



SENIOR COURTS
COSTS OFFICE

ON APPEAL FROM REDETERMINATION

SCCO Ref 220/15

REGINA v TUNSTALL

10 February 2016

PRESTON CROWN COURT

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

CASE NO: T20147712

LEGAL AID AGENCY

DATE OF REASONS: 26 November 2015

DATE OF NOTICE OF APPEAL: 16 December 2015

APPLICANT: Brian Jackson & Co
Solicitors
DX 14139 Liverpool 1

The appeal has been dismissed for the reasons set out below

**J M SIMONS
COSTS JUDGE**

REASONS FOR DECISION

1. Brian Jackson & Co solicitors appeal against the decision of the Determining Officer at the Legal Aid Agency to reduce the number of pages of prosecution evidence (PPE) included in their Litigator Fee Claim from 10,000 to 4,158.

2. The solicitors represented Natasha Tunstall who faced a charge of conspiracy to pervert the course of public justice. At the conclusion of the case the solicitors submitted their Litigator Fee Claim in which they claimed 10,000 PPE

3. The determining officer allowed 4,158 PPE and stated that in respect of the balance of the claim evidence had to be submitted which included the discs and a Case Summary.

4. On 30 September 2015 the solicitors appealed against the decision in form LF2. They enclosed a Case Summary and stated that they did not have any discs as their client had instructed a new solicitor to whom the discs were passed. In any event, they stated, that in view of the decision of *Mr Justice Haddon-Cave in R v Furniss & others [2015] 1 Costs LR 151* evidence of the content of the discs was unnecessary as they did not have to show that electronically served evidence was pivotal to the case and did not have to be considered in detail.

5. In response to the Litigator Fee Review the Determining Officer stated that *"whilst we may not need to see the discs you would still need to justify that the electronically served evidence should be paid as PPE. You will also need to provide evidence that the discs were served whilst representing this client."*

6. The solicitors now appeal. In their grounds of appeal they refute the suggestion that they have refused to supply the discs and they refer to the letter that they sent to the Legal Aid Agency on 25 September 2015 when they stated that the discs were no longer in their possession as they had been forwarded to new solicitors.

7. They also submit that there was no lawful justification for the Legal Aid Agency to request the further information indicated or for its decision to disallow the PPE. They refer to the judgement in *R v Thomas Chilton (SCCO re 400/14)* in support of their submission that the decision in *R v Furniss* is binding upon the Determining Officer.

8. The solicitors have requested that this appeal is dealt with in their absence.

9. Since the decision made in *R v Furniss* and the decision made by me in *R v Thomas Chilton*, there have been further decisions made on these issues by other Crown Court Judges (for example, *R v Sagoo*, Recorder Curtis QC sitting in Snaresbrook Crown Court on 24 May 2015 and *R v Manning* HHJ Mansell QC sitting in Chester Crown Court on 3 April 2015) in which other Crown Court Judges have stated that the decision in *R v Furniss* is not binding on them. Consequently, I no longer consider that *R v Furniss* is, contrary to what I stated in *R v Thomas Chilton* binding upon me.

10. In my judgement the position with regard to electronically served PPE is set out in paragraph 1(5) to Schedule 2 of the Criminal Legal Aid (Remuneration) Regulations 2013 which states:

(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 into account the nature of the document and any other relevant circumstances.

11. The basic position is therefore that electronically served PPE is not included in the number of pages of prosecution evidence. However the Determining Officer can decide to include this evidence taking into account the nature of the document and any other relevant circumstances. In this instance, without the discs, the Determining Officer is unable to make a judgement as the importance of the contents of this evidence within the context of the case. Accordingly, in my judgement the determining officer was correct in refusing to allow the contents of the disc to be included as pages of prosecution evidence.

12. For the reasons stated above this appeal does not succeed and must be dismissed.

To: Brian Jackson & Co

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