice and Assistance (Scotland) Regulations 1996 the terms of which are quoted below.

"Fees for work actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given, due regard being had to economy".

I therefore tax the grants numbered AA/07/1095186301 and AA/07/1095622701 as if they were one grant.

I have taxed off the first entry in file number AA/07/1095186301 as excessive. I have also taxed off the entire claim for grant reference AA/07/1095622701 as excessive.

The total amount allowed in taxation for grant numbers AA/07/1095186301 and AA/07/1095622701 is £69.30.

I find that grant reference AA/07/1095620101 has properly been dealt with under a separate grant. Whilst I accept that a debt accumulated by the debtor gave rise to the additional problems with which the client now finds herself having to face the remedy is quite distinct.

I tax this account in the sum of £37.65. I have abated the 2nd entry of the 8th June 2001 (£10.55); the entry of the 15th of June 2001 (£2.40) and £42.40 of the entry dated the 18th June 2001. I reached my decision having due regard to Regulation 17 of the Advice and Assistance (Scotland) Regulations 1996 and the reported cases referred to at the commencement of the taxation.

The total amount allowed in taxation for grant number AA/07/1095620101 is £37.65.

REPORT OF TAXATION

DONALDSON AND COMPANY

Versus

THE SCOTTISH LEGAL AID BOARD

*Account references - AA/07/1089249701, AA/07/1089245501,
AA/07/1089055801*

HV

Dundee 19th October 2001

I certify that I have taxed grants *AA/07/1089249701 and AA/07/1089055801* as one grant in the sum of £64.74.

I certify that I have taxed grants *AA/07/1089245501* in the sum of £31.65.

Our Shane

Mrs O M McShane
Depute Auditor of Court

Note: -

This is an example of a multiple claim submitted for payment to the Legal Aid Board. In this instance three grants of Legal Advice and Assistance have been submitted for payment in respect of the one client.

Submissions tendered on behalf of the Scottish Legal Aid Board

- This is an example of an incompetent multiple grant of Legal Advice and Assistance.
- There should only have been one grant of advice and assistance, with authority being sought by Donaldson and Company to exceed the £80.00 threshold by telephone or fax.
- In the board's opinion the three areas of advice are not sufficiently distinct and do not indicate that there are three wholly separate sets circumstances and therefore do not merit separate grants of Legal Advice and Assistance.

Donaldson and Company's submissions

- The three separate areas on which advice was provided are distinct as they could each have resulted in separate legal consequences. E.g. title to goods purchased on hire purchase, sequestration and raising a protection from harassment order.

My findings are as follows: -

1. Grant number *AA/07/1089249701* relates to bankruptcy advice.

The client first contacted Donaldson and Company on the 11th June 2001 when minimal advice was tendered on the basis that the client had not produced the

paperwork discussed. The client then telephoned on the 11th June 2001 seeking further advice. The final file entry relates to a meeting that took place on the 18th June and lasted for one hour and 5 minutes. The bankruptcy process was discussed in great depth.

There was nothing produced by the client, which would suggest that a creditor had raised court proceedings. The client was not "apparently insolvent". It would not be possible to commence, with bankruptcy proceedings at this stage even if a decree had been obtained as no charge had been served.

In my opinion the advice provided was excessive. There was no question of a sequestration application being lodged at this stage albeit the advice was provided. I would have expected the minimal advice to be provided at this stage with greater detail being provided when proceedings are imminent.

2. Grant number AA/07/1089245501 relates to harassment.

The client also discussed this matter with Donaldson and Company on the 11th June 2001. There after the client attended for a meeting on the 12th June 2001. The meeting lasted for one hour and twenty minutes. The matters upon which advice was given include the nature of the harassment being experienced, protection from Harassment orders, Interdict and police involvement. Each of these subjects was gone through in depth.

In my opinion the advice provided was excessive. At the closing stages of the meeting the client was informed of her rights as a debtor and harassment in her own home. This advice appeared to satisfy her and would have been adequate.

3. Grant number AA/07/1089055801 relates to HP arrears.

The client also discussed this matter with Donaldson and Company on the 11th June 2001 and by telephone on the 13th June 2001. A meeting took place on the 15th June at which types of agreement, the steps that may be taken by the creditors and the arrears were discussed.

In my opinion the advice provided was excessive. The client had already had bankruptcy explained to her.

Having carefully considered submissions received from parties at the beginning of the hearing on the subject of multiple grants, and in particular the terms of paragraph 1.9 of the Commentary on Advice and Assistance excerpts of which are quoted below.

"There may unusually be circumstances where more than one grant of advice and assistance can be made. In deciding whether to make separate grants the solicitor should have regard to whether the advice being sought is sufficiently distinct as to be a wholly separate set of circumstances. Solicitors should expect these situations to be the exception rather than the rule."

" Where a client is seeking advice on financial difficulties and, in particular, in relation to a number of debts, it is not appropriate for a solicitor to make a grant of advice and assistance in relation to each individual debt. In particular it is not appropriate to claim a minimum fee for advice on each debt."

I do not find that this case is one, which merits three multiple applications. Firstly we are dealing here with a client who is in arrears with HP payments and owes another creditors money. (Grant references *AA/07/1089249701* and *AA/07/1089055801*).

Neither of the files indicates that a sequestration application is imminent. The immediate problem in respect of each grant is the fact that the client is in debt. The advice tendered was very complex and premature. Three hours and 6 minutes of advice have been tendered when no real action can be taken at this time These 2 grants should have been dealt with as one.

Additionally in respect of these 2 accounts I find that the work was not carried in terms of regulation 17 of the Advice and Assistance (Scotland) Regulations 1996 the terms of which are quoted below.

"Fees for work actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given, due regard being had to economy".

I therefor tax the grants numbered *AA/07/1089249701* and *AA/07/1089055801* as if they were one grant.

I have taxed off £10.55 from the first entry in file number *AA/07/1089249701* as excessive. I have also taxed off £10.55 from the third entry on that file.

I taxed off the first entry and the final entry *AA/07/1089055801* as excessive.

The total amount allowed in taxation for grant numbers *AA/07/1089249701* and *AA/07/1089055801* is £64.75.

I find that grant reference *AA/07/1089245501* has properly been dealt with under a separate grant. Whilst I accept that debt s accumulated by the debtor gave rise to the additional problems with which the client now finds herself having to face the remedy is quite distinct.

I have abated the entry of the 11th June 2001 by £10.55 and £42.20 of the entry dated the 12th June 2001.

I reached my decision having due regard to Regulation 17 of the Advice and Assistance (Scotland) Regulations 1996 and the reported cases referred to at the commencement of the taxation.

The total amount allowed in taxation for grant number *AA/07/1089245501* is £31.65.