

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

JM

**Note by the Auditor of Court, Glasgow
Sheriff Court in the Account of
Expenses of Eileen M. J. Paterson,
Solicitor, Glasgow in causa Application
under Section 65 (7) and 65 (9) of the
Children (Scotland) Act 1995 by the
Authority Reporter in the case of**

This taxation arose out of a dispute between the Scottish Legal Aid Board (The Board) and Eileen M. J. Paterson, Solicitor, Glasgow (The Agent) in relation to fees claimed by the Agent for work in the above Children's Referral case wherein the Agent is Curator ad Litem to [REDACTED]. The remit to me is in terms of Regulation 12 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (S.I 1989 No 1490). By interlocutor of 13th October 2004 the Sheriff allowed an uplift of 40% to the solicitors Fees in accordance with Regulation 5 (4) of the foregoing Regulations. At the taxation the Board was represented by [REDACTED]. Eileen M. J. Paterson attended personally. The detailed Account presented for taxation which extends to 71 pages includes an entry on the final page for the 40% uplift on the entire Fees. The Board's position was that this uplift should apply only to that work carried out by the Agent as a solicitor as opposed to Curator ad Litem. Both parties accept that to identify what proportion of the Fee actually relates to work carried out as a solicitor and therefore subject to the percentage uplift would not be an easy matter to resolve and I have subsequently been advised by both parties that the 40% uplift should apply to 90% of the work carried out. This makes my task in this respect purely arithmetical. The adjustment to the uplift I have shown on page 71, the final page of the Account.

I have further been advised that the parties have agreed an abatement of 30 minutes for each full court day to reflect a lunch period. I am informed that this occurs on 41 days and at £28.20 on each occasion amounts to £1,156.20. I have accordingly included this sum in the figures "taxed off" on the final page of the account.

The main items of contention between the parties are the charges throughout the Account for preparation for the Proof which proceeded over a period of 48 days and the preparation of written submissions ordered by the Sheriff on 22nd June 2004. The Board provided me with a schedule of these charges, drawn from the detailed account, which shows a total of 251 ½ hours has been claimed. From the schedule it can be seen that between 20th February 2003 and 20th June 2004 a total of 125 hours has been claimed (Proof Preparation). From 23rd June 2004 to 11th July 2004 the claim is for 126 ½ hours (Preparation of written submission). I understand the Board to have offered 100 hours made up of initial preparation of 40 hours and allowing a further one hour per day for each of 60 days in Court.

Having perused the transcript of the Shorthand Writers Notes which extend to over 5,500 pages and read the Sheriff's Judgement which extends to 120 pages and contains 280 findings in facts and further considering the Number of Witnesses having given evidence at the Proof Hearing which lasted 48 days with a further 4 days of submissions this was undoubtedly a complex case involving serious allegations. The nature of the proceedings involving the potential loss of a child into Local Authority care reflects the responsibility which a solicitor carries in such cases. This however is, I believe, reflected in the 40% uplift in Fees award. I believe it is for me to consider what would be appropriate preparation time as is "reasonable for conducting the proceedings in a proper manner". (Regulation 4).

Up to 22nd June 2004 I calculate there to have been 48 Court days and allowing preparation of 1 hour per day with an additional element for general preparation I am of the opinion that 60 hours would be suitable remuneration for preparation for Proof in this case. I will add 60 hours to the preparation of written submissions before calculating the number of hours being disallowed.

On 22nd June 2004 the Sheriff ordered written submissions be prepared and continued the case until week commencing 12th July 2004 for this purpose. These submissions were presented by all parties in the case over the 4 days 12th, 13th, 14th and 15th July 2004. The written submission prepared by the Agent extends to 144 pages and a charge for framing this, amounting to £864, appears on page 69 of the Account. In addition time is charge on every day for the preparation of the submissions from 23rd June to 11th July 2004 inclusive (with the exception of Saturday and Sunday 26th and 27th June). The daily charge ranges from 4hrs on 2nd July to 11hrs on 4th July. (The weekends 3rd - 4th July and 10th - 11th July are included in these charges). The total time charge in the Account as shown in the schedule is 126 ½ hours.

It is the Board's position that there is no provision in the regulations for allowing a time charge additional to a framing charge which is incorporated in the Account at page 69. However, in the inclusive offer of 100 hours preparation time and conceded by Mr. Haggarty at the taxation, in the exceptional circumstances of this case, the Board accept a time charge should apply. In the circumstances I will allow a time charge for the preparation of the written submissions. The charge however, must have subsumed within it the framing charge earlier referred to. Accordingly I have "taxed off" the sum of £864, representing this charge, on the final page of the account.

Whilst I accept that the time claimed amounting to 126 ½ hours including two week-ends has been spent by the Agent in the preparation of the written submission like the Board I find the amount of time spent is such work to be unprecedented. The total number of days charged is 17. Assuming 6 hours as an average daily court time the hours charged 126 ½ would convert to 21 days, which I could not sustain. By excluding the week-ends charged 3rd & 4th and 10th & 11th July I am left with 13 days. Applying an average daily court time of 6 hours this equates to 78 hours which in all the circumstances I find to be adequate remuneration for the preparation of the written submission to include the framing of same.

Accordingly I have allowed 60 hours for Proof Preparation and 78 hours for the preparation of the written submission, a total of 138 hours. The total claimed within the

Account amounts to 251 ½ hours. I am accordingly disallowing 113 ½ hours. This equates to £4,948.60 and again this sum has been "taxed off" on the final page of the Account.

The various items I have referred to as being "taxed off" I have shown on page 71 of the detailed Account of Expenses. In addition I have adjusted the final figures to allow the 40% uplifted on the Fees as taxed by me. My own Audit Fee is incorporated, allowing for recovery of the proportion thereof on the Account as taxed, I therefore tax the account at the sum of Forty Nine Thousand Two Hundred and Twenty Seven Pounds and Fifty One pence (£49,227.51p). As I have invoiced the Board for the full Audit Fee for the avoidance of doubt I confirm that the net sum payable to Eileen M. J. Paterson is Forty Six Thousand Four Hundred and Sixty Six Pounds and Twenty Six pence (£46,466.26p).

T. M^r Callaghan

AUDITOR OF COURT
SHERIFFDOM OF GLASGOW AND STRATHKELVIN
4TH JULY 2005

4/8/04 Attendance at Glasgow Sheriff Court by E Paterson for the renewal of this Warrant Warrant renewed till 8/9/04 which was the date of the Judgement Waiting 10.00 - 10.30 10.90
Attendance in Court 10.30 - 10.35 Q 28.20

5/8/04 Attendance on phone with [REDACTED] being brought up to date with [REDACTED] situation noting that things had been a bit difficult over the last couple of weeks as Michael had been in and out of care. [REDACTED] was unaware at the time I spoke to [REDACTED] that Michael was now out of care further noting that [REDACTED] was due to come and have a chat with Jennifer on 11/8/04 and taking details of her statement 5 mins 6.20

5/8/04 Framing statement of [REDACTED] 2 sheets 12.40

Paid Hodge & Pollok fee for extending notes £2231.42
 Re-embursed by SLAB

26/8/04 Writing to Hodge & Pollok enclosing fee for extending notes 2.45

26/8/04 Paid Hodge & Pollok fee for extending notes 2433.89
 Re-embursement requested from SLAB on 6/9/04

6/9/04 Attendance by E Paterson perusing and considering application for Renewal of Warrant Hearing on 8/9/04 10 mins Q 10.90

8/8/04 Attendance on phone with [REDACTED] discussing [REDACTED] and her up-to-date position 2.45

8/8/04 Attendance at Glasgow Sheriff Court by E Paterson for the renewal of this Warrant and Judgement Grounds established Waiting 10.00 - 10.30
Attendance in Court 10.30 - 10.40 Q 28.20
 Attendance sorting out productions 10.40 - 11.00 Q 21.80

8/9/04 Attendance by E Paterson perusing and considering Sheriff's written judgement 3 Hours Q 130.80

Paid Hodge & Pollok fee for extension of notes 1738.70

£ 6,737.33 £ 3,632.20

-71-
Brought forward £6,737.33 £36,328.20

PAID Hodge and Pollok fee for extension of notes 317.15

7054.48 36,328.20

~~Add 40% as per Sheriff's interlocutor dated 13/10/04~~ 14,531.28

~~7,054.48~~

~~TOTAL CLAIMED~~ £57,913.96

ADD OUTLAW

7,054.48

TAXED off

.1156.20 Agreed Court Dats 41 x 1/2 hrs.
 - 104.00 Framing Written Submission 144 Pages
 Reperation Time Allowed 138 hours (+ 38 hrs)
 48.60 Taxed off 113 1/2 hours

6,968.80

ADD 40% Uplift per interlocutor 13.10.04 14,531.28

Calculation of Uplift

Total fees Charged
 Taxed off

£36,328.20

6,968.80

£29,359.40

90% Wherest

£26,423.46

Uplift 40% thereon

£10,569.38 (40% of £26,423.46)

Uplift applied

14,531.28

Uplift taxed off

£3,961.90

-3,961.90

-10,930.70

TAXED off

£57,913.96

10,930.70

£46,983.26 £517

£46,466.21

AUDITOR'S fee £2,761.25

Wherest

2,244.25

£49,227.51

Balance payment = £1998.00 fees
 + £10,569.38 uplift
£10,769.18

GLASGOW 4 JUL 2005
 I HAVE EXAMINED THE DETAILED ITEMS OF CHARGE RELATING TO THE FOREGOING ACCOUNT AND AM OF THE OPINION THAT IT IS FAIRLY AND REASONABLY CHARGED. AT THE SUM OF forty nine Thousand Two hundred and Twenty Seven Pounds and Fifty One pence.
 (£49,227.51)

T. McCafferty

AUDITOR OF COURT
 SHERIFFDOM OF GLASGOW
 AND STRATHKELVIN