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Submission to the Joint Committee on Justice, Home Affairs and Migration on

CIVIL LEGAL AID

26 January 2026

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Introduction

1. In July 2025, the Council of the Bar of Ireland welcomed the publication of the Majority and Minority reports of the Independent Review Group on Civil Legal Aid. Barristers form an integral part of the civil legal aid ecosystem. The Council of The Bar of Ireland is the accredited representative body of the independent referral Bar. Barristers provide specialist advocacy, legal analysis, drafting and client support in a range of areas where civil legal aid is currently available, including:

    - childcare proceedings (applications by the Child and Family Agency (CFA) to take children into the care of the State)
    - adoption
    - domestic violence proceedings/applications for civil restraining orders
    - applications to discharge from wardship
    - family law proceedings including custody, access, maintenance, relocation applications and declaration of parentage applications
    - marital/relationship breakdown - divorce/judicial separation/cohabitation
    - international child abduction
    - representation of victims in criminal prosecutions in respect of their prior sexual history
    - applications for international protection
    - inquests.

2. The Minister for Justice, Jim O'Callaghan, has stated that his Department will make proposals to Government regarding the recommendations in due course. No concrete indication, as such, has been given by the Minister as to which recommendations will be adopted by the Department of Justice or what structural reform will look like. There does appear to be an acknowledgement however that the current income threshold for someone to qualify for civil legal aid is too low.[1] At a conference held by the Free Legal Advice Centre in Trinity College Dublin on the 12th January 2026, the Minister stated that reforms to the civil legal aid system -

[1] The recommendation of the Majority report is that an urgent structural review of means testing (income, asset thresholds, allowances, contributions) be carried out as soon as possible and that pending the review to urgently raise key financial thresholds: Income limit: €18,000 → at least €23,500

"would need to be sequenced, and to work in parallel with other ongoing civil justice reforms."[2]

3. The focus of this submission is on that element of the Report which relates to fees payable to Barristers under the civil legal aid scheme in the areas of family law, domestic violence, wardship and childcare/child abduction. The Majority and Minority Reports of the Review Group have identified the inadequacy of fees paid to Counsel and to Solicitors working in these areas. The Majority report recommends an immediate and comprehensive review of payment levels and structures for Barristers and Solicitors.[3]

[2] Statement of the Minister for Justice dated 12th January 2026 published on gov.ie
[3] Recommendation Majority Report Civil Legal Aid Review Group #22

Executive Summary

4. In the aftermath of the financial crisis in 2008, the Government cut fees payable to Barristers for civil legal aid work on several occasions between 2008 and 2012. These reductions were initially made in line with the Financial Emergency Measures in the Public Interest Act 2009 (FEMPI), although further, additional cuts were applied above the level of FEMPI cuts during the financial emergency period. The rates of reduction varied. The overall reductions in case fees in the Circuit Court and High Court between 2008 and 2012 were in the order of 32%.[4]

   Regarding fees for District Court cases, the reductions between 2008 and 2012 were in the order of 44% and higher for certain cases in the District Court.[5] These reductions have never been reversed and inflation has escalated, particularly since the Covid 19 pandemic, and it shows no signs of abating. The majority report recommends increasing the thresholds to reflect rising individual earnings. Yet fees payable to Counsel have not been restored and the impact of inflation has been overlooked.

5. Fees payable to Barristers under the civil legal aid scheme involve a model of a fixed case fee for Barristers for virtually all work in a case regardless of complexity or time spent in court, time spent reviewing papers and drafting legal documents, including pleadings and submissions, or consultations. (A summary of the Fees under the Terms and Conditions 2012 is attached in Appendix 1.) The Bar of Ireland has repeatedly raised the issue of inadequate civil legal aid fees and its impact on access to justice, with Government. Our comprehensive submission to the Legal Aid Board in 2018 identified the challenges across all jurisdictions.[6] It included an analysis by a Legal Cost Accountant of case studies, outlining the extent of work carried out and the inadequacy of the fees provided.

6. Aside from the lack of fee restoration since the financial emergency measures were imposed, the complexity of legal work has increased exponentially over the past decade.

[4] The case fee which applied in the Circuit Court as at 01/09/08 was €1,690.47 and by 2012, it had been reduced to €1,145. (This represents an overall reduction of 32%.) The case fee for junior counsel in the High Court as at 01/09/08 was €3,151.28 and was reduced to €2,135 by 2012, also a reduction of 32%.
[5] The case fee for District Court cases in 2008 was €1,349.75. By 2012 the fees had been reduced to €750 for a childcare case in the District Court, representing a 44% reduction. From 2012, other District Court cases were paid between €339 - €508 depending on the type of case. These are set out on p.2 of the 2012 Terms and Conditions at Appendix 1.
[6] Submission of the Bar of Ireland to the Legal Aid Board on the operation of the Civil Legal Aid Scheme February 2018

This is the result of significant legislative development and a constantly evolving jurisprudence in our courts. (More detailed examples of legislative developments since 2012 are dealt with in paragraph 20 below.) In addition to legal complexity, societal developments have led to more complex family structures. In terms of geopolitics, Great Britain left the E.U. and ended automatic mutual recognition of child related orders under EU law. The outbreak of War in Ukraine has led to the greater movement of people across Europe (including separating children from parents) which has resulted in an increase in jurisdictional challenges for the courts and legal practitioners in matters such as residence/habitual residence. Societal norms have also shifted. The insidious role of social media and prevalence of online pornography and addiction issues are constant features of marital breakdown, custody and access disputes. Barristers acting in domestic violence matters (which are described by the Supreme Court as a *"social evil"*[7]) are at the coalface in terms of dealing with societal ills. These factors contribute to a complex social context in addition to rising legal complexities.[8]

7. Against this backdrop, last year, the Council of the Bar of Ireland conducted a survey of our Members who practice in the areas outlined above. Responses suggest that the current Terms and Conditions are jeopardizing the availability of Counsel to deal with civil legal aid work as well as the prospect of practitioners exiting the legal aid panel. 95.5% of the Members surveyed can already foresee that practitioners will exit civil legal aid work in favour of more sustainable fees in other areas of practice and most believe that the work of Barristers in these areas of law is undervalued and under compensated by the 2012 fee structure.

8. A direct consequence of this is a real and urgent risk of institutional, vocational and practical legal knowledge departing, which will further compound the experience of litigants, many of whom are amongst the most vulnerable who come before the Courts.

[7] DK v Crowley 2002 2 I.R. 758

[8] Since May 2018, in criminal proceedings for rape and sexual assault, victims have been entitled to civil legal aid to secure independent representation by Counsel on the issue of admissibility of evidence about their prior sexual history. The Supreme Court clarified the rights of the accused and the rights of victims to privacy and dignity in *DPP v AM [2025] IESC 16*

9. The issue of the Government's failure to reverse the *FEMPI* cuts has been repeatedly raised by the Bar Council with the Department of Justice. In 2018, the Department of Justice did indicate that the fees payable under the 2012 Terms and Conditions would be revised in quarter 4 of 2018.[9] Nothing changed, however.

10. Counsel assist litigants in the expeditious processing of legal disputes. They act as an efficient resource to the courts and litigants and ensure that limited court time is available to as many litigants as possible. The expertise required to advise and advocate in all legal aid cases, where vulnerable children and adults are invariably involved, is of a specialised nature and there is a strong public interest in ensuring that the best advocates are attracted to practice - and remain in practice - in these areas. For many practitioners it has become unviable to continue to participate in the scheme. This creates a real concern regarding an emerging dearth of experienced Barristers.

11. The Council of the Bar of Ireland calls on the Government to:

    a. implement Recommendation #22 of the Civil Legal Aid Report and conduct an immediate review of the fees payable to Barristers under the Civil Legal Aid Scheme;
    b. implement full restoration of the *FEMPI*-era cuts made between 2008 and 2012 and restore the link to national wage agreements;
    c. establish an independent, time-limited and binding mechanism to determine adequate fee structures and fee rates for Barristers under the civil legal aid scheme.

[9] Oversight and Performance Agreement between the Legal Aid Board and Department of Justice 2018

Case Studies

12. The case studies reviewed by Mr Fitzpatrick, independent Legal Costs Accountant (referenced at paragraph 5 above) related to a childcare case in the District Court; a divorce in the Circuit Court; and a child abduction/Hague convention matter in the High Court. (The Opinion of Mr Fitzpatrick and relevant documentation is attached at Appendix 2).

13. Regarding the District Court childcare matter, the case had continued over a period of two years. The difficulties with very lengthy contested childcare cases in the District Court have been the subject of analysis by Dr. Carol Coulter and Dr. Maria Corbett under the auspices of the Child Law Project.[10] In 2018, the authors produced a report which centred around their examination of ten lengthy, contested and complex childcare cases in the District Court. All of the cases the subject of that report had taken a week or more of hearings, often with multiple adjournments, which led to the cases lasting many months and in some cases more than a year. In their report, the authors concluded:

> *"The prolonged and complex cases here share certain features. These include allegations of very serious harm to a child or children, involving the likelihood of a criminal investigation; lack of coordination between state agencies concerning the allegations made; the involvement of a substantial number of expert witnesses; the requirement that there be professional assessments of the children and sometimes also of the parents; delays in obtaining such assessments; and disputes between experts as to the findings of the assessments."*[11]

14. Cases concerning the removal of children from their parents and placing them in the care of the State are some of the most traumatic and frequently very complex, in terms of factual and expert evidence. The work of Barristers in this area is acutely undervalued and under-compensated. It is not difficult to understand why Barristers working for these fees are forced to leave childcare law.

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[10] The Child Law Project was established in Nov 2012 (under S.3 of the Childcare Amendment Act 2007). The remit of the project is to allow certain organisations to nominate people to attend court and report on childcare proceedings. The report centred around ten lengthy contested and complex childcare cases in the District Court. All of the cases the subject of that report had taken a week or more of hearings, often with multiple adjournments which led to the cases lasting many months and in some cases more than a year.

[11] Report by Dr Carol Coulter, March 2018 p 95 commissioned by the Department of Children and Youth Affairs

15. In the international child abduction/Hague Convention matter analysed by the Legal Cost Accountant, he concluded that the hours reasonably spent were 68.5 hours [12] This is a very specialised and difficult area of law. In practice, the legally aided party may be opposed by a privately retained Barrister. Where one side is funded on a fixed-fee basis and the other side can pay privately for preparation and court time, the imbalance can affect the extent of preparation that can realistically be undertaken. This in turn risks affecting the fairness of the process and the outcome. There should be equality of arms.

[12] The opinion of Mr Fitzpatrick contained within the 2018 submission is at Appendix 2

Outdated fees and fee rate structure

16. The 2012 fee structure is outdated and not reflective of the work required today. When case fees were originally agreed between the Bar Council and the Legal Aid Board (under the original agreement which was in 1998 [13]), the case fee agreed was based on an hourly rate predicated on an average of 12 hours for a District Court case and an average of 20 hours for a Circuit and High Court case. These averages have never been reviewed. (A table of the 1998 fee schedule is at Appendix 3.) The framework is nearly 30 years old and is outdated. [14]

17. Further to the above, the omnibus case fee covers virtually all the work done on a case up to and including the first day of the hearing. This includes drafting legal documents and submissions, attending any interim court applications, meeting with clients, conducting negotiations and preparing for the hearing. Where matters are put back or delayed, all of the preparatory work needs to be repeated on the subsequent hearing date at the Barrister's own cost. It is clear that the fee structure requires a full and independent examination with a view to establishing a structure that provides fair compensation.[15]

[13] Terms and Conditions 30 September 1998 between the Legal Aid Board and the Bar of Ireland

[14] It should be noted that the report of the Legal Costs Accountant was procured by the Council in 2018. An updated report is not to hand. It is the experience of practitioners however, that workloads in all areas of civil legal aid have increased since 2018. In addition, post pandemic inflation has been persistently high.

[15] The Legal Aid Board's Circular on Legal Services 2017 provided a schedule of fees payable to other vital participants in the delivery of legal aid services. The Circular suggests that fees paid to other self-employed professionals by the Legal Aid Board were structured entirely differently to the fee structure for Barristers. The rate per hour for a consultation and reports by such professionals was up to €210 per hour in that 2017 schedule. Half-day attendances (regardless of whether a matter is called on) were compensated at a rate up to €805. It is not known whether these fees have been increased or not but regardless, there is no way of rationalising a fee structure for other professionals in the civil legal aid system which recognises the appropriateness of discharging fees for consultations and reports, and at the same time, failing to pay Barristers for consultations, negotiations or drafting legal documents.

18. In his speech at the opening of the legal year in October 2025, the Chief Justice referred to the Report of the Civil Legal Aid Review Group and referenced the complexity of the legal landscape. The Chief Justice stated:

> *"I hope that the consideration of the report will lead to a development of the legal aid system which will build upon the foundations of the Legal Aid Board and provide legal aid and assistance to those who cannot afford it when they find they must navigate an increasingly complex legal world. "*[16]

19. There is no doubt that we are operating in a complex legal world. The survey of our members conducted last year revealed that the length of court hearings, and increases in complexity, responsibility, documentation and number of court appearances, have drastically increased the number of hours required to resolve matters. Since 2012, a huge swathe of legislation has been commenced and new procedural rules introduced. Barristers have engaged in intensive professional development to expand their knowledge and develop the skills required to be effective advocates and negotiators in a constantly evolving legal landscape. An inexhaustive list of examples of significant developments in legal practice since 2012 where Civil Legal Aid is relevant are highlighted below:

- *The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010:* The purpose of the Act was to provide legal recognition and rights for same sex couples through civil partnerships and to provide rights for cohabiting couples. The Act was commenced in 2011 but it took time before proceedings under the Act started coming onstream. As with any new and novel piece of legislation, it was unclear at outset how the provisions of the Act relating to Cohabitees would evolve in practice. Contrary to empirical expectations amongst legal practitioners when the legislation to protect cohabitees was conceived, the Act is not "divorce light". One particular challenge which Applicants in a cohabitation suit face, is meeting the definition of a "qualified cohabitant". This latter first hurdle is dependent on a myriad of factors in terms of income and assets of the parties and the surrounding circumstances. The latter cannot be determined without a full hearing of the proceedings and unless it is a very clear cut case where the applicant falls squarely within the definition of a *"qualified cohabitant",* the prudent and precautionary

[16] Speech of the Chief Justice of Ireland 6th October 2025 (courts.ie)

course of action to take is to bring equity proceedings to establish property rights in tandem with a cohabitation action. This gives rise to a situation where Barristers are effectively undertaking two cases with all the associated workload, but are paid a single case fee.

- *The Children's Rights Referendum 2012:* The passing of this referendum affirmed the inherent rights of children and the obligation on the State to protect them. A further outcome of the referendum was the requirement of the courts to hear the views of the child (where the child is capable of forming his or her own views). The Children First Act 2015 and the Child and Family Relationships Act 2015 were subsequently passed and a new Part V was inserted into the Guardianship of Infants Act 1964 to deal with welfare and/or voice of the child reports (Section 32(1)(a) and 32(1)(b)). The introduction of these measures to protect and hear the voice of child has led to a very substantial increase in the number of court hearings required in any matter where a Section 32 report is directed. The workload for Counsel includes drafting applications, advising the client on the recommendations of the Expert and potentially challenging the report and cross examining the Expert. In the majority of cases where a Section 32 Expert report is directed, supplemental reviews of the child are required after a period of time leading to further court hearings. Part 2 and 3 of the Child and Family Relationships Act 2015 further introduced legislative measures to protect the rights of parents who have had children through donor assisted reproduction thereby recognising the complex situation of parents and children born through such procedures.

- *Assisted Decision Making:* The 2015 Assisted Making Decision Act (as amended) came into force on various dates between 2016 and 2023. The Act gave effect to the UN Convention on the Rights of Persons with Disabilities. The Act replaced the system of wardship, where the best interests of a person who lacked capacity was the governing principle. Under the new regime, the "will and preferences" of the person with impaired mental capacity is at the heart of decision making relating to their welfare, property and affairs. The provisions around the appointment of a Decision Making Representative (the highest level of support available to a person who would have previously been made a Ward of Court) were commenced on the 26th April 2023 (Part V). As early as the 8th December 2023, a written judgment was delivered in the

Circuit Court by Judge O'Connor in relation to the concept of "will and preferences".[17] Within two months of the Act passing, a judgment was delivered by the President of the High Court in relation to Part 8 of the Act which deals with advance health care directives.[18] To say that significant and complex legal and procedural issues have emerged and continue to emerge from this new statutory framework is an understatement.

- *Changes to the law around Domestic Violence:* On the 1st January 2019, the Domestic Violence Act 2018 was commenced. The Act is expressed to be a consolidating Act. A new criminal offence of coercive control was introduced. The Act improves the protections available to victims of domestic violence under civil and criminal law and introduced important new measures to improve the court process such as the introduction of a protection against cross examination in person as follows:
    - Children giving evidence in a domestic violence matter cannot be cross examined in person by the applicant or respondent;
    - In the case of adults, the Court is entitled to refuse to allow in person cross examination of one party by the other.

- *Court practice and procedures:*
    - New legislation providing for Civil Restraining Orders were commenced under the Criminal Justice Miscellaneous Provisions Act 2023. Related District Court rules were commenced by S.I. 364/2024 District Court (Civil Restraining and Behaviour Orders);
    - Childcare proceedings in the District Court have been subject to a case management regime commenced by the President of the District Court in relation to the District Court childcare proceedings in Dublin.[19] These case management provisions provide for strict timelines in respect of interim or emergency care orders, which all require extensive preparation and documentary review. The Practice Direction applies to the District Court in Dublin only;
    - Order 59 Circuit Court Rules Order Family Law was significantly updated in 2017 [20];

[17] John Doe v HSE 12th December 2023 Judgment Judge John O'Connor
[18] Governor of a Prison v XY 22nd June 2023
[19] District Court Practice Direction DC05
[20] SI 207/2017

- New Circuit Court rules were commenced under the Domestic Violence Act 2018 including provision for originating proceedings for a safety or barring order to be commenced by way of Domestic Violence Civil Bill [21];
- Changes to Brussels IIb which provides a legal framework for managing family disputes across EU borders. This was most recently changed by Brussels 11b (2019/1111).

20. Societal developments have also had an impact. Digital documentation is far easier to generate and store than paper records, and this has led to a proliferation of digital records. In family law proceedings involving maintenance and property, records relating to income, assets, debts and expenditure are critical. These documents must be reviewed by Counsel for the purposes of advising the client, grounding further applications and preparing for cross-examination. Similarly, digital data including digital correspondence, messaging, social media content, video recordings/voice recordings and CCTV have exploded beyond recognition when compared with 2012. This type of data has become an integral feature of cases, in particular those involving allegations of abuse and misconduct in domestic violence matters and in applications for Civil Restraining Orders.

21. While there is a view that the advent of AI will assist legal practitioners in their work, it has already been shown to create problems for the courts. The phenomenon of hallucinations is well established. When unrepresented litigants rely on AI to generate submissions and legal documents, it can disrupt the orderly conduct of proceedings, burden court resources and increase delay. In a recent case before the Workplace Relations Committee (reported in the Irish Times on the 8th January 2026)[22] the claimant was a litigant in person. The claimant used AI to draft her submissions. The AI-generated material created significant inefficiencies, increasing the work required of both the Adjudicator and the Respondent's legal representatives (which in turn, must have had an impact on their legal costs). As AI use in litigation becomes more common, these issues are likely to arise more frequently. If vulnerable parties are not able to secure legal representation and must represent themselves, there is a serious risk of increased delay, inefficiency, and procedural disruption across the court and tribunal system.

[21] SI 282/2020

[22] Stephen Bourke 'HR worker admits using 'AI assistance' to write legal papers for her employment tribunal' *The Irish Times* (Dublin, 08 January 2026)

A Widening Justice Gap and the Need for Response

23. Waiting lists for legal aid certificates have expanded. Some law centres experience wait times of 62 weeks.[23] Expanding waiting lists all point to more complicated and entrenched circumstances by the time they may reach court. The spectre of a civil legal aid system with fewer practitioners, handling more complex cases, for lower pay, with rising demand, is not one that inspires confidence.

24. It has been government policy for the past decade to increase diversity in the legal profession and to ensure that barriers to entry to the profession are removed. The Legal Services Regulation Authority (LSRA) Breaking Down Barriers report looks at how to create a sustainable legal services sector for the future. The report is unequivocal in its Recommendation #26:

> *"Engagement between relevant stakeholders, Department of Justice, public expenditure and NDP delivery and the Bar of Ireland should be intensified so that the concerns identified in the LSRA research around the levels and structure of professional fees for state funded legal aid work undertaken by junior barristers are explored and addressed."* [24]

The Bar of Ireland has been and continues to be, committed to acting on this recommendation and engaging with the Department and relevant stakeholders.

25. Counsel working in civil legal aid work are faced with significant and ever-increasing complexity in their case load. There are growing challenges facing both practitioners and vulnerable litigants, and urgent reform is essential, as set out by the Reports of the Independent Review Group on Civil Legal Aid. In particular, the fee structures which are currently in place are unsustainable and those Barristers who work in civil legal aid work are

[23] Speech by Nuala Egan, Chairperson of the Legal Aid Board 12 January 2026 at the FLAC conference Trinity College Dublin
[24] LSRA Breaking Down Barriers Final Report to the Minister for Justice January 2024

at a point where such work is no longer viable. Recommendation 22 of the Majority Report of the Independent Review Group must be implemented without delay.

26. A functioning civil legal aid system depends on the continued participation of skilled, experienced Counsel who can ensure fairness, efficiency, and access to justice for those who need it most. Without immediate action to restore fees, modernise the fee framework, and establish an independent mechanism for future review, there is a risk that the justice gap will widen and public confidence in the administration of justice will be eroded. The Bar of Ireland urges the Government to act now to protect the integrity, viability, and future of the civil legal aid system.

The Council of the Bar of Ireland calls on the Government to:

a) implement Recommendation #22 of the Civil Legal Aid Report and conduct an immediate review of the fees payable to Barristers under the Civil Legal Aid Scheme;

b) implement full restoration of the *FEMPI* cuts made between 2008 and 2012 and restore the link to national wage agreements;

c) establish an independent, time-limited and binding mechanism to determine adequate fee structures and fee rates for Barristers under the civil legal aid scheme.

Appendix 1: Legal Aid Board 2012 Terms and Conditions for the Retention of Counsel (Barristers)

Fees for services

(exclusive of VAT)

THE DISTRICT COURT

Proceedings on foot of Parts III and IV of the Child Care Act 1991		**Fee Junior Counsel**	**Fee Senior Counsel**
Case fee	To cover all work carried out by him or her in regard to the case to include as appropriate, consultations, preparatory work, settlement negotiations and/or court appearances incidental to the full hearing.	€750	€1,050
Case fee	An additional sum of €150 shall be payable in respect of each application for an interim care order, where the solicitor considers that it is necessary for the barrister to attend. A fee equivalent to the refresher fee shall be payable in respect of the first application for an interim care order.	€150 (€400)	
Refresher	An additional sum shall be payable by way of refresher in respect of each second or subsequent day of a hearing, or part thereof. The refresher fee payable to junior counsel shall be in the sum of €400 save in the event that both Junior and Senior Counsel are retained in which case the refresher fee payable shall be €300 per day for Junior Counsel (payable in the event that Junior Counsel is in attendance in court).	€400	€500

	In order for a refresher to be payable a matter must be listed for hearing and must involve legal submissions and / or evidence in excess of thirty minutes. Refreshers will not be payable in relation to mention dates or where matters are adjourned for the purpose of dealing with ancillary issues or issues incidental to the substantive Order made. A refresher will be payable in respect of a review of a full care order(s) i.e, if final orders are already in place and the matter is listed for review. A refresher will also be payable in respect of any other review (consequent upon a care order being made) subject to the matter involving legal submissions and / or evidence in excess of thirty minutes.		
Taking judgement	An additional sum shall be payable for taking judgement. (a refresher shall not be payable in these circumstances).	€150	€200

THE DISTRICT COURT

Private family law proceedings		**Fee Junior Counsel**	**Fee Senior Counsel**
Case fee	in respect of Junior Counsel for private family law matters in the District Court shall be in accordance with the below. The fees shall cover all work carried out by him or her in regard to the case to include as appropriate, consultations, preparatory work, settlement negotiations and/or court appearances. No additional sums shall be payable either in relation to interim applications or in relation to second or subsequent days of hearing.		

Case fee	a) Maintenance only	€339	
Case fee	b) Guardianship only	€339	
Case fee	c) Custody and or access only	€339	
Case fee	d) Domestic violence only	€339	
Case fee	e) Custody and/or access and guardianship	€339	
Case fee	f) Maintenance and custody/ and or access /and/or guardianship	€423	
Case fee	g) Domestic violence and maintenance	€423	
Case fee	h) Domestic violence and custody/ and or access /and / or guardianship	€423	
Case fee	i) Maintenance and Domestic violence and custody / and or access /and/or guardianship	€508	

THE DISTRICT COURT

Other civil proceedings		**Fee Junior Counsel**	**Fee Senior Counsel**
Case fee	Shall cover all work carried out by him or her in regard to the case to include as appropriate, consultations, preparatory work, interim applications, settlement negotiations and/or court appearances incidental to the full hearing.	€508	

Refresher	An additional fee shall be payable by way of refresher in respect of each second or subsequent day of a hearing, or part thereof. In order for a refresher to be payable a matter must be listed for hearing or must involve legal submissions and / or evidence in excess of thirty minutes. Refreshers will not be payable in relation to mention dates or where matters are adjourned for the purpose of dealing with ancillary issues e.g, costs, or issues incidental to the substantive Order made.	€400	
General	Where the Board determines that counsel should be paid for District Court work by reference to a set number of hours work the hourly rate.	€76	€114

THE CIRCUIT COURT

All court proceedings		**Fee Junior Counsel**	**Fee Senior Counsel**
Case Fee	Where counsel is briefed prior to the institution of proceedings to cover all work carried out by him or her in regard to the case to include as appropriate, consultations, drafting or settling of pleadings, preparatory work, interim applications, case progression hearings, settlement negotiations and court appearances.	€1,145	€1,650

Case Fee	Where counsel is briefed after the Notice of Trial has been served or the matter has been given a hearing date, the case fee (€750) shall cover all work carried out by him or her in regard to the case to include as appropriate, consultations, preparatory work, further interim applications, settlement negotiations and court appearances.	€750	
Case Fee	An additional sum shall be payable in respect of each interim or interlocutory application on foot of section 35 of the Family Law Act 1995 or section 37 of the Family Law (Divorce) Act 1996. A similar additional sum may be payable for other interim or interlocutory applications subject to them being approved in advance on foot of the legal aid certificate granted to the client. No additional fee shall be payable in respect of an application for judgement in default.	€200	
Refresher	An additional sum shall be payable by way of refresher in respect of each second or subsequent day of a hearing, or part thereof. The refresher fee payable to junior counsel shall be in the sum of €400 save in the event that both Junior and Senior Counsel are retained in which case the refresher fee payable shall be €300 per day for Junior Counsel (payable in the event that Junior Counsel is in attendance in court). In order for a refresher to be payable a matter must be at hearing and listed for further hearing and must involve legal submissions and / or evidence in excess of thirty minutes Refreshers will not generally be payable in relation to mention dates or where matters are adjourned for the purpose of dealing with ancillary issues e.g, costs, or issues incidental to the substantive Order made however the Board	€400	€650

	may pay an additional fee of €76 to junior counsel and / or €114 to senior counsel in the event that the submission is extensive.		
Taking judgement	An additional sum shall be payable for taking judgement (a refresher shall not be payable in these circumstances).	€150	€200
Re-entry / enforcement	If following the completion of a case legal aid is granted for an application to enforce the order or orders made therein or to re-enter the matter for other reasons, the fee payable		
General	Where the Board determines that counsel should be paid for Court work in the superior courts by reference to a set number of hours work the hourly rate.	€76	€114
	The case fee payable in respect of an appeal from the District Court to the Circuit Court shall be that applicable to a case in the District Court.		

THE HIGH COURT

All other High Court, Court of Appeal, and Supreme Court proceedings		**Fee Junior Counsel**	**Fee Senior Counsel**
Case Fee	To cover all work carried out by him or her in relation to the case including as appropriate, consultations, drafting or settling of pleadings, preparatory work, settlement negotiations and court appearances including any mention dates and any interim or post hearing applications.	€2,135	€3,150
Refresher	An additional sum shall be payable by way of refresher in respect of each second or	€1,000	€1,350

	subsequent day of a hearing. The refresher fee payable to junior counsel shall be in the sum of €1,000 save in the event that both Junior and Senior Counsel are retained in which case the refresher fee payable shall be €300 per day for Junior Counsel (payable in the event that Junior Counsel is in attendance in court). In the case of a matter before the Supreme Court, a full refresher will be paid to both counsel if both counsel advocate before the Court. If Junior Counsel does not advocate before the Court the lower fee shall be payable. In order for a refresher to be payable a matter must be at hearing and listed for further hearing and must involve legal submissions and / or evidence in excess of thirty minutes. Refreshers will not generally be payable in relation to mention dates or where matters are adjourned for the purpose of dealing with ancillary issues e.g, costs, or issues incidental to the substantive Order made, for example the practical arrangements for the return of a child on foot of an Order made in child abduction proceedings. If more than half an hour's court time is involved in addressing the issue the Board may pay an additional sum of €105 to Junior Counsel and €150 to Senior Counsel. A refresher fee shall be payable in the event that a court requires written submissions to be made in relation to the substantive issue(s) in the case. The full refresher fee shall be payable to both Junior and Senior Counsel in this event. No fee shall be generally payable in the event that the submissions relate to an ancillary event e.g, costs, however the Board	€300	

	may pay an additional fee of €105 to junior counsel and / or €150 to senior counsel in the event that the submission is extensive.		
Taking judgement	An additional sum shall be payable for taking judgement (a refresher shall not be payable in these circumstances).	€150	€200
Re-entry / enforcement	If, following the completion of a case, and authorisation / legal aid certificate is granted for an application to enforce the order or orders made therein or to re-enter the matter for other reasons, the fee payable on such application shall be at the refresher rate.		
General	Where the Board determines that counsel should be paid for Court work in the superior courts by reference to a set number of hours the hourly rate.	€105	€150
	The case fee payable in respect of an appeal from the Circuit Court to the High Court shall be that applicable to a case in the Circuit Court.		

Appendix 2: The Opinion of Mr Fitzpatrick

PETER FITZPATRICK & COMPANY

OPINION

LEGAL AID FEES

1. INTRODUCTION

I was instructed by the Council of the Bar of Ireland to review the 2012 Terms and Conditions ("*Terms*") relative to the instruction of barristers for child care, Judicial Separation/Divorce and The Hague convention cases. The review examined their fitness for purpose in the current legal environment. A separate analysis of each category of case was undertaken and further reference can be made to the covering letters relative to each category together with the estimates appended thereto. This Opinion provides a general overview and commentary on all categories and on the *Terms* generally.

THE 2012 TERMS FOR COUNSEL

The Legal Aid Board are one of the largest purchasers of Barrister services in the state. The de facto purchasers on the ground however are individual Solicitors in each of the Law Centres spread around the country. That requires structure and the Board must have central control over pricing to ensure there is value for services rendered and the expenditure has a proportionate relationship to the services given. The most recent "*Terms*" are the 2012 edition which came into operation on the 1 August 2012 and which was a revision of an agreement dated 30 September 1998 between the Board and the General Council of the Bar of Ireland. The "*Terms*" are an essential component for the Board in endeavouring to make uniform the invoicing practice across multiple Law Centres covering multiple types of cases in multiple courts and venues. Crafting "*Terms*" to achieve balance between value for services and fair and reasonable remuneration is not easy. Any "*Terms*" must be simple and easy to follow. They also must be easy to process and be capable of verification and supervision by Board management. The "*Terms*" clearly achieve that but in my opinion do so to the detriment of Counsel. On balance the "*Terms*" are clear and user friendly, however they are capable of being adjusted marginally to fairly remunerate Counsel for services performed. My review of three categories of cases (see

below) revealed that on many levels, Counsel's work is not paid for at all or if it is paid for, it is negligible.

LEVEL OF FEES

I was instructed to prepare an independent report on three primary types of cases for which Counsel are regularly instructed by the Board;

1) Childcare cases
2) Judicial Separation and Divorce cases (Circuit Court)
3) Hague Convention cases

I was briefed with fully redacted Counsels' working papers (from which the identity of the parties nor personal details could be discerned) for Hague Convention cases and Divorce cases. I read them and noted the principal areas of work undertaken by reference to obvious "*steps*" in the cases such as pleading work, motions, appearances, consultations, briefing, refreshers, for mention dates, Judgment and research. I examined these by reference to the dates upon which the work was undertaken. I then estimated the time that, in my opinion, *reasonably* should have been devoted to each task or category of work. Once this was completed, I prepared a table of estimated total time and labour which I then contrasted with the total fees paid in each of the cases. I performed this exercise (known as the "Expense of Time" exercise) to evaluate approximately the average or median hourly rate being paid to Counsel for their services. In order to *cross check* my own estimate, I called for a meeting with the individual Barristers who acted in each of the above sample cases. I did this to perform a *sense check* of my estimate with the intimate knowledge and memory of each Counsel and I re-assessed each entry. This exercise also enabled me to familiarise myself with the nature and extent of the services performed (as a file will never contain all relevant information). The results of each estimate were considered in light of the issues in the case, the *Terms* and the ultimate fee paid to Counsel. The results of the estimates and the "Expense of Time" exercise are stark. The median rates (by reference to work actually and reasonably undertaken) point to unfair remuneration. Within the legal services market, I doubt if any lower rates can be found. The rates arising (€51-€68) can be compared against the following:

1. They are half of the current Trainee Solicitor rates charged by the larger commercial firms.
2. They are a quarter of the lowest rates allowed by independent Adjudicators (Taxing Masters).
3. They are less than the Boards own applicable hourly rates (when such are applied) of €76 and €150 for non-court work.
4. They are less than the lowest rates deemed reasonable (which are currently under challenge) by Independent Commissions of Inquiry.
5. They are less than non-legal fees paid to professional Guardian Ad Litem.

Evaluating the work of Counsel by reference to hourly rates is only one measure to assess the viability of the work. It is a helpful indicator. It does not mean that Counsel ought to be paid by the hour. For many reasons assessing fees in that manner would be unwieldy for both Counsel and client and is almost impossible to assess and control. The cost of supervision and control of such an approach in itself would be considerable. There are potential variations to the existing structure that would improve the process. The difficulties from the perspective of Counsel are in the main twofold; the pricing is too low and large categories of work are not being paid for at all. This appears to have come about by the passage of time and changing circumstances such as;

- Length of court hearings
- Increased documentation being briefed
- Court listings
- Increasing complexity (legally and factually)
- Increased responsibility
- Increased number of Court appearances

THE CASE FEE

The existing framework does not capture nor reflect work of Counsel that typically prevails in 2018. A modification of fee payments and a broadening of the categories and modernisation of some of the fee concepts would address that. At the heart of the problem is the rigidity of the 2012 Rules and, in particular, the concept of a *Case fee* and what it covers. It is an omnibus fee that gives no weight to actual and real work undertaken. It is a *"one size fits all"* approach that has little regard to actual work undertaken. It is not transparent and the lack thereof penalises Counsel. Counsels *Case fee* simply covers a

multitude of legal categories of work that in most sectors of the legal services industry are paid for separately. These are;

- Consultation(s)
- Pleading(s)
- Motion(s)
- Settlement negotiation(s)
- Case Progression Hearing(s)
- Appearance(s)

All other categories[1] are for the best part subsumed into the *Case Fee.* To illustrate how this works it is important to distinguish between a *Brief fee* and a *Case Fee*. A Case fee is more restrictive than the more commonly used concept of a *Brief fee*. Where a *Brief fee* is paid separate distinguishable items of work pre and post hearing are noted and paid for separately. A *Brief fee* includes attendance on the first day of hearing. If those pre and post hearing items are paid at only nominal levels, the *Brief fee* is treated as the *equaliser* to ensure overall payment is satisfactory and fair. Where a *Case fee* is applied no such *equalisation* occurs and more often than not the extent of work required in the pre hearing phase means in effect the preparatory work such as make-up of the brief, the preparation of evidence, collation of Authorities and the first day of hearing is almost undertaken free gratis by Counsel. I illustrate the point by setting out below the six categories of costs separate to Brief preparation and attendance on the first day. For each, I have placed a fair and typical fee for each item of work. I have then benchmarked this against the *Case fee* (using the Circuit Court Case fee of €1,145.00). The fees listed below are typical for Circuit court work. The cumulative value of the fees listed below is €1,150.00. The Case fee is €1,145.00. In this example, if there was one consultation, a Defence, one Motion, one settlement meeting and one Appearance it effectively means no fee is paid for the preparation, nor the first days hearing. I understand many Circuit Court cases will have more than one of each of these categories thereby eroding the value of the *Case fee* further making it negligible or non- existent.

[1] One exception to this appears to be the €200.00 provision for Section 35 and Section 37 Applications in the Circuit Court.

		€
•	Consultation(s)	150
•	Pleading(s)	200
•	Motion(s)	200
•	Settlement negotiation(s)	300
•	Case Progression Hearing(s)	150
•	Appearance(s)	150

The simplicity of a *Case Fee* from an administrative perspective is attractive, but it is neither fair nor reasonable. Legal costs are moving on to a new era of transparency, concepts and new structures (Office of the legal Costs Adjudicator will become operative this year) and the existing concepts of the 2012 Terms, in my opinion, require adjustment to bring them in line with the ever changing environment in which costs are incurred. Hourly rates and the application of hours to rates is a blunt tool and as such is not a viable alternative, however a structure of weights and grading is possible to allow for fair remuneration, value for services rendered but which, at the same time, does not cause administrative burdens for the Board. The inherent difficulty is the *preparatory time*. This is a significant portion of the work of Counsel. It is hard to quantify and capture however it should be paid for. The level of preparation before any case is an essential component of the general administration of justice and ensuring cases are progressed through the courts as expeditiously as possible. Preparation time, read in, preparation of evidence, written submissions are key factors in keeping lists moving. This work is largely undertaken in chambers and appears to be largely uncaptured.

CONCLUSION

The analysis of each type of case revealed similar results and heavily pointed to *median rates* below industry standards and in some instances below the guidelines of the 2012 *Terms*. The *Terms* provide for recommended hourly rates for some non-court work (€76) and court work (€150). Across all three categories the substantive body of work is paid below these rates. This appears to have come about because of the concept of the Case fee and what it covers. In the 1998 *Terms*, the fees were fixed on the basis that Counsel might spend an average amount of time (believed to be based on averages of 12, 15 & 20 hours

for District, Circuit and High Courts respectively). This median or average approach also appears to have influenced the fees for the 2012 *Terms*. The increased documentation, complexity, changed court practices and professional time expended on these cases strongly suggests a re-appraisal of these is required. It is noteworthy that the hourly rate in 1998 of £70.00 (€88.88) is more than the lowest rate in the 2012 *Terms*, notwithstanding the passage of twenty years.

The Childcare analysis stands out more than others as the rates/fees paid to Counsel are notably less than professional Guardian Ad litem. On a lesser level, I note that the travel expenses are measured at 50% of the highest Civil Service rate which appears unfair.

Stephen Fitzpatrick

B.A. Solicitor F.I.L.C.A

23.1.2018

Appendix 2.b: SP Letter to Counsel re Childcare matter

PETER FITZPATRICK & COMPANY

SF/289/16/CR 20th December 2017

Re: Legal Aid Fees - **Childcare**

Dear-

I refer to the above matter.

I have reviewed the documentation briefed to me in this matter which comprised of a comprehensive narrative (in Table form) of work undertaken by Counsel and a second Table which identified the payments actually made to Counsel. The narrative is most comprehensive because it highlights the type of documentation received (and the extent thereof) and the work undertaken by Counsel. It is also very clear as it contains a description of the services performed by reference to dates upon which the work was undertaken. There is additional helpful information distinguishing the different time spent on *preparation* for hearings and actual *court time* and *waiting time*.

On review of this brief, I formed an opinion on the reasonable amount of time to be assigned to each of the tasks involved. In the attached Table, I set out the result of that exercise. I also met with Counsel twice and I made enquiries about her own estimate of time and how it had been arrived at. The total time noted on Table no. 2 can be cross referenced with the ultimate fee paid in this matter (in order to test the reasonableness of that fee). You will note from the Table no. 2 that 452 hours were reasonably spent. This can be measured against the total fee paid by the Legal Aid Board (€22,200.00).

The fees ultimately paid for Counsels work were in accordance with the 2012 Terms and Conditions. Within that framework there is no *Brief fee*. Instead the Terms provide for a primary fee entitled a "*Case Fee*". This is an indiscriminate fee of an omnibus nature that covers all work (save items 2-4 below) no matter what level of documentation is furnished. The basis of charges in the 2012 scheme are broken down into five primary types of fees which are:-

1. Case fee of €750.00

2. An additional fee of €150.00 per interim care order
3. A Refresher fee of €400.00
4. A Judgment fee of €150.00

Examining the work actually and reasonably undertaken in the example given to me with the ultimate fee paid, yields a stark result. The fee paid of €22,200.00 means an average hourly rate of €49.12 per hour is being paid. This however is not a true reflection as the total amount of time spent by Counsel is more than what is paid for as the 452 hours only reflect costs captured by the Terms. Additional professional time arose that is not included. The categories of costs excluded by the Terms can amount to considerable work. The obvious categories are;

- Drafting letters of Voluntary Discovery,
- Drafting Discovery Motion and Grounding Affidavit,
- Preparation of Legal Submissions.
- Review of Discovery documents [often a review of DVDs of interviews).
- Access applications (if listed on the same day as an Interim Care Order).
- Application for Directions under Section 47 (if listed on the same day as an Interim Care Order).
- Appearances when the matter is in for mention.
- Preparation time.

The *Case fee* in particular is inadequate as it does not reflect the evolving nature of a Brief/instructions. The papers of Counsel increase throughout the currency of the case and no payments are made for *reading in* as the brief grows in volume and perhaps complexity. There is no flexibility. In this case, the following documents were first briefed;

1. 2 Social Worker reports
2. 2 Minutes of Case meetings
3. GAL Report
4. Medical reports
5. 2 Parental Capacity reports

6. 5 Care Plans for each child.

The fee of €750.00 when first set seems to have been heavily influenced by an assumption that thirteen hours work might be involved for the most basic of cases. My analysis of this case reveals significantly more time is required in preparation at the outset and throughout the lifetime of the instructions. The *Case Fee* lacks transparency and the "*one size fits all*" approach means that how (and to what extent) Counsel is remunerated, is a matter of chance and circumstance. I understand most cases will involve at least one consultation, one pleading, several case progressions and one Motion. Counsel is therefore at the mercy of the *facts* of the case. In addition the *behavior* of the parties can determine remuneration. Perversely, the more involved and difficult cases (involving more consultations, motions, pleadings and settlement meetings) will under this scheme pay Counsel less because the value of the fee paid to Counsel as a result is eroded significantly. This lost time is not "*made up for"* on other categories of payment. There is no balancing provision and significant work of Counsel is not captured at all by the Terms.

I also observe that Counsel instructed by the Legal Aid Board in Childcare matters have perhaps the greatest burden, yet are paid substantially less than Counsel representing the CFA or Guardian Ad litem. The CFA scheme is much broader and encapsulates work that the Legal Aid Board scheme does not. The disparity between the levels of fees payable by the respective agencies on Full Care Orders is notable (CFA pay over twice the fee payable by the Board). Refresher fees are also notably lower.

I hope this assists.

Yours faithfully,

STEPHEN FITZPATRICK

stephen.fitzpatrick@peterfitzpatrick.ie

Encl. Table of Fees

Appendix 2.c: SP Letter to Counsel re Divorce

PETER FITZPATRICK & COMPANY

SF/289/16/CR 20th December 2017

Re: Legal Aid Fees - **Divorce proceedings**

Dear-

I refer to the above matter.

I have reviewed the documentation briefed to me in this matter (redacted files and correspondence) relating to Divorce proceedings. On review of this brief, I formed an opinion on the reasonable amount of time to be assigned to each of the tasks involved. This I undertook by reference to the primary dates upon which work was undertaken. In the attached table, I set out my estimate of hours spent. Once this exercise was undertaken, I met with Counsel and I made enquiries about her own estimate of time and verified whether mine varied to any great degree. It did not.

The estimated time can be cross referenced with the ultimate fee paid in this matter (in order to test the reasonableness of that fee). You will note from the table that 21.5 hours were reasonably spent. This can be measured against the total fee payable by the Legal Aid Board (€1,145.00 was paid). The fee paid is entitled a "*case fee*". It is an indiscriminate fee of an omnibus nature defined in the 2012 scheme that covers all work no matter what level of documentation is furnished. It also includes the costs of one Motion and all pleadings. The basis of charges in the 2012 scheme are broken down into five primary types of fees which are:-

1. Case fee of €1,145.00
2. Case fee where Counsel is briefed after the Notice of Trial of €750.00
3. An additional fee of €200.00 per interim Application
4. A Refresher fee of €400.00
5. A Judgment fee of €150.00

In the example given to me no fees for refreshers interim applications nor Judgment fees arose and therefore the time estimated by me is relevant only to the "*case fee*" of €1,145.00.

My estimate of the total time spent is 21.5 hours. Applying an hourly rate of €250.00 per hour would yield a fee of €5,375.00. The fee paid €1,145.00 means an average of €53.25 per hour is being paid. That is grossly inadequate and particularly so because it appears to be the case that Barristers regularly instructed in Divorce proceedings by the Legal Aid Board are in excess of ten years *call*. A crude but notable benchmark is that this work is paid at approximately half of the rate some of the top five firms charge out for their trainee solicitors.

The concept of a *case fee* is out dated. The fee of €1,145.00 when first set was it seems heavily influenced by an assumption that 13 hours work might be involved for the most basic of case. My analysis of this case reveals significantly more time is required. This case however was a relatively straightforward one and one could easily conceive of another one whereby there would be:-

1. Several further interim applications
2. Heavier documentation and more complex documentation
3. Multiple consultations in advance of hearing
4. Additional pleadings

Extra work falling within the above categories is not provided for within the existing framework. The application of a case fee is a "*one size fits all*" approach. Such an approach might work for all participants in a scheme such as this if there was a significant volume of work and on any given day as Counsel would be in a position to hold multiple briefs. That might work because over time the good would pay for the bad and these matters could be considered *"on the round"*. That is simply not the case because the listings of the Court (and the number of Judges hearing these cases) does not allow for the retention of several briefs. In addition, the level of documentation and the extent of the issues contained within the brief precludes any more than one brief being held on any one day.

The work of Counsel in these cases is in my opinion improperly provided for. There is over reliance on Counsel to such an extent that it appears even within the context of Counsel's *case fee,* Counsel are at times asked to undertake work that ordinarily is within the remit of the solicitor. This therefore erodes the value of the case fee for the Barrister.

In addition the "*one size fits all"* approach makes no distinction for the *seniority* of the Barrister. If it is the case that the Board is regularly instructing Barristers with only in excess of ten years *call*, then there is no recognition of this in the fee. It means the Board is requiring minimum standards of experience but it is not willing to pay for that experience. Even if the Board elected to use Barristers that are relatively inexperienced and perhaps only several years at the bar, the rates are in my opinion still wholly inadequate.

The scheme itself lacks sophistication because there is no provision for a form of proper certification by the Solicitor to account for difficult and complex cases and those that are more document heavy. Within other State Bodies there are schemes in operation to account for such variables.

The *case fee* also lacks transparency. The multiple components to it obscures the fee. A fairer approach would be to sub divide the case fee into proper component parts and assign flexible fees or indeed a range of fees (depending on certification). Obvious components are:-

1. Pleading fees
2. Brief fees
3. Consultation fees
4. Refresher fees
5. For Mention fees
6. Motion briefs
7. Judgment fees

The *case fee* captures most *headline* work and is grossly inadequate for even the most basic of divorce applications. It also appears to be considerably removed from the general marketplace.

This case is simple one with little variation however most cases will require many consultations, Motions and negotiations, appearances. As a result the value of the fee paid to the Barrister is eroded significantly and is likely to be considerably lower than the €53.25 per hour.

There are a number of other variables of the case that could significantly impact upon a Barrister's time and they are simply not catered for (travel time to other jurisdictions and of course waiting time). It would not take too much effort to formulate a fair working guide or scheme for payment of Counsels' fees that is reflective of work reasonably and actually undertaken by Counsel. This could be easily undertaken to ensure there is value to that public for the services rendered but is equally balanced and fair in the payments made to the Barristers engaged.

I hope this assists.

Yours faithfully,

STEPHEN FITZPATRICK

stephen.fitzpatrick@peterfitzpatrick.ie

Encl. Table of Fees

Appendix 2.d: SP Letter to Counsel re Hague matter

PETER FITZPATRICK & COMPANY

SF/289/16 16th January 2018

Re: Legal Aid Fees- **Hague Convention case**

Dear-

I have reviewed the documentation briefed to me in this matter (redacted files and correspondence) relating to important and urgent Hague Convention proceedings.

On review of this brief, I formed an opinion on the reasonable amount of time to be assigned to each of the tasks involved. This, I undertook by reference to the primary dates upon which work was undertaken. In the attached table, I set out my estimate of hours spent. Once this exercise was undertaken, I met with you twice to receive your own estimate of time and verify whether mine varied to any great degree.

The estimated time was then cross referenced with the ultimate fee paid in this matter (in order to test the reasonableness of that fee). You will note from the table that 68.5 hours were reasonably spent. This, when measured against the total fee payable by the Legal Aid Board (€4,285.00 was paid) shows the fee is unfair and inadequate for services provided. The fee paid includes a "*Case fee*". It is an indiscriminate fee of an omnibus nature defined in the 2012 scheme that covers all work no matter what level of documentation is furnished. It also includes the costs of one Motion and all pleadings. The basis of charges in the 2012 scheme are broken down into three primary types of fees which are:-

1. Case fee of €2,135.00
2. Refresher fee of €1,000.00
3. A Judgment fee of€150.00

Many typical categories of costs are not paid for no matter how many arise. The obvious ones are consultations, court appearances, interim applications. In the example given to me

two fees for Refreshers arose (one for written submissions and one for a day long Judgment). There was no child assessment application although normally there would be that type of application in a case of this nature. If additional work arose under such an application, it would have had no bearing on the fee paid notwithstanding the significant work involved.

The analysis of the total time spent came to 68.5 hours. Applying an hourly rate of €250.00 per hour would yield a fee of €17,125.00. Application of the Tusla rate for Childcare matters would yield €13,700.00. The fees paid of €4,285.00 are notably lower and it points to an average of €62.55 per hour. That is grossly inadequate and particularly so because it appears to be the case that Barristers regularly instructed in this type of case are in general are in excess of ten years *call*. Using the number of hours as a "*checking mechanism*" for the reasonableness of the fee in the first instance, means that this work is inappropriately paid. It is not a suggestion that the work should be paid on an hourly basis. It points to the fact the payment is unfair. Independent benchmarks will also show the fees require revision. The primary reason why the fees are unfair is because a notable number of categories of work are excluded.

I note the fixed refresher fee of €1,000.00 applies to Junior Counsel only is not lead by Senior Counsel and where Junior Counsel does not advocate in court. When lead, it is reduced to €300.00. At face value that appears harsh. If the brief fee is paid at approximately two thirds, I see no obvious reason to depart from this for a refresher fee. The fact Junior Counsel may not be "*on their feet"* does not diminish the work to be undertaken. This looks like a double discount. In practice, this inter alia is why the fee is not of parity with Senior Counsel and is instead generally measured at two thirds refresher.

Yours sincerely,

STEPHEN FITZPATRICK

stephen.fitzpatrick@peterfitzpatrick.ie

Encl

Appendix 3: 1998 Terms & Conditions from Legal Aid Board

THE DISTRICT COURT

All proceedings		
Case fee	The case fee in respect of Junior Counsel shall be the sum of £600.00 to cover all work carried out by him or her in regard to the case to.include.as appropriate consultations,·drafting·or settling of pleadings, preparatory work, settlement negotiations and/or court appearances. This sum has been calculated on the basis of twelve hours at £50.00 per hour.	£600
Interim or interlocutory application	An additional sum of £100 shall be payable in respect of each interim or interlocutory application, where the Solicitor considers that it is necessary for the Barrister to attend.	£100.
Refresher	An additional sum of £250 shall be payable by way of refresher in respect of each second or subsequent day of a hearing, or part thereof.	£250
Legal Aid	If following the completion of a case legal aid is granted for an application to enforce the order or. orders made therein the fee payable on such application shall be at the rate of a refresher that is £250.	£250
Senior Counsel	The appropriate rate for Senior Counsel shall be one and a half times the rate payable to Junior Counsel.	
	The hourly rate and the fees set out above shall be increased in accordance with any increase in the maximum point of the scale of the 4th Legal Assistant in the Attorney General's Office.	
	Should work be carried out by more than one Barrister then the relevant case fee shall be divided between them in such manner as may be	

	agreed by the Barristers or in default of agreement as may be determined by the Board.	

THE CIRCUIT COURT

All proceedings		
Case fee	The case fee in respect of Junior Counsel shall be the sum of £750.00 to cover all work carried out by him or her in regard to·the case·to include as appropriate consultations, drafting or settling of pleadings, preparatory work, settlement negotiations and/or court appearances. This sum has been calculated on the basis of fifteen hours at £50.00 per hour.	£750
Interim / interlocutory applications	An additional sum of £100.00 shall be payable in respect of each interim or interlocutory application. Such additional sum shall not be payable in respect of an application for judgement in default where such judgement is obtained.	£100
Refresher	An additional sum shall be payable by way of refresher in respect of each second or subsequent day of a hearing, or part thereof.	£250
Legal Aid	If following the completion of a case legal aid is granted for an application to enforce the order or orders made therein the fee payable on such application shall be at the rate of a refresher that is £250.	£250
Senior Counsel	The appropriate rate for Senior Counsel shall be one and a half times the rate payable to Junior Counsel.	
	The hourly rate and the fees set out above shall be increased in accordance with any increase in the maximum point of the scale of the 4th	

	Legal Assistant in the Attorney General's Office.	
	The case fee payable in respect of an appeal from the District Court shall be that applicable to a case in the District Court.	
	Should work be carried out by more than one Barrister then the relevant case fee shall be divided between them in such manner as may be agreed by the Barristers or in default of agreement as may be determined by the Board.	

THE HIGH COURT

All proceedings		
Case fee	The case fee in respect of Junior Counsel shall be the sum of £1,400.00 to cover all work carried out by him or her in regard to the case to include as appropriate consultations, drafting or settling of pleadings, preparatory work, settlement negotiations and/or court appearances, including any interim applications. This sum has been calculated on the basis of twenty hours at £70.00 per hour.	£1,400
Refresher	An additional sum of £700.00 shall be payable by way of refresher in respect of each second or subsequent day of a hearing, or part thereof.	£700
Legal Aid	If following the completion of a case legal aid is granted for an application to enforce the order or orders made therein the fee payable on such application shall be at the rate of £490 That is 7 hours at £70 per hour.	£490
Senior Counsel	The appropriate rate for Senior Counsel shall be one and a half times the rate payable to Junior Counsel.	

	The hourly rate and the fees set out above shall be increased in accordance with any increase in the maximum point of the scale of the 4th Legal Assistant in the Attorney General's Office.	
	The case fee payable in respect of an appeal from the Circuit Court shall be that applicable to a case in the Circuit Court.	
	Should work be carried out by more than one Barrister then the relevant case fee shall be divided between them in such manner as may be agreed by the Barristers or in default of agreement as may be determined by the Board	

TRAVELLING AND SUBSISTENCE

The travelling and subsistence rates payable to Barristers in respect of work undertaken by them shall be equivalent to the highest travelling and subsistence rates payable to civil servants and will be subject to the same conditions as apply to civil servants.

Travelling expenses shall be allowable only in respect of travelling expenses actually and necessarily incurred in attending sittings of Courts. No travelling expenses shall be payable in respect of a Dublin-based Barrister for attending Courts in the Dublin area.

Travelling expenses will be reduced pro-rata if a Barrister travels to do cases other than legal aid cases.



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