

**AUDITOR SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE**

AR & BD

**POINTS OF OBJECTION**

for

**THE SCOTTISH LEGAL AID BOARD**

In the case of [REDACTED] 1531624420

**Proceedings in relation to Part IV of the  
Parole Board (Scotland) Rules 2001**

**Date of ABWOR grant – 19 March 2020**

**Authorised Expenditure - £2,250.00**

**Date & Time – 21 April 2021 @ 11:30am**

**1. Nature of proceedings**

The solicitor has approved an application for Advice by way of representation (ABWOR) to a person in relation to Parole Board proceedings. In terms of Regulation 1(2) of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003, a “Parole Board case” means a case of a prisoner to which Part IV of the Parole Board (Scotland) Rules 2001 applies.

**2. Reference to the Auditor**

A reference to the Auditor has been made in the above case in terms of Regulation 18(4) of the Advice and Assistance (Scotland) Regulations 1996 (“the 1996 regulations”):

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

**3. Statutory test of taxation and fees and outlays allowable**

In terms of Regulation 17(1), of the 1996 regulations fees and outlays allowable to the solicitor upon any assessment or taxation mentioned in regulations 18 and 19 in respect of advice or assistance shall, and shall only, be

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

- (b) outlays actually, necessarily and reasonably incurred in connection with that matter, due regard being had to economy, provided that, without prejudice to any other claims for outlays, there shall not be allowed to a solicitor outlays representing posts and incidents.

Solicitors fees in respect of ABWOR proceedings must be charged in terms of Part I of Schedule 3 of the 1996 regulations.

#### **4. Bases of Taxation**

The bases of taxation in legal aid and advice and assistance cases is agent and client, third party paying.

In *Park v Colvilles Limited* 1960 S.C. 143, in his opinion Lord Patrick, with whom the other three members of the Division concurred, said at p.153:

*"Now, for nearly a century a distinction has been enforced, according as the taxation was between agent and client, client paying, or between agent and client, third party paying. If the taxation is between agent and client, third party paying, all expenses are allowed which would be incurred by a prudent man of business without special instruction from his client in the knowledge that the account would be taxed - Hood v Gordon per Lord McLaren at p.676."*

In the Opinion of Lord Eassie in the Note of Objections to the Auditors Report in the cause *Nicholas Dingley v The Chief Constable Strathclyde Police*, Outer House A448/93, he helpfully clarifies at paragraph [27] that:

*"I would observe in passing that the term "man of business", little used today, simply refers to a solicitor."*

Expenses in the Supreme and Sheriffs Courts of Scotland by James Hastings

In terms of the third party paying test we would refer the auditor to pages 111 to 113 within part 2, chapter 7 of the above publication where the author describes every bases of taxation available. The guidance he provides to auditors in relation to the legal aid category of taxations at page 112 at paragraph 4(c) "solicitor and client, when third party is a fund". At 4(c) where the legal aid fund is paying:

*"The bases is the same as (b) above except that the benefit of any doubt is given to the paying party and not the receiving party and any unusual expenses which might not be recovered on a party and party basis, must be sanctioned by the paying authority."*

That is consistent with Rule 44.3(2)(b) of the [Civil Procedure Rules](#) which outlines the bases of assessment applicable in England & Wales and in respect of the standard bases, which is broadly similar to agent and client, third party paying in Scotland, which states:

*"(b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party."*

Accordingly, it is respectfully submitted if the auditor has any doubt as to the appropriateness of the charges in dispute then that doubt is given to SLAB as paying party.

#### **5. Items in dispute**

There are three work items which are the subject of dispute. It is recognised that the monetary sums in dispute are modest however as they feature regularly in other Parole Board cases which are

submitted by McKennas to SLAB we would welcome the auditors guidance. We would hope this may allow us to resolve matters amicably in future cases mindful, of course, that we recognise that each case requires to be considered on its own facts and circumstances.

The disputed items are listed below.

Date	Work item	Claim	Offer	Disputed Sum
19 March 2020	Precognition of client re forthcoming parole board hearing – 413 words	£12.36	£0.00	£12.36
24 March 2020	Letter to parole board – 1 page	£6.18	£2.48	£3.70
1 Dec 2020	Formal letter to parole board providing contact details for the hearing	£2.48	£0.00	£2.48

### **Disputed precognition charge – 19 March 2020**

The precognition is attached for the auditors consideration (**Appendix 1**).

There is no universal definition of what constitutes a precognition but a number of examples are provided below.

Glossary of legal terms and Latin maxims. - A preliminary written statement of the evidence which a witness may be expected to give. It is usually paraphrased after interview with the witness and prepared in the first person. It is not signed, and is not binding.

Manual of the Law of Evidence in Scotland, W.J. Lewis [1925] page 172 - A written statement of the matters which witnesses are expected to give as evidence on oath when in the witness box, and is as a guide generally essential for the proper leading of the evidence at the diet of enquiry.

I.D. MacPhail, Sheriff Court Practice, 2nd Edition, page 473 - A written statement in intelligible form of the matters which a witness is prepared to give in evidence in the witness box.

J A Beatons, Green & Son, 1982. - A preliminary examination of a person who may be required to give evidence in a criminal trial or a civil proof. The purpose of obtaining a precognition is to acknowledge in advance of the trial or proof of the evidence the witness will be able to give about facts which are likely to emerge as relevant in which it will require to be proved. The likely evidence is set out in a document, also called a “precognition”.

Although the definitions vary in emphasis, it seems very clear that a precognition is a statement taken to discover what evidence a person will give in court or, where appropriate, at a Tribunal.

SLABs view is that given the nature of Parole Board proceedings a precognition is neither, necessary or reasonable, due regard being had to economy unless there are exceptional circumstances.

It is important to recognise that in arriving at its decision the Parole Board in terms of its own guidance states the following:

*“What does the Parole Board take into account when considering an offenders case?”*

*The Board takes into account all of the information contained in the reports in the dossier. It will take into account information about the original offence from the trial judge's report. The Board is*

*interested in behaviour in prison, offending history, family and social background and plans for release. The Board also considers whether the offender has taken any steps to address issues or problems which may have contributed to their offending behaviour. The main consideration for the Board will be to assess whether an offender is likely to be a risk to the community if they are released on licence.”*

That information is available from what is provided for in the dossier or, where appropriate, in any supplementary addendum.

Parole Board proceedings are not intended to be adversarial. Their decision making process focuses largely on an analysis of the offenders behaviour past, present and future, the evidence of change and the manageability of risk.

SLAB receives accounts from many firms throughout Scotland who provide advice and assistance and ABWOR in respect of Parole Board Tribunal proceedings and we are unaware of any other firm of solicitors who consider it necessary to take a precognition in what now appears to be as a matter of routine in order to properly present their client’s case. As the bases for taxation is agent and client, third party paying it is respectfully submitted that a prudent man of business (i.e. another solicitor) does not consider it necessary, due regard being had to economy, to take a precognition and we would therefore invite the entry to be taxed off in full.

There is no indication in the account that the statement was lodged as a production. In any event, our records indicate that the same solicitor and Firm represented ██████ at what appears to be his last Parole Board hearing in October 2018, in what was a particularly lengthy hearing and consistent with the practice of other firms who provide legal representation in Parole Board cases no precognition was taken from the client in that case. It is unclear why there appears to have been a change in practice and why it is now considered necessary, due regard being had to economy, to adopt this course of action in this case. The previous account can be provided if this would assist the auditor.

The precognition in this case has been taken at the first attendance on the client and prior to the perusal of the dossier. Accordingly, even if a precognition was necessary it is arguable that it may be premature at this stage and a more informed decision could be taken once the dossier has been fully considered.

Moreover, the contents of this particular *precognition* consist of the clients frustration as to what he perceives has been a lack of progress through the prison estate together with providing details on an outstanding criminal investigation. The policy of the SPS is not to make any changes to a persons risk assessment until the court determines the outcome of any prosecution. That type of information appears to be of a type that can adequately be framed into a file note in accordance with SLAB guidance.

*“It is not appropriate to frame a precognition as a matter of routine and which simply reflects the instructions from the client on various matters. This is more correctly contained within a file note. This is included within the time charge for a meeting or telephone call and it remains on your file for further use. It need not form part of a precognition for which a separate framing charge is payable in appropriate circumstances.”*

The solicitor in this case has been paid for the time reasonably spent with the client on 19 March 2020 and that charge should absorb the charge for what SLAB considers was information that could adequately be contained in a file note. In addition, the information provided in the precognition

could have been conveyed to the Parole Board orally by the legal representative without this increasing the duration of the hearing.

#### **Disputed letter charge – 24 March 2020**

A copy of the disputed letter is attached for the auditors consideration (**Appendix 2**).

SLABs view is that this letter appears to constitute “*short letters of a formal nature*” and accordingly the fee payable is prescribed in terms of paragraph 4(ii) of Part I of Schedule 3, in the sum of £2.48. The ABWOR fees can be viewed [here](#).

SLABs published guidance on letters under advice and assistance (and ABWOR) is simply a form of that aid type.

In light of the letter content which is effectively a short communication to the parole board advising that they are acting on behalf of ██████████ and will be attending the hearing scheduled for 23 April 2020 and future representations that will be made. The Parole Board will be aware of the location, time date and mode of hearing.

In SLABs view the letter appears to be a short formal letter and the auditor is therefore invited to tax the fee at £2.48 in accordance with paragraph 4(ii) of Part I of Schedule 3 of the 1996 regulations.

#### **Disputed letter charge – 1 December 2020**

If it was necessary at all it is unclear why this information could not have been incorporated into the 2 page letter that was sent to the Parole Board on 27 November 2020, which SLAB has allowed in full. There has been continuity of representation at this point and the Parole Board had already been informed on the 19 November 2020 of Ms McKennas availability for the hearing on the 4 December.

McKennas indicate that “*we cannot delegate our diaries so far in advance*” and that is why they could not provide this information in the 2 page letter sent on 27 November 2020. This appears to contradict what is actually provided for in their accounts for earlier hearings in both the Reid and Doherty cases.

- For the hearing on 23 April 2020 McKennas appear to have informed the Parole Board on 24 March 2020, a full month earlier that they would be appearing.
- For the hearing on 27 August 2020, McKennas informed the Parole Board on 21 August.
- On the 19 November 2020, Ms McKenna informs the Parole Board of her availability for the hearing on the 4 December in a 2 page letter which has been allowed in full.
- In the Brian Doherty case McKennas advise the Parole Board they are acting on 19 March 2020 and seek clarity on the date of the hearing which had been fixed for 30 March 2020.

27 November was a Friday. The letter sent on 1 December 2020 was a Tuesday so it remains unclear when there was only one clear working day between the two respective letters, why this letter was necessary and particularly so given that McKennas had already written to the Parole Board on the 19 November 2020, to confirm that Ms McKenna was available for the hearing on Friday 4 December. Alternatively, there does not appear to be any cogent reason why the letter 27 November could not have been delayed until 1 December which would have short circuited the need for two letters.

This is not an agent and client, client paying taxation this is agent and client, third party paying and it is incumbent at each and every step that is taken that the solicitor conducts the proceedings with due regard being had to economy. That is enshrined in the legal aid regulations.

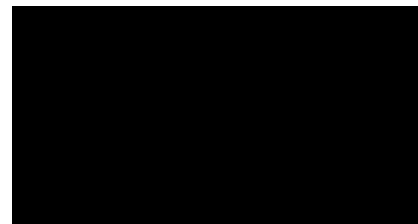
It is appreciated that these are modest sums but the letter 1 December 2020, does not appear to satisfy the test of work being *“actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given, due regard being had to economy”*.

The prudent man of business would not require to send two letters containing, in part, the same information (19/11 and 1/12) and that appears to raise issues of double accounting. It is further submitted that even if this information required to be communicated on more than one occasion then it does not seem unreasonable to suggest that it should either have been provided in the letter of 27 November 2020, or failing which, that letter (27/11) could have been delayed and sent on 1 December to avoid the need for another letter.

The auditor is therefore invited to tax off the letter charge of £2.48.

### **Expenses**

SLAB acknowledges that the question of expenses are wholly within the discretion of the Auditor and accordingly I have no further observations to make in this regard.



[REDACTED]

States:-

Statement noted by Yvonne McKenna, solicitor, within HMP Glenochil on the 19<sup>th</sup> of March 2020.

1. My full name is [REDACTED] I am now 70 years of age. I have a life prisoner parole board hearing which is scheduled to take place within Glenochil on the 23<sup>rd</sup> of April 2020 at 11.30 am. I am becoming completely despondent about the whole matter.
2. It is evident to me that the last 2 years that I have spent in custody have been a complete and utter waste of time. By now I ought to have been on my way to Greenock and into the Open Estate and instead I am still here. This is all due to [REDACTED] the previous Psychologist. The prison are now saying that I have allegedly committed a Communications Act offence involving my niece which has been reported to the Procurator Fiscal's Office in Alloa.
3. This incident was supposed to have happened a year ago in March 2019. It is having a major impact on my progression through the prison estate.
4. Insofar as I recall matter my niece had told me over the telephone that she had

have a copy of my telephone call. Sometimes they do and sometimes they do not record them. The social worker said not be bothered about this. The police haven't even been out to see me. All of this is meant that because this matter is still outstanding then my risk assessment will not be updated and I will not be progressed further which is extremely unfair. I have not had any contact with any members of my family now. I was told not to write to them over the past year so I have not. I am just getting extremely frustrated with the lack of progress now and I wish matters to move on so that I can have a successful outcome and move into the community before I end up dying in here.



Dear Sirs

128941

We refer to the above. Please note that our firm are instructed to act on behalf of [REDACTED] and will be representing his interests at his forthcoming parole board hearing on the 23<sup>rd</sup> of April 2020 at 11.30 am within HMP Glencohil. We note that this will be a face to face tribunal. We shall be making further representations to the Board on behalf of [REDACTED] once the appropriate increase in his legal advice and assistance has been granted. This will relate to his own personal representations and his representations with regards to non-disclosure information.

Yours faithfully

McKennis Law Practice

4 Heritage House, North Street, Glenrothes, KY7 5SE

Telephone – 01592 756449

117

**AUDITOR SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE**

**POINTS OF OBJECTION**

for

**THE SCOTTISH LEGAL AID BOARD**

In the case of [REDACTED] 1527223020

**Proceedings in relation to Part IV of the  
Parole Board (Scotland) Rules 2001**

**Date of ABWOR grant – 16 March 2020**

**Authorised Expenditure - £750.00**

**Date & Time – 21 April 2021 @ 10:30am**

**1. Nature of proceedings**

The solicitor has approved an application for Advice by way of representation (ABWOR) to a person in relation to Parole Board proceedings. In terms of Regulation 1(2) of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003, a “Parole Board case” means a case of a prisoner to which Part IV of the Parole Board (Scotland) Rules 2001 applies.

**2. Reference to the Auditor**

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**3. Statutory test of taxation and fees and outlays allowable**

In terms of Regulation 17(1), of the 1996 regulations fees and outlays allowable to the solicitor upon any assessment or taxation mentioned in regulations 18 and 19 in respect of advice or assistance shall, and shall only, be

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

- (b) outlays actually, necessarily and reasonably incurred in connection with that matter, due regard being had to economy, provided that, without prejudice to any other claims for outlays, there shall not be allowed to a solicitor outlays representing posts and incidents.

Solicitors fees in respect of ABWOR proceedings must be charged in terms of Part I of Schedule 3 of the 1996 regulations.

#### **4. Bases of Taxation**

The bases of taxation in legal aid and advice and assistance cases is agent and client, third party paying.

In *Park v Colvilles Limited* 1960 S.C. 143, in his opinion Lord Patrick, with whom the other three members of the Division concurred, said at p.153:

*"Now, for nearly a century a distinction has been enforced, according as the taxation was between agent and client, client paying, or between agent and client, third party paying. If the taxation is between agent and client, third party paying, all expenses are allowed which would be incurred by a prudent man of business without special instruction from his client in the knowledge that the account would be taxed - Hood v Gordon per Lord McLaren at p.676."*

In the Opinion of Lord Eassie in the Note of Objections to the Auditors Report in the cause *Nicholas Dingley v The Chief Constable Strathclyde Police*, Outer House A448/93, he helpfully clarifies at para [27] that

*"I would observe in passing that the term "man of business", little used today, simply refers to a solicitor."*

Expenses in the Supreme and Sheriffs Courts of Scotland by James Hastings

In terms of the third party paying test we would refer the auditor to pages 111 to 113 within part 2, chapter 7 of the above publication where the author describes every bases of taxation available. The guidance he provides to auditors in relation to the legal aid category of taxations at page 112 at paragraph 4(c) "solicitor and client, when third party is a fund". At 4(c) where the legal aid fund is paying:

*"The bases is the same as (b) above except that the benefit of any doubt is given to the paying party and not the receiving party and any unusual expenses which might not be recovered on a party and party basis, must be sanctioned by the paying authority."*

That is consistent with Rule 44.3(2)(b) of the [Civil Procedure Rules](#) which outlines the bases of assessment applicable in England & Wales and in respect of the standard bases, which is broadly similar to agent and client, third party paying in Scotland, which states:

*"(b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party."*

Accordingly, it is respectfully submitted if the auditor has any doubt as to the appropriateness of the charges in dispute then that doubt is given to SLAB as paying party.

#### **5. Items in dispute**

There are two work items which are the subject of dispute. It is recognised that the monetary sums in dispute are modest however as they feature regularly in other Parole Board cases which are

submitted by McKennas to SLAB we would welcome the auditors guidance. We would hope this may allow us to resolve matters amicably in future cases mindful, of course, that we recognise that each case requires to be considered on its own facts and circumstances.

The disputed items are listed below.

Date	Work item	Claim	Offer	Disputed Sum
16 March 2020	Precognition of client re forthcoming parole board hearing – 351 words	£12.36	£0.00	£12.36
25 March 2020	Letter to client explaining that in light of the pandemic it is unlikely that your hearing will go ahead and we will be in touch with an update once we know the situation	£6.18	£2.48	£3.70

### **Disputed precognition charge – 16 March 2020**

The precognition is attached for the auditors consideration (**Appendix 1**).

There is no universal definition of what constitutes a precognition but a number of examples are provided below.

Glossary of legal terms and Latin maxims. - A preliminary written statement of the evidence which a witness may be expected to give. It is usually paraphrased after interview with the witness and prepared in the first person. It is not signed, and is not binding.

Manual of the Law of Evidence in Scotland, W.J. Lewis [1925] page 172 - A written statement of the matters which witnesses are expected to give as evidence on oath when in the witness box, and is as a guide generally essential for the proper leading of the evidence at the diet of enquiry.

I.D. MacPhail, Sheriff Court Practice, 2nd Edition, page 473 - A written statement in intelligible form of the matters which a witness is prepared to give in evidence in the witness box.

J A Beatons, Green & Son, 1982. - A preliminary examination of a person who may be required to give evidence in a criminal trial or a civil proof. The purpose of obtaining a precognition is to acknowledge in advance of the trial or proof of the evidence the witness will be able to give about facts which are likely to emerge as relevant in which it will require to be proved. The likely evidence is set out in a document, also called a “precognition”.

Although the definitions vary in emphasis, it seems very clear that a precognition is a statement taken to discover what evidence a person will give in court or, where appropriate, at a Tribunal.

SLABs view is that given the nature of Parole Board proceedings a precognition is neither, necessary or reasonable, due regard being had to economy unless there are exceptional circumstances.

It is important to recognise that in arriving at its decision the Parole Board in terms of its own guidance states the following:

*“What does the Parole Board take into account when considering an offenders case?”*

*The Board takes into account all of the information contained in the reports in the dossier. It will take into account information about the original offence from the trial judge's report. The Board is interested in behaviour in prison, offending history, family and social background and plans for*

*release. The Board also considers whether the offender has taken any steps to address issues or problems which may have contributed to their offending behaviour. The main consideration for the Board will be to assess whether an offender is likely to be a risk to the community if they are released on licence."*

That information is available from what is provided for in the dossier or, where appropriate, in any supplementary addendum.

Parole Board proceedings are not intended to be adversarial. Their decision making process focuses largely on an analysis of the offenders behaviour past, present and future, the evidence of change and the manageability of risk.

SLAB receives accounts from many firms throughout Scotland who provide advice and assistance and ABWOR in respect of Parole Board Tribunal proceedings and we are unaware of any other firm of solicitors who consider it necessary to take a precognition in order to properly present their client`s case. As the bases for taxation is agent and client, third party paying it is respectfully submitted that a prudent man of business (i.e. another solicitor) does not consider it necessary, due regard being had to economy, to take a precognition and we would therefore invite the entry to be taxed off in full.

There is no indication in the account that the statement was lodged as a production. In any event, our records also indicate that the same Firm (different solicitor) represented ██████████ at what appears to be his last Parole Board hearing in October 2018, and consistent with the practice of other firms no precognition was taken from the client in that case. It is unclear why there appears to have been a change in practice and why it has been considered necessary, due regard being had to economy, to adopt this course of action in this case. The previous account can be provided if this would assist the auditor.

The precognition in this case has been taken at the first attendance on the client and prior to the perusal of the dossier. Accordingly, even if a precognition was necessary it is arguable that it may be premature at this stage and a more informed decision could be taken once the dossier has been fully considered.

Moreover, the contents of this particular *precognition* the client is in very simple terms confirming to the instructing solicitor that he does not wish to be present at the hearing and has no evidence to give, nor does he wish to be considered for released, that he accepts the medical reports findings and simply asks that consideration be given to be transferred to a medium secure hospital in England. That information appears with respect to be of a type that can adequately be framed into a file note in accordance with SLAB guidance.

*"It is not appropriate to frame a precognition as a matter of routine and which simply reflects the instructions from the client on various matters. This is more correctly contained within a file note. This is included within the time charge for a meeting or telephone call and it remains on your file for further use. It need not form part of a precognition for which a separate framing charge is payable in appropriate circumstances."*

The solicitor takes the view *"that this is a mental health patient in the State Hospital, and the fact that he would not be attending the hearing himself, a precognition is in our view always appropriate"*. In SLABs experience that is not a view which is shared by other solicitors who accept instructions in Parole Board proceedings from mental health patients.

The solicitor in this case has been paid for the time spent with the client on 20 March 2020 and that charge should absorb the charge for what SLAB considers was information that could adequately be contained in a file note. In addition, the information provided in the precognition could have been conveyed to the Parole Board orally by the legal representative without this increasing the duration of the hearing.

#### **Disputed letter charge – 25 March 2020**

A copy of the letter is attached for the auditors consideration (**Appendix 2**).

SLABs view is that this letter appears to constitute “*short letters of a formal nature*” and accordingly the fee payable is prescribed in terms of paragraph 4(ii) of Part I of Schedule 3, in the sum of £2.48. The ABWOR fees can be viewed [here](#).

SLABs published guidance on letters under advice and assistance (and ABWOR) is simply a form of that aid type.

On one view it could be suggested that the letter 25 March was speculative. The Parole Board issued guidance [here](#) on the 27 March to confirm that hearings would be conducted by teleconference and the hearing proceeded as intended on the 30 March. However, given the uncertainty at the time the letter appears to satisfy the test of work actually, necessarily and unreasonably done.

However, given its content which is effectively a short communication to the client advising of the possible delay that may arise due to the pandemic it required no legal thought or expertise. It is of a type which would presumably have been sent to clients across the whole spectrum of legal cases at that time and you would surmise would have been adopted as a pro-forma template style letter which would be chargeable in other affected cases.

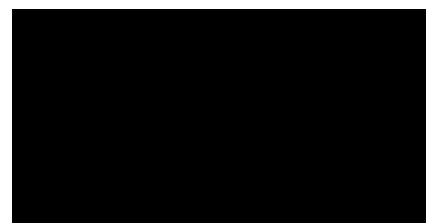
In SLABs view the letter appears to be a short formal letter and the auditor is therefore invited to tax the fee at £2.48 in accordance with paragraph 4(ii) of Part I of Schedule 3 of the 1996 regulations.

#### **McKennas seek to re-open negotiations in relation to restricted entries they have previously accepted**

It is respectfully submitted that any other entries which were restricted have already been accepted by McKennas and accordingly these are not matters for the auditor. Those entries were not accepted under reservation of any other entries being reinstated. The taxation process should be a mechanism exercised as a last resort to resolve issues which remain in dispute after the normal accounts taxation process has run its natural course. If the auditor considers that there is scope for re-negotiation of any of those entries then SLAB should be informed as to what entries are now being challenged and the basis for each respective challenge.

#### **Expenses**

SLAB acknowledges that the question of expenses are wholly within the discretion of the Auditor and accordingly I have no further observations to make in this regard.



States:-

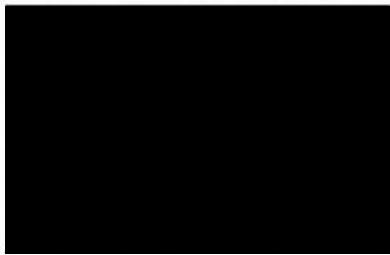
Statement noted by Janice Morrison, Solicitor, within Iona 2 Ward, State Hospital, Carstairs on the 16<sup>th</sup> of March 2020.

1. My details are as above. I believe that I have a life prisoner tribunal hearing scheduled to take place on the 30<sup>th</sup> of March 2020 within the State Hospital. I do not wish to be personally present at the hearing but I would wish a representative from McKennas to be present to represent my interests. I would not be seeking my release from the Parole Board at this hearing. I accept my doctors position that I should remain in hospital for the time being. I think that if I were to be transferred to prison then there would be a great risk to me. I was previously attacked in a hospital wing whilst in prison. I accept that my doctor does not think that I can be released from hospital at this time.
2. Having gone over the conclusions in this updated doctors report with my solicitor, I do accept the mental health diagnosis that my doctor has given me. I also accept that my medication which I am receiving is helping me although I only think so from time to time. I do a lot of groups and classes at the hospital and I do think that they benefit me. I am going to crafts this morning and oi look forward to it.

in England.

4. I do not intend to be present at the parole board hearing myself. I would like the parole board to know that I have done 25 years in hospital and I do not want to do another 25 years. I do understand however that the best way for me to progress is for me to move down levels of security.





10-0102

Miss [unclear]  
[unclear]  
[unclear]

Dear [redacted]

LIFE PRISONER PAROLE TRIBUNAL: 30<sup>th</sup> MARCH 2020

We refer to the above. In view of the current coronavirus pandemic it will be unlikely that your parole board hearing will be proceeding on the 30<sup>th</sup> of March 2020. We have asked the parole Board for Scotland to clarify the position and as and when we have a response then we shall of course let you know.

Yours faithfully

McKENNAS

88

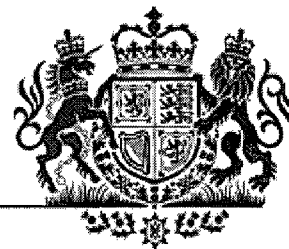
30  
17  
7  
[Signature]  
606.841

As a result of the coronavirus pandemic our office is now closed. Staff will however be attending the office frequently. If possible please respond to us by e-mail where possible. If you wish to telephone and there is no answer please leave your name, number and a brief message and we will revert to you as soon as possible. We apologise for any inconvenience caused.



32019  
25 yrs in  
Custody

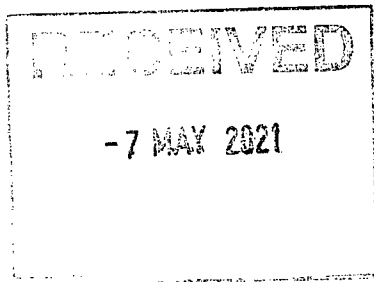
Sheriffdom of Tayside,  
Central and Fife



Scottish Legal Aid Board,  
Thistle House  
91 Haymarket Terrace,  
EDINBURGH.  
EH12 5HE

ALAN PIRIE  
SCTS Judicial Auditor of Court  
Tayside Central & Fife  
Sheriff Court  
Market Street  
FORFAR  
DD8 3LA  
DX 530674 - FORFAR

30 April 2021



Dear Sirs,

Taxation - [REDACTED]

I refer to the recent taxation.

I have taxed the account and enclose a copy of the account with my note of reasons.

The fee due to SCTS £66, comprising £46 lodging fee and £20 taxation fee I have apportioned between parties (£33 per party).

Yours sincerely

ALAN PIRIE

Auditor of Court

Tayside Central & Fife

[apirie@scotcourtsribunals.gov.uk](mailto:apirie@scotcourtsribunals.gov.uk)

Blackberry: 07792 568194

LARN  
1527223020

Nominated Solicitor  
MISS JANICE K MORRISON

Firm

**Firm name** MCKENNAS SOLICITORS  
(26020)  
**Branch Address** 4 HERITAGE HOUSE  
NORTH STREET  
GLENROTHES  
**Postcode** KY7 5SE

Last Offer Date: 02/02/2021

## Negotiations

Date of Work	Work Item	Lodged	Paid	Offered	Accept Offer	Negotiations (SLAB in blue)
16/03/2020	Travel Time (Qualified) Start time : 08:50 16/03/2020   Stop time : 10:10 16/03/2020   Mileage : 55   Details of travel to/from : glenrothes office to carstairs state hospital   Total number of cases/accounts this fee is to be apportioned with (only if applicable) : 2	£16.32	£16.32	-	Accepted by SLAB	
16/03/2020	Mileage Mileage : 55   Total number of cases/accounts this fee is to be apportioned with (only if applicable) : 2	£13.20	£13.20	-	Accepted by SLAB	
16/03/2020	Meeting (Qualified) Start time : 10:20 16/03/2020   Stop time : 10:40 16/03/2020   Description : meeting with client taking possession of paroles board dossier noting statement re forthcoming hearing	£21.74	£21.74	-	Accepted by SLAB	
16/03/2020	Travel Time (Qualified) Start time : 10:40 16/03/2020   Stop time : 12:00 16/03/2020   Mileage : 55   Details of travel to/from : return travel carstairs to glenrothes office   Total number of cases/accounts this fee is to be apportioned with (only if applicable) : 2	£13.60	£13.60	-	Accepted by SLAB	
16/03/2020	Mileage Mileage : 55   Total number of cases/accounts this fee is to be apportioned with (only if applicable) : 2	£13.20	£13.20	-	Accepted by SLAB	
16/03/2020	Precognition Number of words : 351	£12.36	£0.00	£0.00	No	• [SLAB] Thank you for your response. However, I can only reiterate that our position

£ 48.06

Date of  
Work

Description : PRECOGNITION  
OF CLIENT  
Work Item  
REFORTHCOMING PAROLE  
BOARD HEARING |

£78.06  
Lodged Paid Offered Accept Offer

**Negotiations  
(SLAB in blue)**

*has not changed. We cannot agree that the document uploaded should be regarded as anything other than a file note and should not have been charged as a precognition in this matter. If you disagree with our approach then you can, of course, exercise your right to taxation as provided for in Regulation 18(4) of the Advice and Assistance Regulations.*

- No we do not accept the Boards position in this matter. You have indicated that your position has not changed. We were under the impression following our previous discussions with SLAB that if we wanted to submit a file for taxation, that we should in the first instance come back to you. That was at our Miss McKennas last taxation with SLAB in 2019. If we havent heard back from the Board over the course of the next 7 days we intend to lodge our file with the Auditor so we should be obliged by your confirming the position which would seem to be rather a waste of time, money and expense given that we are talking about £12.36 here and we have accepted a number of the Boards other abatements in relation to this account.

- [SLAB] Thank you for your response. However, our position has not changed since our last negotiation. We cannot agree that the document uploaded should be regarded as anything other than a file note and should not have been charged as a precognition in this matter.

- No. We respectfully disagree with the conclusion reached by the Board. This is the only precognition that has been taken from this client. The suggestion in the most recent refusal appears to be that there has been a precognition taken on a number of occasions and that only one may be necessary in most cases. It is not clear to us why the Board do not consider that any precognition is required in this case whatsoever. If the abatement is insisted upon then the case will be sent for taxation.

- [SLAB] We note your comments in connection with the proposed abatements made to the account in connection with the precognition. A precognition is to provide that person's version of events and, in most cases, will reflect what he or she speaks to in a court of law. Accordingly, one would expect a full statement to be obtained once all the facts have been engathered. When meeting with a client it should be unnecessary to frame a precognition on each occasion. While we can understand a solicitor holding a file note to reflect the clients position, we do have difficulty in agreeing that the subsequent file note can be said to be a precognition and chargeable as same. We have perused the file note in the papers uploaded and we disagree that it should have been made up to be a precognition and charged for.

£78.06

Date of Work

Work Item

Lodged

Paid

Offered

Accept Offer

Negotiations (SLAB in blue)

£76.06

- We attach herewith a copy of the precognition of [REDACTED]. There is no reason why we should not be noting a precognition as this is a court hearing. In particular, in the circumstances given that this is a mental health patient in the State Hospital, and the fact that he would not be attending the hearing himself, a precognition is in our view always appropriate.
- [SLAB] Please advise why a precognition has been taken as not normally required for parole hearings. Forward copy for further assessment.

19/03/2020 Letter (Non-Formal) £6.18 £6.18 - Accepted by SLAB  
 Number of pages : 125 |  
 Description : to writing to client following meeting, explaining we shall represent your interests at forthcoming parole board and asking if you receive any other additions to the dossier to let us know |

19/03/2020 Letter (Non-Formal) £6.18 £2.64 - Accepted by FIRM  
 Number of pages : 125 |  
 Description : to writing to parole board explaining we are acting and asking them to confirm date of the hearing |

- Abatement accepted by firm
- [SLAB] Allow 1 page formal as reasonable for a confirmatory letter - forward copy.

24/03/2020 Letter (Non-Formal) £6.18 £2.64 - Accepted by FIRM  
 Number of pages : 125 |  
 Description : to a parole board asking them in light of lockdown to confirm if panel will still be going ahead |

- Abatement accepted by firm
- [SLAB] Allow 1 page formal as reasonable - forward copy.

£ 89.52

Date of Work	Work Item	Lodged	Paid	Offered	Accept Offer	Negotiations (SLAB in blue)
25/03/2020	Letter (Non-Formal) Number of pages : 125   Description : to client explaining that in light of the pandemic it is unlikely that your hearing will go ahead and we will be in touch with an update once we know situation	£6.18	<del>£2.64</del> £6.18	£0.00	No Review reason	<p>• [SLAB] Thank you for your response. However, I can only reiterate that our position has not changed. We cannot agree that this very short letter, which is of basic content requiring little thought or legal expertise, should be charged at anything other than formal and that a formal fee is applicable and reasonable. If you disagree with our approach then you can, of course, exercise your right to taxation as provided for in Regulation 18(4) of the Advice and Assistance Regulations.</p> <p>• No, again we disagree with the Boards proposition and we would respectfully ask the Board to consider our negotiation in relation to 16th March. If we haven't heard from you within the next 7 days then we intend to lodge our file with the Auditor for taxation. We await hearing further.</p> <p>• [SLAB] Thank you for your response. However, our position has not changed since our last negotiation. We cannot agree that this very short letter, which is of basic content requiring little thought or legal expertise, should be charged at anything other than formal and that a formal fee is applicable and reasonable.</p> <p>• No. The Board appear to suggest that because the letter is short that it is formal. We respectfully disagree with that position. If the abatement is insisted upon the case will be sent for taxation.</p> <p>• [SLAB] We cannot agree that this short letter of less than 60 words should be feed other than anything but formal.</p> <p>• A copy is attached. We do not accept that this is a formal letter. This sets out detailed information to our client and whilst we have accepted the above two formal letters, we think that this matter should be paid.</p> <p>• [SLAB] Allow 1 page formal as reasonable - forward copy.</p>
29/03/2020	Perusing (Qualified) Start time : 12:00 29/03/2020   Stop time : 14:00 29/03/2020   Details of documents perused : PERUSING TH WHOLE DOSSIER -320 PAGES AND GOING OVER THE SAME RE HEARING. HIGHLIGHTING RELEVANT INFORMATION IN RESPECT OF WHICH WE REQUIRE TO ASK QUESTIONS OF THE RMO	£86.96	£86.96	-	Accepted by SLAB	
30/03/2020	Court (Qualified, no counsel) Start time : 10:00 30/03/2020   Stop time : 10:25 30/03/2020   Nature of Hearing : CONDUCTING PAROLE BOARD HEARING	£28.23	£28.23	-	Accepted by SLAB	

£210.89


Date of Work	Work Item	Lodged	Paid	Offered	Accept Offer	Negotiations (SLAB in blue)
01/04/2020	Letter (Non-Formal) Number of pages : 500   Number of words : 394   Description : TO WRITING TO CLIENT FOLLOWING THE PAROLE BOARD HEARING WHICH PROCEEDED IN YOUR ABSENCE. EXPLAINING WHAT HAD HAPPENED AND THE EVIDENCE OF THE RMO PARTICULARLY RE YOUR WISH TO MOVE TO MEDIUM SECURITY	£24.72	£18.54	-	Accepted by SLAB	
05/04/2020	Perusing (Qualified) Start time : 14:00 05/04/2020   Stop time : 14:30 05/04/2020   Details of documents perused: PERUSING THE DECISION OF THE PAROLE BOARD AND REASONS AND WHEN NEXT REVIEW WILL TAKE PLACE	£21.74	£10.87	-	Accepted by FIRM	<ul style="list-style-type: none"> <li>Abatement accepted by firm</li> <li>[SLAB] Thank you for your response to the abatement. However, the fee offered is reasonable. We are not prepared to allow anything further in respect of the perusal 4 sheets and on the basis of the short notes uploaded.</li> <li>We do not accept this. We attach herewith a copy of our Miss McKennas attendance record from that date and we are not minded to accept the same.</li> <li>[SLAB] Allow 15 mins - how many pages perused.</li> </ul>
08/04/2020	Letter (Non-Formal) Number of pages : 125   Description : TO CLIENT EXPLAINING THE OUTCOME AND WE WOULD ATTEMPT TO DISCUSS WITH YOU	£6.18	£2.64	-	Accepted by FIRM	<ul style="list-style-type: none"> <li>Abatement accepted by firm</li> <li>[SLAB] Allow 1 page formal as reasonable - Client already receives decision letter from the Parole Board - forward copy.</li> </ul>

Totals ~~£282.07~~ ~~£230.40~~ £6.18

Memo £24.72  
 11/04/20  
 £24.72  
 £33.00  
 £205.94

Close Print

FORWARD 30 APRIL 2021 (Lenote)  
 Having considered all written submissions I fee the account as presented to me in the sum of Two hundred and seventy five pounds - 94 pence only (£275.94) inclusive of liability for part of Invoice fee.

  
 ALAN PIRIE  
 ALAN PIRIE

**SLAB Reference 1527223020**

The attached account was presented to me for taxation by McKennas , Solicitors , Glenrothes, in terms of Regulation 18(4) of the Advice and Assistance (Assistance by way of Representation)(Scotland) Regulations 2003 .

Taxation of the account was assigned for 21 April 2021. By agreement of parties I dealt with the taxation by way of written submissions.

The account as presented to me is annexed. The amount in dispute was £16.06 comprising of 2 entries on the account. The principal taxed amount is £242.94.

For the avoidance of any doubt I only considered the amounts that were objected to, having regard to my role in terms of the regulations. I have no locus to consider any specific entry where same has been either agreed between the parties or conceded. I further fully accept that the benefit of any doubt I have on any aspect of the account has to be given to SLAB as the paying party. Reference Hastings, Chapter 7, Pages 111-113).

In this particular account I have allowed a fee of £6.18 for the letter on 25 March 2020. I have sustained the objection by SLAB and have not allowed the precognition fee of £12.36 sought – entry of 16 March 2020.

Reasons for my decision are noted below.

Taxation Costs

As accepted by both parties, the expenses of the taxation are a matter for the Auditor. The total fees due to SCTS in this matter are £66. These are account lodging fee of £46 and taxation fee of £20. The taxation having been sought by McKennas this is due for payment initially by them to SCTS. Given the relatively small amount of the amount of the account I do not propose to apportion the fee based on the individual amounts. Given that there has been “success” by each party I will apportion liability on the basis of 50% each. One half of the fees namely £33 has therefore been added to the account. The account is therefore taxed at £275.94. McKennas will be liable for the remaining £33. I will, as I did on the last occasion, leave it to parties to make the necessary administrative arrangements to apportion the fee.

Decision Reasons

Correspondence – 25 March 2020.

The charge claimed was objected to by SLAB on the basis that the letter constituted a short formal letter and that therefore a reduced charge of £2.48 was appropriate. I was referred to the guidance by SLAB in respect of letters under advice and assistance that I have considered. The letter was sent on 25 March 2020. Mr Doherty had a Parole Board Hearing assigned for 30 March 2020. The letter (word count 88) advised Mr Doherty that his hearing may be unlikely to proceed on 30 March 2020 and that the Parole Board for Scotland has been asked to clarify the position. This letter imports



relevant and important information to the client who would have been wondering if the hearing was still proceeding given the situation at that time. It is a matter within my knowledge that National Lockdown was effective from Tuesday 24 March and clearly there was doubt re the hearing proceeding. Given the situation pertaining in the Country at the time the work (the letter) was clearly necessary and reasonable. I do note that the Parole Board issued guidance re hearings although that was not issued until 27 March, two days after this letter was sent. A formal letter would be a letter perhaps enclosing a cheque, acknowledging correspondence etc. Formality or otherwise of a letter is assessed on the content not length of the letter. The letter in dispute is not a short formal letter in my view and I will therefore allow a charge of £6.18.

Precognition – 16 March 2020.

I have read all the submissions before me and the document that is the subject of the dispute between the parties. I have also noted the lengthy submission from SLAB relative to this disputed charge. In coming to my decision I give consideration to (a) What is a precognition? and (b) Whether the charge meets the statutory test applicable, namely work necessarily and reasonably done, due regard being had to economy.

A precognition is a written statement of the evidence which a witness may be expected to give. This can also be a written statement of the evidence that a party/applicant may be expected to give to the Court/Tribunal.

The statement narrates nothing that could be described as evidence that could be given to the hearing. I accept that the hearings are not adversarial and that evidence is not given on oath. Submissions are made to the hearing but evidence may be used to frame the ex parte submissions made. The only possible parts of the statement that could be construed as evidence are "I was previously attacked in a hospital wing whilst in prison" and "I do a lot of groups and classes at the hospital and I do think that they benefit me. I am going to crafts this morning and oi look forward to it". The remainder and majority of the statement, in my view, is simply instructions to the solicitor and therefore a file note. The charge already having been applied, it being included in the attendance charge, I will not allow a precognition charge of £12.36.

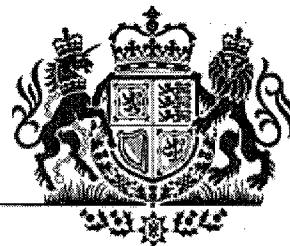
ALAN PIRIE

SCTS Judicial Auditor

Tayside Central & Fife.

  
31/1/21

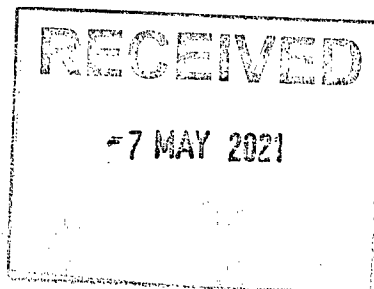
Sheriffdom of Tayside,  
Central and Fife



Scottish Legal Aid Board,  
Thistle House  
91 Haymarket Terrace,  
EDINBURGH.  
EH12 5HE

ALAN PIRIE  
SCTS Judicial Auditor of Court  
Tayside Central & Fife  
Sheriff Court  
Market Street  
FORFAR  
DD8 3LA  
DX 530674 - FORFAR

30 April 2021



Dear Sirs,

Taxation - [REDACTED] 1531624420

I refer to the recent taxation.

I have taxed the account and enclose a copy of the account with my note of reasons.

The fee due to SCTS £66, comprising £46 lodging fee and £20 taxation fee I have apportioned between parties (£33 per party).

Yours sincerely

ALAN PIRIE

Auditor of Court

Tayside Central & Fife

[apirie@scotcourtsribunals.gov.uk](mailto:apirie@scotcourtsribunals.gov.uk)

Blackberry: 07792 568194

LARN  
1531624420

Nominated Solicitor  
MS YVONNE MCKENNA

Firm

**Firm name** MCKENNAS SOLICITORS  
(28020)  
**Branch Address** 4 HERITAGE HOUSE  
NORTH STREET  
GLENROTHES  
**Postcode** KY7 5SE

Last Offer Date: 01/03/2021

## Negotiations

Date of Work	Work Item	Lodged	Paid	Offered	Accept Offer	Negotiations (SLAB in blue)
19/03/2020	Travel Time (Qualified) Start time : 08:30 19/03/2020   Stop time : 09:30 19/03/2020   Mileage : 30   Details of travel to/from : mileage glenrothes office to glenochil prison	£21.76	£21.76 ✓	-	Accepted by SLAB	
19/03/2020	Mileage Mileage : 30	£14.40	£14.40 ✓	-	Accepted by SLAB	
19/03/2020	Meeting (Qualified) Start time : 09:30 19/03/2020   Stop time : 10:10 19/03/2020   Description : meeting with client taking possession of dossier nd noting precognition re forthcoming parole board	£32.61	£32.61 ✓	-	Accepted by SLAB	
19/03/2020	Travel Time (Qualified) Start time : 10:10 19/03/2020   Stop time : 11:10 19/03/2020   Mileage : 30   Details of travel to/from : return travel glenochil to glenrothes	£21.76	£21.76 ✓	-	Accepted by SLAB	
19/03/2020	Mileage Mileage : 30	£14.40	£14.40 ✓	-	Accepted by SLAB	

£104.95

£104.93

Date of Work	Work Item	Lodged	Paid	Offered	Accept Offer	Negotiations (SLAB in blue)
19/03/2020	Precognition Number of words : 413   Description : framing precognition re forthcoming parole board hearing	£12.36	<del>£0.00</del> £12.36	£0.00	No Review reason	<ul style="list-style-type: none"><li>• [SLAB] Thank you for informing the Board that you are proceeding to taxation on this case.</li><li>• We are lodging our account for taxation. We have already messaged the Board in relation to an analogous case for [REDACTED] which is being dealt with under larn 1527223020. We have submitted that file for taxation and now intend to submit this file for [REDACTED] for taxation. We have asked SLAB to confirm whether they are content that Kirkcaldy Sheriff Court Auditor based in Forfar assesses the account and taxes the same and we await hearing from the Board in early course.</li><li>• [SLAB] Thank you for your response. However, we cannot agree that the document uploaded, which should be regarded as file notes, should have been made up to be a precognition and charged. We are not prepared to reinstate this abatement.</li><li>• No. Copy now attached.</li><li>• [SLAB] Forward copy.</li></ul>
24/03/2020	Letter (Non-Formal) Number of pages : 125   Description : to parole board indicating we have instructions and will be appearing at the face to face tribunal parole board and that we intend to make representations	£6.18	<del>£2.40</del> £6.18	£0.00	No Review reason	<ul style="list-style-type: none"><li>• [SLAB] Thank you for informing the Board that you are proceeding to taxation on this case.</li><li>• As above</li><li>• [SLAB] Thank you for your response. However, we cannot agree that the letter uploaded should be charged at anything other than formal as it is a short confirmatory letter. We are not prepared to reinstate this abatement.</li><li>• No. Copy letter here uploaded we do not accept that this is formal and we expect to be paid for the same.</li><li>• [SLAB] Allow 1 page formal as reasonable for confirmatory letter.</li></ul>
22/04/2020	Meeting (Qualified) Start time : 09:36 22/04/2020   Stop time : 09:40 22/04/2020   Description : tel att with client re the parole hearing noting this has been adjourned until tomorrow afternoon in light of coronavirus and explaining we have received some details re outstanding charge that may have a bearing on his parole board hearing	£10.87	£10.87	*	Accepted by SLAB	
22/04/2020	Telephone Call (Qualified) Time (minutes) : 5   Who was call made to/from (name/firm)? : tel att with hmp glenochill as this is a teleconference hearing making specific arrangements to speak to client in advance of parole board	£6.18	£6.18	.	Accepted by SLAB	

£110.52 ✓

£140.52

Date of Work	Work Item	Lodged	Paid	Offered	Accept Offer	Negotiations (SLAB in blue)
23/04/2020	Perusing (Qualified) Start time : 09:00 23/04/2020   Stop time : 11:00 23/04/2020   Details of documents perused : perusing the 652 pages of the dossier	£86.96	£86.96 ✓	-	Accepted by SLAB	
23/04/2020	Court (Preparation) Start time : 13:00 23/04/2020   Stop time : 14:00 23/04/2020   Description : preparation for tribunal hearing position statement and leading of evidence from client / representations re non disclosed material	£43.48	£43.48 ✓	-	Accepted by SLAB	
23/04/2020	Meeting (Qualified) Start time : 14:00 23/04/2020   Stop time : 14:20 23/04/2020   Description : tel att with client going over the representations we will make and advising re parole hearing	£21.74	£21.74 ✓	-	Accepted by SLAB	
23/04/2020	Court (Qualified, no counsel) Start time : 14:30 23/04/2020   Stop time : 15:15 23/04/2020   Nature of Hearing : conducting the parole board hearing	£42.35	£42.35 ✓	-	Accepted by SLAB	
24/04/2020	Letter (Formal) Number of pages : 125   Description : to governor asking to pass legal letter	£2.48	£2.48 ✓	-	Accepted by SLAB	
24/04/2020	Letter (Non-Formal) Number of pages : 250   Description : to writing to client following parole board and explaining that hearing is adjourned for 3 months to await the outcome of criminal proceedings in alcoa	£12.36	£12.36 ✓	-	Accepted by SLAB	
27/04/2020	Telephone Call (Qualified) Time (minutes) : 10   Who was call made to/from (name/firm)? : tel att with client who is concerned about further paperwork that i require and that i should be able to get further RMT reports from the prison	£6.18	£6.18 ✓	-	Accepted by SLAB	

£356.07

£356.07

Date of Work	Work Item	Lodged	Paid	Offered	Accept Offer	Negotiations (SLAB in blue)
29/04/2020	Perusing (Qualified) Start time : 09:00 29/04/2020   Stop time : 09:15 29/04/2020   Details of documents perused : perusing minute from parole board and noting further information they require and that a procedural hearing will be allocated	£10.87	£10.87 ✓	-	Accepted by SLAB	
01/05/2020	Letter (Formal) Number of pages : 125   Description : to governor asking to pass legal letter	£2.48	£2.48 ✓	-	Accepted by SLAB	
01/05/2020	Letter (Non-Formal) Number of pages : 125   Description : to client explaining that we have now received the parole board decision and that the parole board have set out that they require from the prison an update to your risk management plan	£6.18	£6.18 ✓	-	Accepted by SLAB	
16/07/2020	Telephone Call (Qualified) Time (minutes) : 10   Who was call made to/from (name/firm)? : tel att with you as you have concerns the parole board deferred the case for 3 months and as you have pled not guilty they will not know the outcome by the date the parole board next review your case	£6.18	£6.18 ✓	-	Accepted by SLAB	
22/07/2020	Letter (Non-Formal) Number of pages : 250   Description : to a parole board re the case for mr reid and updating them re the outstanding criminal case as the chair may wish to take a view re the date that is picked for the next parole board calling	£12.36	£12.36 ✓	-	Accepted by SLAB	
22/07/2020	Letter (Non-Formal) Number of pages : 250   Description : to client re our tel call and explaining we have brought to the chairs attention the dates fixed for your outstanding trial at allos sheriff court	£12.36	£12.36 ✓	-	Accepted by SLAB	
22/07/2020	Letter (Formal) Number of pages : 125   Description : to governor asking to pass legal letter	£2.48	£2.48 ✓	-	Accepted by SLAB	

£408.98

PLCS 98

Date of Work	Work Item	Lodged	Paid	Offered	Accept Offer	Negotiations (SLAB in blue)
23/07/2020	Telephone Call (Qualified) Time (minutes) : 5   Who was call made to/from (name/firm)? : tel att with client who is worried that he has still not heard re date for his parole board and 3 months have now passed, explaining we have written to parole board already	£6.18	£6.18 ✓	-	Accepted by SLAB	
28/07/2020	Letter (Formal) Number of pages : 125   Description : to governor asking to pass legal letter	£2.48	£2.48 ✓	-	Accepted by SLAB	
28/07/2020	Letter (Non-Formal) Number of pages : 250   Description : to client advising we have now received a report from the caseworker at the parole board and that the information we have provided has been passed to the chairperson and they will be in touch with a date in due course	£12.36	£6.18 ✓	-	Accepted by FIRM	<ul style="list-style-type: none"> <li>Abatement accepted by firm</li> <li>[SLAB] Allow 1 full page as reasonable.</li> </ul>
18/08/2020	Telephone Call (Qualified) Time (minutes) : 5   Who was call made to/from (name/firm)? : tel att with client noting he has received communication from parole board with a date for 11th september 2020, he wants to discuss whether this should be face to face or not	£6.18	£6.18 ✓	-	Accepted by SLAB	
21/08/2020	Letter (Formal) Number of pages : 125   Description : short letter to parole board re our miss mckenna availability for a preliminary hearing on 27th august	£2.48	£2.48 ✓	-	Accepted by SLAB	
25/08/2020	Letter (Formal) Number of pages : 125   Description : to governor to pass legal letter	£2.48	£2.48 ✓	-	Accepted by SLAB	
25/08/2020	Letter (Non-Formal) Number of pages : 250   Description : to client explaining that 2 dates have been set, one for a full parole board and the earlier a preliminary hearing before the chair and explaining further re the need for this	£12.36	£12.36 ✓	-	Accepted by SLAB	

PLCS 32

£447.32

Date of Work	Work Item	Lodged	Paid	Offered	Accept Offer	Negotiations (SLAB in blue)
27/08/2020	Court (Preparation) Start time : 13:00 27/08/2020   Stop time : 13:30 27/08/2020   Description : preparation for parole board hearing	£21.74	£21.74 ✓		Accepted by SLAB	
27/08/2020	Meeting (Qualified) Start time : 13:45 27/08/2020   Stop time : 14:00 27/08/2020   Description : meeting with client going over position re parole board and your instructions that you do not wish there to be further delay of this and further information re your outstanding charge	£10.87	£10.87 ✓		Accepted by SLAB	
27/08/2020	Waiting at court (Qualified) Start time : 14:00 27/08/2020   Stop time : 14:20 27/08/2020   Please provide details of type of hearing attended : waiting for case to start	£10.87	£10.87 ✓		Accepted by SLAB	
27/08/2020	Court (Qualified, no counsel) Start time : 14:20 27/08/2020   Stop time : 14:40 27/08/2020   Nature of Hearing : court procedural hearing before chair who apologises as he had forgotten about hearing addressing re clients position	£28.23	£28.23 ✓		Accepted by SLAB	
27/08/2020	Letter (Non-Formal) Number of pages : 125   Description : to a parole board the preliminary hearing and that I am not being permitted to join the call	£6.18	£2.48 ✓		Accepted by FIRM	<ul style="list-style-type: none"> <li>Abatement accepted by firm</li> <li>[SLAB] Allow 1 page format as reasonable.</li> </ul>
27/08/2020	Telephone Call (Qualified) Time (minutes) : 5   Who was call made to/from (name/firm)? : tel att from parole board coordinator who is enquiring if we have dates for mr reids outstanding case in alloa	£6.18	£6.18 ✓		Accepted by SLAB	
28/08/2020	Letter (Formal) Number of pages : 125   Description : to governor asking to pass legal letter	£2.48	£2.48 ✓		Accepted by SLAB	
28/08/2020	Letter (Non-Formal) Number of pages : 250   Description : to client explaining outcome and the chairs view that the hearing should be postponed until after your outstanding trial and the parole board therefore will be 11th september 2020	£12.36	£12.36 ✓		Accepted by SLAB	

£512.53



BS42.83

Date of Work	Work Item	Lodged	Paid	Offered	Accept Offer	Negotiations (SLAB in blue)
08/10/2020	Perusing (Qualified) Start time : 15:30 08/10/2020   Stop time : 15:45 08/10/2020   Details of documents perused : perusing documentation from the sps being further reports lodged 35 pages 5 further reports re intelligence healthcare report social work updated prison report	£10.87	£10.87	✓	Accepted by SLAB	
19/11/2020	Letter (Non-Formal) Number of pages : 250   Description : to parole board advising re our miss mckennas availability for a further prelim hearing on 4th december and providing info re the trial for mr reid being adjourned at alfoa	£12.36	£12.36	✓	Accepted by SLAB	
19/11/2020	Letter (Formal) Number of pages : 125   Description : to governor asking to pass legal letter	£2.48	£2.48	✓	Accepted by SLAB	
19/11/2020	Letter (Non-Formal) Number of pages : 125   Description : to client advising new parole board scheduled for 15th december and a further preliminary hearing will take place and that we have advised the chair that your trial did not proceed	£6.18	£6.18	✓	Accepted by SLAB	
27/11/2020	Letter (Formal) Number of pages : 125   Description : to governor to pass legal letter	£2.48	£2.48	✓	Accepted by SLAB	
27/11/2020	Letter (Non-Formal) Number of pages : 125   Description : to client explaining a new preliminary hearing before the chair only and the purpose of the hearing	£6.18	£6.18	✓	Accepted by SLAB	
27/11/2020	Letter (Non-Formal) Number of pages : 250   Description : to a parole board updating the chair re the outstanding trial diets for mr reid and that we would be of the view it is in the interests of justice for parole board to proceed on that date	£12.36	£12.36	✓	Accepted by SLAB	

BS95.46

£595.44

Date of Work	Work Item	Lodged	Paid	Offered	Accept Offer	Negotiations (SLAB In blue)
30/11/2020	Telephone Call (Qualified) Time (minutes) : 10   Who was call made to/from (name/firm)? : tel att with you , you are aware a preliminary hearing has been fixed and you are not happy the case is getting put off as your trial in allos is now not until June 2021 and this is causing you anxiety	£6.18	£6.18 ✓	-	Accepted by SLAB	
01/12/2020	Letter (Formal) Number of pages : 125   Description : to parole board providing contact details for the hearing	£2.48	£0.00 ✓	£0.00	No Review reason	<ul style="list-style-type: none"> <li>• [SLAB] Thank you for informing the Board that you are proceeding to taxation on this case.</li> <li>• As above</li> <li>• [SLAB] Thank you for your response. However, we cannot agree that this should be viewed as a general administrative work and therefore non claimable.</li> <li>• We require to provide the agent who is attending at the Parole Boards contact details otherwise the Hearing cannot take place. This is a prerequisite we have only charged £2.48 as a formal charge. We do not accept that that should not be paid.</li> <li>• [SLAB] Letter to call - not chargeable.</li> </ul>
04/12/2020	Court (Preparation) Start time : 09:00 04/12/2020   Stop time : 09:30 04/12/2020   Description : prep for further preliminary hearing	£21.74	£21.74 ✓	-	Accepted by SLAB	
04/12/2020	Meeting (Qualified) Start time : 09:50 04/12/2020   Stop time : 09:55 04/12/2020   Description : tel att with client in advance of preliminary hearing	£10.87	£0.00 ✓	-	Accepted by FIRM	<ul style="list-style-type: none"> <li>• Abatement accepted by firm</li> <li>• [SLAB] It would be appropriate, having due regard to the economy, that this should be entered as meeting at court and be included within the calculation for aggregated fees.</li> </ul>
04/12/2020	Court (Qualified, no counsel) Start time : 10:00 04/12/2020   Stop time : 10:13 04/12/2020   Nature of Hearing : conducting preliminary hearing	£28.23	£28.23 ✓	-	Accepted by SLAB	
04/12/2020	Letter (Formal) Number of pages : 125   Description : to a parole board providing further contact details for mr inch to conduct hearing	£2.48	£0.00 ✓	£0.00	No Review reason	<ul style="list-style-type: none"> <li>• [SLAB] Thank you for informing the Board that you are proceeding to taxation on this case.</li> <li>• as above</li> <li>• [SLAB] Thank you for your response. However, we cannot agree that this should be viewed as a general administrative work and therefore non claimable.</li> <li>• No for the reasons already stated we expect to be paid for this.</li> <li>• [SLAB] Non chargeable - admin.</li> </ul>
07/12/2020	Letter (Formal) Number of pages : 125   Description : to governor with legal letter	£2.48	£2.48 ✓	-	Accepted by SLAB	

£654.07

£1034.07

Date of Work	Work Item	Lodged	Paid	Offered	Accept Offer	Negotiations (SLAB in blue)
07/12/2020	Letter (Non-Formal) Number of pages : 125   Description : to client explaining further to representations that the life prisoner tribunal will take place on 15th december 2020	£6.18	£6.18	-	Accepted by SLAB	
11/12/2020	Perusing (Qualified) Start time : 14:30 11/12/2020   Stop time : 15:00 11/12/2020   Details of documents perused : going over the decision minute and the terms thereof - all are content for hearing to proceed on 15th december despite fact progression may be held up due to outstanding complaint , board to use uncomplicated language and board request for brief addendum -4 pages	£21.74	£10.87	-	Accepted by SLAB	
15/12/2020	Court (Preparation) Start time : 08:00 15/12/2020   Stop time : 09:00 15/12/2020   Description : preparing further for full hearing of parole board	£43.48	£21.74	-	Accepted by SLAB	
15/12/2020	Meeting (Qualified) Start time : 09:30 15/12/2020   Stop time : 09:45 15/12/2020   Description : tel att with you and flo prior to tribunal proceeding	£10.87	£10.87	-	Accepted by SLAB	
15/12/2020	Court (Qualified, no counsel) Start time : 10:00 15/12/2020   Stop time : 11:30 15/12/2020   Nature of Hearing : conducting parole board	£84.71	£84.71	-	Accepted by SLAB	
15/12/2020	Letter (Non-Formal) Number of pages : 125   Description : to a parole board as requested by chair with copy complaint re outstanding case	£6.18	£6.18	-	Accepted by SLAB	
15/12/2020	Letter (Formal) Number of pages : 125   Description : to governor to pass legal letter	£2.48	£2.48	-	Accepted by SLAB	
15/12/2020	Letter (Non-Formal) Number of pages : 250   Description : to client further to the parole board explaining after he gave evidence that the parole board are considering matters and decision within 10 days	£12.36	£6.18	-	Accepted by FIRM	<ul style="list-style-type: none"> <li>• Abatement accepted by firm</li> <li>• [SLAB] Allow 1 full page as reasonable.</li> </ul>

£803.28

Date of Work	Work Item	Lodged	£803.78		Negotiations (SLAB in blue)
			Paid	Offered	
17/12/2020	Perusing (Qualified) Start time : 13:00 17/12/2020   Stop time : 13:10 17/12/2020   Details of documents perused : perusing intimation of parole board	£10.87	£10.87	-	Accepted by SLAB
18/12/2020	Letter (Formal) Number of pages : 125   Description : to governor to pass legal letter	£2.48	£2.48	-	Accepted by SLAB
18/12/2020	Letter (Non-Formal) Number of pages : 125   Description : to client explaining we have the decision and the full minute will be in due course and that further hearing in 12 months time	£6.18	£6.18	-	Accepted by SLAB
06/01/2021	Telephone Call (Qualified) Time (minutes) : 10   Who was call made to/from (name/firm)? : att with client re parole board decision and advising fully he wishes to appeal to supreme court explaining my views at this time re judicial review	£6.18	£6.18	-	Accepted by SLAB
18/01/2021	Perusing (Qualified) Start time : 11:00 18/01/2021   Stop time : 11:30 18/01/2021   Details of documents perused : perusing detailed 5 page decision of parole board and in particular regarding the lack of progression through the prison estate and why that requires to be the position and further re potential for appeal	£21.74	£10.87	-	Accepted by SLAB
19/01/2021	Letter (Formal) Number of pages : 125   Description : to governor with legal letter	£2.48	£2.48	-	Accepted by SLAB
19/01/2021	Letter (Non-Formal) Number of pages : 250   Description : to client re the parole board decision and that a great deal will depend on the outcome of his summary complaint and further thereon and that at this stage we cannot see any right of judicial review	£12.36	£12.36	-	Accepted by SLAB
<b>Totals</b>		<b>£930.07</b>	<b>£838.64</b>	<b>£43.48</b>	

Letter 30 April 2021 (date)  
Having considered all the submissions I too the account as presented to me in the sum of Eight Hundred and Eighty Seven pounds 70 pence only (£887.70) inclusive of liability for part of to date fee



Member of Court

**ALAN PIRIE**

£887.70

33 -

£887.70

**SLAB Reference 1531624420**

The attached account was presented to me for taxation by McKennas, Solicitors, Glenrothes, in terms of Regulation 18(4) of the Advice and Assistance (Assistance by way of Representation)(Scotland) Regulations 2003 .

Taxation of the account was assigned for 21 April 2021. By agreement of parties I dealt with the taxation by way of written submissions.

The account as presented to me is annexed. The amount in dispute was £18.54 comprising of 3 entries on the account. The principal taxed amount is £854.70.

For the avoidance of any doubt I only considered the amounts that were objected to, having regard to my role in terms of the regulations. I have no locus to consider any specific entry where same has been either agreed between the parties or conceded. I further fully accept that the benefit of any doubt I have on any aspect of the account has to be given to SLAB as the paying party. Reference Hastings, Chapter 7, Pages 111-113).

In this particular account I have allowed a fee of £6.18 for the letter on 24 March 2020, have allowed the precognition fee of £12.36 sought on 19 March 2020 and have sustained the objection by SLAB and will not allow the charge of £2.48 for the formal letter on 1 December 2020.

Reasons for my decision are noted below:

Taxation Costs

As accepted by both parties, the expenses of the taxation are a matter for the Auditor. The total fees due to SCTS in this matter are £66. These are account lodging fee of £46 and taxation fee of £20. The taxation having been sought by McKenna's this is due for payment by said firm to SCTS. Given the relatively small amount of the amount of the account I do not propose to apportion the fee based on the individual amounts. Given that there has been "success" by each party I will apportion liability on the basis of 50% each. One half of the fees namely £33 has therefore been added to the account. The account is therefore taxed at £887.70. I will, as I did on the last occasion, leave it to parties to make the necessary administrative arrangements to apportion the fee.

Decision Reasons

Correspondence – 24 March 2020.

The charge claimed was objected to by SLAB on the basis that the letter constituted a short formal letter and that therefore a reduced charge of £2.48 was appropriate. I was referred to the guidance by SLAB in respect of letters under advice and assistance that I have considered. The letter was sent on 24 March 2020. [REDACTED] had a Parole Board Hearing assigned for 23 April 2020. The letter (word count 117) advised the Parole Board a number of things namely that the firm had been instructed to act on behalf of him, that further representations were to be made to the Board and what these would relate to. It was stated that these would relate to his own personal representations and his representations with regards to non-disclosure information. I note the terms of the objection from



SLAB and why the Board are of the view that a formal letter charge should be applied. I note the comment from SLAB that the parole board would be aware of the date and location of the hearing. I do not interpret the letter in that way. The solicitors are advising the Board of their intention to appear and what the submissions will be, location of a hearing is customary and regularly seen in letters. Formality or otherwise of a letter is assessed on the content not length of the letter. The letter in dispute imports information that is necessary and of assistance to the Parole Board similar to a letter that would be sent to a Court. It is not a short formal letter in my view and I will therefore allow a charge of £6.18.

Correspondence -1 December 2020.

I note all the submissions from parties. I note the terms of the letter namely that it advises of the contact telephone number of Ms McKenna for the hearing. This would have been required for contact by the Parole Board. As stated earlier the work must be necessarily and reasonably incurred with due regard for economy. The charge sought for this letter is a formal letter charge. There is clearly no doubt that the letter referred to is such a letter. The test I must apply having regard to the SLAB regulations is whether the work is necessarily and reasonably incurred. I have had the benefit of sight of McKenna's file. I see that a letter was sent to the Parole Board on Friday 27 November. Prior to that availability of Ms McKenna for the hearing on 4 December had been confirmed to the Parole Board. The letter of 1 December advises of a telephone number for contact purposes. I am of the view that this could have been included in the letter of 27 November and will therefore disallow the charge for the formal letter and uphold the submission from SLAB.

Precognition Charge – 19 March 2020.

I have read all the submissions before me and the document that is the subject of the dispute between the parties. I have also noted the lengthy submission from SLAB relative to this disputed charge. In coming to my decision I give consideration to (a) What is a precognition? and (b) Whether the charge meets the statutory test applicable, namely work necessarily and reasonably done, due regard being had to economy.

A precognition is a written statement of the evidence which a witness may be expected to give. This can also be a written statement of the evidence that a party/applicant may be expected to give to the Court/Tribunal. The evidence has to be obtained from the applicant to aid the solicitor in submissions to the Parole Board.

The statement in this case contains information that in my view is "evidence" and relevant to the submissions made to the Panel. This differs from the case of ████████ dealt with on the same date where the "precognition" advised of his instructions. In this case the precognition gives details of an alleged criminal offence pertaining to ████████ in the Glenochil Prison which has been reported to the Procurator Fiscal in Alloa. Given the background here it was essential that a precognition/statement was taken from the applicant for the submissions. I note that SLAB state that the precognitions have not been lodged as productions. It is well established practice in all manner of hearings, Court hearings and others that precognitions from witnesses or parties/applicant and are not shared with opponents or the Court or adjudicating authority.

304/21

Precognitions are only viewed by Auditors for taxation purposes. In all the circumstances the precognition charge is allowed.

ALAN PIRIE

SCTS Judicial Auditor

Tayside Central & Fife.



31/1/21