

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

DM

**Note by the Auditor of Court, Glasgow Sheriff Court in the Taxation of Account of Expenses of Mrs Maria A Clarke, Advocate on Joint Remit of The Scottish Legal Aid Board and Mrs Maria A Clarke, Advocate.**

This taxation, which took place before me on 24<sup>th</sup> July 2002, arose out of a dispute between the Scottish Legal Aid Board (The Board) and Mrs Maria A Clarke, Advocate relating to the fees claimed in representing a [REDACTED] in a Social Work Referral in which [REDACTED]

[REDACTED] The remit to me is in terms of Regulation 12 of the Civil Legal Aid (Scotland) (Fees) Regulation 1989 (S.1. 1989 No. 1490). At the taxation Mrs Maria A Clarke was represented by [REDACTED] of Alex Quinn & Partners, Law Accountants and the Board was represented by [REDACTED]. The Fee Note raised by Faculty Services Limited shows the fees claimed by Mrs Clarke to be as follows:-

<b>Consultation - Glasgow with Agent</b>	<b>£300</b>
<b>Consultation - Glasgow with Client very disabled – Home visit</b>	<b>£600</b>
<b>Five days at £1,170 Daily (90% of £1,300)</b>	<b><u>£5,850</u></b>
	<b>£6,750</b>
<b>V.A.T at 17 ½ %</b>	<b><u>£1, 181. 25</u></b>
	<b><u>£7,931. 25</u></b>

Prior to the taxation [REDACTED] provided me with a Note of Submission dated 19<sup>th</sup> July 2002 and provided me with a Final Note at the Diet of Taxation. The first note had been copied to the Board when sent to me and a copy of the latter was handed to Mr [REDACTED] at the Diet. I do not propose to detail here the authorities and documentation attached to [REDACTED] Notes suffice to say the provision of the two notes enabled both he and [REDACTED] to address me on the contentious matters in a much shorter time than if these submissions has been given verbally at the Diet.

██████████ firstly referred me to the Civil Legal Aid (Scotland) (Fees) Regulation 1989 Regulation 9 "Subject to the provisions of Regulation 10 regarding calculation of fees, Counsel may be allowed such fees as are reasonable for conducting the proceedings in a proper manner, as between solicitor and client, third party paying" and Regulation 10 (2) "Counsels fees for any work in relation to proceedings in the Sheriff Court, House of Lords, Restrictive Practices Court, Employment Appeals Tribunals, Land Valuation Appeal Court, Scottish Land Court or Lands Tribunal for Scotland, shall be 90% of the amount of Fees which would be allowed for that work on a taxation of expenses between Solicitor and Client, third party paying if the work done were not legal aid. Whilst the parties could not agree on the interpretation of "Solicitor and Client, third party paying" it was accepted that such a basis of taxation must lie somewhere between Party/Party expenses and Solicitor and Client, Client paying. Both agreed this was a matter for my determination and further that the question to be decided by me was "what was the reasonable fee for conducting the proceedings in a proper manner having regard to this particular case."

██████████ referred me to two cases:- Firstly a taxation in October 1999 by Ian.L.S Balfour Joint Auditor, Edinburgh Sheriff Court involving Junior Counsel representing a parent at a one day appeal following a Childrens Hearing's refusal to allow the parent any contact with his daughter. Mr Balfour refers to daily fees in civil cases on a party/party basis in Edinburgh Sheriff Court as being between £800 - £900 around March 1999. He goes on to suggest that a reasonable fee for a typical case on a Solicitor Client, Third Party paying basis should be no less than £850. The fee as proposed by Faculty Services was £900 scaled down to £810 (90% of £900). Mr Balfour having determined that the case before him, in view of the number of hours preparation and court time, came into the category of abnormality in magnitude or difficulty and as such justified an uplift of Fee. He therefore sustained Faculty Services proposed fee.

Secondly, ██████████ referred me to a taxation in July 2001 by Mr Feeney the Auditor of Court, Hamilton Sheriff Court involving fees to two Junior Counsel in a Referral by the Reporter to the Children's Panel. In this particular case Mr Feeney allowed a daily fee of £1350 (90% of £1,500).

Without doubt the case before him was unusually complex. Mr Feeney's Note page 16 paragraph 17 "I think I am obliged to state that I consider this to be an exceptionally complex case and in many ways quite unique I also felt it could be considered to be on quite a different level from that which Junior Counsel would normally be expected to conduct". This particular case had I believe taken some forty-eight days of court time.

██████████ submitted that as the case before me was not particularly complex and that the Social Work Reports etc produced therein were fairly standard fare I should tax the daily rate at no more than £1,000 - £1,050 subject to the restriction to 90% thereof.

██████████ advised me that in addition to the five-day Hearing, Counsel spent two full days in preparation with such time on this occasion being subsumed into the daily rate. Further, during the course of the Hearing at least three/four hours was spent each evening in preparation for the following days court appearance. He further advised that the Social Work Records were extensive and there was also Expert Reports from a Consultant Paediatrician and Psychologists in respect of both children.

██████████ advised me that the Board had no difficulty in accepting the fee charged for the first consultation but felt that the fee for the second consultation with the Client was a bit on the high side. ██████████ position was simply that the second consultation which was at the clients home involved leaving Edinburgh at 8.15a.m. and not returning to Edinburgh until 2p.m.

Having given consideration to all submissions and the Notes by my fellow Auditors provided by both ██████████ considering this case on its merits but not in isolation and exercising my own skill and discretion with knowledge of the level of fees charged by Counsel conducting litigation before this court I am of the opinion that a sum of £1,200 per day is a fair and reasonable fee for all preparation and conduct of this case by Junior Counsel on the basis of Solicitor and Client, third party paying. Under deduction of 10% this gives a daily rate of £1,080 for each of the five days. The fee for the first consultation having been accepted by the Board remains at £300 and in view of the explanation of the time involved in attending the clients home for the second consultation I do not find £600 to be excessive and have allowed same.

Finally, I was addressed on the question of the expense of [REDACTED] attendance at this taxation. He advised me that he had incurred not insubstantial expenses in preparation and attendance, which he conservatively estimated at 9 ¼ hours. This does not include his time obtaining the views of other Law Accountants on the level of Junior Counsels Fees. He also advised me that his charge – out rate per hour was £90. Whilst I understand [REDACTED] was not averse to a fee being allowed for preparation and attendance he did take objection to the overall charge, based on Mr [REDACTED] figures, of £832.50. Having regard to the detailed written submissions provided by [REDACTED] and since he has achieved a degree of success I feel it is appropriate he should be entitled to expenses for this work and for the attendance. I have accordingly allowed a fee of £600 + V.A.T.

I have therefore concluded the taxation of the disputed fees at a total sum of £8,497.60 (Eight Thousand Four Hundred and Ninety Seven Pounds and Sixty pence) inclusive of [REDACTED] attendance at the taxation and my own Audit fee all as detailed on Faculty Services copy Fee Note dated 9<sup>th</sup> July 2001 which is duly docquetted and appended hereto.

*T. M. Callaghan*

**AUDITOR OF COURT**  
**SHERIFFDOM of GLASGOW & STRATHKELVIN**  
**26<sup>th</sup> September 2002**

SCOTTISH LEGAL AID BOARD  
HAYS BOX No. GW333  
[REDACTED]  
PER FLEMING & REID  
SOLICITORS  
180 HOPE STREET  
GLASGOW  
G2 2UE

09-07-2001  
F136/MG010065/1  
FRANCIS GERALD MOORE  
F G MOORE

1 of 2

CRIMINAL LEGAL AID CERTIFICATE

CH/ /0394141700  
07-03-2001

C33 MARIA A. CLARKE

446 3400 67

PAID OFF

06-06-2001	CONSULTATION, GLASGOW (AGENTS)	300.00 ✓
15-06-2001	CONSULTATION POLLOK GLASGOW, CLIENT VERY DISABLED - HOME ATTENDANCE	600.00 ✓
18-06-2001	CHILDREN'S REFERRAL, GLASGOW SHERIFF CT. TO 22ND JUNE 2001 - 5 DAYS @ <del>61170</del> DAILY <del>£1,080</del> (90% OF <del>£1,200</del> ) <del>£1,200</del>	5850.00

- 450.00

Continued...

- 450.00

\*\*\* LEGAL AID \*\*\*

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FRANCIS GERALD MOORE

F G MOORE

2 of 2

CRIMINAL LEGAL AID CERTIFICATE

CH/ /0394141700  
07-03-2001

446 3400 67

TAXED off

C33

MARIA A. CLARKE

50.00

Brought forward

RATE; 90% = £1,170.  
CASE COMPLETE.

-450.00

\*\*\* LEGAL AID \*\*\*

6750.00

78.75

17.50

1181.25

-528.75

fee for taxation £ 7931.25  
705.00  
8,636.25

TAXED off

528.75

Auditor's fee

8,107.50

390.10

£ 8,497.60

GLASGOW 26 SEP 2001  
I HAVE EXAMINED THE DETAINED ACCOUNT AND AM OF THE OPINION THAT IT IS FAIRLY AND REASONABLY CHARGED AT THE SUM OF Eight Thousand

four hundred and ninety seven pounds and sixty pence

(£ 8,497.60p)

T. Mc Cafferty

AUDITOR OF COURT  
SHERIFFDOM OF GLASGOW  
AND STRATHKELVIN