

Subject: Emailing: Cairns Brown v SLAB - judgment - lodging of AA diagnostic account
Attachments: Cairns Brown v SLAB - judgment - lodging of AA diagnostic account.pdf

I attach a copy of the judgment in Cairns Brown v SLAB. The Sheriff has found in the Board's favour and granted absolvitor, which basically means that the action has been dismissed, so there is no requirement to pay the AA account.

There are no expenses to or by, as, for claims under, I think, £200, no expenses can be awarded.

There is a 14 day period for appeal to the Sheriff Principal on a point of law from the date of the judgment, 22 June 2012, and it remains to be seen whether Cairns Brown will take it. Small claim rules specifically exclude appeal to the Court of Session.

Our primary argument was that the work had concluded at the first meeting on 21 July 2010 as nothing after then could constitute the giving of advice and assistance, failing which the work concluded on 12 October when the final letter was sent to the client, although the court should be slow to find this to be the date the work concluded as it appeared to be little more than a "letter to call".

Although we had entered a joint minute of admissions to constitute the evidence in the case, small claims are flexible in the extreme when it comes to the rules of evidence (for example, section 35(3) of the Sheriff Courts (Scotland) Act 1971 provides that no enactment or rule of law relating to the admissibility of evidence before a court of law shall be binding in a small claim), so during submissions Bill Cairns indicated that a review of the file in preparation for the proof had indicated that the client had passed some papers (a psychological report) relating to the case to a partner at court which indicated some developments in the case and it was this which led to the letter of 12 October and an agreement to keep the file open further, given what may have flowed from the psychological report. Given the flexible nature of small claims, I wouldn't have got very far with objecting to that factor being left out of account. I was shown a copy of the report, the date on it tied in with developments since the July meeting, and also a copy of the letter of 12 October, which does mention the meeting at court and the implications of the report.

So we reach the point where the Sheriff finds on page three, second last paragraph, that she is not persuaded that the advice and assistance was concluded on 21 July 2010 "given that the client had made a specific request that the file remain open and that there had been some communication from him in the form of the document passed over at court".

I think if it hadn't been for the second of those two factors, she might have agreed it had concluded on 21 July, but as the communication from the client had taken place early October, within three months from 21 July, that changes the game. She was, however, satisfied that the letter of 12 October concluded the work and that the account should have been submitted within three months of then, but wasn't, hence, absolvitor.

It would have been better if she had stated it in terms, and although the decision part of the judgment on page three does not state it explicitly, she states that the defender's submissions are well-founded, and I take this to mean she accepts my submission from the foot of page two into the top of page three that it is perfectly proper for a client to ask for file to be kept open but in this case the client had not been in touch for an extended period of time and there was an obligation on the solicitor to be mindful of the 3 month time limit, which is a difficulty where the file had lain in a cabinet for six months after October.

I'll leave it to you to consider whether you want to put something in the Handbook indicating that where a client requests that the matter be kept open in case there are further developments which may result in him attending for further advice on the matter, the client should be advised that there are respectively three and twelve month time limits for submission of a diagnostic or standard account, as the case may be, and that the matter will be closed and the account rendered if the client does not revert before those periods expire.

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SHERIFFDOM OF NORTH STRATHCLYDE AT DUMBARTON

Note

by

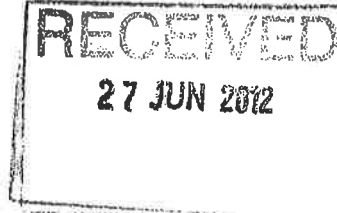
Sheriff Ruth Anderson:QC

In causa

Cairns Brown Pursuers

Against

Scottish Legal Aid Board Defenders



Dumbarton 22nd June 2012.

This Small Claim Summons called before me on 25th May 2012. The Pursuers were represented by Mr. Cairns, Solicitor, and the Scottish Legal Aid Board was represented by Mr. Cowrie, Solicitor. A Joint Minute of Admissions was lodged on 25th May 2012, with the result that there remained one single issue for the court to determine and that related to the date on which the Legal Advice and Assistance given by the Pursuers was completed.

Parties were agreed that I should hear the submissions of the Defenders first and this I did. To provide the necessary context, I set out a brief time-line of the circumstances surrounding the Legal Advice and Assistance which was provided to the client by the Pursuers.

1. 21st July 2010 the pursuers were consulted by the client relating to the holding of a firearms certificate. The pursuers on that date made a grant of advice and assistance to the client. The advice and assistance granted was by way of a diagnostic interview in terms of regulation 8B of the Advice and Assistance (Scotland) Regulations 1996.

2. Regulation 18 (3A) of the Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996 states *inter alia* :

Where the solicitor has given advice and assistance by way of a diagnostic interview then he shall, within 3 months of the date when the giving of the advice and assistance was completed, submit an account to the Board separate from any account or accounts submitted under paragraph (1). No account supplementary to that provided for in this paragraph may be submitted.

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3. The client specifically asked the Pursuers to keep the file open until he contact them again after he had discussed the matter on which he had required advice with Strathclyde Police.

4. Sometime around the first week in October, the client passed a copy letter to a partner in the firm when he met the solicitor at Dumbarton Sheriff Court.

5. On 12th October 2010 the Pursuers wrote to the client in which they stated with reference to the certificate dated 21st July 2010 '*...the work we can do under that certificate is extremely limited indeed and in fact has now been used up.*'

6. On 28th April 2011 the Pursuers rendered an account for the authorised expenditure of £35.00 plus vate of £7.00 to the Defender. The Defender refused to pay the account.

Parties were agreed that it was appropriate that the Defender lead with the submissions.

Submissions by Defenders

Mr. Cownie took me briefly through the legislation and the regulations which pertained to the circumstances of the present case. In respect of advice and assistance given in the form of a diagnostic interview, there is an initial limit of £35, and no increase can be sought. The rational behind that position is that in a diagnostic situation, it will not necessarily be clear at the outset if a solicitor should in fact require to become involved. If it should prove to be one which requires further involvement by the solicitor, then there is provision for further application to the Defender to have the matter which started life as a diagnostic interview treated as what is referred to as a 'distinct category case'.

In the case of a diagnostic interview, the Advice and Assistance form must be sent to the Defender for registration within 14 days of the date of the interview, and as has already been observed, the solicitor has 3 months in which to claim the fixed fee of £35 plus vat.

In the circumstances of the present case, the Defender submitted that the issue to be determined was a matter of fact. The question to be asked was 'When was the giving of legal advice and assistance completed?' The Defender's response to that was 21st July 2010. However, the Defender had an esto position and that was 12th October 2010.

On the facts of this case, the file had lain in a cabinet of the Pursuers from approximately 12th October 2010 until sometime in April 2011 before the account was submitted. Mr. Cownie accepted that it was perfectly proper for a client to ask for a file to be kept open. However, in this case the client had

not been in touch for an extended period of time. There was an obligation on the solicitor to be mindful of the 3 month time limit.

Pursuers' Submissions

Mr. Cairns accepted that the single issue is that of when the work done in terms of the legal and advice certificate was completed. He submitted that 'completion' must be a matter drawn from the facts in every individual case. There are situations where it must be quite clear when a matter has come to an end e.g. the preparation of a document and the sending of it to a client. In a situation such as this, writing to the client six months later asking for confirmation of receipt of the document would be artificial.

In the present case, the client had specifically requested that the file be kept open. Although the initial work in the form of the diagnostic interview may have exhausted the limit of the expenditure, the solicitor can still do work under the certificate. The legal aid board may not pay for that work, but that in itself does not automatically terminate the life of the certificate.

He submitted that it was at the very least in the mind of the author of the letter of 12th October 2010 that advice and assistance was not completed as at 12th October 2010, albeit that the expenditure allowed had been exhausted.

Decision

Having listened with care to the submissions made, and considered the terms of the legislation applicable to the facts of the present case, I am persuaded that the Defender's submissions are well-founded. I was not persuaded however that the advice and assistance was completed on 21st July 2010, given that the client had made the specific request that the file remain open, and that there had been some communication from him in the form of the document passed over at court. The letter of 12th October 2010 effectively completed the advice and assistance given to the client and I am satisfied that in terms of the regulations, the Pursuers should have submitted their account within three months of that date, thereby to have ensured payment.

I shall therefore grant absolvitor. Parties were agreed that expenses should be dealt with on a 'no expenses due to or by basis'.



Ruth Anderson QC
Sheriff of North Strathclyde at Dumbarton

