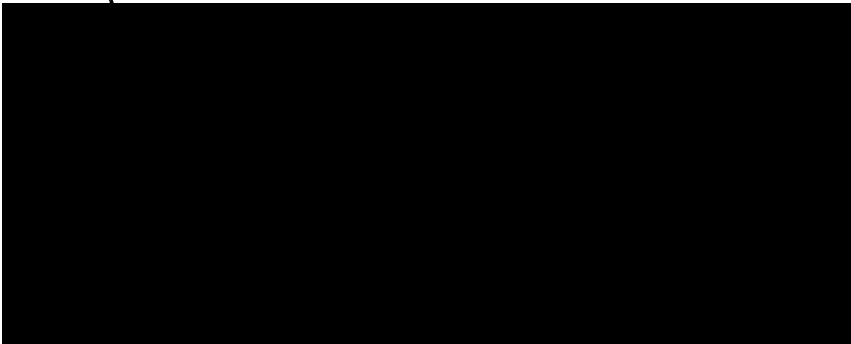


SCOTTISH LEGAL AID BOARD
MEMORANDUM



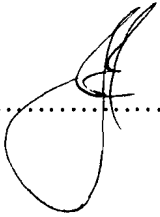
Date: 28 April 2003

Ref: JDH/CS

TAXATION NOTE



Please find attached a taxation note in the above case together with report by the Auditor of Court, Glasgow.


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SCOTTISH LEGAL AID BOARD

-- TAXATION NOTE --

REPORT BY THE AUDITOR OF COURT, GLASGOW
re Accounts of
Bernadette Baxter, Solicitor, Glasgow
as Reporter
in the case of

SB v DB

[REDACTED]
Date of Taxation: 31 March 2003

I enclose copy of report by the Auditor of Court, Glasgow regarding the fees of Bernadette Baxter, solicitor, as reporter, which were incurred during the period of suspension imposed in this case.


You will see that the Auditor agrees with the Board that no fees or outlays can be incurred during a period of suspension. In particular, he states: "It is my view that the reporter's fees and outlays can only be said to be incurred as and when the work was actually carried out". This was in response to the argument put by Carr & Co that they were incurred when the interlocutor authorised the work, prior to the period of suspension.

During the course of the taxation I asked Mr McKay if he would have allowed an expert witness to carry on working and incurring fees. He said he would not. I asked him what the difference was between an expert witness who would be sanctioned by the Board prior to the period of suspension and the reporter in these circumstances. He changed his line of argument to the effect that he could control the expert witness. It was the court who had appointed the reporter. This was not reflected in the interlocutor which authorised the pursuer to instruct the reporter. [Even if the court had authorised the reporter to do the work the question before the Auditor was not the performance of the task but the payment for it. In terms of Section 4(2a) of the Act the Board can only pay out of the Fund fees and outlays properly incurred in accordance with the Act].

I asked him if the reporter would have had to conclude her work even after a certificate was terminated in these circumstances. He said she would. I think this position is untenable and I think Mr McCafferty probably agreed.

Mr McKay indicated at the time that he would proceed to a Note of Objections and the Auditor expects him to do so.

Audit Fee: The Board has been found liable for no part of the audit fee.


JDH/CS
28 April 2003

Principle: Fees and outlays can only be said to be "incurred" in terms of the Act and Regulations when the work is actually carried out, notwithstanding the prior approval or sanction of the Board.

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

**REPORT BY AUDITOR OF COURT
on the Account of
Bernadette Baxter, Solicitor, Glasgow
as Reporter
in causa**

[REDACTED]

This taxation arose out of a dispute between the Scottish Legal Aid Board ("The Board") and Messrs Carr & Co, Solicitors, Glasgow Agents for the Pursuer and relates to an account submitted by Bernadette Baxter as Reporter appointed by the Sheriff at Glasgow on 21st August 2001 in the above case. Messrs Carr & Co have referred this matter to me for taxation in terms of Regulation 12 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989. At the taxation Messrs Carr & Co were represented by Mr Allan McKay and the Board by [REDACTED]

The interlocutor dated 21st August 2001 appointed Miss Baxter "to investigate and report to the Court on all the circumstances of the child [REDACTED] and on the proposed arrangements for the care and upbringing of the said child; Directs that the pursuer shall instruct the said solicitor to prepare the report called for by the Court and be responsible in the first instance of the fees and outlays incurred by the said solicitor in the preparation of such report; thereafter Continues the Child Welfare Hearing to 1st October 2001.

The Pursuer was granted Legal Aid on 12th April 2001. Legal Aid was suspended on 19th September 2001 and subsequently terminated on 19th October 2001 both dates after Miss Baxter's appointment as reporter by the Court and the former before the completion of her report which was lodged with the Court on 28th September 2001. The reporter subsequently submitted her account amounting to £1,402.44 to the Pursuer's Agents who in turn forwarded same to the Board as an Outlay incurred by them. The Board abated all entries in the account from 19th September 2001, the date Legal Aid was suspended and made payment of £817.20 being the total of the account to that date inclusive of v.a.t and other outlays.

[REDACTED] referred me to Regulation 29 of the Civil Legal Aid (Scotland) Regulations 1996 regarding the Power of the Board to suspend availability of legal aid. Mr McKay's position was that Regulation 29 does not apply in this situation, Miss Baxter having been appointed by the Court, Carr & Co have no control over her actions and as Agents for the Pursuer they were ordered by the Sheriff to meet her costs. The Board maintain that having paid the account up until the point where Legal Aid was suspended they cannot pay for any work carried out after this point as there is no grant of legal Aid and the question of payment for the remainder of the account lies with the pursuer or the nominated solicitor (Messrs Carr & Co). Further that where a legal aid certificate is suspended then no further expense can be incurred either in respect of Fees or in respect of Outlays, the onus being on the nominated solicitor to cease work and ensure no other work is being carried out at that time.

Mr McKay referred me to Regulation 35 of the Civil Legal Aid ~~Board~~ (Scotland) Regulations 1996 which reads in parts as follows "Where at any stage in the proceedings a party ceases to receive legal aid, he shall be deemed to be an assisted person for the purpose of any award of expenses made against him to the extent that these expenses were incurred before he ceased to receive legal aid." Mr McKay's position being that Mr Bryson was found liable for the expenses of Miss Baxter as Reporter by the Sheriff's interlocutor of 21st August 2001. Mr Bryson being an assisted person when the expenses were incurred, 21st August 2001 the entire account required to be met by the Board.

It seems to me that what is in dispute is "when the account has been incurred" in terms of Regulation 35. Has the account been incurred when the Reporter was appointed on 21st August 2001 or when the work was actually carried out as detailed in the Reporters account up to and including lodging the Report on 28th September 2001? If it is the former then the entire account subject to possible abatements would be due. If the latter then only work carried out to 19th September 2001 would be due. It is my view that the Reporter's Fees and Outlays can only be said to be incurred as and when the work was actually carried out. Therefore the Board should only be liable for the amount of the account up to and including 19th September 2001, the date legal aid suspended. This amounts to £817.20 being the sum already paid by the Board and the sum at which I therefore tax the account. In these circumstances I find the Board liable for no part of the Audit Fee of £101.05p

T M Campbell

**AUDITOR OF COURT
SHERIFFDOM OF GLASGOW AND STRATHKELVIN
10th APRIL 2003.**