

SCOTTISH LEGAL AID BOARD
MEMORANDUM

Date: 12 December 2001

Ref: PS/CS

GC

TAXATION – DUMBARTON SHERIFF COURT – 4 DECEMBER 2001

I return your papers herewith. The taxation took place on 4 December 2001 with the Auditor finding that a peremptory diet fell within the class of hearing in paragraph 8. He said that, in the past he had allowed this in judicial taxations prior to the creation of paragraph 14A, which specifically provides for peremptory diets. The issue had been raised and discussed by the Council of Sheriff Court Auditors as well. However, he was not prepared to allow a full second preparation fee, but instead abated the block fee by £50, allowing £12.80 for preparation. In total, £61.60 was taxed off.

then got into a bit of a muddle about expenses or supplementary accounts, and ultimately this resolved itself by him saying that he would be lodging a supplementary account for the work in connection with the taxation.

Following this outcome, I have little belief that I could successfully persuade other auditors to the contrary, nor do I see much prospect of a successful note of objections. In the circumstances, I see little option but to pay for peremptory diets under debate block fees. In the meantime, I am writing to to alert him to the difficulties.

pp. David Scott

CO
CO
DY
225 3705

304

PS/CS

16 November 2001

Dear Mr Bayne

CI/8027306/98

TAXATION – DUMBARTON SHERIFF COURT – 4 DECEMBER 2001

I refer to the above matter which has been passed to me for my attention.

I have to say I am really rather surprised this matter is proceeding to taxation at all, and that either you or the nominated solicitor is putting us to the considerable bother and expense of a trip to Dumbarton. The position is quite simple. There is simply no fee for a peremptory diet in the legal aid block table of fees, and there never has been. If the work cannot be subsumed within any other appropriate block of work as prescribed within the table of fees, neither the Board nor an Auditor can invent a fee.

A peremptory diet is not a debate, nor is it any form of legal argument. The fee in paragraph 8 of the block table is clearly headed up “debate” (other than on evidence). The fee is for preparation for the debate and for conduct of debate. Since a peremptory diet is not a debate, this fee is simply inapplicable. It was clearly inapplicable on a judicial basis, given that a special fee had to be created in 1999 to accommodate peremptory diets in the judicial table of fees. The fact that there has been no similar amendment to the legal aid table cannot be used to pretend that a similar fee can somehow be read into the existing table of fees. This is not a matter which can be cured by taxation, but will require an amendment to the fee table. That is not within the hands of the Board, and any *ultra vires* decision of an Auditor allowing such a fee will be immediately reported to the Scottish Executive. Rather than going to the expense and time of this taxation, you might well wish to consider whether efforts could be better spent raising the inconsistencies between the judicial and legal aid table with the Scottish Executive. As you will be aware, the Board can only pay fees and outlays out of the Fund which have been properly incurred in terms of the Act and Regulations. Since there is no fee for this work, any purported decision by an Auditor allowing such a fee would be null and have no effect, as the Board cannot make an illegal payment from the Fund.

Perhaps.../

Perhaps you would let me know if you still insist on proceeding to taxation in this matter.

Yours sincerely

A solid black rectangular redaction box covering the signature area.

Form of intimation to a party whose solicitor has withdrawn

SHERIFFDOM OF *(insert name of sheriffdom)*
AT *(insert place of sheriff court)*

in the cause
[A.B.], *(insert designation)*,
Pursuer
against
[C.D.], *(insert designation)*
Defender

Court ref. no.

The court has been informed that your solicitors have ceased to act for you.

As a result the sheriff has ordered that you appear or be represented on *(insert date and time)* within the Sheriff Court at the above address. A copy of the order is attached.

When you appear you will be asked by the sheriff to state whether you intend to proceed with your action *[or defences or answers]*.

Date *(insert date)*

Signed

Solicitor *(add designation and business address)*

* Delete as appropriate

NOTE:

IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

THE AUDITOR OF COURT

DUMBARTON SHERIFF COURT
CHURCH STREET
DUMBARTON
DX 597 TEL 01389 763266

Mrs M Macbrum Hote
DX 500751
HELENSBURGH

Your Ref: KRM.AD.C145

My Ref: NWR

Date: 6 November 2001

Dear Sir(s)

ACCOUNT OF EXPENSES: FA 198/99

I acknowledge receipt of the fee of £12.00 for lodging your account of expenses and, in response to your request, I have assigned *Tuesday 6 December 2001 at 2.15P* within the Sheriff Court House, Church Street, Dumbarton, as the date, time and place for hearing parties on the account.

There will be a further fee of £ *32.00* for taxation of the account, payable at the diet of taxation. When drawing your cheque for that sum, please make it payable to N R Weir.

Intimation should be given not less than 7 days before the diet of taxation and wherever possible should be given to the party's Solicitor otherwise it should be directed to the party litigant at the last address disclosed by him/her in the pleadings, unless a different address can be justified. When intimation is made to an alternative address, it might be prudent to supplement this with intimation to the original address.

Yours faithfully

N R Weir

N R Weir
Auditor of Court

KB

4 Orchard Grove
Polmont
FK2 0XE

Tel/Fax: 01324 716625
Mobile: 07929 010905
e mail kb@kbayne.co.uk

DX FA32
Falkirk
Legal Post
LP 26 Falkirk

K. BAYNE
LAW ACCOUNTANT

The Scottish Legal Aid Board
Civil Accounts Division
LP 2
Edinburgh 7

11 November 2001

[REDACTED]
Dear Sirs

[REDACTED]
I refer to the above matter and to our recent telephone conversation and now write to advise that a diet of taxation has been fixed within Dumbarton Sheriff Court for Tuesday 4th December 2001 at 2.15pm. I enclose a copy of the Auditor's note of intimation for your attention.

I understand that you will now pass this on to your Legal Services Department who will deal with this.

Obviously as already discussed I am more than happy to speak with them on this to try and avoid the cost and inconvenience of the taxation actually taking place.

Yours faithfully

K Bayne
K Bayne
Law Accountant

Civil Accounts Division

Legal Post LP2 EDINBURGH 7

220 4895

338

ES

29 October 2001

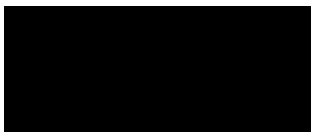


Thank you for your letter dated 5 October 2001.

This issue has been raised with one of our staff solicitors who is of the view we cannot make payment of a fee that does not exist in the legal aid block table of fees. I am therefore unable to authorise payment of the fees claimed for the peremptory diets.

I trust this clarifies our position.

Yours sincerely



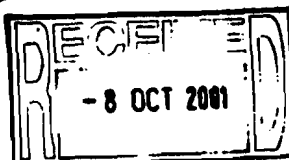
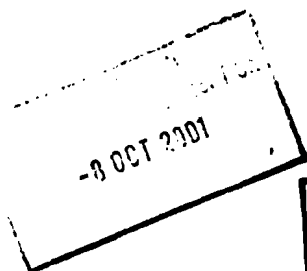
[REDACTED]

The Scottish Legal Aid Board
Accounts Division
DX ED555250
Edinburgh 30

5 October, 2001

Dear Sirs

[REDACTED]



I refer to the above matter and to your letter of 21st September in which you requested copies of the court interlocutors for the preemptory hearings. These are now enclosed together with a copy of the interlocutor of 19th February fixing the hearing. I trust that this will now be sufficient to enable the fees to be reinstated into the account for payment.

In view of the delay that there has been in getting this matter resolved I am informed that the account has been lodged for taxation and a diet is awaited. I would therefore be to everyone's benefit if matters could be resolved quickly.

I do understand that [REDACTED] is actually on holiday but I did speak to her prior to her departure and she advised that she would inform [REDACTED] of the case and that she would be able to deal with matters. She also advised that she had spoken to [REDACTED] about this and he also was aware of the situation and would be able to make a decision if required.

I trust that one of the aforementioned can deal with matters.

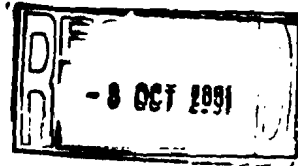
Yours faithfully


K Bayne
Law Accountant

FA198/99

DUMBARTON 12 April 2001 Act: Party Alt: MacRae

The Sheriff on Defender's motion of consent Grants crave 1 of the defences and in terms thereof Makes an order imposing on the Defender all parental responsibilities and ^{giving to him all} parental rights as provided for in Sections 1, 2 and 11 of the Children (Scotland) Act 1995 in respect of the child [REDACTED] born 28 January 1993; quoad ultra Dismisses the craves of the initial writ and remaining craves of the defences and Finds no expenses due to or by either party.



(Sgd) SIMON W H FRASER

FA198/99

DUMBARTON 22 March 2001 Act: Absent Alt: Mrs. MacRae


The Sheriff on Defender's motion there being no appearance by or on behalf of the
~~PURSUER~~
~~Defender~~ at today's peremptory diet of new Continues the peremptory diet until 12
April 2001 at 10.00 a.m. within the Sheriff Court House, Church Street, Dumbarton,
Ordains the Pursuer to appear or be represented at said diet; under certification that, if
the Pursuer fails to appear or be represented at the said diet the Sheriff may grant
decree against her or make such order or finding as is thought fit, Ordains the
Defenders to serve on the Pursuers a copy of this interlocutor and a notice in Form
G10 forthwith.

(Sgd) T SCOTT

FA198/99

DUMBARTON; 19^K February 2001.

The Sheriff, in respect that the solicitors for the Pursuers/~~Defenders~~ have intimated to the court that they have withdrawn from acting in the cause, Ordains the Pursuers/~~Defenders~~ to appear or be represented at a diet of the court to be held on 22nd March 2001 at 10 a.m. within the Sheriff Court House, Church Street, Dumbarton; Under certification that if the Pursuers/~~Defenders~~ fail to appear or be represented at the said diet the Sheriff may grant decree against ~~him~~/her/them or make such order or finding as is thought fit; Ordains the ~~Pursuers~~/~~Defenders~~ to serve on the Pursuers/~~Defenders~~ a copy of this interlocutor and a Notice in Form G10 forthwith.



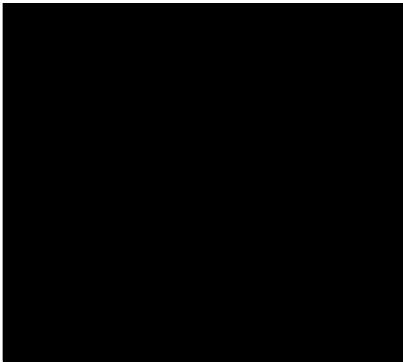
Accounts Division

220 3908

338

ES/KS

21 September 2001



Thank you for your letter dated 22 August 2001.

To enable consideration to be given to this matter, it would be of assistance if you could provide copies of the court interlocutors for the preemptory hearings.

I look forward to hearing from you.

Yours sincerely



[REDACTED]

22 August, 2001

25 AUG 2001

Dear Sirs

[REDACTED]

I refer to the above matter and to my telephone conversation with [REDACTED] regarding the proposed abatements to the agents fees.

As advised I do believe that the correct fee for peremptory hearings has been used. I would draw your attention to your Table of Fees and the relevant paragraph which states "to include preparation for and all work in connection with any hearing or debate other than on evidence". I cannot see how this does not cover the peremptory hearing. The said hearing is of great importance and basically decides whether a party can continue with their defence to the action.

As advised during our telephone conversation if you are not prepared to allow this fee then the account will need to be lodged for taxation. I would point out that this has already been discussed at other taxations although I would say not in a legal aid case but where this point has arisen and this is the fee that is allowed. You will of course appreciate that from the beginning of this year a new fee has actually been brought in to the Judicial Table to specifically cover this work.

Finally as you are aware I am actually going on holiday at the end of next week and it would be appreciated if you could let me know your position prior to this as obviously if matters are to go to taxation then I would like to get the ball rolling in order that a diet could be fixed as soon as possible after my return.

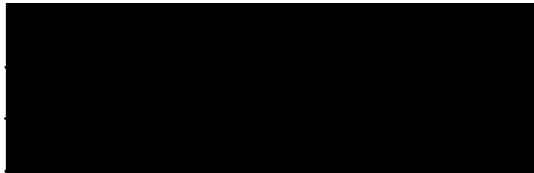
Yours faithfully

[REDACTED]

Civil Accounts Division
44 Drumsheugh Gardens
Edinburgh EH3 7SW
Heys DX Exchange DX 555250 EDINBURGH 30
Telephone (0131) 231 7081
Fax (0131) 221 3008



Fax



Ext'n: 329

Pages: 1(including this one)

Date: 21 August 2001

Subject:



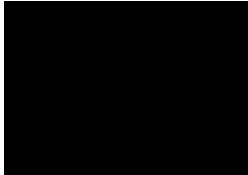
Urgent

I refer to our telephone conversation of today's date.

I note that as discussed you are going to advise Messrs Raeburn Hope to lodge the account in this case to the Auditor for taxation. There are no prescribed fees for interim hearings (other than interdict hearings) or peremptory diets under the Chapter II block fee.

I trust this clarifies matters and look forward to hearing from you.

Kind regards.



This fax is intended solely for the attention of the addressee(s). It may contain confidential information. If you are not the intended recipient, you must not read or make any use of the information contained in the fax, or cause or allow anyone else to do so. Please notify us immediately by telephone and return the fax to us by post. Any costs incurred will be refunded on request.

[REDACTED]

The Scottish Legal Aid Board
Accounts Assessment
DX ED555250
Edinburgh

25 July, 2001

Dear Sirs

[REDACTED]

ES Account - Offer-49519

I refer to my correspondence of 25th June and 11th July sent in respect of the above and note that I have not yet received your response to same. I would be obliged if you confirm what the current position is as soon as possible.

Yours faithfully

[REDACTED]

RAEBURN HOPE

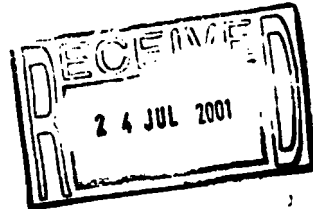
SOLICITORS

77 SINCLAIR STREET
HELENSBURGH G84 8TG
TELEPHONE: 01436 671221
DX 500751 HELENSBURGH FAX: 01436 675888
E-mail: email@raeburnhope.co.uk
Legal Post : LP6

Our Ref: KRM.jc.C145
Your Ref: ES/ACCOUNT_OFFER/49

23 July 2001

Accounts Assessment
Scottish Legal Aid Board
LP 2
EDINBURGH 7



Dear Sirs

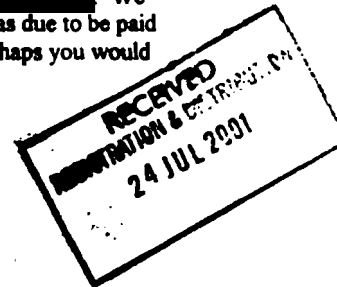
CV/8027306/98

We refer to your letter of 18 June 2001 and subsequent letter of 25 June 2001 by our Accountant, [REDACTED] following upon his telephone call with [REDACTED]. We had understood from our Accountant that the remainder of our fee was due to be paid in early course. We do not yet appear to have received same and perhaps you would confirm when we should expect the balance of fees to be paid.

We look forward to hearing from you.

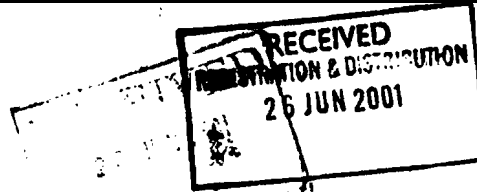
Yours faithfully

KIRSTINE R MACRAE
PARTNER



Made with 25th June

The Scottish Legal Aid Board
Accounts Assessment
DX ED555250
Edinburgh 30



25 June, 2001

Dear Sirs

[Redacted]

ES/Account-Offer/49519

I refer to the above matter and to my recent telephone conversation with [Redacted] during which I advised that I was instructed by the agents to respond to the proposed abatements to the account.

As advised during our telephone conversation the fees that have been claimed here in respect of the interim hearing are in fact the debate fee which is the appropriate fee for work of this nature. The second fees that have been claimed in respect of the peremptory diet and again the debate fee and this has been discussed in the past is the appropriate fee as well for such work.

I trust that the abatements will now be withdrawn and the balance of the fees now paid to the solicitor.

In view of my involvement in matters I would appreciate if you could just drop me a line confirming that payment has been made to enable me to return the file and papers to my instructing agents.

[Redacted]

Patent

2001

b/f

71 00

397 50

Mar 22

Fee for preparing for peremptory diet to include perusing and checking interlocutor, serving same on the defender, preparing for hearing with a view to taking decree

of law -
no evidence

No fee exists for
this work.

62 80

- 74-10

Attce at court for the hearing when after representations a new diet was fixed

11 30

Apr 11

Paid George Walker & Co, Sheriff Officers fee for serving

42 24

12

Fee for preparing for peremptory diet to include perusing and checking interlocutor, arranging for service on the defender, collating papers, preparing for hearing and attending on both the pursuer and the defender prior to the hearing and discussing with them both on matters

62 80

Attce at court when decree of dismissal was granted

11 30

- 74-10

Process fee

54 57

Posts and Incidents

72 03

Add outlays

672 30
113 24

785 54

~~278-89 fees + posts~~

taxed
abt
= £61-60

all - £596-44
£398-43 fees + posts
£198-24 attays.
113-24 outl.