

**Sheriffdom of Lothian and Borders at Livingston**

Note by David Fyfe, Sheriff Clerk Auditor of Livingston Sheriff Court in the remit by Messers. Caesar & Howie Solicitors Livingston in connection with the provision of Legal Advice under the Legal Ad (Scotland) Act 1986

To [REDACTED] 505263211

This taxation arose out of a dispute between the Scottish Legal Aid Board (the Board) and Caesar & Howie, The Central Scotland Law Group with offices in Livingston in relation to fees claimed by the Solicitors for providing Legal Advice and Assistance under the Legal Aid (Scotland) Act 1886 to the above client.

At the diet of taxation which took place on 7<sup>th</sup> August 2012 Messers Caesar and Howie were represented by Mr Martin Monaghan and the Board were represented by [REDACTED]

Regulation 18 (4) of the Act provides that:-

If a solicitor is dissatisfied with any assessment of fees and outlays by the Board under paragraph (3) above, he may require taxation of his account by the auditor; the auditor shall tax the fees and outlays allowable to the solicitor for the advice or assistance in accordance with regulation 17, and such taxation shall be conclusive of the fees and outlays so allowable.

Regulation 17 (1) (a) of the Act provides that:-

the fees for work actually, necessarily and reasonably done in connection with the matter which advice and assistance was given, due regard being had to economy, calculated, in the case of assistance by way of representation, in accordance with the table of fees in Part 1 of Schedule 3, and in any other case, in accordance with the table of fees in Part II of Schedule 3.

I had been kindly provided with a copy of two Reports by Auditor of Court of Glasgow and Strathkelvin dated 8<sup>th</sup> and 14<sup>th</sup> May 2012 which also were taxations involving The Board.

The only item in dispute in the Account before me is the letter dated 25<sup>th</sup> October 2011 described in the account drawn up and prepared by W. Brian Irvine and Company as "*Writing you enclosing draft Separation Agreement, advising with regards to the terms of same, going over the relevant clauses at length, explaining with regard to available options, noting the steps we will take, 8 pages*".

The letter is charged in the Account at 8 pages at standard rate. Mr Monaghan explained that his company had developed a style agreement that starts life as a multi option document which is edited up and down, depending upon the circumstances and then has various segments inserted in it to represent the various clauses which are within the particular agreement in question. That the process is lengthy and time consuming, taking on average around an hour, but the end product meant that the client had all the relevant information to suit their particular agreement. It was his company's practice to restrict the charge for this letter to the amount referred to within the account. He also stated that in his experience spending that time is worthwhile as it reduces time spent and charged for later in the process. [REDACTED] explained that the Board's position was that

while seeing the merits of issuing such a letter the problem was one of how much is a fair amount to pay for sheetage? The regulations only allow letters to be charged, at Part II, as set out at 'B' and 'C'; while, for instance, a lengthy telephone call, over 10 minutes, could be 'charged as time occupied'. He accepted that the alterations made to the first page of the pro forma letter might be regarded as properly chargeable at standard letter rate £7.25 per page.

Having heard the parties on these matters, considered the authorities produced by the Board, having regard to the Board's guidelines and perused the Agents business file I am of the opinion that:-

The first page of the letter is unique enough to justify being properly charged at the standard letter rate of £7.25 per page, the remaining pages, being of a more pro forma nature, should properly be charged at formal letter rate of £2.90 per page. I am therefore taxing off the £58.00 and accordingly allowing £27.55 for the letter in question.

Finally, I take the view that both parties had the intention of seeking clarity in this matter as regards future such charges on the Legal Aid Fund. For that reason I am content on this occasion to wave any audit fee payable.



David Fyfe

Auditor of Court

Livingston Sheriff Court

[REDACTED]

[REDACTED] – AA/1505263211

We refer to the above matter and the **enclosed** taxation in relation to the long letters for separation agreements. Clearly, we will abide by that decision in relation to how the letter should be framed. Based upon your own experience of our letters and the matters referred to, it seems that we will require to frame our accounts based upon seven pages of formal letter rates at £2.90 per page which is £20.30, plus 1, 2 or 3 sheets (we cant see it going above 3) of standard letter rates at £7.25 per page, depending upon what extra information goes on the first page to the client which is dictated. It will for us to make that clear within the fee charger entry so the Board can identify this and process our accounts in the correct way.

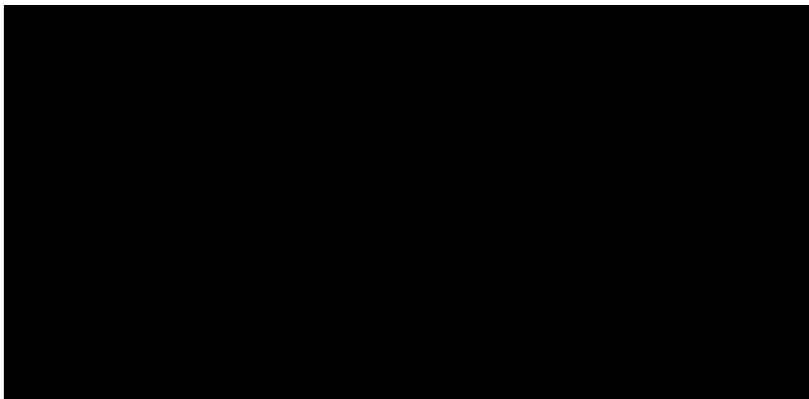
If you agree with this approach based upon the terms of our discussion and this taxation, we will issue the necessary instruction to all concerned that this is how matters are to be dealt with.

We look forward to you reverting.

Yours faithfully,  
Martin Monaghan



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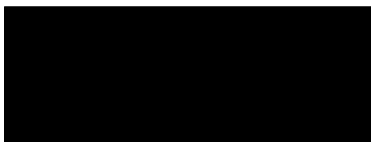
We refer to our email of 16<sup>th</sup> August, a copy of which is enclosed for ease of reference and would now be pleased to hear further from you on the points raised. We look forward to hearing from you at your earliest convenience.

Yours faithfully

Enc

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**Undernote:**



- AA/1505263211

We refer to the above matter and the **enclosed** taxation in relation to the long letters for separation agreements. Clearly, we will abide by that decision in relation to how the letter should be framed. Based upon your own experience of our letters and the matters referred to, it seems that we will require to frame our accounts based upon seven pages of formal letter rates at £2.90 per page which is £20.30, plus 1, 2 or 3 sheets (we cant see it going above 3) of standard letter rates at £7.25 per page, depending upon what extra information goes on the first page to the client which is dictated. It will for us to make that clear within the fee charger entry so the Board can identify this and process our accounts in the correct way.

If you agree with this approach based upon the terms of our discussion and this taxation, we will issue the necessary instruction to all concerned that this is how matters are to be dealt with.

We look forward to you reverting.

Yours faithfully,  
Martin Monaghan

**Jane Gisoldo**  
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Messrs Caesar & Howie  
Solicitors  
LP 18  
LIVINGSTON

**COPY**

Your Ref: MFM/AKI/141717

Our Ref: CS

Please quote the department above  
and our reference

2 December 2013

Dear Sirs

[REDACTED] AA/1505263211

Thank you for your letter dated 20 November 2013 addressed to [REDACTED] Head of  
Legal Services - Technical & Criminal. Your correspondence has been passed to Mr  
Haggarty and a response will be sent to you in early course.

Yours faithfully

[REDACTED]  
Legal Secretary