



SENIOR COURTS
COSTS OFFICE

SCCO Ref: 22/3/17

Dated: 19th October 2017

ON APPEAL FROM REDETERMINATION

REGINA v ROBERTSON

CROWN COURT AT ISLEWORTH

APPEAL PURSUANT TO REGULATION 29 OF THE CRIMINAL LEGAL AID
(REMUNERATION) REGULATIONS 2013

CASE NO: T20167332

LEGAL AID AGENCY CASE

DATE OF REASONS: 15th March 2017

DATE OF NOTICE OF APPEAL: 22nd March 2017

APPLICANT: Asghar & Co, Solicitors

The appeal has been successful (in part) for the reasons set out below.

The appropriate additional payment, to which should be added the sum of £100 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

**MARK WHALAN
COSTS JUDGE**

REASONS FOR DECISION

Introduction

1. Asghar & Co. ('the Appellants') appeal against the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') to reduce the number of pages of prosecution evidence ('PPE') forming part of its Litigator Graduated Fees ('LGF') claim.
2. The Appellants represented Ker Robertson pursuant to a Representation Order dated 6th June 2016. Mr Robertson was tried at Isleworth Crown Court in December 2016 on charges relating to Conspiracy to Supply Controlled Drugs (Class A and B) and the possession of a firearm.
3. In the LGF claim submitted in December 2016 the Appellants claimed 6360 PPE. The Respondent assessed and allowed 394 PPE. 5966 PPE remain in dispute and comprise the point in issue in this appeal.

The relevant facts

4. Ker Robertson was charged (with two co-defendants) on an indictment alleging 13 counts of conspiracy to supply controlled drugs and the possession of various prohibited items, including a firearm, a knife and other criminal property. The trial listed for December 2016 ultimately "cracked". The prosecution evidence and/or unused material included datum downloaded from four mobile telephones owned by Mr Robertson and his co-defendants. This datum was downloaded onto discs and served on the Appellants. The electronic material has never existed in paper form. The exhibits are considered in more detail below but can be identified as follows: MSG/2 (also referred to as NRC/001) (Robertson); MSG/04 (also identified as AJK/22) (Wickens); MSG/05 (also identified as AJK/23) (Wickens) and MSG/06 (also identified as NJM/08) (Smith). It is the datum on these electronic exhibits which comprise the disputed 5966 PPE.

The Regulations

5. The applicable regulation is The Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations'). Paragraph 1 of Schedule 2 to the 2013 Regulations provides (where relevant) as follows:

"1. Interpretation

...

(2) For the purposes of this Schedule, the number of pages of prosecution evidence served on the court must be determined in accordance with sub-paragraphs (3) to (5).

(3) *The number of pages of prosecution evidence includes all –*

- (a) *witness statements;*
- (b) *documentary and pictorial exhibits;*
- (c) *records of interviews with the assisted person; and*
- (d) *records of interviews with other defendants,*

which form part of the committal or served prosecution documents or which are included in any notice of additional evidence.

(4) *Subject to sub-paragraph (5), a document served by the prosecution in electronic form is included in the number of pages of prosecution evidence.*

(5) *A documentary or pictorial exhibit which –*

- (a) *has been served by the prosecution in electronic form; and*
- (b) *has never existed in paper form,*

is not included within the number of pages of prosecution evidence unless the appropriate officer decides that it would be appropriate to include it in the pages of prosecution evidence taking in account the nature of the document and any other relevant circumstances”.

The Respondent's submissions

6. The Respondent's case is set out in the Written Reasons dated 15th March 2017. Mr Michael Rimer, a Senior Solicitor at the Respondent, was unable to attend the hearing on 4th August 2017, so he proffered his submissions in an e-mail to the court dated 28th July 2017.
7. The Respondent, in summary, disallowed the disputed PPE as it concluded initially that the material was not served as prosecution evidence pursuant to the requirements of Para 1(2)/(3) of Schedule 2 to the 2013 Regulations. In his e-mail dated 28th July 2017, however, Mr Rimer, on behalf of the Respondent, now concedes that this analysis was incorrect. The Respondent – relying, presumably, on the recent, authoritative guidance of Mr Justice Holroyde in Lord Chancellor v. SVS Solicitors [2017] EWHC 1045 (QB) – now accepts that the disputed material comprised evidence served by the prosecution. The outstanding issue, therefore, comprises the qualitative assessment at Para. 1(5) of Schedule 2 to the 2013 Regulations, namely whether it would be appropriate to include the exhibit(s) in the PPE count “*taking into account the nature of the document and any other relevant circumstances*”. As this exercise was not undertaken initially by the Determining Officer, Mr Rimer sets out his analysis in his e-mail. Accordingly, the Respondent now concedes the PPE should be increased by 481 pages,

but continues to contest the balance of the disputed PPE. I will consider Mr Rimer's reasoning in a little more detail in my analysis outlined below.

The Appellants' submissions

8. The Appellants' submissions are set out in the Notice and Grounds of Appeal dated 22nd March 2017. Mr Ghuman, a Solicitor, attended and made oral submissions to the court at the hearing on 4th August 2017.
9. The Appellants, in summary, made detailed submissions as to why the disputed material was "served", a point now conceded by the Respondent. On receipt of this concession, the Appellants served "Updated Grounds of Appeal", in which it submits, inter alia, that "*everything on the discs needed to be looked at*". It argues thus that the solicitors would have been negligent not to look at all the images, videos, internet searches and other material downloaded from the defendants' telephones, reciting specifically a comment of Mr Justice Holroyde from paragraph 44 of Lord Chancellor v. SVS (ibid). Again, I will consider the Appellants' specific submissions in a little more detail in the course of my analysis set out below.

My analysis and conclusions

10. I note from the outset that the empirical calculation of the disputed PPE is not wholly consistent in the various submissions filed by the parties. Whereas, in other words, the Written Reasons dated 15th March 2017 appear to confirm a disputed PPE of 5966, Mr Rimer's e-mail analysis of the individual exhibits appears to acknowledge a greater overall total of 6416 PPE, before allowance is made for the subsequent concession of 481 PPE. Ultimately, for reasons outlined below, the accuracy of the starting figure may not matter, but I acknowledge from the outset that it may be necessary ultimately for the parties to agree the precise, revised PPE.
11. My analysis of the disputed, electronic exhibits pursuant to Para. 1(5) of Schedule 2 to the 2013 Regulations is as follows.

MGS/5 (Robertson)

12. This exhibit comprises 2404 pages. The Respondent's revised analysis allows 246 pages as PPE. This analysis, in my conclusion, is broadly correct. I would allow one additional page, namely the "Handset report excel", making a total allowance for this exhibit of 247 PPE. Most of the other pages on this exhibit are, in broad overview, photographs and images that are irrelevant undoubtedly to the prosecution, insofar as they comprise, inter alia, wedding photographs, a mixture of personal images and images downloaded from pornographic (or explicit) sites.

MGS/4 (Wickens)

13. This exhibit comprised 1428 PPE. Mr Rimer's subsequent analysis concedes 146 pages (although the e-mail narrative suggests that the correct allowance should be 200 pages). This analysis, in my conclusion, understates the page

count which should be included, taking into account the documents and any other relevant circumstances. The PPE should, on my analysis, also include the following; Network information pages 23, Contacts 4, SMS 88, Log 377, Contacts 404 and Calls 60, which total an additional allowance of 956 pages. On this exhibit, therefore, the allowance should be 1156 PPE (i.e. 956 pages + 200 conceded by the Respondent).

MGS/5 (Wickens)

14. This exhibit comprises 1293 pages. Mr Rimer's subsequent allowance concedes 89, plus (from the e-mail, another 32) pages. Again, I find this analysis to be flawed, so that the following pages should also be included; Summary 1, Case data 1, Contacts 21, Summary 1, Case data 1, Contacts 370 and Calls 60, making an additional total of 455 pages. This exhibit should allow accordingly 576 PPE (455 + 89 + 32).

MGS/6 (Smith)

15. This exhibit comprises 1291 pages. Mr Rimer's analysis continues to dispute inclusion within the PPE in its entirety. This analysis, in my conclusion, is flawed, so that I would allow the following: Summary 1, Case data 1, Contacts 110, SMS 94, Summary 1, Summary 1, Case data 1, Contacts 97, SMS 216, Summary 1 and Summary 1, making a total of 524. This exhibit should accordingly allow 525 PPE.
16. In my conclusion, therefore, this appeal is allowed to the extent that an additional 2503 PPE (247 + 1156 + 576 + 524) is added to the page count.

TO:

Asghar & Co.
DX42261
Slough West

COPIES TO:

Mr Michael Rimer
Legal Aid Agency
Central Legal Team
102 Petty France
London SW1H 9AJ
DX328
London Government Legal
Department

Ms Carmel Curran
Legal Aid Agency
DX10035
Nottingham

The Senior Courts Costs Office, Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL: DX 44454 Strand, Telephone No: 020 7947 6468, Fax No: 020 7947 6247. When corresponding with the court, please address letters to the Criminal Clerk and quote the SCCO number.