

SPSO decision report

Case: 201403261, The Accountant of Court
Sector: Scottish Government and devolved administration
Subject: policy/administration
Outcome: not upheld, no recommendations

Summary

Mr C complained that the Accountant of Court had not properly supervised a judicial factor. A judicial factor is appointed when money and assets need to be protected to ensure that debtors can, if possible, be paid. One had been appointed in relation to a firm of solicitors that had undertaken work relating to the executry of Mr C's late mother. Before this work was completed the solicitors had taken interim fees and had these assessed, and they had also ceased trading. The final work was transferred to another firm and a judicial factor was appointed to ensure debts were paid whenever possible. Mr C told us he was unhappy that when he complained about the amount of fees charged, the judicial factor referred this to an Auditor of Court for the fee to be 'taxed'. This is a formal process and the decision (called taxation) is normally binding. Mr C said that the fees could simply have been changed without any need for this process, and that the decision was based on an assumption that there were five meetings with the solicitors when there had only been two. He also complained to the Law Society (who regulate the work of solicitors) who accepted that the recording of three meetings had been dishonest. Mr C said that in light of the Law Society's findings the judicial factor had wrongly reported that there was no evidence of dishonesty.

The judicial factor is not within our jurisdiction, neither are solicitors. Our role was limited to assessing whether the Accountant of Court had correctly supervised the judicial factor. Before we could say that they had failed to do so, we would need to find that they had been wrong to rely on the decisions of the judicial factor, either because these were clearly unreasonable or there was a material error. We found that there was no evidence that the taxation calculation included five meetings. The decision had not relied on the solicitors' files, which were incomplete. We also found that, as Mr C alleged dishonesty in the fee calculation, the referral to someone independent was appropriate and that there was no need to investigate the taking of the interim fee. In the circumstances, there was no evidence that the Accountant of Court had not acted reasonably within their discretion when supervising the judicial factor and we did not uphold this complaint.