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	ICOS:	**04/024580/11**
Judgment: approved by the Court for handing down (subject to editorial corrections)*	*Delivered:*	**11/12/2020**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

COMMERCIAL HUB

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Between:

DANIEL McATEER and AINE McATEER

Applicants

-v-

JOSEPH McELHINNEY, PATRICK McDAID and WALTER HEGARTY (practising as Messrs McElhinney, McDaid and Hegarty Solicitors)

Respondents

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Mr McAteer appeared as a Litigant in Person
Mr J. Dunlop (instructed by Carson & McDowell) for the respondents

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McFARLAND J

Introduction

[1] By Summons issued 20 June 2018, an application has been made for a review of the taxation certificate issued by Master McGivern on 22 May 2018 by which she taxed the legal costs and expenses of the respondents in relation to the action under ICOS reference 04/024580 and certified a sum of £47,746.64 as due for legal costs and expenses of the respondents. The Summons has been signed only by Daniel McAteer. It purports to be made on behalf of both applicants, and for the purposes of the application I am treating it as if it has been made by both applicants and that the written and oral representations that have been made by Mr McAteer, have been made on behalf of both of them. Aine McAteer has not lodged any document herself and has not communicated with the court directly. Mr McAteer assured the court that he was representing his wife. I conducted a video live link hearing on 3 December 2020 under the provisions of Schedule 27 to the Coronavirus Act 2020.

The court clerk and I were present in the Commercial Court in the Royal Courts of Justice. Mr McAteer, Mr Dunlop and Mr Magee, solicitor, attended by video live link. There were no issues relating to the ability of all parties to participate in the hearing.

[2] As the ICOS reference number suggests, this is a case of some vintage. By Writ of Summons issued on 10 September 2004, the applicants commenced legal proceedings against the respondents alleging breach of contract and negligence in relation to legal services provided by the respondents to the applicants. Due to deficiencies in processing the claim, various orders were made by Master McCorry firstly on 11 October 2007 staying the action for 2 months and compelling replies to a notice for particulars within 21 days from the end of the stay, and then on 25 April 2008 an 'unless order' to compel replies. The terms of the 'unless order' were that unless the replies were received within 28 days of service of the order, the respondents would be at liberty to enter judgment against the applicants. There was a continuing failure to lodge replies after the required date. A hearing had been fixed for the consideration of another interlocutory matter for 19 September 2008. This hearing was before Deputy Master Wells and the conduct before and at this hearing and the order arising from it are the subject of significant relevance to the litigation and this review, and I will deal with this in more detail later. Deputy Master Wells on 19 September 2008 made an order striking out the action for failure to comply with the 'unless order'

[3] The applicants then issued an application to set aside the Orders of Master McCorry (25 April 2008) and Deputy Master Wells (19 September 2008) under Order 2 Rule 2, and for other relevant relief. Again, I will deal with this application in more detail later. On 27 May 2009, Master McCorry dismissed the summons. This order was then appealed to the High Court and on 28 October 2009, Mr Justice Hart dismissed the appeal.

[4] On 21 November 2011, the Court of Appeal dismissed the applicants' appeal against the order of Mr Justice Hart. In the context of costs, Deputy Master Wells ordered that the applicants pay the respondents' costs of the main action, Mr Justice Hart ordered that the applicants pay the respondents' costs of the application before the Master and the costs of the appeal before him (not to be enforced without further order), and the Court of Appeal affirmed that order, but made no order as to costs in respect of the appeal to the Court of Appeal. I understand that the restriction on enforcement has now been removed. The taxation process undertaken by Master McGivern therefore related to the costs of the main action, and the subsequent hearings before Master McCorry and Mr Justice Hart.

[5] A hearing was then convened on 4 September 2017 for the purpose of taxing the respondents' costs, which was attended by Mr McAteer. An assessment of £47,746.64 was made. The applicants then sought a review of that assessment, which was convened on 23 October 2017, at which submissions were made by Mr McAteer. Master McGivern gave a reasoned written ruling on 28 March 2018 and confirmed

her certification of the sum of £47,746.64, and it is this decision that the applicants now wish to have reviewed.

Order 62 Rule 35

[6] Order 62 Rule 35 of the Rules of the Court of Judicature provides as follows:

> *"Review by a judge*
>
> *35. - (1) Any party who is dissatisfied with the decision of the Taxing Master on a review under rule 33 may apply to a judge for an order to review that decision either in whole or in part, provided that one of the parties to the taxation proceedings has requested the Taxing Master to state the reasons for his decision in accordance with rule 34(4).*
>
> *(2) An application under this rule may be made at any time within 14 days after the Taxing Master has issued a certificate in accordance with rule 34(4).*
>
> *(3) An application under this rule shall be made by summons and shall, unless the judge thinks fit to adjourn it into Court, be heard in chambers.*
>
> *(4) Unless the judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule and no ground of objection shall be raised which was not raised on the review by the Taxing Master but save as aforesaid, on the hearing of any such application the judge may exercise all such powers and discretion as are vested in the Taxing Master in relation to the subject matter of the application.*
>
> *(5) On an application under this rule the judge may make such order as the circumstances may require and in particular may order the Taxing Master's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the Taxing Master for taxation.*

[7] It is important to bear in mind that this is not an appeal, but an application to review. The review means that the judge has full unfettered discretion in dealing with all matters that the Master was entitled to deal with. Confusion arose from a judgment of Cumming-Bruce LJ in *Hart –v- Aga Khan Foundation (UK)* [1984] 1 WLR 994 at 1006 when he stated that:

> *"it is open to a court on review to reject the opinion of the taxing master only if it is shown on the principles of*

> *[Wednesbury] that the taxing master had regard to irrelevant considerations, or failed to take into account relevant considerations, or if the court is satisfied that the opinion of the taxing master on the facts was clearly wrong."*

This approach was not followed by Campbell J in *Re Mitchell* [1992] 8 NIJB 10 when he quoted with approval the statement of the English Court of Appeal in *Jackson v Parker & Gurney Champion* (unreported 5 November 1985) that the equivalent English rule meant that there was no limitation on the Court's power to review any decision of a taxing officer, whether on quantum, fact or otherwise. Any lingering reliance on *Hart* has been extinguished by the English Court of Appeal in *Madurasinghe v Penguin Electronics* [1993] 1 WLR 989. McGowan LJ at 993 stated that the judge below had been plainly wrong in following *Hart*, observing that since the registrar (exercising the taxation role) and the judge had the same powers and discretion, the judge's discretion cannot be fettered by the manner in which the registrar exercised his discretion.

[8] Notwithstanding this unfettered discretion, I am mindful of the observation of Carswell LJ in *Carr v Poots* [1995] NI 420 at 425j – "*In such fields I should still not lightly overturn the decision of the taxing master*" – based on a recognition of the particular expertise held by the taxing master in relation to the taxation of costs.

Litigation misconduct and taxation

[9] The taxation process can take into account what could be described as litigation misconduct. This is an all embracing term covering all aspects of misconduct from unreasonable conduct through to improper conduct. The case put forward by the applicants is that the respondents' solicitors were guilty of fraud and had 'duped them', and if there was any factual basis to that assertion, this would certainly fall within what could be described as 'misconduct'. It goes without saying that should it be proved that a solicitor perpetrated a fraud against another, be they a client or another party, they, amongst other things, would not be entitled to recover legal costs for work conducted for such an unlawful purpose.

[10] The mechanism for dealing with litigation misconduct in the taxation process is dealt with in Order 62 Rules 10 and 28:

> *"Rule 10.-(1) Where it appears to the Court in any proceedings that anything has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party, the Court may order that the costs of that party in respect of the act or omission, as the case may be, shall not be allowed and that any costs occasioned by it to any other party shall be paid by him to that other party.*
>
> *(2) Instead of making an order under paragraph (1) the*

Court may refer the matter to the Taxing Master, in which case the Taxing Master shall deal with the matter under rule 28(1).

Rule 28. - (1) Where, whether or not on a reference by the Court under rule 10(2), it appears to the Taxing Master that anything has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party in the taxation proceedings he may exercise the powers conferred on the Court by rule 10(1).

(2) Where, whether or not on a reference by the Court under rule 11(3), it appears to the Taxing Master that-

(a) any costs have been incurred unreasonably or improperly in the taxation proceedings, or

(b) any costs have been wasted by failure to conduct those proceedings with reasonable competence and expedition, or

(c) there has been a failure to procure taxation,

he may, subject to paragraph (3) of this rule, exercise the powers conferred on the Court by rule 11(1)(a).

(3) In relation to the exercise by the Taxing Master of the powers of the Court under paragraph (2) of this rule, paragraphs (4) to (8) of rule 11 shall apply as if for references to the Court there were substituted references to the Taxing Master.

(4) Where a party entitled to costs-

(a) fails without good reason to commence or conduct proceedings for the taxation of those costs in accordance with this Order or any direction, or

(b) delays lodging a bill of costs for taxation, ,

the Taxing Master may allow the party so entitled less than the amount, he would otherwise have allowed on taxation of the bill or may wholly disallow the costs.

[11] An issue which arose before Master McGivern was the extent to which Rule 28 allowed her to consider the issue of alleged misconduct during the proceedings before Deputy Master Wells. Master McGovern was of the view that her powers, without a reference to her under Rule 10, were limited to misconduct arising during

the taxation proceedings.

[12] The reference to 'taxation proceedings' in Rule 28 (1), in my view has to be considered in the context of the full phrase - 'any party in the taxation proceedings' and refers to the party and not the overall proceedings. Rule 28 (2) clearly envisages the Taxing Master acting without the need for a direct reference from the judge in the proceedings giving rise to the taxation. Rule 28 should not be interpreted as restricting the Taxing Master's discretion. This view is confirmed by the authors of the authoritative *Supreme Court Practice* (1999 edition), or the 'White Book'. The authors described the effect of the Rule as giving the taxing master "*power to penalise a party in costs for misconduct etc., either during the proceedings which give rise to the taxation or the taxation proceedings themselves*"

[13] It was therefore open to Master McGivern to have considered this point. Although she declined to do so, her ruling did take into account the ambiguity, and she did cover that situation by stating that should she be wrong in relation to her interpretation and if she did have the discretion to consider the respondents' solicitors' litigation misconduct, she would not have altered her approach to the taxation process as the High Court and Court of Appeal had already ruled on the matter and it had not just come to light during the taxation process (see paragraph [13] of her ruling).

Basis of taxation

[14] The order as to costs from the Court of Appeal in this case was silent as to the basis of taxation and therefore, applying Order 62 Rule 12(3), the costs will be taxed on the standard basis, as opposed to the indemnity basis. Rule 12 (1) states that the amount to be allowed is *"a reasonable amount in respect of all costs reasonably incurred and any doubts which the Taxing Master may have as to whether costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party."*

[15] As to what is to be regarded as reasonable, *Francis v Francis and Dickerson* [1955] 3 All ER 836, suggests that when considering whether any step was reasonable, the test should be what a sensible solicitor in the light of his or her then knowledge would consider to be reasonable in the interest of his client. This would also include any step taken by the solicitor on the advice of properly instructed counsel.

The Application for Review

[16] The application was supported by an affidavit sworn on 19 June 2018, which in turn exhibited a counsel's opinion as to the merits of the claim against the respondents and an affidavit sworn on 21 August 2017. This earlier affidavit would have been considered by Master McGivern.

[17] Much of the content of the affidavits focussed on matters relating to the

original litigation and the conduct of the respondents' solicitors during that litigation. Daniel McAteer stated his belief that the judgment before Deputy Master Wells had been obtained by fraud, particularly the obtaining of judgment in the absence of the applicants.

[18] Daniel McAteer also stated at paragraph [3] of the 19 June 2018 affidavit – "…I had no difficulty with the way in which the Taxing Master dealt with the Taxation process itself …". This is also reflected in the ruling of Master McGivern of 28 March 2018. In particular she has stated at [7] – "At the review hearing on 23 October the Respondents [the Applicants before me] confirmed that they were not making an application for a review and were not progressing the points about the items which I had taxed off in the bill." And again at [9] – "At the review hearing Mr McAteer stressed that he had no issue about how I had conducted the taxation on 4 September nor had he any issue about the conduct of the [Respondents'] Costs Drawer, Ms Mallon". Before me, Mr McAteer adopted a similar approach indicating that he had no issue with the taxation exercise conducted by Master McGivern.

The Bill

[19] I do not propose to deal with the bill of costs that was presented for taxation, and the final bill approved by the Taxing Master following the taxation process, in much detail. The applicants, both before the Taxing Master, and before me, took no real issue with the actual amounts claimed. The force of the application is directed towards the alleged fraud perpetrated by the respondents' solicitors.

[20] As for the taxed bill, I have considered the nature of the litigation, the contents of the affidavits submitted on behalf of the applicants, the ruling of Master McGivern, and the judgment of Coghlin LJ in the Court of Appeal. They have given me an appreciation of the issues at stake in the litigation and the legal services that were required to be rendered on behalf of the respondents to defend the serious allegations of professional negligence being made against them. The complexities of the litigation, the consideration of the related litigation not directly involving the respondents, and the fact that the solicitors were having to deal with the applicants' solicitors and then the applicants themselves as personal litigants, resulted in a suggested uplift of 85% over the basic hourly rate of £87.33. The hourly rate of £87.33 and the uplift of 85% would be in line with the hourly rate and uplift generally allowed at that time when dealing with complex professional negligence work. The taxed bill reflects those rates, but also includes lower hourly rates and lower uplifts for less complex and more routine work. Overall, having considered the taxed bill in detail, I can see little, if any, to criticise the drafting of the bill, and the process undertaken by the Taxing Master in taxing off certain items. The final bill, for which the applicants are liable, amounts to £47,746.64. This is broken down as follows:

Solicitors Fees	£18,360.24
Disbursements (including	

Counsel's fees)	£16,309.50
VAT	£ 6,849.05
Stamp duty	£ 6,227.85
Total	£47,746.64

Mr McAteer's submissions

[21] As I have said earlier, Mr McAteer's main submission was that the order made by Deputy Master Wells was obtained by fraud. From that basic submission emerged two themes. Firstly, he submitted that the decision was void and therefore had no effect and could be ignored. As a further consequence, the subsequent decisions of the High Court and the Court of Appeal were also void with no effect and could also be ignored. Secondly, and in the alternative, by virtue of the misconduct, the Taxing Master, and this court on review, should disallow the respondents' legal costs in full.

Void order

[22] The submission in relation to the order being void relies primarily on the judgment of Lord Denning in *MacFoy v United Africa Company* Limited [1961] 3 All ER 1169. That case has some parallels with this case. A plaintiff had issued a writ, and then served a statement of claim during the long vacation. Service during the long vacation was not permitted. The defendant defaulted in not serving a defence and judgment was marked as a consequence of this failure, the period of default being calculated from the end of the long vacation. The defendant applied to set aside the judgment and failed. He then appealed to the Court of Appeal and for the first time raised the issue of nullity. The appeal was dismissed and then came before the Privy Council, where, again, it was dismissed. Lord Denning reiterated the well-established distinction between void orders and voidable orders. A void order is a nullity. "*It is not only bad, it is incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes more convenient to have the court declare it to be so. And also every proceeding which is founded on it is also bad and incurably bad.*" (1172 I) Lord Denning then distinguished this with a voidable order. *"But, if an act is only voidable, then it is not automatically void…. It is not to be avoided unless something is done to avoid it. There must be an order of the court setting it aside: and the court has a discretion whether to set it aside or not. It will do so if justice demands it but not otherwise. Meanwhile it remains good and a support for all that has been done under it."* (1173 A)

[23] This exposition of the law must, however, be seen in the light of a later Privy Council decision in *Isaacs v Robertson* [1984] 3 All ER 140, when Lord Diplock put some context into what Lord Denning had said. In particular, he stated at 143 b-c the following:

"*Their Lordships would, however, take this opportunity to point*

> *out that in relation to orders of a court of unlimited jurisdiction it is misleading to seek to draw distinctions between orders that are 'void' in the sense that they can be ignored with impunity by those persons to whom they are addressed, and orders that are 'voidable' and may be enforced unless and until they are set aside. Dicta that refer to the possibility of there being such a distinction between orders to which the descriptions 'void' and 'voidable' respectively have been applied can be found in the opinions given by the Judicial Committee of the Privy Council in … [MacFoy]; but in [that appeal] nor in any other case to which counsel has been able to refer their Lordships has any order of a court of unlimited jurisdiction been held to fall in a category of court orders that can simply be ignored because they are void ipso facto without there being any need for proceedings to have them set aside."*

And later at 143 f -

> *"The contrasting legal concepts of voidness and voidability form part of the English law of contract. They are inapplicable to orders made by a court of unlimited jurisdiction in the course of contentious litigation. Such an order is either irregular or regular. If it is irregular it can be set aside by the court that made it on application to that court; if it is regular it can only be set aside by an appellate court on appeal if there is one to which an appeal lies."*

The Court of Judicature of Northern Ireland is a court of unlimited jurisdiction, and as a consequence its orders are not void or voidable. They are regular or irregular. In other words, they remain good orders until they are set aside, either by the court that granted them, or by an appellate court.

[24] Mr McAteer initiated a process of seeking an order of the court determining that Deputy Master Well's order be set aside as irregular. On 27 January 2009, he applied for two orders to be set aside, or struck out: Master McCorry's order of 25 April 2008 (the 'unless order') and Deputy Master Wells' order of 19 September 2008 (the striking out order). The application was based on Order 2 Rule 2. This provides as follows:

> *"An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before party applying has taken any fresh step after becoming aware of the irregularity."*

The alleged irregularity was set out in an affidavit sworn by Mr McAteer on 1 December 2008. This affidavit had been filed in relation to what was considered an

inappropriate application, and was then filed again as an exhibit to a further affidavit sworn on 28 January 2009 in support of the 27 January 2009 application. The affidavit sets out in detail Mr McAteer's allegations concerning the conduct of the respondents' solicitors. At paragraphs 14 to 16, Mr McAteer refers to the events leading up to the hearing of 19 September 2009, including the request by the solicitors that the case be adjourned, his agreement to that request, the letter from the solicitors to him indicating that he did not need to attend the hearing, and his subsequent non- attendance.

[25] By making this application, Mr McAteer was accepting that the order was not a void order, but was a binding order of the court, which he was endeavouring to set aside on the ground of irregularity. He was seeking to have it set aside, as opposed to seeking a ruling that it was void *ab initio*.

[26] In any event, the nature of the order and the fact that it was an order of the High Court make it clearly an enforceable order, which remains in full force with full effect until such times as it has been set aside. It has not been set aside, and remains in full force.

[27] In the circumstances, I decline to accept Mr McAteer's submission that the Order of Deputy Master Wells, and the subsequent orders of Master McCorry, Mr Justice Hart and the Court of Appeal are void, and can therefore be ignored by this court and anyone else.

[28] In addition, as Mr McAteer had applied to set aside the order of Deputy Master Wells based on an alleged irregularity, and that application was refused by Master McCorry on the merits, and that refusal was subsequently unsuccessfully appealed to Mr Justice Hart, and the appeal against Mr Justice Hart's refusal had then been dismissed by the Court of Appeal, the order can safely be described as not being irregular. In the circumstances, they are all valid orders, and any costs awarded by the orders require to be taxed by the Taxing Master.

[29] I reject any suggestion by Mr McAteer that the Taxing Master, and a High Court judge on review, have the power to somehow alter, overturn or ignore a decision of the Queen's Bench Master, the High Court or the Court of Appeal. The inherent jurisdiction the High Court does not extend that far.

Litigation misconduct by the respondents' solicitors and counsel

[30] As stated, Mr McAteer's main case relates to the fraud he says was perpetrated against the applicants, primarily because they were, in his words, 'duped' into not attending a hearing at the Master's court and this resulted in the order of Deputy Master Wells. During this hearing, the allegation was then extended to include counsel, as Mr McAteer discovered that counsel had been present at the hearing.

[31] As previously set out, I consider that the Taxing Master had a discretion to consider litigation misconduct, whether it has been referred to her by a trial judge (in this case by Master McCorry, Mr Justice Hart, and the three members of the Court of Appeal) or should she become aware of it during the taxation process. I have similar powers on review. I do not have any greater powers than those held by the Taxing Master, as I am conducting a review of her decision.

[32] Five very experienced judges, each with many years' experience both in practice and on the bench, Master McCorry, Mr Justice Hart, Lord Justice Girvan, Lord Justice Coghlin and Sir John Shiel have considered Mr McAteer's complaints about the conduct of the legal representatives before Deputy Master Wells. None of them found that there had been any irregularity sufficient to set aside the order of Deputy Master Wells.

[33] Nor had any of the five judges considered that anything had been unreasonably or improperly done or any omission had been made by the legal representatives that, although falling short of being an irregularity that would justify setting aside the order, still merited a disallowance of all or any costs, or even a referral to the Taxing Master.

[34] There was no irregularity present in this case; none that would justify the setting aside the order of Deputy Master Wells, and none that would even render a reduction in costs.

[35] Mr McAteer is most insistent that there has been a fraud, but the reality is that apart from making this assertion, he was not been able to provide any evidence to substantiate that assertion, either before the five judges, or before me. Repetition of an assertion, in the absence of evidence, does not make it a fact, no matter how many times it is repeated.

[36] Although there is a discretion to investigate, and take into account, litigation misconduct, the Taxing Master, and the High Court judge on review, should not, save in the absence of new evidence, revisit matters that had already been dealt with, and determined, by a judge, or judges, in the proceedings that gave rise to the taxation order. Any, non-referred, litigation misconduct should only be considered by the Taxing Master if there is evidence that had not been placed before the judge, or judges, in the matter or matters giving rise to the taxation order. In all likelihood, the discretion to consider non-referred litigation misconduct will only arise when the misconduct is clear and obvious from the examination of the solicitor's file or from the taxation process.

[37] Deputy Master Wells made the order because the applicants had failed to comply with the terms of the 'unless order'. The 'unless order' had a specified date for compliance, and at any time thereafter the case was liable to be struck out. All that Deputy Master Wells did was confirm the reality of the situation. I rely on the report given by counsel who was present at the hearing. This hearing had been

convened to consider another interlocutory matter. An adjournment was applied for and the Deputy Master was advised that it was an application by consent. The Deputy Master on his own motion, and not at the request of the legal representatives for the respondents, declined to adjourn and instead made the order to strike out, which was merely confirming the status of the litigation. The adjourning of the other interlocutory matter would have been pointless as the main action was over, as indeed were all summonses relating to it. Mr McAteer's presence at the hearing, particularly as he continued to be in default of the 'unless order,' is unlikely to have made any difference to the outcome.

[38] Mr McAteer has advised that he has made a complaint against a solicitor to the Solicitors' Disciplinary Tribunal. That body is independent of the courts and will take its own course, make its own decisions and in its own time. Mr McAteer suggested that I postpone the matter until such time as the Tribunal has decided on his complaint. I decline to do so. Whatever that decision is, unless the Tribunal is referred to new evidence that was not available before Master McCorry, Mr Justice Hart and the Court of Appeal (and we are considering a nine year gap since the Court of Appeal decision) or, indeed, before me, the findings of the Court of Appeal that there was no irregularity must stand.

Conclusion

[39] As indicated, I do not have the power, as part of my review of the taxation process, to re-open the entire case, including the various findings and orders of the Master, the Deputy Master, Mr Justice Hart and the Court of Appeal. Nor would I wish to do so, as the applicants have not produced any evidence to suggest fraud or misconduct on the part of the respondents' solicitors. This litigation has been concluded as far as this court is concerned. The purpose of the taxation process was to measure a reasonable level of remuneration for legal services reasonably rendered in the course of legal proceedings. Master McGivern has undertaken her role with admirable precision, and on my review of the process, I can find nothing wrong with her conclusions. After conducting my own review, I am content that the final amount of £47,746.64 is correctly calculated when assessed on the standard basis and reflects a reasonable amount for legal services reasonably incurred by the respondents. I therefore affirm the certificate of Master McGivern.

[40] In the summons, the applicants not only sought to rely on the provisions of Order 62, but also Order 1A. I do not propose to quote from the Order, save to say that it states that the overriding objective of all the Rules of the Court of Judicature is to deal with cases justly. This Order does not add a separate ground, but rather emphasises that when applying Order 62 the overriding objective and purpose is to deal with the case justly. I consider that both Master McGivern, and I, have done so.

[41] I will hear the parties in respect of the costs of this review.

[42] In conclusion, I can do no more than to remind the applicants that it would be

wise for them to reflect on the concluding words, uttered nine years ago, in the judgment of Coghlin LJ – "*We are not persuaded that the interests of justice would be served by prolonging any further this already tortuous and time consuming litigation*".