THE HIGH COURT

[2017 No. 41 MCA.]

IN THE MATTER OF

JOHN J. BUCKLEY

APPLICANT

AND
DECLAN O'NEILL (TAXING MASTER)

RESPONDENT

AND
DENIS DOYLE

PARTY INTERESTED

JUDGMENT of Mr. Justice Binchy delivered on the 9th day of November, 2018

1. This judgment is concerned with an application to review decisions of the respondent dated 13th January, 2017, on objections raised by the applicant to the respondent's taxation of bills of costs furnished by the applicant to the party interested, insofar as the objections raised relate to the quantum of allowances and/or disallowances made by the respondent in the taxation. It is something of an understatement to say that the background to this application is complex and indeed it is difficult to conceive of a case with a more eventful background leading up to an application of this kind.

2. It is not in dispute that the applicant acted on behalf of the party interested in a variety of matters throughout the 1990s and 2000s up until they had a disagreement about costs owing and, in most cases already discharged, by the party interested to the applicant, by reason of which disagreement the party interested ultimately issued a summons to tax on 24th July, 2011. However, prior to doing so, the party interested had issued proceedings against the applicant whereby he seeks orders, inter alia, requiring the applicant to provide a full account of his treatment of the sum of €600,000.00, which had been paid to the applicant (on behalf of the party interested) in respect of a deposit on the sale of lands by the party interested. The deposit had been forfeit (owing to the liquidation of the purchaser) and belonged to the party interested. By those proceedings the party interested also sought orders requiring the applicant to pay the party interested the deposit, together with interest as well as orders for damages under various headings.

3. Simultaneous to the issue of proceedings, the party interested also sought interlocutory relief with a view to obtaining orders seeking an account in relation to these monies. On 18th July, 2011, Murphy J. made orders, *inter alia*, requiring the applicant to account for the whereabouts of the €600,000.00. In an affidavit sworn on 22nd July, 2001, the applicant deposed that there was just €45,146.99 remaining in his client account to the credit of the party interested. €35,000.00 had been paid by the applicant to the liquidator of the company that paid the deposit (pursuant to a settlement entered into with the liquidator) and the balance had been applied towards fees, outlay and VAT which the applicant claimed were due to him by the party interested, and a significant proportion of which the applicant claims in this application was specifically authorised (in writing) by the party interested for payment to the applicant. In an affidavit sworn on 28th July, 2011, the applicant stated (at para. 11):-

> "I say that should it transpire in taxation, that I am mistaken in my belief that fees remain due and outstanding to my firm, and that any sum is properly due to the plaintiff, I have previously given to this Honourable Court undertakings, which I am happy to repeat, that I will repay any such sum to the plaintiff upon the Taxing Master's determination of the outstanding issues."

4. The taxation of the applicant's bills was initially dealt with by Taxing Master Flynn and the matter was mentioned before him on a number of occasions between 18th July, 2011, and 14th December, 2011 when Taxing Master Flynn retired. At some stage during this period, Taxing Master Flynn directed that the applicant prepare and furnish detailed bills of costs in accordance with the format required for taxation. While the applicant subsequently complied with that order, in this application he takes issue with that direction because he maintains that he had previously furnished valid bills of costs (albeit not in the seven column format required for taxation) to the interested party, and that it is those bills of costs should have been subjected to taxation. I will return to this point, and its relevance, later.

5. The taxation proceedings were next listed before the new Taxing Master, Master O'Neill, on 2nd March, 2012. He was dissatisfied with the form of summons to tax which he considered to be bad on its face because it recited no basis to ground a Taxing Master's jurisdiction to embark upon a taxation of costs as between a solicitor and own client. Nor did the summons to tax specify any bills which should be subjected to taxation. As a result, the party interested brought forward an application to this Court seeking an order for taxation pursuant to s. 2 of the Solicitors (Ireland) Act 1849, as amended by the Legal Practitioners (Ireland) Act 1876 or alternatively an order under the inherent jurisdiction of the High Court referring the applicant's bills of costs to the Taxing Master. This application came before Charleton J. who delivered a written judgment in respect thereof on 25th March, 2013 (*Doyle v. Buckley* [2013] IEHC 292). This judgment concluded with the following order at p. 5:-

> "Bills D215 and D226 are referred to taxation. All of the charges made by the defendant of the plaintiff are to be proved before the Taxing Master. In respect of any matter where a proper bill of costs furnished by the defendant solicitor to the plaintiff as his client is proven together with a voluntary payment of that bill by the plaintiff, taxation is to be rejected. In respect of any matter where a proper bill of costs is not furnished, or where a voluntary payment by the plaintiff to a solicitor is not apparent, taxation in respect of that is hereby ordered."

6. The order was subject to the qualification that bills relating to costs before the year 2000 were to be excluded. In relation to whether or not payment of a bill was made voluntarily, Charleton J. said earlier in the judgment at pp. 4-5:-

> "Where a proper bill of costs has been furnished and where this has been paid by the plaintiff in a regular way, there is no warrant for exercising the inherent jurisdiction of the court to order taxation of costs at this stage. No official will know better than the Taxing Master as to whether a proper bill of costs supports any charge dating back to the year 2000. By payments in a regular way, I mean that on receiving the bill of costs, the plaintiff himself [the party interested] disbursed the sum due by either paying over a cheque or through some form of bank transfer or by signing a letter or other document indicating that a particular sum of money for particular work referable in a reasonable way to such bill of costs should be paid or taken from monies to his credit in the solicitor's accounts. In the affidavit evidence exchanged between the parties, at increasing length and with a growing number of exhibits, a contest is entered as to what was or was not a proper bill of costs, and whether any bill apparently so furnished was one which compiled with the statutory requirements. On one side, the plaintiff's, it is said that none of these are proper bill of costs and on the other it is said that they all

are.

The Taxing Master must adjudicate on the issues as to costs from the year 2000 onwards and may have to decide:

(1) in respect of any matter whether a proper bill of costs was furnished or not; and

(2) whether evidence of voluntary payment by the plaintiff to the defendant as described above exists.

There is liberty to apply to the court on this motion by re-entry and simple brief affidavit on both sides should any intractable issue arise that is not capable of being dealt with in accordance with the principles set out herein."

7. Thereafter the matter proceeded to taxation. Hearings took place on 29th and 30th April, 2014, and resumed again on 8th, 9th, 10th and 11th September, 2014. There were other dates on which the matter was in for mention before the respondent and directions were given. The party interested was cross-examined by the applicant on 9th February, 2015 and the applicant was cross-examined on 1st April, 2015. The respondent delivered his final ruling on 22nd May, 2015.

8. However, the respondent had made interim rulings. On 13th December, 2013, he ruled that certain bills should not be admitted to taxation. These were bills bearing the administrative reference D151/A and were dated 1st February, 2006. One of the bills came to a total of €71,000.00 and the other came to €152,515.00. The applicant put into evidence a document dated 1st February, 2006, authorising these payments, which was signed by the party interested. The following is an extract from the relevant text in the letter:-

"I, Denis Doyle, hereby approve the above account for payment and I further authorise the deduction from funds held to my credit and the payments to my solicitors in full of the following:-

• €152,515 in respect of the attached account arising from sundry matters pertaining to the compulsory acquisition of lands at Drummin, Delgany, and

• €71,000 in respect of accounts (1st September, 2005) arising from the issuing by Wicklow County Council of proceedings in relation to the user of the landfill site and the subsequent resolution and disposal of that matter.

I acknowledge receipt of a balancing check in the sum of €432,820 and I authorise the lodgements of this check (€432,820) to the credit of my account at Ulster Bank in discharge of my solicitors undertaking in that regard."

9. The letter then goes on to provide short particulars of the funds received and to authorise the disbursements to be made from those funds, including the fees referred to above. The letter is then dated 1st February, 2006 and signed by the party interested.

10. The respondent heard evidence in relation to this document. The party interested confirmed that the signature on the document looked like his signature, but he could not recall attending a meeting at the offices of the applicant on 1st February, 2006, when the applicant claimed (in evidence) that the figures in the bills were discussed in considerable detail with the party interested. Having heard the evidence, the respondent held that on the balance of probabilities, the invoices and the detailed bills of costs had probably been presented by the applicant to the party interested. He therefore considered that proper bills of costs had been presented and paid voluntarily in accordance with the test laid down by Charleton J. and that the bills should not be subjected to taxation.

11. However, on 30th April, 2014 the respondent reversed this decision. He did so because of an incident that occurred at the taxation hearing the day before, 29th April. After lunch on that day, the respondent was informed that before leaving the room for lunch, the applicant had verbally abused the party interested, calling him names of a most insulting and reprehensible nature.

12. The applicant denied this accusation. The party interested gave evidence as to the occurrence of this incident, and this evidence was corroborated by a court stenographer who was in the room at the time and overheard the utterances of the applicant. The applicant did not give sworn evidence but maintained his denial of the incident.

13. Initially, the respondent considered that he did not have disciplinary functions as regards the conduct of a solicitor before him, and that it was matter for the party interested to complain to the relevant authority if he wished to do so i.e. the Law Society. So the taxation of costs continued on that day. On the following day, having reflected on this incident overnight, the respondent thought it appropriate to make a finding as to whether or not the applicant uttered the words alleged by the party interested, because in light of the denial of the applicant that he did so, the issue was of importance to his credibility in the taxation proceedings, and in particular in relation to those matters in respect of which there was a dispute between the applicant and the party interested as to what may or may not have occurred, or may or may not have been said or agreed in relation to accounts rendered. Accordingly, the respondent arranged for the DAR to be played, and this recording clearly demonstrated that the applicant had in fact made the utterances that he had denied. The applicant immediately apologised both for the utterances themselves and for misleading the parties including the respondent. He said however that it was never intended that the utterances would be directed at the party interested himself, and that he was merely expressing his frustration at the evidence given by the party interested earlier.

14. All of this led the respondent to have a doubt as to the applicant's evidence in relation to the service of the bills referred to above on the party interested and whether or not there had been a detailed discussion regarding these bills as asserted by the applicant. Having previously given the applicant the benefit of the doubt in this regard, he had decided that these bills should not be taxed, in accordance with the order of Charleton J. (i.e. that there should be no taxation of bills which had been rendered and discharged voluntarily by the party interested). In light of his conclusions as to the credibility of the applicant, the respondent decided that a further nine bills all issued by the applicant to the party interested post 2000 should be taxed. In an exchange between the respondent and the applicant at the time, the applicant accepted this decision and stated "I have no problem taxing any of my bills". The respondent drew up a list of those bills which was signed by both parties.

15. So the taxation of all accounts post 2000 proceeded. The Taxing Master made interim rulings on 30th April, 2014, 10th September, 2014 and 11th September, 2014. He delivered his final ruling on 22nd May, 2015. These rulings resulted in very substantial reductions to the accounts of the applicant, amounting in total to approximately €752,726. The respondent then adjourned the matter to 2nd June, 2015 to hear submissions concerning the completion of the taxation. Before then however the applicant decided

to exercise the "liberty to apply" granted by Charleton J. in his decision of 25th March, 2013. By this time however, Charleton J. had been elevated to the Supreme Court, and so the applicant brought the matter, ex parte before Eagar J., during a vacation sitting, and he simply transferred it into the Judicial Review list. Ultimately the matter came back before the then President, Kearns P., on foot of a motion issued by the party interested. His counsel argued before Kearns P. that the applicant was now trying to prevent the taxation reaching its conclusion, by arguing that the respondent should only have taxed the two specific accounts referred to in the decision of Charleton J.. The applicant confirmed that that was his case and submitted that the respondent had no jurisdiction to tax any bills other than the two specifically referred to by Charleton J.. However, Kearns P. said that if the applicant had a difficulty with the decision of the respondent, the way to deal with that was to exercise his legal entitlements in such circumstances, whether by seeking a judicial review of the decision of the respondent or otherwise.

16. The applicant then applied to this Court for leave to issue judicial review proceedings and on 27th July, 2015 obtained an order granting him liberty to seek orders of *certiorari* concerning the bills taxed by the Taxing Master, other than the two expressly referred to by Charleton J. Those proceedings came on for hearing before Twomey J. who delivered a decision on 20th April, 2016 refusing the reliefs sought. He did so on the grounds that the applicant should have exercised the alternative remedies that he considered to be available to the applicant following upon the decision of the respondent to tax all bills. In this regard, Twomey J. was of the opinion that the most appropriate course for the applicant to take following upon the decision of Kearns P. was to appeal that decision if he was dissatisfied with it rather than to issue judicial review proceedings. Twomey J. considered that the comments of Kearns P. in relation to the possibility of challenging the decision of the respondent by way of judicial review were no more than *obiter*. Twomey J. also considered that the applicant had other remedies at his disposal, including the making of objections (in due course) within the taxation process and, if necessary, an application to this Court to review the outcome of the taxation.

17. The applicant then appealed the decision of Twomey J. to the Court of Appeal. That court handed down an ex tempore decision on 13th October, 2017. The conduct of that appeal on the part of the applicant appears to have been somewhat shambolic. It appears the applicant attempted to conduct the appeal on grounds other than those set out in the papers filed, but in any case the court heard the appeal and concluded for a variety of reasons that it had to fail. Principal amongst these reasons was that in the view of the court, the applicant was too late in challenging the decision of the respondent of 30th April, 2014 to tax eleven bills that he identified and listed on that date. Not only that, the applicant had actually agreed to have the bills taxed. Moreover, by this time the taxation process had moved on so that the ruling of the respondent that was under challenge had been overtaken by the decision of the respondent following upon objections brought in by the applicant to the original decision of the respondent. So that was the end of the judicial review proceedings.

18. In any case, the respondent had continued with the taxation process which was concluded on 28th October, 2015 when the respondent measured an opposition fee in favour of the party interested. In the meantime, the applicant had carried in objections, on 13th July, 2015, to the determinations of the respondent of 22nd May, 2015. These objections were later superseded, on 28th September, 2016 by further objections which were treated, by agreement, as the objections of the applicant. The objection hearing then took place, and while I am unclear as to the date of the same, the respondent delivered his rulings on the objections on 13th January, 2017. The applicant then issued the notice of motion with which this judgment is concerned by which he seeks the following reliefs:-

> "(1) an order pursuant to O. 99, r. 38(3) of the Rules of the Superior Courts for review of the findings of the respondent Taxing Master dated 13th January, 2017 on the objections raised by the applicant to the respondent's taxation on the applicant's bills of costs insofar as those objections go to the quantum of the allowances/disallowances made by the respondent in review of taxation;
>
> (2) an order pursuant to O. 99, r. 38(3) of the Rules of the Superior Courts staying review by this Honourable Court until the issues in an appeal lodged in the Court of Appeal on 26th July, 2016 are determined."

19. The second relief sought by the applicant was moot by the time this application came on for hearing, in light of the decision of the Court of Appeal of 13th October, 2017.

20. Within the framework of these proceedings and as part of the case management of the same, Noonan J. made an order requiring the applicant to produce, in advance of the hearing of this application, a booklet or booklets of the documentation he intended to rely upon at the hearing of this review. While the applicant complied with this direction, in the course of the hearing he purported to introduce additional documentation to which Mr. McDermott, S.C. on behalf of the party interested objected. In light of his objection and the order of Noonan J., I ruled against the introduction of any documentation by the applicant, other than that which he had included in his booklets in compliance with the order of Noonan J.. Noonan J. also directed the delivery of points of claim and points of defence by the parties, as well as the delivery and preparation of a "schedule of issues". In summary, the documentation brought in by the applicant to the hearing of this review comprised the following:-

> (1) the notice of motion and grounding affidavit of the applicant seeking this review;
>
> (2) the judgment of Charleton J. of 25th March, 2013;
>
> (3) all rulings of the respondent;
>
> (4) the objections of the applicant to the rulings of the respondent, together with exhibits in support of those objections principally made up of bills of costs and supporting documentation;
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> (5) submissions of the party interested in response to objections of applicant;
>
> (6) rulings of respondent on objections;
>
> (7) report of respondent to court pursuant to O. 99, r. 38(5) of the Rules of the Superior Courts 1986 (the "RSC");
>
> (8) pleadings in the judicial review proceedings referred to above; and
>
> (9) authorities relied upon by the applicant.

21. At this hearing, the applicant did not indicate any intention to rely upon the files relating to the work undertaken by him which gave rise to the bills the subject of the taxation. He did ask to introduce an affidavit whereby he brought those files before the taxation itself, but this was one of the documents objected to by Mr. McDermott and in respect of which I ruled against the

applicant. Perhaps for this reason he did not attempt to rely on any of the files at the hearing of this review, even though the files comprised the vast bulk of the evidence before the respondent. The applicant did have his files in court, and insofar as this hearing is concerned it is perhaps curious that he did not seek to rely on them in any way, but on the other hand a summary description of the work undertaken by the applicant is contained in the rulings of the respondent, the objections of the applicant, and the rulings of the respondent to those objections, as well as in the detailed bills prepared for taxation.

Applicant's Arguments

22. While the applicant makes many arguments in these proceedings, the following is a summary of his principal grievances with the decisions of the respondent:-

1. The respondent should not have taxed at all those bills to which the party interested had indicated his agreement and given his authority to discharge the same from funds standing to his account. He claims that the respondent had no jurisdiction to tax these bills and misunderstood or misinterpreted the decision of Charleton J. insofar as it dealt with accounts which had been discharged by the party interested.

2. He submits that his signature appearing on a list of files prepared by the respondent was not a consent to the taxation of those files but merely a recognition of those files which the respondent himself had determined to tax, having reversed an earlier decision not to tax certain bills by reason of the bills having been voluntarily discharged. Insofar as the respondent relies upon the statement made by the applicant that he had "no problem taxing any of [my] bills", the applicant submits that this was a general statement intended to convey that the applicant believed that his charges would stand up to scrutiny and was not intended to be a concession that prior agreements could be ignored or set aside. Moreover, the applicant submits that in any event he presumed that the respondent would apply the conclusive presumption contained in O. 99, r. 11(3) of the RSC in any taxations that followed. Order 99, rules 11(1-3) of the RSC provide as follows:-

> "11. (1) On a taxation as between solicitor and client, all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.
>
> (2) Any costs which in the circumstances of the case are of an unusual nature and such that they would not be allowed on a taxation of costs as between party and party shall, unless the solicitor shall have expressly informed his client in writing before they were incurred that they might not be so allowed, be presumed, until the contrary is shown, to have been unreasonably incurred.
>
> (3) On a taxation as between solicitor and own client, all costs incurred with the express or implied approval of the client evidenced by writing shall be conclusively presumed to have been reasonably incurred, and where the amount thereof has been so expressly or impliedly approved by the client, to have been reasonable in amount."

The applicant submits that the effect of O. 99, r. 11(3) is that any bill paid under the written authority of the party interested is not amenable to taxation, or alternatively should be allowed in full on taxation.

3. The respondent then failed to apply that conclusive presumption in the taxation of bills for which had been furnished and agreed by the party interested.

4. The respondent arrived at conclusions adverse to the applicant without any evidence supporting those conclusions;

5. Some of the files that were available for taxation were merely "skeletal" by reason of their age (the applicant having disposed of significant parts of same for that reason) and the fact that the party interested had requested taxation five or more years after those accounts had been agreed and settled. Through no fault of the applicant therefore, they were incomplete for the purposes of taxation and did not fairly represent the work undertaken by the applicant.

6. The applicant objected to the respondent taxing the detailed bills prepared at the direction of the respondent's predecessor, in circumstances where the bills prepared and furnished by the applicant at the conclusion of the transactions concerned were valid bills amenable in law to taxation;

7. The respondent taxed two bills which were acknowledged and agreed both by the party interested and by his legal costs accountant to be agreed and which they therefore confirmed to the respondent did not require taxation;

8. The respondent taxed a number of the accounts applying principles appropriate to a solicitor and client taxation of costs, in circumstances where all bills should have been taxed on a solicitor and own client basis.

9. It was inappropriate for the respondent to examine the applicant's files in the context of a solicitor and own client taxation in the absence of evidence that the charges were unreasonable.

10. There is no obligation on solicitors to keep detailed records of time and while the applicant did keep records, he was not asked to produce the same.

23. The applicant also made specific submissions in relation to specific deductions. His detailed objections in this regard are set out in some 47 pages of objections to taxation. Inevitably, this gave rise to a detailed ruling on objections from the respondent running to some 73 pages. The respondent gave detailed consideration to the objections of the applicant, but upheld all of his original rulings with one exception in which he accepted the validity of a submission made by the applicant. I will first deal with the applicant's more general objections as set out above and will then return to his specific objections to deduction.

Jurisdiction arguments

24. The first point to be made about the applicant's arguments that the respondent did not have jurisdiction to tax any more than the specific bills directed for taxation by Charleton J. i.e. bill numbers D215 and D226, is that this application for review of taxation is concerned with quantum only. That is apparent from the applicant's own notice of motion and was accepted unambiguously by the applicant in the course of these proceedings. It is therefore somewhat surprising that the applicant, both in his written and oral submissions to this Court, devoted any time at all to arguments based upon the jurisdiction of the respondent, never mind the very considerable time that he in fact spent on this argument.

25. Leaving aside that point however, the applicant's arguments in this regard are in any event misconceived and must be rejected. This is so for a number of reasons:-

1. Firstly, the order of Charleton J. clearly required the respondent to make a decision as to whether or not any particular payment made by the party interested to the applicant was made voluntarily. Having initially decided in favour of the applicant that those accounts to which the party interested had agreed in writing, and in respect of which he had authorised payment, should not be referred to taxation, the respondent then reversed that decision because of the concerns that he had formed regarding the credibility of the applicant. At this point, the applicant could have exercised the "liberty to apply" granted by Charleton J. to the parties to permit them to revert to him with any "intractable" issues. The applicant did not avail of this liberty until more than a year after the decision of the respondent to tax eleven bills rather than just two. When he then did so before Kearns P., he was unsuccessful and he did not appeal that decision. Nor, for that matter, did he appeal the decision of Charleton J. which required the respondent to make a decision as to whether or not any particular bill was paid voluntarily. The applicant did issue judicial review proceedings challenging the decision of the respondent in this regard, but those proceedings were unsuccessful both in this court and in the Court of Appeal. On this basis alone, it seems to me that the applicant is stuck with the decision of the respondent to tax the relevant accounts.

2. More than that however, it is clear beyond any doubt in my view that the applicant agreed to taxation of these accounts. He is clearly recorded as saying to the Taxing Master that:-

"I have no problem taxing any of my bills".

He may well have made this concession under some pressure in light of the misfortunate events of 29th/30th April, 2014 but there can be no doubt that by this statement he agreed to the taxation of any of his bills, and that he did so without qualification.

3. Insofar as the applicant argues that in agreeing to taxation of his bills, he did so on the basis that all of the rules as to taxation would apply, and especially O. 99, r. 11(3) of the RSC, it seems to me that he cannot rely on the latter rule to exclude any of his bills from the process of taxation. He was clearly agreeing to an examination of his accounts and submitting to the jurisdiction of the respondent, and if he intended that any bills should have been excluded by reason of O. 99, r. 11(3) he should have said so, or challenged the decision of the respondent once it became apparent to him that matters were proceeding in a way otherwise than that to which he had agreed.

4. The applicant makes very strong and persuasive submissions as regards the rationale behind O. 99, r. 11(3), but those arguments cannot succeed in light of what I have already set out above. More than that however, there are two further reasons why those arguments are flawed. Firstly, there is the Solicitors Remuneration Act of 1881 which relates to the remuneration of solicitors in conveyancing and other non-contentious business. Seven of the eleven files with which this decision is concerned fall into this category (there are two files in which court proceedings were involved, and two others involving compulsory purchase orders which may properly be regarded as contentious). Section 8 of that Act deals with agreements between solicitors and their clients in relation to fees. Solicitors have permission to enter into such agreements with their clients and s. 8(4) provides that:-

> "The agreement may be sued and recovered on or impeached and set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor; and if, under any order for taxation of costs such agreement being relied upon by the solicitor shall be objected to by the client as unfair or unreasonable, the taxing master or officer of the Court may inquire into the facts, and certify the same to the Court; and if, upon such certificate, it shall appear to the Court or judge that just cause has been shown either for cancelling the agreement, or for reducing the amount payable under the same, the Court or judge shall have power to order such cancellation or reduction, and to give all such directions necessary or proper for the purpose of carrying such order into effect, or otherwise consequential thereon, as to the Court or judge may seem fit."

5. As far as contentious matters are concerned, there is a similar provision contained in s. 10 of the Attorneys' and Solicitors' Act 1870 which permits the court to re-open agreements for costs (after payment has been made by the client) in special circumstances and to make orders requiring repayment of fees paid. This provision is subject to a time limit of twelve months from the date of payment, but as mentioned above such time limits do not apply to court ordered taxations which are made pursuant to the inherent jurisdiction of the court as in this case. That is apparent from the decision of the Supreme Court (McCarthy J.) in *The State (Gallagher Shatter & Co) v. DeValera* [1991] 2 I.R. 198 and in any case is acknowledged by the applicant. However, the applicant nonetheless argued that since there was a court order directing taxation of two bills only (bill reference nos. D215 and D226) the respondent should not have taxed the other accounts because the period for requesting taxation of the same had expired. In substance however this argument is another attack on the jurisdiction of the respondent to enter upon taxation of any bills other than those bearing reference numbers D215 and D226. The respondent considered that the order of Charleton J. entitled him to do so (because he had come to doubt the credibility of the applicant and so he was not satisfied as to voluntary payment of the bills concerned) and therefore decided that he should tax those bills, in accordance with the decision of Charleton J. If the respondent was not correct about this, then the applicant should have taken whatever measures were required to address that decision in a timely manner, and cannot now raise that argument upon this review.

6. It is apparent therefore that from as far back as 1870 in contentious matters, and 1881 in non-contentious business, agreements between solicitors and clients in relation to fees did not have the sacrosanct status attributed to them by the applicant. This is almost certainly a reflection of the fiduciary duty owed by a solicitor to his/her client. While the 1870 and 1881 Acts are of course pre-1922 statutes, they remain in force and as primary legislation, must prevail over any conflicting provisions of the rules of the superior courts.

7. Moreover, s. 27 (3) of the Court and Court Officer's Act 1995 (the "Act of 1995") provides as follows:-

> "The High Court may review a decision of a Taxing Master of the High Court …. made in the exercise of his or her powers under this section, to allow or disallow any costs, charges, fees or expenses provided only that the High Court is satisfied that the Taxing Master, …. has erred as to the amount of the allowance or disallowance so that the decision of the Taxing Master, ….is unjust."

This section contains no presumptions, conclusive or otherwise, in favour of either solicitor or client. Accordingly, the conclusive presumption contingent O. 99, r. 11 (3) of the RSC must yield to the jurisdiction conferred upon this Court in primary legislation.

8. Although not relevant to these proceedings, it is worth noting that similar provisions as appear in the earlier Solicitors Acts as regards revision of costs assessments appear again in s. 151 of the Legal Services Regulation Act 2015 (the "Act of 2015"). Subsections 151(1) and (4) thereof provide:-

> "151. (1) A legal practitioner and his or her client may make an agreement in writing concerning the amount, and the manner of payment, of all or part of the legal costs that are or may be payable by the client to the legal practitioner for legal services provided in relation to a matter.
>
> (2) Not relevant
>
> (3) Not relevant
>
> (4) An agreement under subsection (1) shall, in an adjudication under this Part, be amenable to adjudication by the Chief Legal Costs Adjudicator."

9. Also in the context of jurisdiction, the applicant argues that there is a time limit within which a client is entitled to demand taxation of a bill. That is correct, and in general terms that period is twelve months from the delivery of a bill of costs that accords with the applicable requirements. A number of the bills the subject of this taxation review were presented and discharged years before any demand for taxation. Assuming they were presented in accordance with the applicable standards, they would, ordinarily, be beyond, and in some cases very well beyond, the reach of taxation. But from the point of view of the applicant, the difficulty with this argument is that this Court has an inherent jurisdiction to refer a bill for taxation, and it was in the exercise of that jurisdiction that Charleton J. made the orders that he did. As already said, if the applicant had a difficulty with those orders, he should have appealed them at that time.

26. For all of the foregoing reasons, I am of the view that the applicant's arguments as to the jurisdiction of the respondent to tax all of the accounts that he did must be dismissed.

27. Having reached that conclusion however, I feel I should add one cautionary note. While it is, I believe, clear that a fee agreement reached between solicitor and client cannot be said to be beyond review by a court or, post the Act of 2015, review by a legal costs adjudicator, it seems to me that both the legal costs adjudicators and the courts must be very slow to interfere with an agreement freely entered into between the parties as a matter of contract. This is especially so in cases where the client has agreed a fixed fee in advance in connection with the provision of any particular service, not least because at that point in time the client has available to him/her the option of instructing different legal advisors at a different cost. In relation to matters where a basis of charge has been agreed in advance, and the fees can be demonstrably shown to have been calculated in accordance with that basis of charge, in my view both adjudicators and the courts should also be slow to intervene. The paramount consideration in such circumstances should be whether or not the client freely entered into the agreement.

Applicant did not agree to taxation
28. I have already dealt with this argument in the paragraph 25.2 above.

Respondent failed to apply presumptions contained in O. 99 r. 11
29. There are two presumptions contained in O. 99, r. 11. The first is contained in O. 99, r. 11(2) which provides that where costs are of an unusual nature such that they would not be allowed on a taxation of costs as between party and party then, unless the solicitor shall have expressly informed his client in writing before they were incurred that they might not be so allowed, they shall be presumed, until their contrary is shown, to have been unreasonably incurred. This is clearly not a presumption that in any way operates in favour of the applicant.

30. The second presumption is contained in O. 99, r. 11(3). This rule applies to a taxation between a solicitor and own client, as is the case here. In fact, there are really two presumptions within this sub-rule and they are stated to be conclusive presumptions. The presumptions are that costs incurred with the express or implied approval of the client and evidenced by writing are (conclusively) presumed to have been reasonably incurred, and where the amount has been expressly or impliedly approved by the client, that amount is conclusively presumed to be reasonable. I have already dealt, at paras. 25(3) to (10) with the argument that this sub-rule maybe relied upon to exclude from taxation those bills which the applicant claims were subject to agreements between the applicant and the party interested.

Respondent arrived at conclusions without evidence
31. The applicant submits that the party interested did not adduce any evidence at all that the charges of the applicant were either unreasonable or unreasonably incurred. Accordingly, the applicant says that he is entitled to the benefit of O. 99, r. 11(1) which says that on taxation as between solicitor and client, all costs should be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred. At the taxation hearing, there were three sources of evidence:-

1. The evidence of the applicant;

2. The evidence of the party interested; and

3. The files of the applicant.

Insofar as the evidence of the party interested is concerned, it would appear from the rulings of the respondent that his evidence was confined to whether or not he signed the forms of agreement and authority that appeared to bear his signature, and whether or not there was discussion around those agreements. It appears that the applicant also gave evidence on this issue. It is less clear from the rulings whether or not the applicant gave evidence as to the amount of his charges, as distinct from making submissions. Submissions in relation to those charges were made by a legal costs accountant retained by the party interested, Mr. Shane O'Donnell.

32. Insofar as the applicant may have given evidence on these issues, it seems to me, from the rulings of the respondent, that such evidence related to the nature of the services provided rather than the level of the charges. Accordingly, the principal evidence regarding the level of charges before the respondent comprised the files themselves. Apart from the agreements relied upon by the applicant, those files, or at least some of those files, also contain the letters issued by the applicant to the party interested pursuant to s. 68 of the Solicitors Act 1994 (such letters I will hereafter refer to simply as "s. 68 letters", or in the singular, "s. 68 letter") setting out the basis upon which he would raise fees, and these letters, quite correctly, formed part of the rationale for the various decisions of the respondent, in particular in relation to the rate per hour applicable to the services rendered. Just as importantly, the files contained the evidence of the services provided by the applicant to the party interested. Apart from letters to the client about fees, or agreements about fees, the files themselves must surely be the next most important evidence to be considered by the Taxing Master upon taxation of costs. Almost anything else that is said about what is reasonable or not reasonable is more in the nature of a submission than it is a matter of evidence.

33. It is clear from the rulings of the respondent both in the first instance and again upon the objections of the applicant, that the respondent gave the fullest consideration to the contents of the applicant's files and the services provided and moreover that the respondent had a very full understanding of what was involved in the provision of those services, their complexity and the expertise required to deliver the same. There is in my view no substance to the argument that the respondent did not have evidence upon which to base his conclusions.

Some files were "skeletal" only

34. This is another limb of the absence of evidence argument. In one way it might even serve to contradict the argument that the respondent did not have evidence upon which to base his conclusions, because this line of argument is that since some files were skeletal only, the applicant in those cases did not have sufficient evidence upon which to base his conclusions. So therefore at least in those cases where he had a full file, presumably it can be said that he had evidence. It is not apparent either from the original rulings of the respondent or his rulings on the objections of the applicant that he was in any way restricted to operating from a skeletal file only in any case. One might have expected that he would comment on this if that had been so. The respondent does not respond to this complaint in his rulings on the objections of the applicant. But there is nothing at all in the rulings of the respondent that would suggest that he was unable, from the files provided, to identify the services provided by the applicant, or that he was impeded in doing so owing to lack of material. On the contrary, he repeatedly refers to his review of the files.

35. Furthermore, it is apparent that when directed to do so by the respondent's predecessor, Taxing Master Flynn, to prepare detailed item by item bills of costs in the format required for taxation, he was able to do so. While the applicant protested that he should not have been required to do so (and that these bills should not have been relied upon in any way by the respondent for the purposes of the taxation directed by Charleton J., because the bills provided and agreed to by the party interested were valid bills) there is nothing to suggest that the applicant was inhibited from preparing detailed, item by item bills for taxation by reason of files, or substantial portions of files, having been destroyed. That is far as I can put this matter in circumstances where the files were not brought in evidence before me upon this review.

The respondent should not have taxed the detailed bills prepared at the direction of his predecessor

36. The applicant submits that all bills initially submitted by him to the party interested complied with statutory requirements, and that he was entitled to have them taxed in the format presented to the client. That may well be so, but I am unclear as to the substance of the point being made by the applicant by this argument. If it is that the presentation of an item by item bill pursuant to the direction of Taxing Master Flynn had the effect of moving the clock forward for the benefit of the party interested, so that he could now challenge a bill that was previously out of time for challenge, then that issue is disposed of by my rulings on arguments as to jurisdiction. Otherwise I am unsure as to the relevance of this argument, and in any event the applicant has failed to identify any prejudice by whatever reliance was placed by the respondent upon the detailed bills of costs, as distinct from the summary form bills of costs presented by the applicant to the party interested upon the conclusion of transactions, or at the point of payment. Moreover, it is clear that the respondent considered all of the applicant's bills in an effort to do justice to the parties. Finally as regards this point, in one case - file D/254 - the applicant actually requested the respondent to use one of these detailed bills (to the exclusion of others), when it apparently better suited his purposes.

Respondent should not have taxed bills acknowledged and agreed by party interested, at the taxation hearing, as agreed and not requiring taxation

37. The respondent acknowledges that at one point during the course of the taxation, the party interested and his legal costs accountant accepted that certain files were agreed and need not be subjected to taxation. However, as matters went on, it appears that the respondent came to the conclusion that there was confusion on the part of the party interested and his costs accountant as to the files that were being referred to and he reconsidered the matter and decided to subject these files to taxation. He did so in the light of the fact that he found there to be a great deal of confusion generally, not in relation to the services provided by the solicitor, about which he was complimentary, but around the billing of files and file references. That is an issue about which the respondent was best placed to form a view, and in respect of which it is almost impossible for this Court, upon an application to review, to form any view at all. I do not think therefore it would be appropriate to review the decision of the respondent in this regard.

Respondent applied party and party principles of taxation

38. This is an allegation made throughout the objections of the applicant to the rulings of the respondent, and also in the submissions of the applicant. It is everywhere rejected by the respondent. The applicant grounds this argument upon the provisions of O. 99, r. 11 and submits that it is a well-established principle that the onus rests upon a client in a solicitor and own client taxation of costs to demonstrate that the costs are unreasonable. He cites as authority for this proposition the cases of *Dunne v. Fox* [1999] 1 I.R. 283, *Heffernan v. Heffernan* (unreported, High Court, Gannon J., 2nd December, 1974) and *McGrory v. the Express Newspapers Limited* (unreported, High Court, Murphy J., 21st July, 1995). He relies in particular on the conclusive presumption contained in O. 99, r. 11(3), but I have already ruled that the conclusive presumption contained in that rule cannot be relied upon to rule out altogether a taxation of costs. As to the more general proposition, that there is an onus upon a client, in a solicitor and client taxation, to demonstrate that a particular item of cost charged by a solicitor is unreasonable, I don't believe that this is correct. All that O. 99 provides is that all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred. There is no presumption, one way or another.

39. The applicant went so far as to argue that on a solicitor and own client taxation, a Taxing Master should not take files for inspection in circumstances where the onus of proof may shift between the parties before or during the course of a taxation, so that in this case it was for the party interested to prove that charges were unreasonable, before the respondent could request sight of files. The respondent ruled that in a dispute regarding solicitor and own client fees, he has a clear obligation pursuant to s. 27 of the Act of 1995 to ascertain the nature and extent of the work undertaken by the solicitor, and to place a value on that work. Section 27(1) and (2) of the Act of 1995 provide as follows:-

> "27.—(1) On a taxation of costs as between party and party by a Taxing Master of the High Court, or by a County Registrar exercising the powers of a Taxing Master of the High Court, or on a taxation of costs as between solicitor and client by a Taxing Master of the High Court, the Taxing Master (or County Registrar as the case may be) shall have power on such taxation to examine the nature and extent of any work done, or services rendered or provided by counsel (whether senior or junior), or by a solicitor, or by an expert witness appearing in a case or any expert engaged by a party, and may tax, assess and determine the value of such work done or service rendered or provided in connection with the measurement, allowance or disallowance of any costs, charges, fees or expenses included in a bill of costs.
>
> (2) On a taxation of costs as between party and party by a Taxing Master of the High Court, or by a County Registrar exercising the powers of a Taxing Master of the High Court, or on a taxation of costs as between solicitor and client by a Taxing Master of the High Court, the Taxing Master (or County Registrar as the case may be) shall have power on such taxation to allow in whole or in part, any costs, charges, fees or expenses included in a bill of costs in respect of counsel (whether senior or junior) or in respect of a solicitor or an expert witness appearing in a case, or any expert engaged by a party as the Taxing Master (or County Registrar as the case may be) considers in his or her discretion to be fair and reasonable in the circumstances of the case, and the Taxing Master shall have power in the exercise of that discretion to disallow any such costs, charges, fees or expenses in whole or in part."

The respondent ruled that the only effective way of carrying out the task is by reference to the file, coupled with any other evidence which may be advanced at the taxation. I fully agree with that ruling. It seems to me to be self-evident that in order to consider whether or not a particular fee is reasonable, a taxing master must have regard to the work done, and the evidence of that work will mainly be found on the file.

Time records

40. In a number of files, the respondent based his assessment of a fair fee on his estimate of the time reasonably required to be spent on the relevant matter and, in effect, set aside the applicant's estimate of time. The respondent reasoned that the applicant did not provide detailed particulars of time spent on the matters, and he had difficulty in accepting the estimates as provided by the applicant. For his part, the applicant submitted that a solicitor is under no obligation to keep time records and furthermore that he had kept a record of his time in his diary and that that record formed the basis of his estimate as to time spent upon the various matters. He also submitted that the respondent did not ask him for his time records, and that he should have done so before arriving at his own conclusions.

41. It may be correct in a technical sense to say that a solicitor has no express obligation to keep time records. However, where a solicitor intends that time is to be the key parameter for calculation of the ultimate fee, then it is incumbent upon a solicitor to keep reasonably detailed time records recording the time spent upon each step taken in the matter and a short description of that step, and to produce those records without being requested to do so in support of the fees claimed. In these cases, the solicitor had, in a number of instances, quoted an hourly rate of charge as the basis upon which fees would be calculated. The fee then calculated by reference to that hourly rate of charge was to be subject to an uplift to be assessed on the basis of the other well-known factors to be taken into account when considering the appropriate level of a solicitor's fee, including, for example, the urgency of the matter, the complexity of the matter, the importance of the matter to the client the number of documents to be considered and the seniority and experience of the solicitors dealing with the matter. So time was to be the measure of the basic level of charge, and in turn it fed into the amount of uplift to be applied by reference to the other factors.

42. In those circumstances, without the benefit of a time ledger of any kind, the respondent had little choice but to undertake his own review of the file and to compare that with the applicant's estimate of time spent on the various matters. If he felt, as he clearly did in a number of items, that the applicant could not reasonably have spent the time that he claimed to have spent on any particular item, then it was quite proper for the respondent to adjust the time accordingly. I will return to this when considering specific items below.

Quantum

43. Perhaps much later than might be expected in the circumstances, I turn now to address the quantum of the fees charged by the applicant and allowed by the respondent in the individual cases. I do so against the somewhat unusual background that while this review is meant to be about quantum only, the applicant did not address quantum at all in his written submissions to the court, although he did do so in his points of claim, which run to some 49 pages. I have considered his points of claim as well as his objections to the rulings of the respondent, and also the original rulings of the respondent and his rulings on the objections. The applicant did make oral submissions in relation to specific bills, but these submissions did not relate to quantum but rather related to the issues that I have already dealt with above. The party interested made no submissions in relation to specific items of quantum, and nor did he adduce any evidence in regard to the same, no doubt because the applicant did not do so in the first place.

44. At the outset, it is helpful to recall the scope of a review upon taxation by this court. Even if the applicant had opened all his files to me, this court would not have embarked upon an item by item review of the costs as allowed by the respondent. The scope of review by this court is considered by McCracken J. in the case of *Smyth v. Tunney (No. 3)* [1999] I.L.R.M. 211 in which, having set out s. 27 (3) of the Act of 1995, he said:-

> "The principle upon which I must act, therefore, is not simply to decide whether the Taxing Master erred, but also, if I am to alter his decision, I must find that his taxation was unjust. I cannot approach this issue on the basis of trying to assess what costs I would have awarded had I been the Taxing Master. It is on this basis that I turn to consider the individual items in dispute ….".

Section 27 (3) of the Act of 1995 was also considered by Kearns J. (as he then was) in the case of *Superquinn Ltd v. Bray U.D.C.* (No. 2) [2001] I I.R. 459 wherein he said (at p. 475):-

> "Under the old system, the court had a wide ranging remit and, in the context of a review under O. 99, r. 28, could "make such order as may seem just".
>
> Now under s. 27(3) of the Act of 1995 it can intervene "provided only that the High Court is satisfied that the Taxing Master … has erred as to the amount of the allowance or disallowance so that the decision of the Taxing Master … is unjust".
>
> This wording seems to represent a significant shift of emphasis and to impose a heavier burden on any party seeking to challenge a ruling of the Taxing Master. This interpretation is acknowledged at p. 350 of the *Minister for Finance v. Goodman (No. 2)* [1999] 3 I.R. 333 and can scarcely be a matter of doubt. It would suggest (when taken in conjunction

with s. 27(1) and (2)), that the court should exercise a considerable degree of judicial restraint in the context of a review, although it must clearly intervene if failure to do so would result in an injustice."

45. In a case relied upon by the party interested, *Lowe Taverns (Tallaght) Limited v. County Council of the County of South Dublin & Anor* [2006] IEHC 383, McGovern J. observed:-

> "Section 27(3) of the Courts and Courts Officers Act, 1995 recognises that the Taxing Master is a person with special expertise in the area of costs and is, in effect, a specialist tribunal. The courts should be slow to interfere with the decisions of such a specialist tribunal and should operate on the basis of curial deference and judicial restraint."

46. So therefore it may be said that the scope of review undertaken by this court in an application to review a decision of the respondent is constrained by the curial deference which the court owes to decisions of the respondent in light of his expertise, as well as by the statutory framework and in particular s. 27 (3) of the Act of 1995 which, before the court may intervene, requires the court to form the conclusion that the Taxing Master has erred as to the amount of an allowance or disallowance so that his decision is unjust, and the courts have held that this imposes a significant burden on any party seeking to displace a decision of the Taxing Master. In *Superquinn* Kearns J. quoted from the decision of the Geoghegan J. in *Bloomer v. Incorporated Law Society of Ireland* (2) [2000] 1 I.R. 383 where he said at p. 387:-

> "If this court finds that the Taxing Master has erred in the sense described, this court then has to address the second question which is whether the taxation was unjust. In relation to any given item in the taxation which is in controversy, the justice or injustice of the decision will be determined by the amount."

47. Kearns J. then went on to consider when an error as to amount becomes unjust and said:-

> "It seems to me that, in exercising its powers of review under s. 27, the High Court should adopt a similar role and standard to that traditionally and habitually taken by the Supreme Court in reviewing awards of damages, that is to say that it should not intervene to alter a finding of amount made by the Taxing Master unless an error of the order of 25% or more has been established in relation to an item under challenge."

With this in mind, I will now proceed to consider the most significant deductions made by the respondent to the accounts under consideration.

Bill Reference Number D151 – *The County Council of the County of Wicklow v. Denis Doyle, Edward Doyle, Michael Doyle, Margaret Doyle and Desmond Doyle*

48. This file is concerned with an application for an injunction brought by Wicklow County Council against the party interested and his siblings. The county council applied in the first instance to the High Court for orders requiring the defendants to cease using lands in Wicklow as a landfill. The narrative given by the applicant also suggests that reinstatement of the land was required, an exercise which can be very costly. It also appears from this narrative that the council and the defendants ultimately agreed upon terms for reinstatement of the lands.

49. The proceedings were remitted to the Circuit Court (is it not clear upon whose application). They appear to have commenced in October, 1998. As is so often the case in injunctive proceedings, there was a flurry of activity after the initial issue of the proceedings and this continued for three months up to early December, 1999.

50. While it is not entirely clear from the documents before me, it appears that some resolution must have been agreed with the county council and by early December, 1999, consideration was being given by the party interested to issuing a motion to dismiss, but a decision was made to place that course of action on hold. Little was done thereafter in the year 2000, but the matter became active again in 2001. A motion to dismiss was issued and was successful before the Circuit Court on 15th July, 2001. The defendants decided not to pursue the county council for costs because of negotiations that the defendants were having with the council regarding the compulsory purchase of lands. The applicant agreed to defer looking to the party interested for payment of the account until a later date, following the completion of a sale of lands by the party interested to the county council.

51. It appears from the rulings of the respondent that there were no less than five bills relating to the services provided, although the applicant disputed that these were all bills, and claimed that some of the earlier documents described by the respondent as bills were in fact requests for interim payments. Whatever way they are categorised, there is little doubt that there was a lot of confusion in relation to both charges and credits and it was for this reason the respondent directed taxation of the bill.

52. It appears that the first bill was dated 2nd January, 2002. The respondent did not consider it was an interim bill as asserted by the solicitor, because it was specifically described as being a bill of costs. There was no reference in it to it being of an interim nature. The respondent considered that the applicant was bound by that bill.

53. Although no copy of that bill was placed before me, from the rulings of the respondent on the objections of the applicant, it appears that that bill totalled €66,072, and provided for a solicitor's professional fee of €47,500 and fees to counsel of €5,817, the latter being inclusive of VAT.

54. The second bill, relating to the same subject matter, and upon which the applicant relies, was dated 4th December, 2005. The total on that account came to €71,000. The party interested had indicated his agreement to this account, and authorised payment of the same from funds to his credit in a letter to the applicant (prepared by the applicant) dated 1st February, 2006. This bill, which was clearly prepared by the respondent at the time, sets out in summary form, but with reasonably significant detail a summary of the services provided.

55. The applicant contends that taxation of this file was significantly inhibited because a substantial portion of his file had been destroyed by the time the party interested requested taxation. The provision of the services had concluded at the latest in January, 2005, when the applicant appears to have done some work on this file, although the substantive services had concluded in mid-2001. Nonetheless it is apparent that the file must have been intact as of January, 2005. However, the party interested did not seek taxation of any files until July, 2011.

56. In neither of the rulings of the respondent, whether in the initial ruling or in his ruling on objections, does the respondent give any indication that there were inadequate materials available to him to form a view as to a fair fee. Although the applicant specifically referred to this in his objections, the respondent made no reference at all to this in his rulings on the objections, but he does refer to having examined "the files" which suggests that something more than a "skeletal" file was available to him. In any event, it is

abundantly clear that the respondent had a good grasp of the nature of the proceedings, their importance to the client, the expertise required to deliver the same and the work undertaken by the solicitor. Indeed, in his initial ruling he says that:-

> "I measure the appropriate fee at €26,000 given that the matter commenced in the High Court, was remitted to the Circuit Court and involved intensive work on the part of the solicitor herein. The fee must accordingly carry a substantial allowance for complexity and importance. The possible situation facing the client was grave in terms of financial consequences had the applicant succeeded in this action. In my view the solicitor exhibited considerable skill throughout in the defence of this action."

57. These complimentary remarks make it clear that the respondent had sufficient information to take into account all those factors which must be taken into account in the taxation of a bill of costs. All that appears to have been missing – and it must be said to be an important omission – was the time required of the applicant in dealing with the matter. It was a matter for the applicant to provide the respondent with this information, but on this occasion it does not appear as though the applicant had indicated that the party interested would be charged on the basis of an hourly rate, with or without an uplift to take account of other factors. I was not provided with a copy of the s. 68 letter issued by the applicant in the matter and in his objections to the rulings of the respondent the applicant makes no reference to the time spent by him or by his firm in these proceedings.

58. The respondent had great difficulty reconciling the various bills issued by the applicant to the party interested in this matter. When reviewing the objections, he noted that the applicant, having initially charged a fee €47,500 (in his invoice of 2nd January, 2002) subsequently claimed that this sum was an Irish Punt figure, and converted it into Euro, thereby increasing the fee to €60,312. While the bill issued just after the introduction of the Euro, and an error in this regard was undoubtedly possible, nonetheless this error was inconsistent with other elements of the account and, more importantly, was inconsistent with a subsequent invoice issued by the applicant on 1st September, 2005, claiming a professional fee of €49,000.

59. Even adopting the applicant's own figures, the respondent calculated that there was an overcharge of €12,812. He also identified that counsel's fees, had for no apparent reason, increased from €5,817 (inclusive of VAT) to €13,350 (exclusive of VAT). He further had difficulty in identifying credits attributed to the party interested.

60. The respondent explained that he directed taxation of the costs in this matter on the basis that original bill of 2nd January, 2002 did not tally with the subsequent bill of 1st September, 2005, and examination of all accounts furnished by the applicant in the matter affirmed the views that he had initially formed. He noted that:-

> "Instead of clarity the client was, at best, presented with almost impenetrable opaqueness such that no informed or voluntary consent to payment could be imputed even though the bill was paid. No client whether an experienced business man or not, should be billed in this manner. In fact, the client was a person, I was informed, who had received limited education."

For these and other reasons, the respondent was not prepared to accept the evidence of the applicant that the bill had been fully explained to the party interested and that he had understood the same.

61. As to the fee of €26,000 measured by the respondent, on the information available to me it is difficult to see how the fee could represent an injustice of any kind to the applicant, never mind form a conclusion that the respondent had erred by a margin of 25% or more. While it is not at all implausible that the services might have merited a greater fee, that would depend on the time reasonably spent on the matter and the hourly rate indicated to the party interested at the outset. Since there was no evidence of this at all, and since I have found no other reason to consider the fee assessed by the respondent to be in error I consider that the application to review the decision of the respondent in this matter should be refused.

File D151- Bray Legal Services

62. In his bill of costs, the applicant claimed reimbursement of fees paid to Bray Legal Services, as his town agents. In his rulings and objections, the respondent notes that the accounts relating to those services were not produced. In any event, the respondent was able to identify that in the detailed bill submitted by the applicant, all outlay in connection with the file had been accounted for in the applicant's detailed bill, and there were also separate items claimed, in respect of filing of documents, by way of professional fees due to the applicant. In other words, the charges raised by Bray Legal Services Ltd to the applicant, were recovered by the applicant directly, and could not therefore be recovered again as a separate item of outlay. The amount involved was €576. The applicant submits that in taking this approach the respondent was applying a party and party principle to these items of outlay, which are fully recoverable on a solicitor and client basis. But he does not address the issue of double recovery. If the solicitor has already charged in his bill for the outlay charged to him by the town agent, and for the services also provided to him by the town agent, then I fail to see how he can recover those amounts again by including them as a separate item of outlay in his account. In my view the respondent was correct in his ruling in relation to this item.

Files D151 A5(I) and (II)

63. These files relate to the sale of lands by the party interested to Wicklow County Council. Payment of the accounts in each case was purportedly agreed to and authorised by the party interested in the same letter of authority dated 1st February, 2006 referred to earlier. Somewhat unusually, these files relate to the conveyancing aspect only of two agreements reached with the council, the first for the sale of lands in the sum of €700,000 and the second for the sale of lands in the sum of €200,000. Negotiations leading to the agreements between the county council and the party interested (in one case) and the council and the party interested and his siblings (in the other case) were dealt with on other files and fees taking account of those negotiations were separately discharged by the county council on those files. Although in these cases again the applicant protests that he did not have complete files available for taxation, the respondent makes no mention at all of having inadequate files available and in fact makes specific reference to considering the files.

64. In file (I) he notes that the sale proceeded and was concluded in the usual manner without complications. He also notes that both transactions closed on the same day and the correspondence files relating to each had much in common. He says that the only unusual aspect is that the professional fee was calculated on the basis of a commission rate of 1.5% of the consideration (€700,000), giving rise to a fee a fee of €10,000. He concludes that the fee should have been less than what he refers to as the norm, and not more, given that costs relating to the terms of the contract did not arise, having been dealt already with on another file. He therefore assessed the fee at €5,500 plus VAT and outlay, equating to a fee of approximately 0.78% of the consideration.

65. On file (II) where the consideration was €200,000, the applicant also charged a fee of €10,500 equating, as the respondent noted, to a commission at the rate of 5.25%. The respondent allowed a fee of €1,500 plus VAT and outlay.

66. I am in no doubt at all that the fees allowed by the respondent in these matters were absolutely fair to the applicant and no review of the same is required. I might add that it is very clear from the rulings of the respondent that all fees relating to the negotiation of these agreements were separately recovered, and more than adequately so, in a separate file relating to compulsory purchase orders made by the council and indeed the costs accountants employed by the applicant in connection with the recovery of those and related costs expressed the view that the professional fees recovered in connection with those matters, in the sum of €67,000, were €30,000 more than had been expected.

67. A further point in relation to these files is that the applicant claimed that at the taxation hearing on 13th December, 2013, the costs accountant representing the party interested conceded that in each of these matters a proper bill had been rendered and the client had voluntarily authorised payment of the same. The respondent considered this point and agreed that such a concession appeared to have been made. However, at the same time he noted that the memorandum of 30th April, 2014 identified these files as being subject to taxation in accordance with the direction of the respondent. The respondent concluded that some confusion had probably arisen by reason of misidentification of files. He also records in his rulings on the objections of the applicant that he referred these files for taxation because he could not consider that the fees had been agreed voluntarily without explicit information having been provided by the applicant to the party interested that the fees as charged were exceptionally high. In the circumstances the respondent formed the conclusion that the client would be most unlikely to have volunteered to pay sums which he considered to be "*blatant and obvious overcharges*".

68. The respondent further noted that while these conveyancing costs should have been recoverable from the council, it appears that the solicitor did not pursue recovery of the same from that quarter.

69. One final issue arises on each of these files and that relates to payment of fees to a consultant retained by the party interested directly. This was a Mr. Philip Farrelly, an agricultural consultant who invoiced the party interested the sum of €25,000 plus VAT of €5,250 in each of these cases for consultancy services. These fees were claimed from the county council. It appears from the rulings of the respondent on objections, that the sum of €34,485 was recovered from the council, but the respondent was satisfied that as between solicitor and client, both sums of €30,250 were allowable, subject to credit being also allowed in respect of the sum received from the county council.

70. The applicant claims however that the gross amount charged by Mr. Farrelly came to a total of €227,716.86 and as far as I can understand it, he appears to be claiming that he discharged the balance (not recovered from the council) from funds belonging to the party interested, on his instructions. The difference between the sum recovered from the council (€34,586) and the total amount claimed by Mr. Farrelly comes to €193,230.86. If I understand the applicant correctly, he says that he discharged this sum from the funds of the party interested, upon his instructions to do so. He says however that owing to the passage of time, this is not apparent from his files, although he was in a position to exhibit the two accounts of €30,250 and cheques recording payment of the same.

71. In any event, if at the plenary hearing of these proceedings the applicant is in a position to demonstrate, from his banking records, that he did in fact pay Mr. Farrelly the balance of €193,230.86, then there can be hardly any doubt that he could not now be found liable to pay this sum to the party interested. To that extent, and subject to that qualification, the findings of the respondent require review and if necessary, adjustment, in light of the findings of the trial judge in this regard in the plenary proceedings.

File D215- Sale of lands to Sandysream Developments Ltd

72. This is one of the files expressly directed for taxation by Charleton J.. It concerns the proposed sale of a portion of the landfill lands owned by the party interested to a company called Sandystream Developments Ltd (hereafter "Sandystream") for a consideration of €10.5 million, representing a price per acre of €1.5 million. This contract was concluded in March, 2006.

73. In his initial ruling, the respondent records that the applicant quoted a fee at the outset, by way of estimate only, in a range from €85,000 - €110,000. In the final account, professional fees were claimed in the sum of €92,250, and outlays were claimed in the sum of €26,278, a total of €118,528. The latter figure was also quoted in an earlier letter to the party interested dated 3rd November, 2010.

74. Although the applicant's s. 68 letter in the matter was not produced to me, the respondent refers to the s. 68 letter issued by the applicant in this matter as specifying an hourly rate ranging from €150 to €250. However, the applicant failed to produce any adequate record of the time claimed to have been spent by him in the matter. Although it was not made clear to me one way or another, I am assuming that the fee arrived at by applying the hourly rate was subject to uplift by reference to the other factors referred to in the s. 68 letter.

75. The applicant issued no less than nine bills in relation to the matter. There is of course nothing wrong at all with a solicitor issuing requests for payment on account, but there should be no difficulty for the client or the Taxing Master to follow the basis upon which each invoice is raised, and in particular the period to which each relates, the services provided in that period and the basis upon which the fees in each are calculated, which should be consistent with the s. 68 letter. Regrettably, the respondent had great difficulty reconciling the accounts issued by the applicant. Ultimately he calculated that the total amount of professional fees in the interim invoices came to €111, 250 as distinct from the sum of €92,250 shown in the detailed bill subsequently prepared by the applicant upon the direction of Taxing Master Flynn.

76. It is apparent from both his initial ruling and his ruling on objections that the respondent gave detailed consideration to the applicant's file and to all accounts issued by the applicant. He also observes, in his initial ruling:-

> "It seems to me that these unusual circumstances constitute an object lesson as to how particulars of costs should not be presented to a client, as the result can only create utter confusion."

77. In his initial ruling he summarises the work undertaken by the applicant, and estimates the amount of time spent by the applicant on the matter. He calculates that based on the applicant's own estimate of time expended, which was 145 hours, the party interested was overcharged €7,250 in respect of time spent upon the matter, and a further €7,250 by way of mark-up.

78. However, the respondent estimated that the amount of time actually spent on the matter was of the order of 52.75 hours. He considered that an appropriate fee in the matter would be of the order of €40,000, taking into account the nature of the work, its complexity, its importance and value, as well, of course, of the time spent by the applicant on the matter. Initially, he tested this fee against a notional 115 hours at the rate of €250 per hour, which would have given rise to a charge of €28,750. He then marked that up by 30%, which gave rise to an additional €8,625. This in turn gave rise to a figure in turn of €36,875, which he rounded upwards to €40,000. That was upon his initial assessment.

79. Having taken into account the objections of the applicant, he arrived at the same figure by a different route. He considered his own time estimate of 52.75 hours and applied two different hourly rates, €250 per hour for the years 2005-2006, and €350 per hour for 2007 (from when the applicant claimed, he had increased the hourly rate, from 2007). This gave rise to a fee of €14,987 and applying a 30% uplift, that fee would increase to €19,483. The fee as allowed by the respondent however was more than double that amount.

80. The respondent considered the case of *Sheehan v. Corr* [2016] IECA 168 which in his view sanctions a general approach to assessment of an instructions fee and considered that that case was authority for allowing a fee of €40,000 in circumstances where the time spent upon the matter was unreliably recorded. The respondent also took into account what he considered to be an overlapping of work with a related file (file number 226 to which I next refer).

81. In his ruling on objections, the respondent expressly refers to s. 27(1) and (2) of the Act of 1995 and concluded:-

> "Where a solicitor relies on unsubstantiated time expended as a basis for a professional fee and fails to adhere to the terms of a s. 68 letter, it is not tenable to suggest that the provisions of O. 99, r. 11 RSC outweigh those contained in primary legislation. In my view the amount charged to the client was blatantly and obviously excessive."

82. It is apparent that the respondent gave the fullest possible consideration to the file, to the work done by the solicitor and to all of the accounts issued by the solicitor prior to his initial determination. It is also apparent that the respondent gave just as much consideration to the objections of the applicant. He has clearly treated the matter as one would expect, as a matter of great significance and importance to the client, and as one of complexity and requiring skill and expertise on the part of the applicant. He did everything that he could to understand the basis upon which the applicant calculated his fee, and in calculating the fee that he considered appropriate, the respondent has allowed the applicant a very wide margin of appreciation. Against that background, it would be impossible for this court to interfere with the conclusions of the respondent in this matter.

File D226 – further sale of lands to Sandystream

83. In May, 2006 the party interested entered into a further contract for sale with Sandystream for the sale of circa. 6.5 acres of farm land adjoining the lands the subject of the contract of March, 2006, for a price of €10 million. The contract stipulated a closing date of 31st July, 2006 and a deposit of €600,000 was paid. In the event, the transaction did not close on 31st July, 2006 and in Autumn of 2006 there were negotiations concerning, *inter alia*, environmental issues and liability for possible contamination of the lands in sale. The contract was never completed and specific performance proceedings were subsequently issued. This file however is concerned only with the sale of lands, at least as far as the transaction progressed, and not with the specific performance proceedings, for which there is a separate file.

84. While there was a connection between this transaction and the transaction the subject of the March, 2006 contract, one was not dependent upon the other, and this was of some significance to the applicant. Advices were sought from two senior counsel in this regard.

85. It appears from the ruling on objections of the respondent that the s. 68 letter of the applicant quoted an hourly rate of €250. The applicant claimed that this rate was increased to a rate ranging from €250 - €350 by letter to the party interested of 4th January, 2007. In his ruling on objections, the respondent observes that while this letter was exhibited by the applicant with his objections, it was not in his earlier affidavit bringing the files into the taxation, and nor did the letter contain a file reference. In any event the respondent factored this letter into his assessment of charges in the matter.

86. The fee charged by the applicant for his work between February, 2006 and October, 2008 came to a total of €125,000. This incorporated a discount of €3,800.

87. The respondent records that the applicant produced a document detailing the hours worked by him in the matter. The applicant had not provided a tot of the hours, and so it fell to the respondent to compute a total of the hours worked which he calculated at 188 hours. However, the respondent initially estimated that the file required at most 150 hours of the applicant's time. Subsequently, the respondent reviewed the file for the purpose of considering the applicant's objections. The latter exercise appears to have been a more detailed exercise and resulted in a reduction of time from the respondent's original estimate i.e. following a detailed review of the file for the purpose of considering the applicant's objections, the respondent reduced his estimate of time spent upon the matter by the applicant to 99 hours 15 minutes.

88. The account rendered by the applicant showed a time value for work done in the sum of €80,500. Applying the applicant's own hours claimed, and the rates of charge applied by the applicant, the respondent calculated as follows:-

YEAR	**HOURS**	**RATE**	**FEE**
2006	99	€250	€24,750
2007	82	€350	€28,700
TOTAL	**181**		**€53,450**

89. The respondent then notes: "based on the solicitor's own estimate, a discrepancy of €27,050 arises between the value of the hours claimed (€53,450) and actually billed (€80,500). In addition to this incorrectly computed sum, a mark-up of 60% was applied giving rise to the gross charge at €128,300 (on this basis it should actually have been €128,800). Following negotiations with the party interested however the fee charged was reduced to €125,000.

90. Again, using all of the applicant's own figures, and applying a mark-up of 60%, the respondent calculates that the maximum fee that the applicant should have charged would have been €85,520. On the other hand, applying his own estimate of time of 99 hours 15 minutes, broken down as to 59 hours 15 minutes for 2006 and 40 hours for 2007, at a rate of €250 per hour and €350 per hour respectively, and applying a mark-up of 50%, the respondent comes up with a fee of €43,218.75. This was an exercise he conducted when considering the objections of the applicant. Using a different methodology, he had in his first ruling originally assessed an appropriate professional fee in the sum of €52,500.

91. The respondent came to the conclusion that the applicant had overcharged by reference to his own terms and conditions and s. 68 letter. Again this was a case in which there were numerous bills of costs presented by the applicant and it is clear that the respondent considered all of those bills, as well as all work done on the file. He also considered relevant authorities such as *Sheehan v. Corr* as well as in *Re Sharmane Limited* [2009] 4 I.R.285 and *Missford Limited* [2010] 3 I.R. 756. Specifically, he considered the hourly rates allowed by this court as regards professionals generally in *Missford*, and concluded that the fees as allowed by him were in that range. Having reviewed *Missford*, I think he is correct. The rate per hour under consideration in that case, for other professionals, was €425, which Kelly J. considered required reduction by 16% in light of the prevailing economic conditions. That

would yield an hourly rate of charge of €357. Kelly J. also directed the taxing master to have regard to that rate when taxing legal costs. The fees allowed by the respondent to the applicant in this case were considerably in excess of that hourly rate, when uplift is applied,

92. In any case, it is very clear that the respondent has had due regard to the significance of this matter to the client (it was obviously very significant in financial terms) the complexities of the matter, the work required to be undertaken, the seniority and experience of the solicitor, the time spent upon the matter and all other matters required to be taken into account. It might be possible to quibble with the fee allowed by the respondent having regard to the value of the matter, but on the other hand this sale did not complete, and in any case I do not think that it could be said that he has erred so significantly as to be unjust, and certainly not by as much as 25% (which it will be recalled is the margin for error suggested by Kearns J. in *Superquinn*). Moreover, the respondent was clearly inhibited by the lack of transparency in the manner in which the applicant had set out his basis of charge and the manner in which he proceeded to calculate his fee. I do not think that the fee allowed by the respondent could be considered to be unjust having regard to the terms which the applicant put to the respondent in his s. 68 letter and even allowing for the apparent increase in hourly rates in 2007. It does not therefore require review.

File D240 – sale of lands to Greystones Partnership

93. This is the transaction that gave rise to the single largest reduction in fees charged. The transaction involved the sale of lands by the party interested to a partnership known as the Greystones Partnership. There were two lots involved, the first being a portion of the farm of the party interested, and the second being his family home and lands adjacent thereto. In each case the lands were being sold for development purposes. The total sale price was €11,491,095 made up of €9,648,210 in respect of the re-zoned farmlands and €1,842,885 in respect of the family home and adjacent lands. The fee charged by the applicant was one calculated at the rate of 3%, of the total consideration, amounting to €344,733, upon which VAT was payable at the rate of 21%. Payment of the fee was authorised by the party interested by his signature on the face of the bill of costs dated 18th July, 2007. The fee allowed by the respondent, both initially and upon review was €70,000.

94. This was a file which the respondent had expressly declined to tax initially, but changed his mind following upon the events 30th April, 2014. He explains this both in his initial ruling and in his ruling on objections. The applicant continues to take issue with the jurisdiction of the respondent to tax his fees in the matter, but I have already dealt with all of the arguments of the applicant grounded upon or touching upon jurisdiction.

95. As to quantum, it is the applicant's case that:-

1. He notified the party interested by letter of 13th November, 2006 that he would be charging a professional fee of 3% in the transaction, payable out of proceeds of sale;

2. This fee included provision for work more usually undertaken by auctioneers, including as to price and concluding agreement upon the sale of other adjoining lands belonging to a third party (presumably to the Greystones Partnership) and other conditions;

3. The fee also includes a considerable body of work done on a licence agreement, by which it was initially proposed to implement the transaction. This course, which was almost certainly designed to save upon stamp duty, was later abandoned, as it was considered to be unreliable or inappropriate. (The transaction was then completed in the usual way).

4. Some time after conclusion of the transaction, on 18th July, 2007, the party interested requested that an invoice be drawn up as a matter of urgency. The applicant did this immediately, putting aside other work, and the party interested approved the account with his signature and authorised payment of the same from funds held by the applicant and; The party interested offset the costs against his liabilities to capital gains tax, and acknowledged that he did so. This constituted further approval of the account;

5. The applicant himself paid income tax arising from the receipt of these fees (as is the case in all of these matters), and yet taxation was not sought by the party interested until more than five years later.

96. The arguments of the applicant in this matter are persuasive, but as I have already stated, this application is concerned with issues relating to quantum only. The respondent assessed the fee in the amount that he did and the corresponding reduction from the fees of the applicant, for the following reasons:-

1. This was a matter to which the scale fee provided by the Land Registration Rules 1972 ("the 1972 Rules") applied. Although revoked in 2012, these rules were in force at the time of this transaction. While they are rarely invoked, the respondent considered it appropriate to invoke them in this case in view of the sums involved. He considered that the party interested should have been specifically advised as to the extent to which the fee charged exceeded what the respondent described as the "norm" as well as the fee calculated in accordance with the 1972 Rules.

2. The 1972 Rules provide for a sliding scale of charges which in this instance would have given rise to a maximum fee of €57,628.50 on the conveyancing elements of the transaction. This would not have included any fee for work associated with the licence that was under negotiation in the initial stages. The respondent considered the work associated with the license agreement and measured a fee of €17,126 in respect of that work, which he then added to the statutory scale fee on the consideration and allowed a total fee of €70,000, -presumably including a certain element of rounding up.

3. The respondent considered that there was no element of auctioneering work undertaken by the applicant as contended for by the applicant. In his rulings on objections he states that negotiations had been conducted by a firm of auctioneers to whom professional fees were paid.

4. Apart from the licence agreement, the transaction proceeded on a relatively straightforward basis. This was a transaction in respect of which the time spent upon the matter was not likely to feature as a significant consideration by reason of is scale.

5. As regards the letter from the applicant to the party interested of 13th November, 2006, quoting a fee calculated at the rate of 3%, and the form of acknowledgment and authority signed by the party interested on 18th July, 2007, the respondent considered that the level of charge was so great that the solicitor was bound, by reason of his fiduciary relationship with the party interested, to explain in some detail the basis upon which his fee proposal was grounded. In

particular, he felt that the applicant had a duty to explain to the party interested that the fees in question were not being assessed in accordance with the prescribed scale, and that they were considerably in excess of any marketplace norms. He also considered that the particular agreement relied upon by the applicant in this instance should have been agreed to in writing, given the level of charges involved, i.e. the party interested should have signed an agreement to the fees in advance, after receiving the appropriate advices.

97. Taking up this last point first, it would be very difficult to argue with the point being made by the respondent in this regard. The solicitor exhibited an unsigned file copy of the letter of 13th November, 2006. At a minimum, it would have been better that this letter or some other form of agreement relating to fees should have been signed by the client in this instance, from the outset of the transaction. I also agree with the respondent that, in the particular circumstances of this case, given the level of fees involved, the party interested should have been informed that they exceeded significantly the fee that would be chargeable if calculated under the 1972 Rules.

98. As to marketplace norms, it is probably fair to say that in the highly competitive market for solicitors services in conveyancing transactions, there really are no norms. It would be very difficult for a solicitor to advise a client as to what a "normal" fee might be, given the extent of competition in the marketplace, and the fact that scale fees have been prohibited for many years, aside, somewhat paradoxically, from the scale prescribed by the 1972 rules up to the date of their revocation. But I think that almost every conveyancer would agree that a fee charged on the basis of 3% would be highly unusual. It might well be justified at the very lowest end of the market where conveyancing is very often uneconomic, but on a sale price of €11,491,095, I would venture to suggest it is unprecedented, or if not that, at least very rare. That being the case, on the very particular facts of this case, the fiduciary relationship the applicant had with the party interested, as his solicitor, required him to appraise his client that the fee was well in excess of marketplace norms. I must stress however that I have come to this conclusion on the very unusual facts of this case. In general terms I do not think it could be said a solicitor has a duty to inform his client as to his competitor's charge rates. Apart from the fact that he may not know them, it is a matter for a client to shop around as he sees fit to establish if a proposed fee is reasonable or in line with the marketplace.

99. While it is claimed by the applicant that the fee included provision for negotiations normally undertaken by auctioneers, it appears from the rulings of the respondent to the objections of the applicant that this was disputed by the party interested at the taxation hearing. It also appears that the respondent could find no evidence of this on the file; on the contrary he found evidence that an auctioneer had been retained and paid. The letter of 13th November, 2006 makes no reference at all to auctioneering services. In the summary of the work provided by the applicant in his objections to the rulings of the respondent, there is no mention at all to the applicant conducting such negotiations. While the applicant contends that the onus of proof in this regard was on the party interested at taxation i.e. to prove the involvement of the auctioneer or that applicant was not involved in negotiations, I cannot accept this contention. It was clearly a significant factor relied upon by the applicant in putting forward what was by any standards a very high basis of charge on any consideration (save perhaps in the lowest value transactions) not to mention the kind of consideration in this case. He should therefore have been able to demonstrate the work that he did under this heading, and he did not do so.

100. The fee allowed by the respondent in this matter comes to a total of 0.6% of the total consideration paid. At €70,000 it is very difficult to see how it could be argued that the fee allowed by the respondent was anything other than fair and reasonable in the circumstances. The only question that arises for this Court is whether or not the disallowance by the respondent of the balance of the fees charged by the applicant could be regarded as unjust, in circumstances where payment was authorised under the hand of the party interested, and the party interested did not seek taxation of costs until four years later. While this line of argument is persuasive, it ignores altogether the fiduciary duties owed by the applicant to his client, which, as I have said above, in the particular circumstances of this case, imposed a duty upon the applicant to advise his client that the fees proposed were well in excess of marketplace norms , as well as being well in excess of the fee calculated by reference to the 1972 rules. Such a course would have provided the party interested with sufficient information to enable him to make a fully informed decision as to whether or not he should accept the charges proposed by the applicant. Since the party interested was not appraised of any of this, the fee charged by the applicant was quite properly made subject to taxation, notwithstanding whatever agreement may have been reached between the applicant and the party interested.

101. Having done that, it is my view that the respondent arrived at a fee that fairly represented the nature of the work undertaken by the applicant in a transaction of this kind, and the responsibilities undertaken by him by reference to the sale price. The fee as assessed by the respondent does not therefore require review.

File D54- Doyle v. Sandystream

102. This file was concerned with proceedings issued by the party interested against Sandystream for specific performance of the contract entered into between the parties in May, 2006. A completion notice in relation to that contract was served in October, 2007 and expired in 23rd November, 2007. A plenary summons issued on 27th November, 2007. It appears from the summary of the proceedings given by the respondent that an application was made to have the case admitted to the Commercial Court, which was refused. A defence and counterclaim was filed on behalf of the defendant, following which the plaintiff (the applicant herein) issued a motion for particulars arising out of the defence and served a reply to the defence and counterclaim. A motion then issued on behalf of the plaintiff seeking an order compelling replies to particulars, but before that could be heard, the defendant company was put into voluntary liquidation. The precise date of this is unclear, but it was probably sometime in April, 2009.

103. The party interested, through the applicant, entered into negotiations with the liquidator. The extent of these negotiations, and the time spent in these negotiations by the applicant, became a contentious issue in the taxation of the applicant's fees. The respondent is very complimentary of the services given by the applicant noting that following the appointment of the liquidator to Sandystream: "*it is clear from the file that Mr. Buckley solicitor gave the matter a great deal of thought and consideration, as is evident from the correspondence which ensued, initially, with counsel and ultimately with the defendant's solicitors. The careful drafting and redrafting of letters by Mr. Buckley is evident.*"

104. These proceedings were ultimately settled with the liquidator on the basis that the plaintiff could retain €565,000 out of the €600,000 deposit paid by Sandystream prior to its liquidation. The balance of €35,000 was paid to the liquidator. In considering the fees to be allowed to the applicant, the respondent again makes reference to the skill of the applicant in concluding a successful outcome.

105. It appears that in this case again the applicant submitted a number of bills and strange as it may seem the respondent said in his initial ruling that he was unclear as to the exact sum actually charged to or paid by the party interested in respect of costs in these proceedings. In the bill prepared at the request Taxing Master Flynn, an instructions fee of €77,750 is claimed. This is almost the same as the sum claimed in the first bill of the applicant dated 23rd October, 2009. In a bill dated 18th November, 2010, the

professional fees are divided between work up to 23rd October, 2009, claimed at €77,750 and after 23rd October 2009, claimed at €24,675, a total of €102,425. This is repeated in yet another bill dated 2nd December, 2009.

106. This was a matter in which the respondent again had great difficulty in satisfying himself as to the time spent upon the matter by the applicant. The applicant claimed that he spent 188.25 hours in dealing with the matter. In his first ruling, the respondent estimated that it was more likely he had spent of the order of 110 hours, but following on further review in order to deal with the objections of the applicant, he considered that 90 hours was more likely to be a reasonable yardstick of time.

107. Having considered the file, the second time around, he formed the opinion that the estimate of time spent in the matter by the applicant was carelessly compiled, with some extreme overestimations, but he also considered that some time had probably been omitted. Furthermore, he found that some time recorded on this file had already been accounted for in one of the other files relating to the sale of lands to Sandystream, in which the initial case to advise to counsel had been prepared. He also identified a number of instances in which the applicant claimed for time spent in attending court when in fact an adjournment had been agreed in advance and he was not present, and other cases where the applicant claimed for four hour's court attendance when the matter was adjourned and it was clear in advance that it would be. The respondent nonetheless allowed court attendance of two hours in such instances. On another occasion, the respondent found that four hours were claimed in circumstances where an adjournment had been agreed, and counsel had been instructed by phone to move the application. There are several more such examples. There is an absence of attendance notes recording time and as with all other matters there is no time recording system deployed by the applicant.

108. It appears that the applicant also invoiced initially (but not later) for fees which he claimed were due to a deceased senior counsel, in the sum of €10.121.65. However, that senior counsel had apparently previously informed the applicant that the only fees due to him were €1,500 plus VAT in respect of an opinion that he had previously provided.

109. In his decision on this matter the respondent again cites the decision of the Court of Appeal in *Sheehan v. Corr* and refers in particular to para. 99 of the decision of the Court of Appeal where the court states:-

> "The obligation is on the solicitor to keep a proper record of their time and labour spent on each case. If they have failed to keep proper records of their time and labour, then there is no reason why they should get the benefit of any doubt about the estimate of hours which they spent on the case. If they submit the bill with only an estimate of hours and no proper records to back up that estimate then this estimate will be carefully scrutinised by the Taxing Master. It is at that point that the Taxing Master is entitled to make a more generalised assessment of whether the estimate of hours provided is reasonable and/or reliable and, if not, to make his own assessment of the amount of hours spent on each item, the seniority of the solicitor involved and the appropriate professional charge for that professional service."

110. The respondent noted that the solicitor had confirmed during the course of taxation that he does not have a time recording system notwithstanding that in three separate s. 68 letters he stated that his charges would be based upon time expended, plus a variable uplift.

111. Having considered the file in detail, and having considered the time estimate of the applicant, and his own estimate of time, and also having had regard to all other relevant factors, including the skill shown by the applicant and the very satisfactory result for the party interested, the respondent came to the conclusion that a fair fee would be €35,000. He tested this fee by reference to two different hourly rates and noted that if the hourly rate referred to in *Missford* were allowed, the fee so calculated would still amount to less than €35,000 (based on 90 hours spent on the matter). Accordingly, he affirmed the instructions fee as initially assessed by him at €35,000.

112. This was an action for specific performance of a contract having a value of €10,000,000. The proceedings were at quite an advanced stage when the defendant went into liquidation. Realistically, the case then almost certainly became an exercise in trying to ensure that the plaintiff could retain the deposit of €600,000. The applicant secured a good result for the respondent in this regard.

113. While a substantial amount of work was undertaken, it does not appear as though discovery was pursued and nor had the matter reached the point at which it was necessary for the applicant to seek advices on proofs, never mind comply with the same, or prepare briefs for counsel.

114. While the value of the proceedings to the client altered dramatically the case remained a valuable one for the party interested, with what was probably the best possible outcome in the circumstances. I consider that the fee as assessed by the respondent is on the low side of the range of fees that might be allowed having regard to the value of the matter to the client and the work undertaken, but it is not so low that this Court should interfere. Moreover, although the respondent does not say so in his decision, it is my view that in taking into account what is just in the circumstances (as required by s. 27 of the Act of 1995) this Court should have some regard to the findings of the respondent that the applicant claimed payment for time that he demonstrably did not spend on the matter, and at one point claimed payment for counsel's fees that he must have known were not due, although he later appears to have withdrawn that claim. For these reasons this fee does not fall for review.

Files D151 A/1-4

115. The first two of these files, D151/1 & 2 were concerned with instructions for negotiations conducted in autumn and winter of 1998 and spring and summer of 1999 for the acquisition by Wicklow County Council of farmlands owned by the party interested, for the purposes of constructing a dual carriageway. The acquisition would have had significant implications for the party interested and his farming activities. When agreement could not be reached, the county council made a compulsory purchase order of lands.

116. Following upon that, the applicant assisted and advised in the preparation of submissions and objections to the Minister for the Environment in relation to the compulsory purchase orders, of which there were six. As a result, those orders were annulled by the minister in March of 2000.

117. However, the council subsequently proceeded to make further compulsory purchase orders. The applicant again advised and represented the party interested in respect of those matters. Ultimately, at quite a late stage in the process, the county council withdrew from these compulsory purchase orders (it appears, out of environmental concerns) and instead reached agreement with the party interested for the acquisition of the lands the subject of file references D151A(i) and (ii). As part of this agreement, the county council agreed to pay all of the costs incurred by the party interested in respect of all of these matters. A professional fee was claimed (from the county council) in the sum of €83,000 in respect of all work done by the applicant, and was ultimately agreed at €67,000. The applicant had the assistance of Behan and Associates, legal costs accountants, in connection with the submission and

negotiation of this bill with the council. In his initial ruling of 10th September, 2014, the respondent noted that the bill as prepared by Behan and Associates clearly established that the fee claimed was inclusive of the initial negotiations as well as the subsequent consideration of the compulsory purchase orders that were quashed by the minister, and thereafter the consideration of the fresh compulsory orders and all work following upon those orders. The respondent notes that the applicant at the time specifically queried of Behan and Associates whether the costs relating to the annulled compulsory purchase orders were included, and Behan and Associates confirmed that they were included. More than that, they advised that the outcome was extremely good and that the fees recovered were approximately €30,000 in excess of Behans' expectations.

118. Nonetheless, the applicant presented the party interested with bills in respect of these matters. On file D151/A1, the applicant claimed a professional fee of €9,523, and on file D151/A2 the applicant claimed a fee of €12,698. The applicant further claimed sundries of €860 and €420 respectively in relation to each of these files, and when VAT and disbursements were added the total of the two accounts came to €28,538. The applicant also presented a bill to the party interested in relation to the work following upon the making of the second round of compulsory purchase orders, under file reference D/151/4. This account was for the total sum of €123,985, of which €116,930 was claimed as a professional fee, but with a discount of €50,000 to be applied in consideration of the party interested instructing the applicant in the sale of rezoned lands retained by the party interested.

119. However, the respondent found that all of the work to which these bills related was provided for in the fees recovered, with the assistance of Behan and Associates, from the council. The applicant did not dispute the findings of the respondent in this regard. In his objections he made comparisons with the fees recovered by Mr. Farrelly (agricultural advisor to the party interested), and submitted that having regard to the amount recovered by Mr. Farrelly, the allowance to the applicant should be much greater given that he (according to himself at least) undertook far more work and responsibility in the matter than Mr. Farrelly. However, this comparison is neither here nor there. The applicant must be able to justify his own fees on their own merits.

120. In his initial ruling, the respondent notes that:-

> "Mr. Buckley, solicitor, now accepts that the costs under the two headings already referred to by me were recovered from the local authority. He now argues that certain other certs (sic) were incurred by his client over and above those agreed with the county council by the parties' respective legal costs accountants. I invited Mr. Buckley to identify by reference to the detailed bill of costs and the files such aspects."

121. Later, in the same ruling, the respondent states that the applicant claimed that he was entitled to recover solicitor and client fees, but the respondent considered that in reality that was what had been recovered from the county council having regard to the advices of Behan and Associates.

122. The respondent noted that having considered all relevant files, namely files D151 A/1-4, he considered that costs in respect of all of these files had been recovered from the county council (on a solicitor and client basis). He allowed the sum of €1,000 to cover whatever additional work the applicant had in relaying the observations of Behan and Associates to Mr. Farrelly, in relation to his account, and which account was included with the bill to the council. In effect therefore, it appears that the respondent disallowed all the fees claimed by the applicant in these matters save for the sum of €1,000 plus VAT, on the basis that the applicant had already been paid by the county council, on the equivalent of a solicitor and client basis.

123. The objections of the applicant in relation to this decision repeated the same jurisdictional arguments regarding the authority of the respondent to tax these bills in the first instance, since these bills were discharged on 1st February, 2006 pursuant to the authority and agreement of the client completed on that date. He also made the other jurisdictional arguments concerning the scope of the order of Charleton J. and the effect of O. 99, r. 11(3) of the RSC. I have already dealt with all of these arguments and there is no need to repeat my conclusions in this regard.

124. The applicant makes no reference at all in his objections to the advices of Behan and Associates. Nor did he make any reference to the same in his submissions, whether his written submissions or his submissions to the court. It can only be assumed therefore that he does not dispute the findings of the respondent that, with the assistance of Behan and Associates, he recovered from the council a fee in respect of all of these matters, and that fee was considerably in excess (by €30,000) of the expectations of his own legal costs accountants. It can hardly be doubted therefore that the respondent was correct to make the deductions that he did from these accounts. Accordingly, the decisions of the respondent in relation to these bills do not require review.

File D151/6

125. This matter related to proceedings taken by the party interested to recover costs due to him by Wicklow County Council. These were the fees that had been agreed between Behan and Associates and the county council in relation to the matters referred to above. An instructions fee was claimed by the applicant in the sum of €60,000. In his initial ruling, the respondent remarked that this fee was "*excessive and unjustifiable*". He goes on to state that the applicant accepted that this was the case. The applicant however explained that of this fee, some €50,000 related to services provided by the applicant, at the request of the party interested, to a third party in connection with an election petition. The applicant contends that the party interested directed the applicant to claim these fees in the proceedings issued against the county council.

126. The respondent concluded that he could not take any work associated with the recovery of this sum into account when considering the fees properly payable by the party interested to the applicant in connection with these proceedings. Having reviewed the file, the respondent came to the conclusion that the maximum sum allowable as between solicitor and own client should be €6,000 plus VAT and outlay.

127. In his objections to the initial ruling of the Taxing Master, the applicant makes no comment at all about the finding of the respondent that the fee included in this account includes provision of €50,000 (and consequent VAT) in relation to another entirely different matter. I must take it therefore that the applicant does not dispute this finding. Nor does the applicant make any comment at all (in his objections) to the statement by the respondent in his initial ruling that the applicant himself accepted at the taxation hearing that the fee of €60,000 is wholly excessive and unjustifiable.

128. The respondent then assessed a professional fee based upon the work done by the applicant in the matter before him i.e. the proceedings issued on behalf of the notice party against the county council to recover fees due to the notice party and, by extension, to his solicitors. There was also certain amount of work done on the same file in connection with the acquisition by the county council of a small additional strip of land from the notice party. This strip of land had an agreed value of €5,000.

129. While the file was not opened to me, it appears from the bill of costs that a lot of the work on this file to begin with was concerned with the preparation of bills of costs in those matters which the county council was to pay the costs of the party

interested. This included liaising with third parties such as expert witnesses and counsel as well as the applicant's chosen costs accountants, Behan and Associates. This work was done between 2007 and 2008. When progress was not made in recovering these costs from the county council, proceedings were issued in March, 2009. This prompted negotiation as between the legal costs accountants employed by the county council and the applicant. A statement of claim was served on 1st September, 2009. The applicant demanded a defence from the county council's solicitors on numerous occasions. The matter appears to have settled eventually without the delivery of a defence.

130. Costs accountants' fees were also claimed in the sum of €8,197.75. The respondent did not allow these fees as he considered that those same fees had already been recovered in those individual files in respect of which their advices on fees had been obtained on behalf of the party interested. He said that their fees had already been allowed in full, and therefore no fees should accrue to the applicant for doing the same work (as the costs accountants).

131. In the applicant's objections, he appears to be arguing that he is entitled to recover these fees on a solicitor and client basis in the same way that he would be if he had retained any other expert. But this does not appear to engage at all with the argument of the respondent that Behans' fees had already been allowed in full, and that being the case, they cannot be recovered twice. Indeed, it is difficult to see how they arise at all on the second occasion.

132. Since the file was not opened to me and since no submissions were made to me such as to explain the matter, I am left to work out from the documentation before me the nature of the work required of the applicant in this matter. So far as I can understand it from that documentation, the vast majority of the work done on this file was concerned with negotiating and agreeing costs for which the county council was responsible in files D151 1-4. In the ordinary course of events, submitting a bill, and negotiating and ultimately reaching agreement on the quantum of the same would not usually attract additional charges at all. That said, in the context of a solicitor and client taxation of costs, in which the solicitor is endeavouring to recover as much as possible of the costs which his client is entitled to recover from a third party (on a solicitor and client basis) the solicitor would, it seems to me, be entitled to recover the costs reasonably incurred in so doing.

133. In this case, according to the objections of the applicant, costs totalling €141,963.31 were recovered as a result of these proceedings. That would tend to suggest that the fee allowed by the respondent in the sum of €6,000 in proceedings which were settled after delivery of a statement of claim, but prior to delivery of a defence, is inadequate.

134. But that is perhaps a somewhat simplistic if not distorted way of looking at these proceedings. The reality is that the liability of the county council for the fees payable to the party interested was never in doubt. What one might have expected to happen on the files to which these fees relate is that bills would have been submitted for consideration by the county council, thereafter there would be negotiation, and, if need be, taxation of the costs that could not be agreed. Instead, proceedings were issued. In substance therefore, it seems to me that what the applicant is being paid for in relation to this matter is the drawing up and negotiation of his own bills of costs. There were three bills involved. It seems to me that the basis upon which the applicant would be entitled to be remunerated for this work should be determined by reference to an hourly rate of charge only, without uplift, because in this work he is significantly guided by his legal costs accountants. However, there is no reference at all in any of the documentation presented to me to indicate the amount of time that the applicant spent in dealing with the matter. It may well be that the fee allowed by the respondent is on the low side but I have nothing available to guide me in this regard. The respondent had access to the file and was able to review the work undertaken by the applicant, and concluded that €6,000 was the absolute maximum that should be allowed to the applicant. The applicant now invites the Court to review this fee, without putting forward any evidence as to the amount of time required to be spent upon him on the matter and without making any submissions at all to the Court as to the quantum to be deducted from the account as originally submitted, because of the inclusion of a fee in respect of a totally unrelated item i.e. the work done in the election petition. In those circumstances I simply have no information available to me to conduct a review of the fee allowed by the respondent, and the application to review the decision of the respondent in relation to this bill must for that reason be dismissed.

135. In summary, I have rejected the arguments of the applicant that the respondent did not have jurisdiction to tax any of the bills other than bills D215 and D226, and I have rejected in full the application for a review of the taxation conducted by the respondent in each case, save for the qualification relating to the fees claimed in respect of Mr. Farrelly.