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HIGH COST CRIME APPEAL DECISIONS – DECEMBER 2002 TO JANUARY 2014

- **VHCC Categorisation Criteria – Total volume of Prosecution documentation does not include unused material**

The Committee held that although the phrase "Prosecution Documentation", as referred to in Block B of the criteria and rates, was not defined anywhere in the criteria, the Committee was assisted by reference to a section in Archbold dealing with fees for advocacy in the Crown Court. Paragraph 6-240, section 1(2) of Schedule 4 defines Prosecution evidence as including "all witness statements, documentary and pictorial exhibits and records of interview with the assisted person and with other defendants forming part of the committal or served Prosecution documents or included in any Notice of Additional Evidence". In defining the words "Prosecution documentation" as set out in Block B of the criteria, the Committee adopted the definition in Schedule 4, paragraph 1(2). The Committee ruled therefore that the phrase "Prosecution documentation" does not include unused material and as such in this case the volume of Prosecution documentation did not exceed 10,000 pages and this criterion was not met.

9th December 2002 – Appeal by counsel

LSC Decision Upheld

- Representation Orders – CCU cannot go behind the Representation Order

The assisted defendant had the benefit of a Representation Order authorising the instruction of a QC and Junior Counsel. The instructing Solicitors had to date been unable to secure the services of Leading Counsel and Junior Counsel had been representing the Defendant alone. It was argued by the Appellant that he should therefore be paid at the rate of Junior Counsel acting alone rather than the rate of led Junior Counsel. The Committee felt unable to go behind the Representation Order and held that Junior Counsel could only be remunerated at the rate of Junior Counsel being led.

9th December 2002 – Appeal by counsel

LSC Decision Upheld

- **VHCC Categorisation Criteria – National publicity & widespread public concern and Highly Specialise Knowledge**

The Committee did not feel that the case would give rise to the level of national publicity and widespread public concern required to meet this criteria. It felt that although there had been some coverage of the case in the Daily Mirror, Nottingham Evening Post and on the DTI website, this publicity stemmed largely from a particular interest which the Daily Mirror had in this case. The prosecution had come about largely due to an investigative piece of writing in the Daily Mirror. In addition to this it was not felt that the case would provoke widespread public concern and it was unlikely that the case would have any effect on the police or other regulatory regimes. The criteria of National Publicity and widespread public concern was not therefore held to be met by the Committee.

The need to assess the interrelationship of insolvency and regulatory aspects of the alleged fraudulent trading did amount to highly specialised knowledge. The Committee held that the criteria of highly specialised knowledge was met.

The Committee upheld the overall decision of the Contract Manager in the assessment of this case at category 3.

21st January 2003 – Appeal by solicitor

LSC Decision Upheld

- **Payment of work undertaken which was not previously agreed**

The LSC authorised the attendance at Court of an expert to assist counsel for one full day. The expert actually attended court for four days and the additional three days attendance was not discussed with or agreed by the Contract Manager. The additional three days attendance was therefore not paid by the Contract Manager.

The Appellant contended that clause 19 of the Contract Specification should be read so as to allow an appeal retrospectively on any costs or disbursements, irrespective if agreed beforehand with the Contract Manager in a stage plan. The Committee did not accept that this was the correct interpretation of the Contract (paragraph 9) and Contract Specification when read as a whole and therefore the Committee upheld the decision of the Contract Manager not to pay for the additional three days attendance.

20th February 2003 – Appeal by solicitor

LSC Decision Upheld

- **VHCC Categorisation Criteria – Consistency of category across different co-defendants within the same case**

In a three handed conspiracy case, two out of the three defendants legal teams were categorised at category two. The appellant argued that in the interests of fairness and consistency, the same criteria should apply to their case.

The Committee held that as the criteria for category two were not met (specifically three out of the four criteria in block b) the decision of the contract manager should be upheld and the category of case for this particular defence team should remain at category three.

19th January 2004 – Appeal by counsel

LSC Decision Upheld

- **VHCC Categorisation Criteria – National Publicity and Multiple Victims**

The LSC had categorised the case as a category four. The appellants argued that the case was a category three. There were two Block A criteria that were not accepted.

(i) The case is likely to attract national interest
(ii) If the offence is of a violent or sexual nature, there are multiple victims or if a single victim, there is something significant about the crime. If the case involves drugs, their total value is estimated to exceed £10M.

(i) The panel viewed the indictment and case summary and noted that the appellants were unable to produce any evidence of reporting save for limited local reporting. The panel upheld the contract managers decision and found that this case did not meet this particular criteria.
(ii) The reference to the word 'offence' relates to the class 1 or class 2 offence as detailed in the first of the block A criteria. The panel found that this case did not involve multiple victims, there was only one victim, the murder victim. The Public Order Act offences are not victim offences and the conspiracy to commit GBH again had no victim. The offence of conspiracy is the agreement to cause GBH and the panel noted in this case that the intended object of the conspiracy was never located by the Defendant. Having also viewed the case summary the panel concluded that this was a single victim case.

19th January 2004 – Appeal by solicitors

LSC Decision Upheld

- **VHCC Categorisation Criteria – Does counterfeiting currencies and traveller's cheques constitute a fraud case for the purposes of the use of the case categorisation criteria?**

A group of nine defendants were accused of playing differing and significant roles in the large-scale manufacture and distribution of a number of counterfeit currencies and traveller's cheques. The Appellant argued that for the purposes of case categorisation, the fraud criteria should be applied to this case.

The Committee held that counterfeiting of this kind did not constitute a fraud and therefore the Commission were correct to apply the non-fraud criteria when determining the category of this case.

9th February 2004 – Appeal by solicitors and counsel
LSC Decision Upheld

- **Category and Distant Travel**

This appeal dealt with:

1. The contract manager's decision to categorise the case at category four. The appellants believed that this case should be considered as a category two case.

2. The contract manager's decision not to pay for all travel costs and associated disbursements for visits to the client in prison in Worcestershire and for attendances at Cardiff Crown Court where the case is being heard.

The Committee did not rule on the issue of the categorisation of this case in the absence of representatives for the Appellant and the LSC. The Committee stated that it is open for the solicitors to submit their own appeal in relation to category and to attend any such appeal to make oral submissions.

The Committee overturned the decision of the Contract Manager with regards to the allowance of travel costs and expenses in this case. In the particular facts of this case, the committee considered it is reasonable for the travel costs and expenses of the Appellant solicitor to be a component part of the VHCC contract.

February 2004 – Appeal by solicitors
LSC Decision Overturned

- **Reading Time - Request for a second fee-earner to read all of the served evidence following the resignation of the original fee-earner and request for additional preparation time where there are two indictments in a case, based on the same served evidence**

The Committee did not consider that a man of modest means should be asked to face the burden of paying for a second fee-earner to undertake work already paid for in relation to another fee-earner in the particular circumstances of this appeal.

Despite the fact that there were two trials in this case, the Committee did not consider that this justified two fee-earners separately preparing for each trial and that this would involve unjustified duplication.

16th March 2004 – Appeal by solicitor

LSC Decision Upheld

- **Reading Time – Unused Material**

Both trial counsel requested 2 minutes per page to read all unused documentation in addition to the A grade instructing solicitor. The Committee disallowed the appeal on this point stating that such a request would result in unnecessary duplication and expense to the public purse and in effect would grant both counsel several hundred extra hours to perform the same task as the grade A fee earner.

The Committee suggested that consideration instead be given by the LSC to allowing trial counsel a small, fixed number of hours to undertake a preliminary view of the unsifted unused material to establish how the task might best be divided between all members of the defence team.

29th April 2004 – Appeal by counsel

LSC Decision Upheld

- **VHCC Categorisation Criteria – Total volume of Prosecution documentation does not include unused material**

The appellant sought to have the category of case changed from 3 to 2 by including the unused material in the prosecution documentation page count. The Committee held that the phrase “prosecution documentation” in the VHCC case categorisation criteria was limited to served documentation upon which the prosecution seek to rely and that served unused material did not fall within the definition for the purposes of the criteria.

29th April 2004 – Appeal by counsel

LSC Decision Upheld

- Representation Orders – Counsel's Role Going behind the Representation Order

The assisted defendant had the benefit of a Representation Order authorising the instruction of a QC and Junior Counsel. The instructing Solicitors had to date been unable to secure the services of Leading Counsel due to a profession wide dispute between the LSC and the Bar during this period. Junior Counsel had been representing the Defendant alone. It was argued by the Appellant that he should therefore be paid at the rate of Junior Counsel acting alone rather than the rate of led Junior Counsel.

The Committee held that in the specific circumstances of this case, it had not been appropriate or possible to instruct a QC and therefore the appellant should be remunerated at the rate of junior alone.

4th May 2004 – Appeal by counsel

LSC Decision Overturned

- **VHCC Categorisation Criteria – Value of drugs exceeds £10million**

The appellant argued that the street value of the drugs seized was in excess of £10 million and therefore for the purposes of categorising the case, this criteria was met. The Committee felt that the only evidence revealed by the paperwork was the valuation of the drugs by the Prosecution which stood at £8.5 million.

The Committee felt unable to go behind the Prosecution valuation and therefore upheld the decision of the Contract Manager.

4th May – Appeal by Solicitors
LSC Decision Upheld

- **VHCC Categorisation Criteria - Back-dating re-categorisation of a case**

This appeal dealt with the date upon which recategorisation of the case became operative for calculating payment of leading Counsel's fees.

Leading Counsel was assigned to the relevant Representation Order on 16 July 2003 and signed a Barrister Acceptance Form on 22 December 2003. Ultimately the contract manager had re-categorised this case from category 4 to category 3 (non-fraud) with effect from 21 November 2003. The appellant sought payment of his fees at category 3 rates for the entire period 16 July 2003 to 21 November 2003.

The Committee agreed that in the circumstances of this case the appeal should succeed and particularly noted that it appeared that the client of the appellant (who was first on the Indictment) was alleged to be the prime mover behind a highly sophisticated conspiracy to import substantial quantities of Class A drugs into the United Kingdom, and other co-defendant contracts in this particular case had been classified as category 3 (non-fraud) from the outset.

15th June 2004 – Appeal by counsel

LSC Decision Overturned

- **Full or half daily rates for advocacy**

The issue in this appeal was whether 3.1 hours of advocacy should be paid at the full or half daily rate for counsel. Under the footnote of page 17 of the Contract Specification, it states that the full daily rate will be paid where the advocate is in court for more than 3.5 hours.

The Committee took this to mean time spent actually in court engaged in advocacy and therefore on the facts of this case the time spent in court was less than 3.5 hours and therefore the Committee felt that the Contract Manager was right to pay the half daily rate in this instance.

28th June 2004 – Appeal by Counsel

LSC Decision Upheld

- **VHCC Categorisation criteria – trial length**

The appellants disagreed with the trial estimate made by the court, which was between 10 and 14 weeks. They submitted that the trial would last over 20 weeks, which may have led to this case being re-categorised from category 2 to category 1. The Committee held that they could not go behind the official court estimate in this case, and they were not persuaded that the court's estimate was in this case incorrect.

22nd July 2004 – Appeal by solicitor and counsel
LSC Decision Upheld

- **Category Change Effective Date**

At the time of signing the VHCC contract the case fell into the category four criteria. The volume of papers had not exceeded 5000 pages. The case was recategorised on 9th February 2004. This was the date the contract manager was notified that the papers had exceeded 5000 pages. The appellants argued that the recategorisation should have been retrospective to the start of the contract.

The Committee held that this case was correctly re-categorised from 9th February 2004. The panel accepted that part D 5.4.6 of the CDS manual applied in this case and that there therefore should be no retrospective re-categorisation.

4th August 2004 – Appeal by Solicitor

LSC Decision Upheld

- **VHCC Categorisation Criteria**

The committee were asked to review the decision made by the Contract Manager to categorise a carousel fraud case as a category 3 as opposed to a category 2. The appellants wanted the committee to review the Block A criteria applied, namely; is the defendant's case likely to give rise to national publicity and widespread public concern and does the defendant's case involve a significant international dimension.

The committee decided that the case did involve national publicity but not widespread public concern. The latter was decided due to the fact that the publicity was not extensive and was restricted to a small number of 'professional bodies' who were likely to have an interest.

The committee also decided that the case did involve significant international dimension. This was decided because in order for the firm to properly defend the case, the defence would be required to make significant enquiries and test the evidence in relation to a large number of overseas companies, a large number of those elements of the offence occurring overseas, a large number of the associated elements of each offence occurring overseas, a large number of overseas individuals and the allegedly improper transmission abroad of funds considered by the prosecution to be the proceeds of this fraud.

10th August 2004 – Appeal by Solicitor

LSC Decision Upheld

- **VHCC Categorisation Criteria – Appellants costs reach over £200K**

The panel were asked to examine whether the appellants costs were likely to exceed £200K for the purposes of catergorisation. The appellants argued that in calculating this total the contract manager should take into account previous defence lawyers case costs (from the period when the client was represented by a different firm of solicitors). On the particular factors of this case the panel took the view that the total defence costs should have included the previous defence lawyers costs and that as a result were likely to exceed £200K.

7th September 2004 – Appeal by Solicitor
LSC Decision Overturned

- **VHCC Categorisation Criteria – Appellants costs reach over £200K**

The appellant sought clarification on whether the criterion that "total costs of representing the defendant(s)" referred only to the client(s) represented by an individual solicitor, or to all the defendants in the case.

The Committee was satisfied that the " total costs of representing the defendant(s)" is a figure which relates only to the defendant or defendants being representing by the solicitor in question as opposed to all the defendants in the case.

11th October 2004 – Appeal by Solicitor
LSC Decision Upheld

- **Experts Travel Costs**

The Contract Manager refused to pay travel costs of £120 / hour to a neurological expert instructed by the solicitor.

The Committee felt that there was a well-established convention in publicly funded work that experts should be remunerated for travel time at between 50% and two-thirds of their hourly rate for preparation. In the absence of any statute or subordinate legislation giving guidance on this point, the Committee felt that this was a sensible and proper starting point for travel costs to experts where public finds are being expended.

The Committee wished to comment that even if they were wrong about this, they did not think that the sum claimed by the expert could be viewed as a reasonable fee for travel time.

11th October 2004 – Appeal by Solicitor
LSC Decision Upheld

- **Travel expenses and accommodation**

The appeal was made against the Contract Manager's decision not to allow travel costs and accommodation expenses.

The Committee decided that the matter of accommodation should have been addressed when the task list was agreed, from the documents supplied it would appear that the matter was only raised the day before the trial was due to start. Travel costs and accommodation expenses relate only to journeys from counsels' chambers and not from home addresses. Reasonable travel costs from chambers to court should be paid. The committee also agreed with the Contract Manager's decision to refuse to pay overnight accommodation.

12th October 2004 – Appeal by Counsel
LSC Decision Upheld (added on 26th April 05)

- **Payment Rate for attendance at trial of co-defendants**

The appellants argued that they needed a B grade fee earner to attend the trial of co-defendants in the same case who were being tried separately. They argued that the B grade fee earner should be paid the full preparation rates for this attendance, rather than the attendance at court rates because the work they would be doing would be of a preparatory nature as they would be assessing the impact of evidence given in that trial on their own defendants case which was set down for trial immediately after.

The Contract Manager refused to pay the full preparation rates for this work but did agree for B grade attendance at court at the rate of £34 / hour (attendance at court rates).

The Committee held that the most appropriate and cost effective method of conducting this work would be to instruct a noting brief. However, in the particular circumstances of this case, they agreed to the attendance of a B grade fee earner for certain portions of the trial but they did not agree that this type of work warranted payment at the full hourly preparation rates.

2nd December 2004 – Appeal by Solicitor
LSC Decision Upheld

- Representation Orders – CCU cannot go behind the Representation Order

The assisted defendant had the benefit of a Representation Order authorising the instruction of a QC and Junior Counsel. The instructing Solicitors had not yet instructed a QC and it was argued by the Appellant that he should therefore be paid at the rate of Junior Counsel acting alone rather than the rate of led Junior Counsel. The Committee felt unable to go behind the Representation Order and held that Junior Counsel could only be remunerated at the rate of Junior Counsel being led.

8th December 2004 – Appeal by Counsel

LSC Decision Upheld

- **Status of fee earner**

The appellant argued that a fee earner with 3½ years experience of criminal defence casework should be classified as a B grade fee earner.

The Committee did not feel that 3 ½ years experience of criminal defence casework was sufficient for the appellant to be regarded as a B grade fee earner and further this experience did not comply with the requirements as set out in the Contract Specification.

8th December 2004 – Appeal by Solicitor
LSC Decision Upheld

- **Level of fee earner**

The appellants argued the Contract Manager's decision not to accept the level of a fee-earner with three years post qualification experience as a grade A. The committee were not satisfied that they have a discretion that enables them to consider a fee earner with three years post qualification experience to be an A grade fee earner.

7th March 2005 – Appeal by Solicitor
LSC Decision Upheld (added on 26th April 05)

- **Grade of fee earner**

The Appellant has appealed the Contract Manager's decision to categorise a fee earner as a level B fee earner. The appellants argue that the Committee should designate the appellant as a level A fee earner.

The appellant had been categorised as a grade A fee earner in previous cases. In a previous case the Legal Services Commission sought to use their discretion to allow the appellant at grade A fee earner level notwithstanding the fact that the appellant was only 5 years qualified. It was argued on behalf of the appellant that the Legal Services Commission did have discretion in deciding what level of fee earner they would allow. LSC argued that they did not have discretion to determine the level of grade A fee earners. The contract arrangements provide that a level A fee earner must have 8 years post qualification experience. The contract arrangements are quite clear, a grade A fee earner must have 8 years post qualification experience.

30th March 2005 – Appeal by Solicitor
LSC Decision Upheld (added on 25th April 05)

- **Status of fee earner**

This was an appeal against the classification of a fee earner. The CM had assessed the f/e as a Grade C based on experience. The appellant originally appealed on the basis that the fee earner's experience was sufficient to be assessed as a Grade B. However, on the day of the appeal they changed their reasons and suggested that the f/e should be assessed as a Grade B for being an employed barrister. The committee agreed and assessed the f/e as a Grade B as it was considered that s/he was an employed barrister.

The unit disagreed with this decision on a matter of fact and took further guidance from the Bar Council. The Bar Council provided guidance which confirmed that to be classed as an employed barrister when working in a solicitors office one must have completed pupillage. The fee earner in question had not completed pupillage therefore could not be held as a barrister until completion. The f/e was subsequently classed as a Grade C fee earner. This is the test that will be applied in future cases.

28th Jan 2005 – Appeal by Solicitor

LSC Decision Overturned – subsequently upheld post Bar Council guidance (added on 23rd May 05)

- **Status of fee earner**

The Appellants had appealed against the Contract Manager's decision regarding classification of a fee earner. The fee earner was instructed as Junior Counsel by the firm under the contract. The f/e was actually an in-house counsel employed by the firm and wanted to be assessed as a solicitor advocate despite having professional status of a barrister and not a solicitor.

The committee dismissed the appeal and upheld the Unit's view that the f/e should be assessed as a barrister and not Solicitor Advocate.

28th Jan 2005 – Appeal by Solicitor
LSC Decision Upheld (added on 23rd May 05)

- **Pre-Contract Assessment**

The appeal was made on one point:

The part reduction and disallowance of hours for work done during pre-contract, which the appellant seeks to have reinstated and allowed as claimed.

The Committee decided unanimously to allow in part the appeal against the Contract Managers decision.

The Committee have carefully considered representations both oral and written and are of the view that on the evidence put before us, together with evidence submitted during the appeal that the following previously disallowed hours should be allowed;

Schedule of Preparation of work completed Pre- contract

Hours now allowed by panel

11/03/03 2 hours allowed for perusing press reports.

14-17/03/03 20 hours allowed in total for perusing documentation received from Penningtons.

20/03/03 7 hours allowed for considering KPMG report.

16-17/04/03 12 hours agreed in total for considering the documents from client, as the appellant could not confirm who provided the papers nor the volume of the same.

16/05/03 1.5 hours allowed for conference with Disclosure Officer.

17-18/08/03 26.92 hours allowed during pre-contract for perusal of the unused. On reviewing the file the unused totalled 10,000 pages with no work on this material being undertaken by the Solicitors, so time was therefore allowed for Junior Counsel. However, the time allowed in total for considering unused material should be 1 minute per page, totalling 166.67 hours. The LSC also gave an uplift of 2 minutes per page for a small proportion of the unused allowing a further 18.25 hours, giving an overall total of 184.92 hours. The appellant conducted and was paid for 158 hours during Stage 1, thus allowing the further 26.92 hours to be paid during pre-contract.

21-22/08/03 12 hours allowed for utilising the unused material, as working out inconsistencies and producing schedules.

08/09/03 2 hours allowed by Contract Manager for the Synopsis of Jameson statements, after viewing the document produced.

Summary

Total claimed- 520 hours

Total allowed by Contract Manager- 184 hours

Total allowed following appeal- 267.42 hours

Committee Reasons

The representations made by the appellant are clear. It was submitted that he was asked to do the work with the full knowledge of the instructing solicitors, he had enough knowledge of the case following conferences and requests from the client to read the case material, and felt that it was necessary to undertake the work at that point due to time restraints and even though primary disclosure had yet to be served nor instructions taken.

The panel felt that it would be usual to take instructions on the primary evidence before undertaking any further work, but due to the unusual circumstances of this contract decided to allow in part some of the hours disallowed. The panel agreed in general with the approach of the Contract Manager and a number of the items disallowed, but decided to allow further hours that were deemed reasonable as stated in the summary, in all the circumstances of the case.

February 2005 – Appeal by Counsel

LSC Decision Upheld in part

- **Viewing CCTV footage**

This appeal relates to the number of hours agreed by the LSC for a C Grade fee-earner to view CCTV footage.

The appeal is upheld on the basis that the opposition from the LSC was withdrawn.

April 2005 – Appeal by Solicitor
LSC Decision Overturned

- **Travel Time and Costs to Attend on Witnesses Abroad**

This appeal was in relation to the following issues:

1) If it was necessary for two fee earners to travel to Japan to take a number of witness statements.
2) If it was appropriate to travel business class.
3) If it was appropriate to pat travel time costs.

1) The Committee believe that due to the following unique circumstances of this case it was appropriate for two fee earners to attend upon witness investigations in Japan.

a) The urgency of the case with the trial due to start in three weeks later, the Committee noting reasons for not conducting the investigations earlier were due to the failure of the Crown to provide effective disclosure and the unfortunate illness close to trial of leading counsel.
b) The clear necessity for the client to be present whilst investigations were made in Japan for practical and cultural reasons. It is undisputed that the client for business and domestic reasons could only attend in Japan for one week.
c) The hours that were carried out on investigations and taking witness statements were undisputedly reasonable.

2) The Committee does not wish to set a precedent to travel by business class and each case should be determined on it's own merits. In this case the Committee found that travel by business class was appropriate for the following reasons.

a) Considerable efforts had been made to obtain the cheapest airfare available which was significantly cheaper than those provided by Virgin and British Airways.
b) The length and distance of the journey.
c) According to the client's advice to the Appellant, the fee earners needed to start work immediately upon landing in Japan to avoid jet lag.

3) Bearing in mind that the Committee has allowed the expense of business class ordinarily no travel time will be allowed. However the Committee has taken note of the unusual circumstances of this case and allowed the following.

a) 28 hours travel time for the first fee earner on the basis that the journeys undertaken of 42 hours would require rest periods of about 7 hours each way.
b) No hours have been allowed for travel by the second fee earner on the basis of cost neutrality with business class airfare.

In conclusion the Committee comes to it's decisions bearing in mind the above and the fact that it is clear to the Committee that the investigations carried out in Japan undoubtedly led to a lengthy trial being avoided and hence a substantial saving to the Legal Aid Fund.

April 2005 – Appeal by Solicitor
LSC Decision Overturned

- **Time allowed**

It was agreed by the appellant that the task of considering and summarising the defence and prosecution case transcripts had grown into the wider task of considering comparing scheduling and commenting. The committee decided that the determining factor was not whether the time allowed was sufficient but what was reasonable in all the circumstances.

6th October 2005 – Appeal by Solicitor
LSC Decision Upheld (added on 13th Jan 06)

- **Category: Highly specialised knowledge**

The appellant argued that the case required 'highly specialised knowledge'. The committee agreed with the submissions of the appellant that specialised knowledge of the professional rules relating to accountants satisfied the criteria.

3rd November 2005 – Appeal by Solicitor
LSC Decision Overturned (added on 13th Jan 06)

- **Daily Rates full or half day: Maxwell Hours**

This appeal was in relation to daily refresher rates and the effect of Maxwell hours. The committee, having considered the contractual terms between the parties, found that the remuneration rates for advocacy to be as set out in Annex A of the Contact Specification, irrespective of the sitting regime.

8th November 2005 – Appeal by Solicitor
LSC Decision Upheld (added on 13th Jan 06)

- **Daily Rates full or half days**

This appeal was in relation to daily refresher rates and what constitutes a full day. The committee were of the opinion that the time runs from the time when the advocate enters the court room following the relevant case being "called on", then it is simply arithmetic to see if 3.5 hours have been met. In relation to periods of jury deliberation during which the Appellants were present in court for less than three and a half hours, the committee found the Contract Manager's decision to pay the half daily rate for advocacy, together with an additional payment for waiting time, to be consistent with the terms of the Contract Specification.

8th November 2005 – Appeal by Solicitor
LSC Decision Upheld (added on 13th Jan 06)

- **Reasonable return of brief to go on sabbatical**

This appeal was in relation to whether Counsel's return of brief was reasonable. This was a majority decision, the committee finding that there exists an implied term of reasonableness in VHCC contracts. In the circumstances put before them, the committee found the return of the brief to have been unreasonable.

8th November 2005 – Appeal by Counsel
LSC Decision Upheld (added on 13th Jan 06)

- **VHCC Categorisation Criteria**

The Appellant claimed that the case fell into category 2 rather than category 3. The issues were confined to Block A. Further, there was no dispute that one Block A criterion was established, namely that the case requires legal, accountancy and investigative skills to be brought together.

The Committee found that the case met two further categories: a) that the defendant's case involves a significant international dimension and b) that the case requires highly specialised knowledge.

28th March 2006 – Appeal by Solicitor
LSC Decision Overturned (added on 26th July 06)

- **Payment rates for experts**

The appellant was requesting that the hourly rates requested be upheld, and those experts completing their reports in less time than others should not be penalised for their expedition. The Committee, having heard oral representations from the Appellant and from the LSC, found that the Appellant accepted hourly rates for expert witnesses were

required to be agreed with the Contract Manager and that the requirement to obtain prior authority is well settled and carries into contracted cases.

6th April 2006 – Appeal by Solicitor
LSC Decision Upheld (added on 26th July 06)

- **VHCC Categorisation Criteria**

This was an appeal in relation to Category. The committee were not persuaded by the appellant that this case should be categorised as a category 2 fraud case.
Whilst there may be widespread public concern about this case, it has not yet been made out that the case will give rise to national publicity. On the evidence put forward before them, it was not accepted that this case requires highly specialised knowledge nor has a significant international dimension, and it was also stressed that the criteria requires 'significant' international matters of law.

27th April 2006 – Appeal by Solicitor
LSC Decision Upheld (added on 26th July 06)

- **Reading time for case material**

This appeal related to the time allowed by the Contract Manager for the consideration of the case material in preparation for the confiscation proceedings, the appellant having taken over this case during the latter stages of trial. The committee was not persuaded that the amount allowed in the various tasks was unreasonable in this case, bearing in mind that the case is proceeding towards a confiscation hearing.

27th April 2006 – Appeal by Solicitor
LSC Decision Upheld (added on 26th July 06)

- **Travel Costs for out of area**

The Contract Manager refused to pay the Appellant's travel expenses from Manchester to London, the Appellant contending that travel expenses are payable to QC's wherever they are based.

The committee unanimously agreed, in the particular circumstances of the appeal, to reject the appeal. The reason for this decision was that the VHCC scheme which was introduced to control costs requires specific prior authority from the contract manager to incur disbursements including those which formed the subject of the appeal.

The Appellant signed the barrister's acceptance form confirming he had received and was bound by both the contract and contract specification. The committee had no discretion to nor would seek to alter the contractual arrangements entered into by the parties.

4th May 2006 – Appeal by Counsel
LSC Decision Upheld (added on 26th July 06)

- **Level of fee-earner**

The Contract Manager did not accept that an employed fee-earner met the Grade B fee-earner criteria. The Committee were unable to allow the appeal, having regard to the wording of the regulations.

1st June 2006 – Appeal by Solicitor
LSC Decision Upheld (added on 26th July 06)

- Overseas Travel

The appeal was submitted against the Contract Manager's decision not to remunerate the appellant for travel to Indonesia and Malaysia to attend ID parades. The panel found no evidence that the appellant made enquiries as to the suitability, experience and cost of local agents. The committee were thus of the view that with this lack of information there was no compelling reason to justify the cost of travel to Indonesia and Malaysia in this case.

1st June 2006 – Appeal by Solicitor
LSC Decision Upheld (added on 26th July 06)

- **Time Allowed**

The appeal related to the decision of the LSC to agree 487.5 hours for analysis of the records received from the defendants' business and to analyse the material by re-creating these records in the form of a spreadsheet. The Appellant sought 1,950 hours. The committee were being asked to allow the requested 1950 hours in full. The committee in accordance with the Appeals Protocol and Procedures are inter alia permitted to allow the appeal in full or in part or refuse the appeal. The committee were not satisfied that it was reasonable to allow 20 minutes per row of input data where the function was primarily one of data input from source material belonging to the client. The time requested for this task was excessive. The committee unanimously refused the appeal.

12th June 2006 – Appeal by Solicitor
LSC Decision Upheld (added on 26th July 06)

- **Disbursements - Livenote, cost of additional hard copy**

The Appellant stated that Wordwave will not provide a daily hard copy of the livenote for leading counsel without an additional payment of £15 per day. The appellant would like one hard copy in addition to the electronic copy.

The committee unanimously allowed the appeal. The committee did not seek to interpret the wording of clause 7 c which all agreed was ambiguous but took the view that in the particular circumstances of this case the appeal should be allowed. The committee thought it necessary for leading counsel to receive a hard copy of the livenote. It was deemed impractical and expensive for leading counsel to receive a daily copy printed and delivered from London each evening, the trial being in Canterbury.

12th June 2006 – Appeal by Solicitor
LSC Decision Overturned (added on 26th July 06)

- **Time allowed**

The Appellant was appealing against decisions made by the Contract Manager on a number of tasks in relation to the time payable for the reading of unused and third party material.

The decision to allow the appeal, in part, was on a "case specific" basis. In particular it is not to be interpreted as giving any general guidance, to the appellant or the respondent, on the appropriate amount of time to be allowed for the consideration of unused material statements.

Having heard oral submissions from both parties and having considered examples of the relevant documents the committee have concluded that there is merit in the argument for 2 minutes per page for consideration (and the meaningful noting) of the documents contained in some of the tasks being appealed.

21st June 2006 – Appeal by Solicitor
LSC Decision Overturned in part (added on 14th August 06)

- **VHCC Categorisation Criteria**

The Appellant was appealing the Contract Manager's decision to classify this case as a category 3 case, this being an MTIC fraud case.

The panel were asked to consider whether the case required highly specialised knowledge.

The panel found that the defendant's case required highly specialised knowledge. In circumstances where an abuse of process argument was being considered;

- disclosure was going to be a massive exercise.
- there are strong suspicions that a supergrass is involved
- the Committee further found after undertaking its own deliberations that a knowledge of the history of MTIC frauds was essential for the proper preparation of these cases and therefore the case required highly specialised knowledge for this reason in addition to the points raised above.

4th July 2006 – Appeal by Solicitor
LSC Decision Overturned (added on 14th August 06)

- **Lease/Hire/Purchase of Laptop**

The Appellant was appealing the LSC's refusal to fund the hire, lease or purchase of 4 laptop computers.

In the light of the information available, the panel were unable to conclude that the provision of laptop computers for the defence team was nothing more than an office overhead that should be borne by the defence solicitors.

However, the Committee noted the comments of the learned judge and also of their own consideration that it was important for the client to have a laptop computer so that he could understand the case against him in this particular case. It was therefore decided to allow the provision either by the purchase or lease of one laptop computer for the use of the defendant.

11th July 2006 – Appeal by Solicitor
LSC Decision Upheld in part (added on 14th August 06)

- **VHCC Categorisation Criteria**

The Appellant was appealing the LSC's categorisation of this case as a category two: fraud. The LSC have accepted that this case meets all criteria in block a and three of the

four (a) criteria in block b. The LSC do not accept that the volume of prosecution documentation exceeds 30,000 pages

- The Crown has served, to date, approximately 21,000 pages, with a further 3,000 pages to be served in the near future.
- The Crown has, in its possession, some 18,000 pages of material, described as the "Day Files". This material goes to the core of the Crown's case and Leading Counsel for the Crown concedes the significance of the "Day Files".
- The Committee has allowed this appeal on a "case specific" basis that does not extend to general guidance on the approach to be adopted, by appellant or respondent, in other cases.
- The "Day File" material is, in part, already relied on by the Crown and is at the core of its case and, as the material is generic in nature and indivisible in practice, it should be included in the page count, thus satisfying the outstanding criteria at Block "B"**.**

3rd August 2006 – Appeal by Solicitor
LSC Decision Overturned (added on 14th August 06)

- **VHCC Categorisation Criteria**

The Appellant was appealing the LSC's categorisation of this case as a category three: fraud, as well as the minutes per page allowed for the exhibits.

- It was the Committee's view that this case failed to meet the criterion that 'the defendant's case involves a significant international dimension', the LSC having already accepted the 'legal, accountancy and investigative skills' criterion.
- It was the majority view of the Committee that 30 seconds per page for consideration of the exhibited material is insufficient and that a period of 1 minute per page should be substituted in this case.

3rd August 2006 – Appeal by Solicitor
LSC Decision Upheld in part (added on 14th August 06)

- **Time allowed – Unused material**

The Appellant was appealing the LSC's view that the unused material justified 2 minutes per page to consider and cross reference.

Whilst appreciating the difficulties faced by Counsel in this case, including the pagination of the material, it was the Committee's determination that an allowance of 2 minutes per page was reasonable in all the circumstances.

3rd August 2006 – Appeal by Counsel
LSC Decision Upheld (added on 14th August 06)

- **VHCC Categorisation Criteria**

The appellant was appealing against the decision to categorise the case as a category 3 fraud case.

By a majority decision, the committee decided that the case did not involve national publicity at this stage nor was it clear that it was likely to as no evidence had been presented to show any national coverage to date even though initial arrests were made in 2002/3.

The committee felt however, that this aspect of the case should be under constant review.

The committee, on the evidence presented, unanimously decided that the case did not have a 'significant international dimension'.

7th September – Appeal by Solicitor
LSC Decision Upheld (added on 7th December 06)

- **VHCC Categorisation Criteria**

The appellant was appealing against the decision to not go behind the court trial estimate when making decisions with regards to category and that the re-categorisation should be applied retrospectively.

The committee considered the documents previously supplied to it, representations of the appellants and the committee decision of the 22nd July 2004. The committee also considered the general criminal contract, contract specification, VHCC arrangements and appeals protocol and procedures. The committee did not consider itself bound by the previous committee decision. The committee was unable to conclusively determine the reason why the trial judge came to his conclusion that the trial time estimate should fall below 20 weeks.

The committee were convened to determine whether contract managers ought to go behind the court trial time estimate when making decisions with regard to category and whether once the 20 week threshold had been passed it should be applied retrospectively. The committee were being asked to exercise their discretion in favour of the appellants by backdating the category 1 status of the case ab initio, because, according to the appellants, the Judge was persistently wrong in his time assessment.

The committee were of the opinion that the time estimate was just that – an estimate – which could potentially fall above or below what was originally anticipated. The trial had not started and it was still possible the trial could fall short. Although crude, the 20 week criterion was a matter best determined by the court following representations by all parties involved. The appellant had been at liberty to appeal the Judge and LSC's decision on time estimate each time they requested a re-categorisation which was refused, but they failed to do so.

The committee further noted that the position following a re-categorisation is set out in paragraph 16 of the contract specification. It was unanimously agreed that this specifies that once the categorisation has been reviewed and approved, new rates of remuneration apply 'from the date the request to review the category was first made in writing to the CCU'. In other words the new rates should be backdated to the date of the request which resulted in the re-categorisation. The relevant date in this case being the 17th July 2006.

7th September - Appeal by Solicitor
LSC Decision Upheld (added on 7th December 06)

- **Time allowed**

The appellant is appealing the decision to refuse to pay for a C grade fee earner, pre contract, for viewing a total of 435 hours of video tapes.

The committee unanimously determined that they would rely on the documents supplied in arriving at their decision. Having considered all the facts, the committee did not consider it unreasonable for the LSC to limit the appellant to 90 hours for viewing unused video surveillance. The committee determined that in relation to each defendant, it was unnecessary and unreasonable for the appellants to conduct work on unused material, which was not evidence in the case, in pursuance of further evidence relating to issues

already conceded by the prosecution. The committee agreed with the response to the notice of appeal supplied by the LSC.

21st September - Appeal by Solicitor
LSC Decision Upheld (added on 7th December 06)

Appeal decisions from October 2006 to March 2007 will be added next month.

- **Distant Travel**

The appellant appealed the decision of the contract manager to disallow travel and accommodation expenses over and above 1 hour travel each way and 25 miles each way.

The Appellant became involved in this case following a transfer of the Representation Order to new solicitors. In, or about, October 2006 the Legal Services Commission wrote to the original firm of solicitors informing them of the decision to take the matter as a contracted case. The trial of this matter was to have taken place in Manchester in February with a time estimate of three months.

When taking on the case the Appellant had understood that his fees would be determined by the terms of the Graduated Fee Scheme (GFS). It was not until about December 2006 that the Appellant became aware of the LSC's decision and duly signed a barristers' acceptance form.

The Appellant, who is London based, applied to the Respondent for payment of travel and accommodation expenses. The application was refused. The Appellant accepted that he was bound by both the contract and contract specification.

The Appellant argued that the circumstances of the case demanded that counsel be selected from outside the Manchester area and, in the exceptional circumstances of the case, it was reasonable not only for London counsel to be chosen, but also for the distant counsel rule to be waived.

The Appellant conceded that when accepting the case he took on the risk that his travel and accommodation expenses would not be paid under the GFS.

The Committee has no discretion to amend the contractual arrangements entered into by the parties and, even if that power existed, did not find that there were exceptional circumstances to justify the instruction of distant counsel. Accordingly, the appeal fails.

12th April 2007 – appeal by barrister
LSC decision upheld (added on 10th May 2007)

- **Distant Travel**

The appellant appealed the decision of the contract manager to disallow travel and accommodation expenses over and above 1 hour travel each way and 25 miles each way.

The trial of this matter was to have taken place in Manchester and to have commenced in February. The Appellant, who is London based, was instructed shortly before the commencement of the trial.

The Appellant has always known the case to be subject to the terms of the VHCC Contract. She applied to the Respondent for payment of travel and accommodation expenses. The application was refused.

The Appellant argued that the circumstances of the case demanded that counsel be selected from outside the Manchester area and, in the exceptional circumstances of the case, it was reasonable not only for London counsel to be chosen, but also for the distant counsel rule to be waived.

The Committee has no discretion to amend the contractual arrangements entered into by the parties and, even if that power existed, did not find that there were exceptional circumstances to justify the instruction of distant counsel. Accordingly, the appeal fails.

12th April 2007 – appeal by barrister
LSC decision upheld (added on 10th May 2007)

- **Time for witness lists**

The appellant appealed the decision of the contract manager to pay 8 hours for finalising witness lists instead of 74 hours.

The Appellant accepted that the decision sought from the Committee was whether or not the decision by the Legal Services Commission (LSC) to pay 8 hours for finalising witness lists is reasonable.

The Appellant accepted that as at February 2007 she had, on an agreed basis, carried out in excess of 500 hours of preparation.

The Appellant accepted that all of her defence team had received adequate time from the LSC to read all the documents.

The Appellant accepted that at least 1500 and possibly as many as 2000 pages of witness statements were duplicated in her bundles.

The Appellant accepted that of over 800 witnesses, only about 80 were relevant to her client's case.

In all the circumstances, the Committee determined that the LSC's decision to pay 8 hours for finalising witness lists was reasonable. Accordingly, the appeal fails.

12th April 2007 – appeal by barrister
LSC decision upheld (added on 10th May 2007)

- **Private Investigator expert**

This appeal relates to the decision by the LSC to pay only part of the cost incurred by a private investigator that the appellants instructed during the pre contract stage.

The Committee was asked to consider if it was reasonable for a private investigator to claim 19.5 hours of work and 19.6 miles at a total cost of £852.70. Statements were sought from 11 witnesses and the investigator obtained 1 witness statement.

The Committee unanimously agreed that under the circumstances the investigators bill was reasonable. The Solicitors had a duty to interview potentially helpful witnesses and having received instructions that the witnesses were reliable it could not be said that they were on a "fishing expedition" to interview them.

With a total of 13 visits made by the investigator it is held that the total costs are reasonable and should be paid in full.

26th April 2007 – appeal by solicitor

LSC decision overturned (added on 10th May 2007)

- **Category**

The appeal relates to the decision of the Contract Manager not to categorise the case as a category 2 fraud.

This case was determined as Category 3 in June 2006. The Appellants requested re-categorisation on the 8th December 2006. The Legal Services Commission concede that 2 criteria from Block B have been met and also 1 criteria from Block A. We have had to consider whether the Appellants have satisfied us that at least one of the first three criteria in Block A have been met.

Having been provided with details of the Defendant's case, we do not think that it is likely to give rise to national publicity and widespread public concern.

We have been told that the Defendant's case is that he was an innocent dupe and although it is clear that the legal team have considerable expertise in this type of fraud, we do not think that this Defendant's case requires highly specialised knowledge having regard to his role.

Although there is an international dimension in MTIC Frauds we do not consider that the Defendant's case involves a significant international dimension.

For these reasons the Appeal fails but we must say that the Appeal was very well presented and that we think that the Defendant is very fortunate in his legal representation.

26th April 2007 – appeal by solicitor
LSC decision upheld (added on 10th May 2007)

- **Reading Time**

The appeal relates to the decision of the LSC in relation to times agreed for the consideration of served witness statements and exhibits contained within the 5th NAE. The appellant seeks 6 minutes per page for witness statements and 4 minutes per page for exhibits. The LSC is prepared to agree 3 minutes for witness statements and 2 minutes for exhibits. The appellant counsel seeks 3 minutes per page for witness statements and 2 minutes for exhibits. The LSC is prepared to agree 2 minutes for witness statements and 1 minute for exhibits.

Decision:
(1) 6 mins per page for 5th NFE witness statements (42.6 hrs) and 4 mins per page for 5th NFE exhibits (67.67 hrs) for solicitors.
(2) 3 mins per page for 5th NFE witness statements (21.3 hrs) and 2 mins per page for 5th NFE exhibits (33.8) for each counsel.

Reasons: (1) It is accepted that the above rates for the consideration and scheduling of witness statements and exhibits had been previously agreed for the work carried out by solicitors and counsel. Para. 14 of the Complex Crime Unit Contract Specification provides, inter alia, that:

"The CCU will allow work not authorised as part of a Stage Plan to be remunerated in certain specified categories. the first is necessary additional work arising from the service of further papers in the same category of documentation that has already been agreed....Authority will be implied for the consideration of all such material served within

the life of the stage at the relevant agreed rate. That authority will be at the same hourly rate as agreed for the original material".

"As with pre-trial work the implied authority to read any additional evidence served should be based on the same minute per page formula as originally agreed";

(2) It is accepted that there was no difference in the type of work undertaken for the 4th and 5th NAE - served within a month of each other and the same Stage Plan;

(3) The 5th NAE was new material - it was not previously relied upon by the prosecution nor was it served as unused material;

(4) the time argued for by the Solicitors is a composite time/rate for reading, scheduling and cross-referencing. These tasks are within the 6 mins claimed;

(5) The work carried out so far, in the previous Stage Plans, by Solicitors has been allowed as claimed, with no deductions.

3rd May 2007 – appeal by solicitor
LSC decision overturned (added 10th August 2007)

- **Distant Travel**

The appeal relates to the decision of the contract manager not to reimburse the Appellant for travel and accommodation expenses for court hearings and / or conferences with the defendant during the case (over and above 1 hour travel and 25 miles each way (or the equivalent cost via public transport – £22.50)).

The Appellant is seeking reimbursement for travel time / costs, accommodation expenses and subsistence for conferences and court hearings.

The Committee had every sympathy with the position of the Contract Manager. At the time when the decision by the Contract Manager was made, it was not clear in the Committee's view as to the approach made by the VHCC Unit pertaining to the Local Bar Rule. Evidence was given by the Appellant, that in good faith, he accepted this case on the basis that on other VHCC Contracts, he has been entitled to be reimbursed for travel, subsistence etc as London Counsel travelling to outside Court. Accordingly, the Committee felt due to the inconsistent approach of the LSC that it was appropriate to allow the Appeal. However, the LSC by letter of 19 April 2007, pertaining to the Local Bar Rule has now made matters very clear as to the policy to be embraced pertaining to the Local Bar Rule. Therefore, it is unlikely in the Committee's view that there will be similar Appeals in the future.

10th May 2007 – appeal by barrister
LSC decision overturned (added 10th August 2007)

- **Casemap**

The appeal relates to the decision of the contract manager to pay half the time claimed for entering information onto casemap at B grade standard rates (the other half to be remunerated at B grade rates).

1. This is a complex case where the appellant represents 4 defendants. As a consequence the LSC concede that casemap is appropriate to manage the defence case.

2. The issue we need to decide is whether any of the hours sought are for purely administrative tasks.

3. We have had the benefit of a demonstration of the process and an assurance that other hours devoted to administration have not been claimed.

4. There is a clear audit trail available in casemap.

5. The fact that the appellants represent 4 defendants undoubtedly adds to the time they need to prepare the case.

6. Having regard to the particular facts of this appeal we are satisfied that none of the hours claimed could be said to be administrative tasks and therefore should be paid at full contract rates.

24th May 2007 – appeal by solicitor
LSC decision overturned (added 10th August 2007)

- **Supervision**

This appeal relates to the decision to disallow the supervision of an SFP supervisor by another SFP supervisor.

Decision:

1. The first appeal relates to the issue of whether or not supervision of a grade A fee earner can properly be claimed in this case.

2. In principle an A grade supervisor can supervise another A grade fee earner.

3. In this particular case 2 A grade fee earners have been preparing the case for stages 1-3. Having invested so much time in preparation by the supervisor and A grade fee earner and in view of the fact that the case is becoming arguably more complicated, it seems to us that the preparation must be allowed to continue as in stages 1-3 otherwise the cost of duplication would exceed the likely cost of supervision.

4. We therefore agree that the appellant should be able to claim time for supervision, the actual hours to be agreed between the parties.

24th May 2007 – appeal by solicitor
LSC decision overturned (added 10th August 2007)

- **Grade of fee earner**

This appeal relates to the decision to categorise a fee earner as a C grade fee earner and not B grade as requested by the appellant.

Decision:

1. We have considered the submissions made by both parties and referred specifically to Annexe C of the VHCC arrangements.

2. We take the view that the LSC has a discretion as is inherent in the wording of para B1 c “generally this would be expected”.

3. Having seen the experience and knowledge of this particular fee earner and the fact that he has only been employed full time in a criminal defence practice for 1 year we take the view that the Contract Manager was entitled to exercise the discretion in the way that he did.

24th May 2007 – appeal by solicitor
LSC decision upheld (added 10th August 2007)

- **Counsel's role**

The appeal relates to a decision regarding the rates paid to Counsel. The appellant submitted an appeal that retrospective rates should be paid to him as leading counsel from the date of the first representation order.
The appellant informed the LSC on the 23rd November that it was his intention to request for the representation order in this case backdated to allow him to be paid as leading junior from that date.

The LSC has never been made aware that this is possible, nor are the LSC aware on what legal basis the courts may retrospectively amend a representation order.

Counsel in this case was originally instructed under a "junior alone" representation order dated 8/9/06. The order was subsequently amended on 14/12/06 to include representation by two junior counsel. Accordingly it is accepted that from that date the appellant is liable to be paid for preparation at leading counsel rates. The issue for determination is whether counsel should be paid at the higher rate for preparation preceding that date. We have, on balance, concluded that he should be for the following reasons:

(i) We are satisfied that this was a case which probably justified two junior counsel from the outset and in particular from 10/10/06 when the application, based on counsel's written advice, was adjourned (not refused) by the judge for more information. Once the information was received authorisation was granted and the order amended. Accordingly the circumstances of this case are to be distinguished from a case which develops at a later stage of proceedings into a two counsel case.

(ii) We have been provided with a copy of the most recent Representation Order (25/1/06) which on one view backdates the grant of two junior counsel to the date of the original order - "the representation granted shall include.."

(iii) If a similar amendment had been made in a graduated fees case or under "ex post facto" taxation, counsel would have been paid the whole brief fee, which would include preparation preceding the date of amendment, at the higher rate.

(iv) The difference in the rates payable is modest (£10 per hour).

Accordingly, on the particular facts of this case, the appeal is allowed to the extent of allowing preparation to be paid at the leading junior rate from 10/10/06. (This being the date upon which the Court first considered and then adjourned the application to amend the order.)

24th May 2007 – appeal by counsel
LSC decision overturned (added 10th August 2007)

- **Grade of fee earner**

This appeal relates to the decision of the Contract Manager to categorise a fee earner as a Grade B fee earner as opposed to the appellant's request that he be classed as a Grade A fee earner on a Non Fraud Terrorism case.

The appellant was called to the Bar in July 2001, subsequently completing the QLTT in April 2002. The Appellant was only capable of meeting the criteria for NFA1 from either July 2001 as a barrister, which equates to 6 years and 9 months experience, or April 2002 as a solicitor, which equates to 4 years and 11 months.

The Provisions are clear under Annex C of the Very High Cost Criminal Cases Arrangements 2004, as to Grade A Fee Earners. This criteria has not been met.

14th June 2007 – appeal by solicitors
LSC decision upheld (added 10th August 2007)

- **Pre-trial preparation**

The Appellants are appealing against the Contract Manager's decision on pre-trial preparation for cross examination of 116 live witnesses, which is to allow 200 hours (£32,000) for the Appellant QC, and 350 hours (£35,000) for the Appellant Led Counsel.

The Appellant's are requesting that they are allowed 717 hours each (£114,720 for the Appellant QC and £71,700 for the Appellant Led Counsel) to prepare for cross-examination up to the start of the trial on 3rd September 2007.

The LSC have proposed 550 hours (split between leader and junior) for pre-trial cross-examination preparation.

There are 648 hours, based on 12-hour working days at 6 days a week, over 9 weeks, available for ALL pre-trial tasks – including attending a pre-trial voir dire (estimated at five days) to decide evidential admissibility.

As conceded by the LSC at page 3 of their submissions:

"…..the LSC are allowing 200 hours for the Appellant QC and 350 hours for the Appellant led Counsel to prepare the bulk of cross examination. The LSC fully expects that further hours will be asked, and subject to reasonableness, agreed during the trial stage".

There is another stage plan to be agreed pre-trial, which the Appellants can request hours for cross-examination. At present Leading Counsel has used 73.5 hours for cross-examination and Junior 61 hours for cross-examination.

The committee notes that (a) a forensic accountant has been recently instructed and (b) there is an admissibility argument, which may affect the number of hours required for pre-trial cross-examination preparation.

We invite the Contract Manager to revise the split, to allow the 550 hours to be considered as a "global" figure for use by the two Counsel team.

21st June 2007 – appeal by counsel
LSC decision upheld (added 10th August 2007)

- **Distant travel**

The appeal relates to the decision of the Contract Manager not to reimburse the Appellant for travel and accommodation expenses for court hearings and/or conferences with the defendant during the case (over and above 1hr travel and 25 miles each way (or the equivalent cost via public transport - £22.50)).

The Appellant can justify his being instructed in a distant court because "the instruction of local counsel might lead to suspicion of prejudice, lack of independence or lack of objectivity, because the case had local notoriety (see the four permitted exceptions for the instruction of non-local counsel, as set out in the "Guidelines on Counsel's Claims for Fees under a Crown Court Representation Order" at G-113 pages 460 of Archbold 2007 1st Supplement).

21st June 2007 – appeal by counsel
LSC decision overturned (added 10th August 2007)

- **Travel to attend the client**

The Appellants position was that following the grant of bail and the reporting requirements imposed as part of the bail conditions, the client was no longer able to travel to the solicitor's offices for the purposes of providing instructions.

The LSC position is that once the appellants were made aware of this, they should have made a written application to the Court to vary the reporting restrictions imposed under the client's bail conditions to allow him to attend on his solicitors for instruction taking. Alternatively the LSC submit that once the client informed his solicitors of the situation, the Appellant should have given consideration as to whether it was reasonable to continue to act for the client having regard to the travel costs that would be incurred.

The appeal relates to the decision of the Contract Manager not to reimburse the Appellants for 8hrs 24mins travel time to attend upon the client for the purposes of obtaining instructions.

The travel costs were not recoverable under the General Criminal Contract (GCC).

This case does not fall under one of the "Good reasons" for seeing a client other than at solicitors office, as set out in paragraph 7.9 of the GCC; namely the client is in custody, detention, in hospital, elderly, ill or disabled.

21st June 2007 – appeal by solicitor
LSC decision upheld (added 10th August 2007)

- **Category**

The appeal is in relation to the Contract Manager's decision to categorise the case as a Cat 3 case. The appellant is appealing the decision that only one criteria from Block A has been met.

Decision: the appeal is allowed on the first limb of the argument on significant international dimension:

a) There are 37 transactions where X are the exporter brokers.

b) X to be defended on a positive innocent trader basis where they will cite 40 genuine exports.

c) A civil VAT decision regarding 12 transactions (4 in common with the 37 stated earlier) have been litigated on an international point basis.

d) The Revenue & Customs prosecution office allege that there is no price differential in the European mobile telephone market. Please see prosecution case opening page 138 (paragraph 696). In the circumstances of this case, an understanding of the European market is essential.

In the circumstances the Committee do not feel it appropriate to make any judgement on the highly specialised knowledge as now two of Block A criteria has been met.

The Committee also take the view that had all the representations that the Committee heard have been made to the Contacts Manager at an earlier stage in the detail in which it was presented to the Committee it may be that the Contracts Manager may have taken a different view.

12th July 2007 – appeal by solicitor
LSC decision overturned (added 10th August 2007)

- **Distant travel**

The committee decided to allow the appellant's travel and accommodation expenses in full.

The committee were also asked to indicate to the Legal Services Commission as to whether or not they felt that disclosing the reasons for granting travel expenses for other counsel in this case should have been disclosed. The committee felt that this would have been helpful.

In the particular circumstances of this case, the committee felt that the appellant's expenses should be allowed in full.

5th July 2007 – appeal by counsel
LSC decision overturned (added 10th August 2007)

- **Category**

This appeal relates to the Contract Manager's decision to categorise this contract as a category 3 fraud. It was the appellant's contention that this case should be categorised as a category 1 fraud.

The committee felt that in the very peculiar circumstances of this case that it should be re-assessed as a category 2 VHCC. This was a majority decision. The committee felt that this particular legal team had worked on a number of these cases previously and that many of these cases were interlinked with the case before them.

Therefore they had specialist knowledge of these cases and what it required eg, disclosure. The appellants should be able to deal with this major issue efficiently because of their involvement with the other cases and hopefully save the taxpayer money as a result.

5th July 2007 – appeal by solicitor
LSC decision overturned (added 10th August 2007)

- **Scheduling time**

The appeal relates to the Contract Manager's decision to allow 15 minutes per page to enter mobile phone records on to an excel workbook. The appellant's contention was that this task was taking an average of 45 minutes per page of material. This work was done without specific authorisation but the appellant's claim that they had attempted to contact their contract manager.

The committee believe that the appellant had made genuine attempts to the contract manager and therefore s14(c) is satisfied and the contract manager is able to make a retrospective assessment of the task.

The committee did not feel that 15 minutes was a fair assessment of the time involved to fulfil the task. The experience of the committee suggests that 30 minutes was the average time estimate to complete such a task and invites the contract manager to take this into account when assessing the work.

5th July 2007 – appeal by solicitor
LSC decision overturned but time requested not allowed (added 10th August 2007)

- **Preparation for confiscation**

BACKGROUND
The Appellants became involved in this matter as the third firm of solicitors instructed during the currency of the case. The firm which represented the defendant up to and including the Crown Court trial did so under the terms of a VHCC Individual Case Contract (the "Contract") with the Legal Services Commission (LSC).

A second firm was instructed by the defendant for a period of five months following his conviction. That firm did not enter into a Contract with the LSC.

In, or about, April 2007 the defendant instructed the Appellants to act in respect of Confiscation Proceedings. The Appellants have signed a Contract with the LSC. Neither junior counsel, nor Queen's Counsel were involved in the trial proceedings and neither have signed a Contract.

APPEAL
The documentation provided to the Committee in advance of the hearing is detailed in the LCS's Response to Notice of Appeal dated 7th June 2007. Immediately prior to hearing the appeal, the Committee was provided with a copy of a letter from the Appellants dated 1st August, 2007 attached to which was a transcript of a mention hearing before His Honour sitting on 11th July 2007.

In summary, the Committee was asked to decide whether in the circumstances of this case:-

> (i) an average of 30 seconds per page is reasonable to skim read/consider the entirety of the witness statements served by the Crown during the course of the substantive trial proceedings;
> (ii) an average of 15 seconds per page is reasonable to skim read/consider the entirety of the exhibits served by the Crown;
> (iii) that the decision not to allow the transcription of 1700 hours of CD covert recordings is reasonable in the circumstances.

During the course of the appeal, following oral submissions from both parties and following a brief adjournment, the Respondent asked the Committee to substitute the following time periods:-

> with regard to item (i) - 1 minute per page for consideration of the witness statements and,
> with regard to item (ii) - 30 seconds per page for consideration of the exhibits.

DECISION
1) We find that the proper approach when assessing the issues in this appeal was set out by the Court of Appeal in R -v- Supreme Court Taxing Office ex parte John Singh &

Company 1996. At page 6 of the judgment of Lord Justice Henry he cites with approval the words of Sachs J in R -v- Francis and Dickenson (3 All ER 836 1955) where he says:

> *"When considering whether or not an item in a bill is proper, the correct viewpoint…..... is that of a sensible solicitor sitting in his chair and considering what in the light of his then knowledge is reasonable in the interests of his lay client …(who)… should be deemed a man of means adequate to bear the expense of litigation… and by adequate I mean neither barely adequate or super abundant."*

2) The onus is on the Appellant to show that the time requested with regard to items (i) and (ii) is necessary to undertake the tasks and with regard to item (iii) the method proposed by the Appellant for dealing with the surveillance material in its entirety is necessary and is reasonable in accordance with the requirements of the Individual Case Contract, in particular paragraphs 2 and 4 thereof.

3) We make our decision based on material provided and oral submissions made by the Appellant.

4) Applying the principles espoused in R -v- Singh we prefer the approach taken by the LSC and find the review periods they have now allocated with regard to items (i) and (ii) to be reasonable. With regard to item (iii) of the Appeal, we find that the proposed method for dealing with the entirety of the surveillance material to be unreasonable in the all the circumstances. Accordingly, the appeal fails.

2nd August 2007 – appeal by solicitor
LSC decision upheld (added 10th August 2007)

- **Distant Travel**

The appeal relates to the decision of the Contract Manager to invoke the distant travel principle and not reimburse the Appellant for full travel time and costs to court.

The appellant waived his right to attend and the Committee were asked to consider the appeal on the papers before them and in the absence of both the Contract Manager and the appellant.

The Committee sought clarification from the Committee Clerk as to the location of the Defence Solicitors and took notice of the fact that the firm acted for all seven defendants. The Committee further took notice of the fact that each defendant was separately represented by counsel, five of whom were from the same chambers as the appellant.

On the papers presented to the committee, and in the absence of oral representations from the appellant, there was insufficient detail to assist the committee. Based on the information put before the committee, the appeal is refused.

16th August 2007 – appeal by counsel
LSC decision upheld (added 10th November 2007)

- **Reading of papers**

This appeal relates to the decision of the LSC to agree consideration of the material for Operation X, a linked trial, at 75% of the consideration time agreed for Operation Y, the client's own trial.

The Committee accepted that for the preparation of the Defendants trial there was a need to consider papers in the previous trial especially as the trials were inextricably linked.

The Committee were of the opinion that it was reasonable for the Defence Solicitors to consider the linked material from Operation X as outlined within their appeal at the same rates as those agreed for Operation Y material.

However the Committee were of the opinion that this consideration - by the solicitors - should be sufficient to identify those areas of the linked case evidence that was relevant to Operation Y without the necessity of Counsel having to engage in the same exercise.

16th August 2007 – appeal by counsel
LSC decision overturned (added 10th November 2007)

- **Reading/Scheduling time**

1. This appeal relates to the decision of the LSC in relation to times agreed for the analysis and scheduling of approximately 19,320 pages material X.

The Appellant Solicitors seek a total of 805 hours to complete the work on material X.

The LSC is prepared to agree 643 hours.

The Appellant has completed a total of 212 hrs 54 mins to date on the material and are thus seeking an additional 592 hrs 6 mins. The LSC is prepared to agree an additional 430 hrs to complete the work required on the material.

2. This appeal relates to the decision of the LSC in relation to times agreed for the analysis and scheduling of approximately 400 pages of material Y.

The Appellant Solicitors seek an initial allowance of 104 hrs for the work on material Y.

The LSC is prepared to agree 27 hours to complete the necessary work.

3. This appeal relates to the decision of the LSC in relation to time agreed for the consideration of material Z (charts).

The Appellant Solicitors seek a total of 805 hrs to complete the work on material Z.

The LSC is prepared to agree 506 hours.

This is a very grave case where the defendant faces an indictment alleging 4 counts of murder and 1 count of attempted murder.

The trial is due to commence in 7 weeks time. The trial judge has indicated at an earlier hearing that the trial must go ahead on that date. The trial time estimate is presently 6 months.

The Crown has served in used and unused material vast quantities of documentation exceeding 100,000 pages.

1. Material X

We have been asked to decide whether 643 hours is a reasonable amount of time to consider and schedule 19,320 pages of material X. This amount of time equates to a formula of 2 minutes per page.

The appellants contend that they should be allowed 805 hours which equates to a formula of 2.5 minutes per page

The committee unanimously feels that the appellants should be allowed the claimed 805 hours.

The main reasons for this decision are that:

i) The appellants have exhausted the allowed 643 hours and have satisfied us that it is both reasonable and absolutely essential for the remaining material to be reviewed and scheduled within the further 162 hours, which we allow.

ii) The committee were impressed with the work product schedules and notes generated by the C grade fee-earner in relation to the allowed 643 hours and were satisfied that it would lead to a very considerable saving in time required by leading and junior counsel to consider the material.

iii) We were satisfied that the material consisted of many different types of documents and were often both detailed and handwritten. They were also served in an illogical order.

2. Material Y

The committee considers that a further 27 hours at C grade non-standard rates should be allowed to complete the task of reviewing and scheduling material Y.

The committee took into account that this was detailed work and required cross-referencing to original prosecution witness statements and other case material.

The appellants sought a further 64 hours to complete the task but in the circumstances of this case and also bearing in mind that time had already been allowed to consider and schedule the prosecution witness statements, we felt that an additional 27 hours was reasonable.

3. Material Z (proximity charts)

The appellant solicitors seek 805 hours to complete work on the charts. The LSC is prepared to agree 506 hours (together with a further 20 hours conceded by the Contract Manager during the course of the appeal hearing).

It was common ground that the appellant solicitors had nearly completed the consideration and scheduling of 3 of the 4 charts and they estimated that they would require the full 805 hours to complete the task.

The committee unanimously agreed that the appellants should be allowed a total of 805 hours at B grade rates for this task.

The committee took the view that this is an extremely demanding case and that the appellants had demonstrated a high level of quality and efficiency, whilst at the same time carrying out work at reasonable cost. Amongst other things, it was clear that the solicitors had:

- Deployed a preponderance of ‘C’ grade fee-earners whose work was of a high quality;
- Carried out a B grade work at C grade rates;
- Produced an ‘end product’ which was both impressive and cost-effective;
- Sought to massively reduce the overall costs of the trial itself

In addition the Committee felt that counsel had adopted a similar approach to ‘value for money’ particularly by working from the schedules prepared by the solicitors, as opposed

to the voluminous source materials, and also by endeavouring to properly make detailed admissions thereby potentially reducing the trial from six to four months.

Overall therefore the Committee was satisfied, in reaching its decisions, that the hours now allowed are entirely reasonable, given the necessity for the various tasks to be completed, the real savings in terms of reduced claims for work by leading and junior counsel, and the massive savings in terms of reduced trial time.

23rd August 2007 – appeal by solicitor
1. **LSC decision overturned**
2. **LSC decision upheld**
3. **LSC decision overturned** (added 10th November 2007)

- **Photocopying material served on CD Rom**

The appeal relates to the decision of the LSC to refuse to fund the printing of a hard copy of the exhibits, of roughly 65,000 pages, served only on CD Rom.

This appeal relates to the decision of the LSC to refuse to fund the printing of one hard paper copy of the exhibits.

We have decided that since the electronic format that the evidence has been served in cannot be tagged, highlighted or annotated in any way and that only 1 page can be displayed at a time, that the appellants should be entitled to print one hard paper copy to be funded by the LSC for use of the whole defence team.

23rd August 2007 – appeal by solicitor
LSC decision overturned (added 10th November 2007)

- **Distant Travel**

The Appellants are appealing against the Contract Manager's decision that travel to and from the court will be restricted in this case.

The committee has considered the regulations in this matter and notes that the relevant circumstances of a case must be considered when such an application is received.

In the particular facts of this case, it is clear that the case itself is considerably more complex than the usual murder case with many thousands of pages of disclosure. The client is from London, the solicitors are based in London and counsel chosen by them are from London and are well known to them. They have given advice from a very early stage to advance the efficient preparation of the case and continuing to confer with the solicitors on a regular basis.

30th August 2007 – appeal by counsel
LSC decision overturned (added 10th November 2007)

- **Counsel's role (going behind the representation order)**

The Appeal relates to the LSC's decision to assess the pre-contract work undertaken by the Apellant and make any payment at the pupil/junior rate of £35 p/hr (category 3 case), rather than at the second led junior rate of £50 p/hr.

The Committee was asked to note that the Appeal relates only to pre-contract work undertaken by the Appellant after he was instructed under a three counsel representation order on March 2007 up until the date on which, under an amended Representation Order

for 2 counsel, the original led junior was dismissed by the client and the Appellant became led junior in his place.

The committee has reviewed the documents provided to it and has been asked to consider the appeal on the basis of the written material before it. No oral representations were made by either party.

The committee has concluded that there is no legal basis to go behind the representation order and that the arguments submitted by the Contract Manager are correct. The Committee's sympathy's lie with the Appellant, however it finds that the Contract Manager's proposal of paying at pupil / junior rates is reasonable in the circumstances.

30th August 2007 – appeal by counsel
LSC decision overturned (added 10th November 2007)

- **Distant Travel**

The appeal relates to the Contract Manager's decision to refuse additional travel costs beyond 1 hour each way and 25 miles each way. The appellants contend that despite being located over 300 miles away from the client (the appellants are based in Liverpool and the client is based in Boreham Wood) there is significant cause to make exception within the General Criminal Contract regarding Distant Solicitors as they represented him in his restraint proceedings.

The Committee finds that the Appellant did not either at the time when the Appellants accepted instructions (July 2005) or at the time of the grant of the Representation Order (June 2006), have significant previous knowledge of the case or dealings with the Client in relation to the issues raised by the case so as to justify renewed involvement even though the Client was at a distance.

The Committee does not consider that the Appellants were entitled to assume from their previous dealings with the Commission that they would be paid for distant travel.

6th September 2007 – appeal by solicitor
LSC decision upheld (added 10th November 2007)

- **Distant Travel**

This appeal relates to the Contract Manager's decision to refuse the Appellant travel and accommodation expenses for court hearings during the trial stage of this case over and above 1 hour travel and 25 miles each way or the equivalent cost via public transport - £22.50.

The committee was satisfied the Appellant was aware of section G-112, G113 and G-114 in Archbold dealing with both counsel and the defendant's entitlement in publicly funded matters. The Appellant fully accepted that the purpose of the VHCC arrangements was to control costs. The committee noted that the Appellant signed his barrister's acceptance form accepting in full the terms of the contract entered into by his instructing solicitors knowing that there was a significant risk that the case would <u>not</u> be transferred back to Liverpool. This remains the current position.

Although the committee noted that the Appellant's instructing solicitors would have been familiar with the unused material, the issue of unused material was not raised in writing by the Appellant in accordance with the Legal Services Commission VHCC Arrangements 2004. However, even if it had, it would not have altered the committee's view that unused material could have been assessed by the Appellant's instructing solicitor and non-Liverpool counsel without prejudice to the defendant.

The committee unanimously agreed that it has no discretion to question the Judge's decision to keep the case in London. Further the committee has no discretion to amend the contractual arrangements entered into by the parties and, even if that power did exist, it did not find exceptional circumstances to justify payment beyond that to a trial advocate from the nearest local bar.

27th September 2007 – appeal by counsel
LSC decision upheld (added 10th November 2007)

- **Distant Travel**

This appeal relates to the Contract Manager's decision to refuse the Appellant travel and accommodation expenses for court hearings during the trial stage of this case over and above 1 hour travel and 25 miles each way or the equivalent cost via public transport - £22.50.

The committee was satisfied the Appellant was or ought to have been aware of section G-112, G113 and G-114 in Archbold dealing with both counsel and the defendant's entitlement in publicly funded matters. The committee further found no evidence that any attempt had been made to establish whether trial counsel would have been available either from Teeside or indeed the next nearest local bar - Leeds.

The committee unanimously agreed that it has no discretion to question the Judge's decision to keep the case in Teeside. Further the committee has no discretion to amend the contractual arrangements entered into by the parties and, even if that power did exist, it did not find exceptional circumstances to justify payment beyond that to a trial advocate from the nearest local bar.

27th September 2007 – appeal by counsel
LSC decision upheld (added 10th November 2007)

- **Various preparation tasks**

This appeal was in relation to two issues:

1) Refusal to continue to allow extensive inter fee earner liaison without prior provision of agendas in order for the LSC to assess the reasonableness of the time requested (Task 13).

2) Refusal to allow tasks requested under items 75, 77 to 84 inclusive, 86, 90, 91, 92, 93, 95 and 96 on the grounds that adequate time has been agreed for the defence preparation on these papers.

The committee has considered the Tasks in the 5th Stage Plan, which are the subject of this Appeal and have decided as follows:

Task 13

The Committee allows a total of 6 hours allocated between any Grades for this Task. If additional time for meetings is required in this Stage then agendas must be submitted to the Legal Services Commission with any request for approval.

Reason

The Committee considers that there has already been a huge amount of time spent on the preparation of this case. Counsel has been instructed and the necessity for meetings is at this stage minimal.

The remaining Tasks which are the subject of the Appeal

The Committee proposes to consolidate all of these Tasks into a single Task and to allow 40 hours at Grade B or C to create the portfolios and 10 hours at Grade A to consider the material created.

Reason

The Committee considers that the Appellants have failed to justify the times requested.

The Committee take the view that in the light of the vast amount of time already spent and allowed considering the papers, some of the task work now requested ought to have already been carried out.

11th October 2007 – appeal by solicitors
LSC decision upheld (added 10th November 2007)

- **Category**

The LSC submit that the contract manger is only permitted to take account of those criteria, outlined in Annex B of the Very High Cost Criminal Cases Arrangements 2004 (the arrangements), which clearly state that it must be the defendant's case which meets the individual criteria, and not the case as a whole.

Having regard to that approach the LSC have categorised this case as a category three fraud on the basis that:

1. The case meets two (b) criteria from Block B; and
2. One criterion in Block A, namely "The defendant's case requires legal, accountancy and investigative skills to be brought together."

The Appellant has provided submissions on three further criteria in Block A. The appeal committee are requested to consider each criteria submission separately.

The committee considered the written representations made on the Appellant's behalf and on behalf of the Legal Services Commission.

The Committee has considered whether this case meets any of the three remaining criteria in Block A.

The Committee is not satisfied that this Defendant's case is likely to give rise to national publicity and widespread public concern or that this Defendant's case involved a significant international dimension.

The Committee has considered all the areas referred to by the Appellants but have decided that the Defendant's case does not require highly specialised knowledge.

11th October 2007 – appeal by solicitors
LSC decision upheld (added 10th November 2007)

- **Pre-contract Assessment**

The Appellant is appealing against the decisions made by the Contract Manager on a number of items of work in an audit of their pre-contract bill.

Following discussions between the parties and during oral argument during the appeal, only tasks 6, 8, 9, 12 and 14 were "live" issues.

Items 6, 8 and 9 were disallowed.

Appeal allowed for tasks 12 and 14 only.

Task 12 allowed in full.

Task 14 allowed in part; 50 hours allowed.

The committee decided that the product of the defence preparation in tasks 12 and 14 was substantial and contributed towards a proper consideration of the defence case.

25th October 2007 – appeal by solicitors
LSC decision upheld in part (added 10th November 2007)

- **Distant Travel**

The Appeal relates to the decision of the Contract Manager not to reimburse the Appellant for travel and accommodation expenses for court hearings and during the trial of the case (over and above 1hr travel and 25 miles each way).

The Appellant seeks reimbursement for travel time/costs, accommodation expenses and subsistence for court hearings and the trial of the case.

This is an exceptional case.

Factually this is a Liverpool based set of criminal allegations,

Counsel was instructed pre-charge.

Counsel was instructed and signed the acceptance form before the trial venue was actually decided.

Trial venue was decided by X and the presiding judge of the South Eastern circuit after opposition by the defence advocate.

The trial venue was decided to be in London for many reasons, including juror contamination.

25th October 2007 – appeal by counsel
LSC decision overturned (added 10th November 2007)

- Various Preparation Tasks

The Appeal relates to the Contract Manager's following decisions:

1) To limit the amount of time spent by the A Grade Case Supervisor to read the 134 page Prosecution Case Summary to 2 minutes per page. The Appellant requested that this task should warrant 3 minutes per page.
2) Refuse the Appellant's request that the 5 Grade B fee earners working on this case should also be allowed to review the Case Summary at 3 minutes per page.

3) Not allow the Grade A fee earner to read all the defence schedules/client instructions prepared by the Grade B fee earners at 2 minutes per page.

This is a case in which the management from all concerned caused the committee disquiet.

As the provision of papers by the prosecution caused concern, so too was the lack of information made available to the committee by the Appellant.

The Committee were unsure of the functions of all of the B Grade fee earners and were also concerned that the level of fee earner was not commensurate with the task allotted. The Committee appreciates that this is not the matter subject to appeal but this did impact upon their decision.

Concerns were also raised by the Committee that the amount of time allowed for supervision on this case may be insufficient but are unable to be specific as the tasks undertaken remained uncertain despite inquiry.

After taking this into consideration, the Committee's decision is as follows:

1) The Committee agrees with the appellant that the Prosecution Case Summary warrants a rate of 3 minutes per page for the A Grade fee earner.
2) The Committee feels that the B Grade fee earner dealing directly with the client would also therefore be entitled to read the Prosecution Case Summary at a rate of 3 minutes per page in order to brief the client.
3) No decision has been made on this point but the Committee noted the following:
   - The allowance of 1.5 hours per week may be inadequate;
   - Supervision should be task specific;
   - The Committee do not agree a blanket approach of 2 minutes per page for the A Grade fee earner to read all schedules produced by the B Grade fee earners;
   - The Committee suggest the Appellant and Contract Manager negotiate this task again in light of the above.

8th November 2007 - appeal by solicitor
LSC decision overturned

- Distant Travel

This appeal relates to the Contract Manager's decision to restrict the Appellant's travel time to a maximum of 2 hours and disbursements of a total £22.50 (1 hour and £11.25 each way).

It was the unanimous decision of the Committee that the existing allowance made for travel by the Contract Manager was appropriate and that the client should be considered 'remote'. The Committee felt that there was no compelling argument put forward by the Appellant to persuade them that this should not be the case.

8 November 2007 – appeal by solicitor
LSC decision upheld

- Considering DAT cartridges provided by the Defendant

This appeal relates to the Contract Manager's following decisions:

1) Not to allow the Appellant 220 hours C Grade preparation to undertake a keyword search of a substantial amount of DAT Cartridge material and in turn not allow 80 hours A/B Grade preparation to review the results of the keyword search.

2) Not to allow specific extra time requested for the appellant to exhaustively consider material that may undermine the client's defence.

The Committee considered the appeal and decided to allow the overall 501 hours undertaken by the Grade C fee earner.

The resultant 37 Lever Arch files was the next issue to be considered. A sample of the type of material contained within these files was produced to the Committee in advance.

It is therefore the view of the Committee that 1.5 hours perusal time for the Grade A fee earner, per Lever Arch file, is sufficient to analyse the content and identify the material for when instructions need to be taken for the client.

15 November 2007 – appeal by solicitor
LSC decision overturned

- **Category – Backdating**

The appeal relates to the Contract Manager's refusal to backdate a category change to the beginning of the case having agreed the case should be re-categorised from 4 to 2 from 6th June 2007 when the appellants first requested that categorisation be reviewed.

The Appellant

The Appellant relied on his written representations. He further stated that it has been accepted by the Legal Services Commission that the case should be re-categorised from 4 to 2. The reason the appellant did not apply for re-categorisation sooner was because it was overlooked. The appellant accepted that the contract placed an obligation on the appellant to regularly review the categorisation of the case. However he asserted this was only guidance. He argued that Legal Services Commission should exercise its discretion to backdate the re-categorisation to the beginning of the case. There has been a dialogue between other defendants and the Legal Services Commission and applications to backdate ab initio were accepted.

<u>The Respondent Contract Manager</u>

The respondent contract manager agreed there was no dispute about the fact of re-categorisation from 4 to 2 but there was a disagreement in relation to how far it should be backdated. The position regarding categorisation review was based on contract terms which was not mere guidance. Any backdating should relate back to the date the issue was first raised not ab initio because the degree of preparation would different across categories. The Respondent pointed out that previous appeal decisions are not binding and in any event lack sufficient information to provide anything more than guidance. If there had been an ongoing discussion regarding re-categorisation then it may well have been a factor to be taken into account by the Legal Services Commission in choosing whether or not to backdate. If the application had not been overlooked it cannot be said with any degree of certainty that the Legal Services Commission would have been able to backdate ab initio in any event.

Committee Decision and Reasons

The Committee by a majority decision determined that the Legal Services Commission could not reasonably have chosen to exercise its discretion to backdate ab initio in favour of other defendants in the same case and yet with proper justification or reason to choose not to exercise in favour of the Appellants in the same case. This was a case in which the category 2 criteria appear to have been satisfied ab initio rather than as at a later date for example by service of papers.

The Chair, dissenting, took the view that there was no contractual obligation on the Legal Services Commission to exercise discretion to backdate ab initio and even if such a discretion did exist the appeals committee did not have the power to exercise such discretion on its behalf.

By a majority decision it was decided to uphold the appeal.

22 November 2007 – appeal by solicitor
LSC decision overturned

- Various Preparation Tasks

The appeal related to the Contract Manager's refusal to allow hours and disbursements across a number of tasks.

The Committee first raised the question of whether clause 14(c) was a standard alone clause, and if not, whether the requirement to pay for work conducted without agreement should also satisfy subclauses (a) and (b) in addition to (c). The Respondent Contract Manager confirmed that she was not challenging the appellant's claim to be paid for unauthorised work which may have been disallowed had a strict interpretation of clause 14 been applied. The committee proceeded to assess the reasonableness of each disputed task on its merits.

The unanimous decision of the Committee in relation to each task is set out below.

Task 1. The LSC allowed 19 hours at grade B to check new timelines against old. The Appellant had originally requested 40 hours but completed the task in 34 hours. The Appellant therefore amended the request for extra 15 hours retrospectively. The LSC conceded further hours having seen the work completed. The Committee deemed the work to be urgent and necessary. The Committee considered 30 hours were reasonable and appropriate for this task.

Task 2. The LSC allowed one B grade at court plus an A grade on key dates. The Appellant requested 2 fee earners at all times, with one to do prep work where necessary. The Committee unanimously agreed that an allowance for two fee earners to be present throughout trial was unreasonable. The attendance of a second fee earner at court can in future be agreed between the parties on an ad hoc basis. The Committee was not convinced of the necessity for the open ended commitment for the LSC to having two paid fee earners at court regardless of the amount of preparation required as it left the discretion as to determining what was reasonable to the Appellants. This was not in the spirit of the contract which required agreement between the parties as a means of controlling costs. Refused.

Task 3. The LSC disallowed the Appellant's request for disbursements to cover the transport and shelving costs in relation to files. The Committee took the unanimous view that the cost of the transportation of the files constituted an overhead. The request for payment for shelving was deemed unreasonable. Refused.

Task 4. The LSC disallowed the Appellant's request for hotel and travel expenses for an extra fee earner at court to conduct prep where necessary. As a consequence of the decision at task 2, the Committee refused the Appellant's request.

Task 5. The LSC allowed 42 hours to consider proximity in notes (1 minute per page), whereas the Appellant originally requested 126 hours (3 minutes per page) and completed the task within 99 hours. The committee considered this task a fundamental task which required continuous referral back to source material. 99 hours agreed.

Task 6. The LSC allowed 5 hours at A grade to review new timeline against a previously studied timeline. The Appellant requested 20 hours at C grade. 2 out of 5 timelines took 20 hours. The Committee having considered the matter did not consider this a very complicated task. The Appellant was content to accept a total of 20 hours in total having already spent 20 hours on 20% of the overall task. The Committee unanimously concluded 20 hours at grade C was reasonable on the understanding the rest of this task would not be attracting any further claim. Agreed.

Task 7. The LSC allowed 4 hours at A grade to prepare 5 charts. The Appellant requested 20 hours at A grade for the 5 charts. The committee unanimously agreed having considered all representations that 10 hours were reasonable for this task.

Task 8. The LSC allowed 6 hours at C grade standard rates for finding in the interviews references to a specified person. The Appellant requested 10 hours at A grade, but it had taken 12 hours at C grade to complete. The Committee unanimously agreed 6 hours were reasonable for what the Committee considered a routine task. Refused.

Task 9. The LSC allowed 16 hours at B grade to check graphs/pictorial time lines @ 2 minutes per page (27 entries per page & a total of 18 pages). The Appellant requested 30 hours at B grade. The Committee unanimously agreed having considered the documents produced by the appellants and all representations made, four minutes per entry was an unreasonable amount of time for the completion of this task. Refused.

Task 10. The LSC allowed 20 hours under this task. The Appellant requested 40 hours. The Committee unanimously agreed that it was not reasonable to allow the amount requested by the appellant where only 50 pages of material were involved. Refused.

Task 11. The LSC allowed 28.5 hours. The Appellant requested 80 hours at B grade. It in fact took 56 hours to complete the task. The Committee agreed unanimously 28.5 hours and 56 hours were unreasonable. However, approximately 4.5 minutes per entry was considered reasonable. 42 hours agreed.

Task 12. The LSC allowed 20 hours at B grade for all counts allowed. The Appellant had already spent 17 hours for two counts without authority. The Committee unanimously agreed that work previously conducted should have assisted in this task and reduced the amount of time needed to conclude the task. Refused.

Task 13. The LSC allowed 5 hours under this task. The Appellant requested 30 hours. 5 hours were on the basis of 1 hour per page. The documents were very dense and in the unanimous view of the Committee warranted 3 hours a page. However, the 30 hours requested were considered excessive. The Committee considered 15 hours considered reasonable.

Task 14. The LSC allowed 19 hours under this task. The Appellant requested 36 hours and the grade A had spent 12 hours on 2 of the six charts. The Committee were of the unanimous view that in light of work previously conducted 19 hours were sufficient for this task. Refused.

22 November 2007 – appeal by solicitor
LSC decision upheld in part

- Pre-Contract Assessment (Attendance on Client) and Distant Travel

This appeal relates to the Contract Manager's following decisions:

1. The Contract Manager's decision to refuse two fee earners attending on the client during the pre-contract stage, representing a total additional time of 32.81 hours at Grade C.

2. The Contract Manager's decision to restrict travel costs to a maximum of 1 hr each way for the Instructing Solicitor to sit in on an independent Expert site visit (Accountant visiting site of client's accountancy firm).

The second point also raised the issue of whether the previous Committee's decision to restrict travel was to apply to all facets of the case.

1. The Committee did not regard that it was reasonable in the circumstances of this case to employ / use two fee earners to take initial instructions.

2. The Committee considered that the original Committee should be given the opportunity to reconsider the stated facts of this specific claim. This Committee felt disadvantaged as neither party could recall submissions made and therefore they were unable to address the first hurdle of the appeal as to whether there is a right to appeal on the previous Committee's decision. If such a right to appeal exists then this Committee has made no decision with regard to points 7 and 9.

13 December 2007 – appeal by solicitor

LSC decision upheld

- Reading and Scheduling Time

This appeal relates to the Contract Manager's following decisions:

To agree a total of 140.4 hours at Grade B to prepare to prepare all ancillary documents arising from 5616 pages of served evidence (to include chronologies, schedules etc.). This is in addition to the 262.9 hrs at Grade A for full consideration of the 5616 pages of served evidence, giving a total of 403.3 hrs for the served evidence.

To agree a total of 57 hrs for 1045 pages of telephone evidence, a rate of 3 minutes per page. The Appellant has requested 1000 hrs at Grade B, which is an equivalent rate of 52 minutes per page.

1) The Committee accepted the Contract Manager's interpretation of reading/scheduling witness statements and exhibits, however the Committee took the view that a separate task of a time line is not to be included within the composite rate of 4.5 minutes per page allowed, therefore the Committee allows 50 hours to prepare a time line and after 25 hours of preparation for the Appellant to produce the work to the Contract Manager to decide if 50 hours is reasonable and whether additional time is needed.

2). Telephone evidence. The Appellant's appeal is allowed in part. The Committee allowed the following:-

Grade C standard rates for checking the accuracy of the entries at 3 mins per page.

The task of scheduling/cross-referencing the material of Grade B at 5 mins per page, this includes the preparation of a Defence schedule.

13 December 2007 – appeal by solicitor
LSC decision upheld in part

- **Unused audio surveillance**

This appeal relates to the Contract Manager's decision to disallow a significant amount of time spent on considering unused audio material transcripts and to then listen to certain relevant areas of the tapes.

The committee, having read the appeal documentation and considered additional material and/or representation by both the contract manager and the appellant, have allowed the appeal. The appeal is allowed on the basis that the committee believe that the 213 hours B Grade preparation and 368.8 C Grade preparation was reasonably undertaken given the nature of the task.

The committee would however like to add that the contract manager made his initial decision on the basis of inaccurate information. The committee therefore stress the importance of keeping contract managers up-to-date with matters and to ensure where appropriate meetings arranged between the parties.
9 January 2008 – appeal by solicitor
LSC decision overturned

- **Clients travel expenses**

This appeal relates to the Contract Manager's decision to refuse to authorise payment of the defendant's travel expenses during trial. The Appellant stated that the defendant is impecunious and cited the authority of R v Legal Aid Board Ex parte Eccleston. The Contract Manager asserted that these expenses are only paid in the most exceptional of circumstances and that this defendant's case does not qualify as one such exception.

The Committee accepts that in exceptional circumstances provision applies to authorise expenses of a defendant in a criminal trial/proceedings. The Committee take the view that no such circumstances in this case exist.

9 January 2008 – appeal by solicitor
LSC decision upheld

- **Category, Supervision & Reading**

The points of appeal raised by the appellants relate to three decisions made by the Contract Manager:

1) That the categorisation for the above defendant is fixed to the charges against the client and not in reference to the case as a whole. The Contract Manager accordingly deemed this case to be a Category 3 VHCC.
2) General supervision time in this case should be at the usual rate of half an hour per week per grade as the LSC does not feel that the case against the client is one of such complexity to warrant a higher weekly allowance.
3) The charges against the client should inform the amount of time agreed for the analysis of the evidence by reference to its level of relevance.

The appellants disagree with the above and wish to appeal against the categorisation and the approach taken to determining time to analyse the exhibits served.

The Committee's decisions were as follows:

1) In relation to this case, category 3 applies.

In relation to Block A:

- It was accepted by both parties that the Legal, Accountancy and Investigative Skills criteria is satisfied.

- The Significant International Dimension criteria is not, at present, satisfied. The foreign evidence is still outstanding but the parties may wish to reconsider this criteria upon the service of the foreign evidence.
- The Highly Specialised Knowledge criteria is not satisfied in this particular defendant's case.
- The National Publicity/Concern criteria was not relied upon by the appellant.

Accordingly, only one of Block A criteria applies.

In relation to Block B:

it is accepted by both parties that the case papers served by the Prosecution exceeds 10,000;

the VAT fraud exceeds £2 million. It is important to consider the value of the fraud in count 1 Conspiracy to Cheat the Revenue, which the defendant is not charged/indicted upon, as Count 3 Conspiracy to Launder the Proceeds of Crime, which the defendant faces, involves laundering the proceeds of the Count 1 Conspiracy.

Accordingly, two of the Block B criteria apply.

2) Supervision: 30 minutes per week is deemed reasonable.

3) Preparation : The solicitors should be allowed time to read all the witness statements and exhibits because this is a factually complex case in which the defendant is closely involved evidentially with a co-defendant who is charged with the Count 1 Conspiracy to Cheat the Public Revenue. The evidence against the defendant is closely linked and interwoven with that against the co-defendant.

The Appeal Committee answer the four questions posed by Contract Manager, in her written submissions, dated 9th January 2008, as follows:

Question:

"Whether the established approach of the Unit in agreeing category by reference to the charges against the client is reasonable thereby reducing this contract to a category 3 following the transfer of the representation order."

Answer:

In this specific factually sensitive case the appropriate category is 3. This decision was arrived at by considering and applying the Block A and B criterion (see earlier reasoning). The defendant's case and the counts she faces, as noted above, are factually interlinked with the co-defendant's case and counts. It is impossible to dissect evidentially the prosecution case against the defendant's case. This is a case specific decision, the Committee are not supporting nor endorsing the Unit's approach in agreeing category by reference to the specific charges against the client.

Question

"Whether the time offered for supervision is reasonable in this case"

Answer: Yes

Question

(c) "Whether it is reasonable to draw a distinction between evidence directly relevant to the charges against the client and evidence related directly to other charges not

faced by the client and to have regard to this distinction considering times for analysis."

Answer: No, given the factual circumstances of this case.

Question
(d) "Whether the LSC's approach to the ROTI's is reasonable in all the circumstances"

Answer: During oral submissions, the Contract Manager conceded that the Appellants' suggestion of 1 ½ mins per page (across the board) for the ROTI's was reasonable.

1 February 2008 – appeal by solicitor
LSC decision upheld in part

- **Pre-Contract Claim**

This appeal relates to the Contract Manager's decision to refuse payment on a number of hours submitted as part of the pre-contract claim:

1) To disallow 55 hours at grade C preparation and 10.6 hours at grade B preparation to attend a private investigator.
2) To limit routine correspondence costs to a total of 0.5 hours per week.
3) To offset the hours agreed for reading papers in stage one based upon the claims in the pre-contract stage.
4) To limit parking disbursements.
5) To limit travel costs incurred.

In relation to each of the 5 points set out, the Committee does not allow the appeal.

Committee Reasons:

1) Time to attend the private investigator of 55 hours at grade C and 10.60 hours at grade B.

The committee have carefully examined the submissions of both parties contained in the paper hearing. In relation to this point the committee do not allow the appeal. We believe that the reasons given by the contract manager at page 2 of her response dated 24th January 2008 are correct.

2) Routine correspondence costs of £3312 during the pre-contract stage.

The committee believe that it is reasonable to pay 0.5 hours per week throughout the duration of the case at grade B rate for routine correspondence. We make this decision in the context of a case that has already lasted 15 months. We therefore do not allow the appeal.

3) The LSC's decision to offset the hours agreed for reading the papers during stage one.

The committee believe that the time allowed can only be used once. Duplication has been disallowed. We therefore do not allow the appeal.

4) Parking disbursements and
5) Travelling.

We believe that the reasons given by the contract manager at page 5 of her response dated 24th January 2008 are correct. We therefore do not allow the appeal.

- **Scheduling/Casemap**

This appeal relates to the Contract Manager's decision to:

1) Refuse to fund the case by way of Casemap.
2) To allow 2 minutes per page for reading the statements and interviews and 1 minute per page for exhibits and a further 1 minute per page for the scheduling of this material.
3) The grade of fee earners allowed for the respective work.
4) To refuse the disbursement of £6320 relating to the scanning of evidence onto the Casemap system.

The appeal has been part allowed. Committee Reasons:

1. The issue involved in the appeal is the decision of the LSC that 1 minute per page is a reasonable amount of time for the appellant's to schedule / summarise the documentary evidence served by the prosecution. The category of fee earner (mix of grade C/B is not in dispute). This time is in addition to the 2 minutes for statements and interviews and 1 minute for exhibits (mix of grade A/B is not in dispute) which has been agreed. The appellants argue that they should be allowed, in addition to the agreed time, 4 minutes to schedule / summarise the statements and interviews and 3 minutes to schedule / summarise the exhibits. That makes a total of 6 minutes for statements / interviews and 4 minutes for exhibits.

2. This is an SFO prosecution and a Category 2 fraud under the contract specification. There is no doubt that it is a complex and voluminous prosecution. The appellant's wish to use CaseMap in the preparation of the defence case. The contract manager believes that Microsoft Excel would be more efficient. The committee take the view that it is not for us to dictate which, if any, should be used. That does not however stop us finding that the cost of £6320 was a reasonable amount for the scanning of the case papers into the CaseMap system. Having heard from a representative of CaseMap and using our own knowledge of the product we believe that the mere scanning of the material into the CaseMap system will allow the appellants to use the many facilities available in the system to sort and manage the material presented by the prosecution. It was clear by the end of the hearing of this appeal that the appellants were in fact going to prepare this case for trial using the CaseMap system.

3. The real issue between the parties was the amount of time needed to carry out the scheduling / summarising and in doing so build the CaseMap profile of the case by entering additional data into the CaseMap system. Whilst the basic system does give the user a real head start in the preparation of the case, it is the additional data that the fee earners enter into the system that will ultimately benefit all concerned in the case.

4. The appellant's case was presented by the solicitor with conduct of the case plus one of the grade C fee earners who would ultimately carry out the work in issue. In addition the representative of CaseMap was present and able to assist with questions and a demonstration of the CaseMap system. In the circumstances the appellant could not have been in a better position to demonstrate why time in addition to that allowed was reasonable. On the material presented during the appeal, both written and oral, the committee were not persuaded by the appellant's case. Notwithstanding the appellant's contention that this case needed more time

to prepare than was being allowed they failed to give any demonstration of a reasonable snap shot of work that had in fact been done to demonstrate that the time allowed was insufficient; this notwithstanding the fact that the CaseMap system was available throughout the hearing.

5. We refer to page 3 of the Addendum Response document of the Contract Manager dated 19th February 2008 and the "Decisions Requested" section.

   1. We do not believe that it is for the Committee to dictate which software should or should not be used in this particular case.

   2. We do not allow the appeal against the contract manager's decision to allow 1 minute for the scheduling / summarising of the documentary evidence – note this is in addition to the 2 minutes allowed for reading the statements and interviews and 1 minute for reading the exhibits.

   3. The grade of fee earners did not appear to be in dispute during the appeal hearing.

   4. Notwithstanding the finding in 1 above the committee do believe, if the appellant's decide to use CaseMap that the £6320 incurred in scanning the documents into the system is a reasonable expense.

20 February 2008 – appeal by solicitor
LSC decision upheld in part

- **Scheduling**

This appeal relates to the Contract Manager's decision to allow 221.2 hours paid at grade C preparation in the pre-contract stage, 210 hours grade C preparation and 35 hours grade B preparation in stage 1 to peruse the evidence served by the prosecution. The appellant sought further time to analyse the evidence.

The Committee does not allow the appeal. Committee Reasons:

1. The issue involved in the appeal is the decision of the LSC that 2 minutes per page is a reasonable amount of time for the appellants to analyse / schedule the documentary evidence served by the Crown. This work was to be done by grade C fee earners. To give a flavour of the volume of material involved pre-contract documents (statements and exhibits) amounted to 6636 pages and hence 221.20 hours was paid. Further material was served post contract. The appellant argued that substantially more time was needed to properly deal with the task. From the information available to the committee we are not persuaded.

2. Of note was the fact that notwithstanding a grade A solicitor being given his own time to read the complete set of papers served there was no evidence that he had made any effort to reduce or refine the task facing the said grade C fee earners. In addition there appears to have been a payment for a week's work between 7th – 15th June 2007. This related to the "actual" time spent to analyse / schedule documentary evidence. The LSC paid 6 x 35 hours at grade C and 1 x 35 hours at grade B. It was paid as a result of the present contact manager being persuaded that his predecessor had committed herself to this work being done within the said week. This appears to have been a payment for which no reduction has been made in the page count of documentary evidence. In the circumstances the appellant has actually been paid in excess of the 2 minutes that we consider reasonable for this task.

3. We do not allow the appeal.

20 February 2008 – appeal by solicitor
LSC decision upheld

- **Distant Travel**

This appeal relates to the Contract Manager's decision to apply the local bar rule to this case and to not reimburse the Appellants for travel and accommodation expenses for trial dates and conferences with the defendant during this case over and above 1 hours travel and 25 miles each way (or the equivalent £11.25 if undertaken via public transport). The Appellants are based in London and the trial is listed at Leeds Crown Court.

The Committee can see no reason why the local bar rule should not apply to Counsel's travel in this case. The Committee does not consider that the instruction of local Counsel might lead to reasonable suspicion of prejudice, lack of independence or lack of objectivity. The Committee has heard no evidence that the local bar lacks sufficient experienced Counsel to undertake the case. The case is not unusual or a particularly technical case which requires Counsel with specialised experience and knowledge.

4 March 2008 – decision by counsel
LSC decision upheld

- **Reading Secondary Disclosure**

This appeal relates to the Contract Manager's decision to refuse a rate of 3 minutes per page to read all Secondary Disclosure. The Contract Manager agreed a rate of 1 minute per page for this material.

The Committee has considered this Appeal on the submitted papers. In the Committee's experience a rate of 1 minute per page for reading and considering Unused material served as Secondary Disclosure is reasonable. The Committee notes that the Legal Services Commission has not closed the door if the Appellants wish for further time for material of exceptional complexity provided that the Legal Services Commission first has sight of such material.

4 March 2008 – decision by solicitors

LSC decision upheld

- **Expert Rates**

The appeal was brought on the point that the appellant's contract manager was wrong to refuse to pay up to £275 per hour for the services of a solicitor expert.

<u>The appellant</u>

The appellant outlined the qualifications of the Crown's expert who charged £195 per hour for his report. No other expert could be found prepared to do the work for £110 per hour. He had spent about 15 hours on the report.

The appellant stated that because of time constraints the defence expert had already been instructed.

He had agreed to conduct the work at the reduced rate of £195 per hour as a gesture of good will.

The trial was underway and the report had already been prepared. The committee were effectively being asked to determine the matter on an ex post facto basis.

The respondent contract manager

The respondent contract manager relied on her written submissions and made no further comment.

Committee decision and reasons

Having read and heard submissions from the appellant the committee unanimously determined for reasons of equality of arms the appellant should be allowed the rate of £195 per hour for their expert witness.

It was clear that great effort had been made to find an expert of the requisite experience to provide a report at the suggested rate of £110 without success.

Appeal upheld.

Appeal by solicitors – 5 March 2008

LSC decision overturned

- **Reading witness statements and exhibits**

The appeal was brought on the point that it was unreasonable for the respondent contract manager to allow only 2 minutes per page for witness statements and 1 per page for exhibits and that 3 minutes and 2 minutes respectively should have been allowed.

The appellant did not attend and relied on his written submissions. The respondent contract manager did not attend and relied on her written submissions.

The committee considered fully the written submissions of both the appellant and contract manager in what appeared from the papers to be a relatively straightforward case.

The committee noted that in signing the barristers acceptance form the appellant was bound by the terms of the VHCC case contract, Contract Specification and VHCC Criminal Cases Arrangements which set out the basis on which pre contract and other work would be paid. The appellant would have been aware that in signing the barrister acceptance form, pre contract work would be audited and assessed on the basis of what was reasonable.

The purpose of the contract arrangements is to ensure VHCC cases are managed effectively so that inter alia the cost of such services is controlled.

The committee were satisfied that the instructing solicitors in this case were not allowed more time than counsel for the same task.

The committee unanimously determined having perused the documentation supplied to both parties that the time allowed by the respondent was reasonable.

Appeal therefore refused.

Appeal by counsel – 5 March 2008

LSC decision upheld

- **Reading & scheduling and IT Training**

The appeal was brought on the following points:

1. That the appellant's contract manager was wrong to disallow 116.75 hours for reading exhibits.

2. That the appellant's contract manager was wrong to disallow 15.18 hours for scheduling interviews and exhibits.

3. That the appellant's contract manager was wrong to disallow 5.25 hours for IT training.

The appellant did not attend and relied on his written submissions. The respondent contract manager did not attend on relied on her written submissions.

The committee fully considered the written submissions made by both the appellant and respondent contract manager.

The committee noted that in signing the barristers acceptance form the appellant was bound by the terms of the VHCC case contract, Contract Specification and VHCC Criminal Cases Arrangements which set out the basis on which pre contract work would be paid. It was noted that the barristers acceptance form was signed and dated by the appellant on 26 September 2007.

The purpose of the contract arrangements is to ensure VHCC cases are managed effectively so that inter alia the cost of such services is controlled. This includes agreeing tasks in advance with the Legal Services Commission.

The precise date on which work was conducted by the appellant was unclear from the papers.

The committee did not consider it unreasonable to expect, in the absence of an agreed task list, the appellant to have negotiated in advance through his instructing solicitor on an individual task basis.

In the absence of agreement the basis used by the Legal Services Commission to determine what was reasonable in this case (adopting the formula accepted by all other parties in the case) was considered a reasonable approach by the committee.

Points 1 and 2 of appeal were therefore refused.

In relation to appeal point 3 the committee determined that in this case the 5.25 hours described as "IT Training" was time required not for training (which would have otherwise be deemed an overhead) but reasonably necessary to have continued to provide services to his client of appropriate quality.

Appeal point 3 allowed.

Appeal by counsel – 5 March 2008
LSC decision upheld in part

- **Reading and scheduling exhibits**

The appeal was brought on the following points:

1. That the appellant's contract manager was wrong to refuse to pay 1 minute per page for perusal of 71,066 pages for both leading and junior counsel and also the solicitor appellant.

2. That the appellant's contract manager was wrong to refuse to pay 1 minute per page for scheduling 71,066 pages of exhibits for the solicitor appellant only.

The appellant

The appellant senior Counsel produced a small folder of new material at the hearing which the respondent contract manager had not previously seen. The contract manager did not object to the material being used to assist the appellant in their oral submissions and the appellant accepted that it would be used only for the purpose of illustrating and supporting their oral submissions at the appeal hearing.

The appellant relied on the written and oral submissions of all three parties.

The appellant distinguished their client from the other many defendants by reference to her involvement in four alleged tiers of criminality.

The appellant had not hitherto printed difficult to access material supplied on disk but maintain their request for 1 minute a page for perusal regardless of whether material is on disk or hard copy.

The appellant was unable to estimate what percentage of the 71,066 pages of documentation consisted of invoices and other lightweight documentation but pointed out that much of it was material to their client's case. The appellant was unable to specify the number of deals involving the client but generally maintained she was involved in very aspect of the case. The appellant stated their client was allegedly involved in 12 sample transactions out of a total of well over 500.

The appellant solicitor maintained that it was necessary for all three appellants to read all the papers because of the need to get on with the preparation for trial. She also stated that she had four fee earners working to get on with preparation for trial and it was noted that the trial was unlikely to take place before September 2008 at the earliest.

The respondent contract manager

The respondent contract manager relied on her written and oral submissions. She indicated that she had not seen all the exhibits nor had she previously seen the sample provided at the appeal by the appellant. She agreed to a short adjournment to discuss with the appellant the possibility of reaching a compromise but on her return indicated a lack of agreement and that she would prefer the committee not to adjourn further.

The respondent case manager accepted that all three appellants could read the exhibits but that the only issue was the time allowed for the respective tasks.

Committee Decision and reasons

The committee unanimously determined that the appellant had failed to satisfy the committee that the time allowed by the respondent contract manager was in all the circumstances unreasonable.

As the papers would be read by three sets of experienced lawyers 30 seconds per page for perusal and 30 seconds per page for scheduling (for solicitors only) was considered reasonable.

Further, the committee was not persuaded that the entirety of the 71,066 pages of exhibits were relevant to the defendant's case.

Appeal refused for all three appellants.

Appeal by solicitor and counsel – 5 March 2008
LSC decision upheld

- **Category – Fraud Criteria**

The appeal relates to the LSC's decision to categorise this case as a category three: fraud. The appellants have provided submissions to categorise the case as category two: fraud.

The committee was asked to consider whether the case met the criteria contained in Block A, namely whether in the circumstances of this case it was a case requiring 'highly specialised knowledge' and whether it involved a 'significant international dimension'.

The committee heard from both the appellant and the Contract Manager and reviewed the paperwork. We did not take into account the appellants references to previous appeal decisions. The committee found that the 'highly specialised knowledge' criteria was met because the case involved an interlinking network of companies, disclosure of linked Revenue & Customs operations, the potential of a cut throat defence and the large value of the fraud. The potential for applications in relation to companies in foreign jurisdictions also brings it within the criteria.

The committee also found that there was a significant international dimension as the case involves 13 different countries in 3 different continents and will involve the investigation and review of evidence from Dubai, something that the panel is aware has many complexities.

The committee was also asked by the LSC to rule on whether the LSC's approach was 'reasonable' in the circumstances. The committee does not believe it is appropriate to make a decision on 'reasonableness' as requested.

Appeal by solicitor – 12 March 2008

LSC decision overturned

- **Distant Travel**

The appeal relates to the LSC's decision to apply the Local Bar Rule limiting counsel to a round trip of 2 hours / 50 miles (or the equivalent cost of £72.50).

The committee was asked to consider whether, on the facts of this case, there should be an exception to the local bar rule and therefore travel and hotel accommodation allowed.

The committee felt that as the counsel chosen had represented the defendant in previous and linked proceedings at Southwark Crown Court and therefore had knowledge of matters which would assist him in the preparation of this case, the exception to the rule could be applied, on these facts.

Appeal by solicitor – 12 March 2008

LSC decision overturned

- **Supervision**

The Contract Manager has authorised 1.5 hrs each at Grade A and C to allow for effective supervision of the 1.5 hrs of fee-earner work completed in the Stage.

The appellant wishes to appeal the decision to refuse 10.28 hrs at Grade A, 6.5 hrs at Grade B and 7.78 hrs at Grade C, which is the additional supervision time claimed for the 1.5 hrs of Grade C fee earner work completed in the stage.

The Committee was asked to consider the case on the paperwork only and did not hear from the appellant or the Contract Manager.

The committee was asked to consider whether 10.28 hours of supervision at Grade A, 6.5 hours at Grade B, 7.78 hours at Grade C are reasonable on the facts.

The committee feels a broad approach to supervision is important. The case was being progressed and the strategy discussed. It is important for a Grade A fee earner to regularly discuss issues and it is reasonable for a Grade B fee earner to be present at such meetings.

The Committee therefore allows the additional supervision time of 6.5 hours for the Grade B and 5 hours for the Grade A.

The appeal is therefore partially allowed in so far as the time spent on the Grade B supervision. The Grade C would not be involved in the management of the case or on day-to-day issues and the Committee feels 1.5 hours is reasonable in the circumstances.

Appeal by solicitor – 12 March 2008

LSC decision upheld in part

- **Distant Travel**

The Committee was requested to adjudicate on whether the Contract Manager's decision to restrict the appellant's travel between Chambers in Leeds and the trial court in East Anglia to 1hr and 25 miles each way was reasonable under the circumstances.

The Committee concluded that in the circumstances of this particular case where the appellant is only claiming travel time / mileage from the local bar to the court it would be unreasonable to restrict him to travel time / mileage falling short of that. The local bar to East Anglia is London. The Distance Travel Policy would in this case work unfairly against the applicant.

The appeal was therefore allowed.

Appeal by counsel – 19 March 2008

LSC decision overturned

- **Category (Fraud Criteria)**

1. The first point related to whether the LSC's time to respond to the appeal had elapsed, therefore revoking the LSC's right to argue the appeal.

2. The second point related to the LSC's decision to have categorised this case as a category 3 fraud.

The LSC have accepted that this case meets one criterion in Block A, namely 'The defendants case requires legal, accountancy and investigative skills to be brought together.'

The LSC have accepted that the case meets two (b) criteria form Block B and therefore the category two requirements have been met in terms of Block B.

The appellant has provided submissions in respect of all Block A and B criteria but the appeal relates only to the Block A criteria the LSC does not consider met.

1. It was agreed between the parties that the LSC had given their decision on categorisation on 14th June 2007. By a letter dated 21st June, received by the LSC on 26th June, the appellant appealed that decision. Hence the appeal had been lodged within 14 days.

Part 4 of the VHCC Arrangements 2004 deals with appeals. Part 4.5 states that "Any appeal must be lodged with the CCU within 14 days of receipt of the original decision". Part 4.6 states On receipt of the appeal the contract manager shall give his or her reasons for the decision within 14 days".

The CCU Appeals Protocol and Procedures states (Appeal Guidance) "The appellant must lodge the appeal in writing to the Contract Manager at the CCU. The appellant must lodge their appeal within 14 calendar days of the original decision. Failure to do so will result in the Appeal not being heard. Upon receipt of the notice for Appeal the Contract Manager must respond within 14 calendar days. If no resolution to the issue(s) has occurred by that time, the Contract Manager will provide the appeal bundle to the Appeals Manager and a hearing will be convened".

Notwithstanding the above the Contract Managers response was not given until 25th February 2008; clearly a substantial period beyond the 14 days indicated in the Arrangements and the Appeals Protocol and Procedures.

Of note is the apparent absence of a power to extend the 14 days each party has to meet the time limits for the appeal and the response. We also note the apparent increase in the obligation placed upon the Contract Manager by the replacing of the word "…shall…" in the Arrangements with "… must …" in the Appeals Protocol and Procedures.

Notwithstanding all the above the question remains whether the failure of the Contract Manager to "… respond …" to the appellant's appeal within 14 days is fatal to the subsequent response and / or fatal to the Contract Manager resisting the appeal.

Whilst Appeals Protocol and Procedures provides a sanction if the appellant is out of time, it provides no sanction if the Contract Manager is out of time. It also indicates that "… If no resolution to the issue(s) has occurred by that time (*14 days post appeal by the appellant*), the Contract Manager will provide the appeal bundle to the Appeals Manager and a hearing will be convened…"; there was no resolution at the 14 day point in this case.

We therefore conclude that the hearing should proceed and both parties be heard on the merits.

2. The substantive issue: The appeal against the categorisation of the case as a Category 3 Fraud.

The appellant argues that the case should be a Category 2 Fraud. The appellant's conceded that the only arguable point was "The defendant's case requires highly specialised knowledge". The Contract Manager had already accepted "legal accountancy and investigative skills to be brought together". There was no issue on Block B. Hence if

the appellant succeeded on “highly specialised knowledge” the case would be a Category 2 Fraud.

It was argued that the highly specialised knowledge related to charity and trust law. The appellant referred the Committee to the fact that in March 2007, three of the co-defendants had succeeded on appeal in establishing “highly specialised knowledge”.

We had the benefit of hearing full argument from counsel who had conduct of the case. We also had the 99 page Prosecution Case Statement.

We concluded that the said three defendants faced a significantly different case to this appellant. Whilst the case for this defendant may have required specialised knowledge it did not require “highly specialised knowledge”.

Appeal by solicitors – 19 March 2008

LSC decision upheld

- **Telephone Schedules & Bank Statements**

The appeal relates to the Contract Manager’s decision to authorise 1 minute per telephone entry on the main schedule at Grade C standard rates to undertake the checking of the schedules for accuracy.

The second appeal point was whether the rate of 10 minutes per page to check 429 pages of bank statements, for accuracy, at Grade C is reasonable, and also whether 1 minute per page at Grade A for 19 pages of short summaries of the credits of each defendants bank statements is reasonable.

The appellant was represented by trial counsel. Whilst there appeared to be some confusion as to what trial counsel had come to argue he quickly grasped the issues before the committee and put the case for the appellant.

Having heard from both parties the committee have concluded that the following time is reasonable:

1. The authorisation of 1 minute per line entry on the main telephone schedule at Standard Rate Grade C to check the telephone schedule for accuracy. Together with an additional block of 30 hours at Grade C to undertake full analysis of the verified exhibits at schedule 3.

2. The authorisation of 10 minutes per page at Grade C to analyse the bank statements.

The authorisation of 1 minute per page at Grade A for the consideration of 19 pages of credit summaries. With an additional 1 minute per page for ancillary work relating to this task.

Appeal by solicitor – 19 March 2008
LSC decision upheld

- **Distant Travel**

The appeal relates to the decision of the LSC to apply the ’local bar rule’ and thereby limit counsels’ travel to Leeds Crown Court to a maximum of 1hr each way in travel time at £25/hour and up to the maximum of the monetary equivalent of 25 miles each way at 45p/mile, £11.25 each way.

The Appeal Committee heard oral representations from the appellants and the LSC in relation to whether the 'local bar rule' should apply on the facts of this case.

The Appeal Committee heard that one of the appellants had acted in two very closely linked cases and the LSC conceded the point.

In relation to the second appellant, his computer knowledge and location for conferences and preparation justified travel and accommodation costs in Leeds. The LSC conceded it was likely his instructions had saved costs.

Appeal by counsel – 2 April 2008
LSC decision overturned

- **Telephone Evidence**

The appeal relates to the decision by the LSC to allow 5 minutes per page at Grade C to consider, on behalf of both defendants, 2,776 pages of telephone evidence, which equates to 231 hours.

The appellants have requested a total of 1,500 hours at Grade C, which equates to 32.4 minutes per page.

The Appeal Committee heard an appeal from the appellant solicitors that 1000 hours of Grade C time was needed to review the telephone material for one defendant.

The Contract Manager had contended that the task could be undertaken with the use of software programmes and appropriate computer expertise, which would reduce the time needed.

The Appellant indicated that such software was inappropriate in the particular circumstances of this case, which required manual review due to concerns over the integrity of the data. He had sought advice on the subject.

The Contract Manager conceded the point and indicated he could not definitely assert the work could be done by software for it was not within his expertise and he didn't challenge the fact that the Appellant had been told by the officer in the case that the data could not be relied upon and that therefore manual extraction was necessary.

The appeal was allowed.

Appeal by solicitor – 2 April 2008
LSC decision overturned

- **Distant Travel**

The appeal relates to the decision of the LSC to apply distant travel restrictions and thereby limit solicitors' travel to see the client in prison and to Leeds Crown Court to a maximum of 1hr each way in travel time and up to £22.50 (50 miles) in travel disbursements. The appeal also relates to the LSC's decision to limit Queen Counsel's travel to Leeds Crown Court on the same basis.

The Appeal Committee was asked to consider whether the 'distant travel rule' for solicitors and the 'local bar' rule for Queen's Counsel were inappropriate on the facts of this case.

The Committee was unable to reach a decision on the 'distant travel rule' as it felt it needed much greater information on why this defendant would be prejudiced if not

represented by the appellant. The Committee understood the appellants had previously represented the defendant "in previous proceedings relating to this defendant and/or this case", but had no further details.

The Committee was unable to reach a decision on whether the 'local bar rule' applied as it was not advised to whether the particular QC practiced on the 'Northern Circuit' and noted Archbold G-256 which indicates the peculiar rules applicable to QC's.

Appeal by solicitors and counsel – 2 April 2008
Hearing adjourned

- **Negative advice on appeal**

The appeal was brought on the point that it was unreasonable for the respondent contract manager to allow only two hours to complete a negative advice in relation to the sentence given to the defendant and that 5 hours should have been allowed.

The appellant

The appellant did not attend and relied upon his written submissions.

The respondent contract manager

The respondent did not attend ad relied on his written submissions.

Committee Decision and reasons

The committee considered the written submissions of both the appellant and contract manager.

By signing the Barrister's Acceptance Form counsel would have accepted that if he needed to undertake further work not approved in a stage plan he must receive the authority of the parties to the Individual Case Contract prior to undertaking the work – except where the contract specification provides otherwise.

Under paragraph 14 of the contract specification the Legal Services Commission will not pay for any work not specified in a schedule unless reasonable and necessary and it is not possible to contact the contract manager in advance, provided that genuine efforts are made (see paragraph c).

It was noted that the appellant failed to agree time in advance as required under the VHCC contract. It was also noted that the appellant's advice on appeal was negative and consisted of approximately four pages of double spaced writing in size 14 point, much of which was historical fact and narrative.

Setting aside the question of whether the appellant had sufficient opportunity to contact the contract manager prior to conducting the unauthorised and disputed work the committee agreed that the two hours agreed retrospectively by the Legal Services Commission was reasonable in all circumstances bearing in mind the nature and quantity of legal work involved.

The committee unanimously determined that the time allowed by the respondent was reasonable.

Appeal refused.

Appeal by counsel – 16 April 2008

- **Reading and scheduling exhibits**

The appeal was brought on the point that it was unreasonable for the respondent contract manager to refuse 2 minutes per page for perusal of approximately 55,000 exhibits and all ancillary work including schedules for both solicitors and counsel.

The appellant

The appellant relied on their written and oral submissions.

The appellant solicitor confirmed that he had originally requested 3 minutes per page on behalf of both himself and counsel but that he was prepared to compromise at 2 minutes per page to read and schedule the exhibits. The appellant stated that the trial was likely to take place in 2010 and that the defendant was one of the principal defendants in what was a unique MTIC fraud. He also stated that he considered there to be no routine documents among the exhibits. A certificate for QC had been granted.

The appellant solicitor agreed that the exhibits consisted mainly of invoices, VAT returns and bank statements etc.

The appellant confirmed that the prosecution have served schedules on the defence but that the defence schedules would be different and include a chronology. Expert evidence may be required.

Appellant Counsel confirmed he required a further one and a half minutes for reading the exhibits and to help him fulfil his responsibility as counsel. However counsel stated at the appeal hearing that to avoid dividing time with his instructing solicitor he would be prepared to reduce his request from 2 minutes per page to 1 minute per page.

The respondent contract manager

The respondent contract manager relied on her written and oral submissions.

She stated that both counsel and solicitor first requested three minutes per page and pointed out that counsel has now reduced his claim to 1 minute per page. She also highlighted the fact that there was a considerable amount of routine documentation. She referred to a sample file containing 509 pages of copy cheque stubs.

The respondent contract manager confirmed there would be no objection to further preparation being considered at a later date as part of a targeted approach to reading papers relevant to the defendant's case.

Committee decision and reasons

The committee considered all the submissions of both the appellants and the contract manager.

The committee was of the unanimous view that there was no evidence to suggest anything exceptional about this particular MTIC case. As with most similar cases much of the documentation appeared to consist of invoices, cheque stubbs, bank statements and other routine documentation, which may have been summarised in the prosecution schedules provided.

Were the committee to allow both the appellant solicitor and counsel two minutes per page for essentially the same task they would be rewarding the duplication of work

between solicitor and counsel which is contrary to the terms of the contractual arrangements between the parties.

The committee agreed that counsel could reasonably adopt a more targeted and cost effective approach once the appellant had produced their own defence schedules and chronology.

The committee unanimously determined that the time allowed by the respondent was reasonable in relation to both the appellants.

Appeal refused for both appellants.

Appeal by solicitor and counsel – 16 April 2008

LSC decision upheld

- **Audits and Attendance Notes**

This appeal relates to the Contract Manager's original decision to refuse payment for the Grade A fee earner and Solicitor Advocate in this case to:

1. Peruse 2278 pages of witness statements at a rate of 1 minute per page or total of 38 hours.
2. Peruse 8500 pages of exhibits at a rate of 30 seconds per page or a total of 70 hours.

These items were disallowed on the basis that the Contract Manager was not provided with sufficient detail of the work product upon audit or after her request for the same.

1. Grade A Attendance: The appeal is refused as the attendance notes do not comply with the standards and additional supporting evidence, having been requested by the LSC, was not produced. In the absence of additional evidence and/or representations by the Grade A fee earner at the appeal, the committee unanimously adjudicates that the attendance notes do not justify time claimed.

2. Solicitor Advocate Attendance: The committee, having heard all representations by the advocate with regard to a draft work schedule/log, and the LSC representations conceding that the appellant should be given additional time to produce the work log, reluctantly agrees to adjourn this appeal. The committee suggests that the work log be produced within 14 days of 30th April 2008. The committee makes no comment as to how the LSC should deal with the work log.

Appeal by solicitor – 30 April 2008

LSC decision upheld

- **Distant Travel**

This appeal relates to the Contract Manager's decision to restrict the appellant's travel between the solicitors office in London and the location of the defendant in Birmingham. The Contract Manager took the view that a restriction to 1 hour and £11.25 each way was reasonable under the circumstances of this case.

The committee unanimously allowed the appeal. The committee took the view that this was a border line appeal but found, having heard the appellant expand upon his written representations, that this case fell within the criteria of being exceptional. The committee

comments that the contact manager was right to take the initial view regarding travel and the committee were therefore only persuaded in respect of this appeal on a specific basis after the additional oral representation.

Appeal by solicitors – 30 April 2008
LSC decision overturned

- **Two clerks attending trial**

This is an Appeal against the decision of the LSC to refuse the attendance of two clerks at the trial.

The Appellants represent two Defendants and both will be represented by Queen's Counsel and a Junior. It is a substantial case and the Appellants have over 200 lever arch files of material.

The Committee think it unreasonable to expect the Appellants to have a fee earner standing by to attend whenever a second representative is required at Court. The Committee accepts that it is inevitable that conferences will be required simultaneously.

An additional fee earner should be authorised to attend throughout the trial.

The Appeal is allowed.

Appeal by solicitor – 7 May 2008

LSC decision overturned

- **Trial Preparation**

The Appellant withdraw those sections of his Appeal which relates to telephone evidence and financial documentation. This leaves the Committee to review the Contract Manager's decision to authorise 125 hours for trial preparation to be split between Leading and Junior Counsel.

The Appellant told the Committee that Leading Counsel proposes to take all these hours for his trial preparation.

From what the Committee has heard, the Committee is unable to assess whether the combined allowance of 125 hours is sufficient. However, the Committee thinks that it is unfortunate that separate times have not been agreed for Counsel. To be effective the Appellant should have some trial preparation time. On the basis that Leading Counsel will carry out all the cross-examination and all the preparation for that cross-examination, the Committee considers that the Appellant should be allowed one third of the time authorised for Leading Counsel.

The Appeal is allowed to this extent.

Appeal by Counsel – 7 May 2008

LSC decision upheld in part

- **Reading Case Papers**

The Appellants requested 2.5 minutes per page to read the papers in the case. The Contract Manager had agreed to 2 minutes per page for the served witness statements and interview transcripts and a total of 1 minute per page for the served exhibits.

The allegations in this case are both complex and serious; the case concerns and alleged MTIC fraud involving a family group of companies. The material already served in this case is extensive, notwithstanding that the trial date is at least 12 months from now. There are 335 pages of witness statements, 382 pages of interview transcripts, 391 pages of prosecution schedules and 56,841 pages of exhibits. The total allowance for counsel to consider this material is 972 hours and for the solicitors, 1463 hours to read and schedule this material.

On the 2nd April 2008, the Contract Manager wrote to counsel and said amongst other things:

"I define reading time as time to read and understand served case papers, but not necessarily to follow up and interpret lines of enquiry/investigation".

He goes on to indicate that the allowed time would not include case conferences, drafting legal arguments, preparation during the trial and consideration of unused/3rd party material.

The Committee considered that such as statement was artificial in a large complex case such as this and consider that those matters not included are obviously separate tasks from the initial preparation stage. The Committee considered that the five steps envisaged by counsel in his email of 23rd April 2008 would be required to adequately prepare this kind of case properly; namely:

i. Going to the schedules and selecting a transaction that used evidence relates to;
ii. Finding each document that makes up that transaction;
iii. Moving from screen to screen noting the essential terms of the transaction;
iv. Having a group of notes for transactions that can be assessed against other transactions, facts and overall transactions;
v. Having a summary opinion based on the evidence as a whole to litigate and advise accordingly.

The Committee had to opportunity of seeing the detailed analysis of the time spent by counsel and the speed at which he was able to perform these tasks. As a result, there must be within counsel's possession and the solicitors for that matter, detailed notes, schedules or 'product' that needs to be seen by the Contract Manager in the first instance to enable him to form a proper view as to the sufficiency of the time allowed. The Committee must also be in the same position should the Contract Manager still maintain that the time is sufficient. The Committee considered that counsel's work thus far may indicate that the time allowed is sufficient.

The Committee considered that the Contract Managers desire for individual tasks to be identified in a stage plan is a sensible one. In that respect, counsel may find that, after the initial preparation stage, he has sufficient time to conduct this case properly.

If no agreement can be reached, the appellants were invited to return to the Committee with the evidence shown to the Contract Manager, so that they may properly assess whether the time allowed is sufficient.

Appeal by solicitor and counsel – 14 May 2008
Hearing adjourned

- **Reading Case Papers**

This case is a retrial. Counsel has been newly instructed to represent the client in his retrial. The case has been moved, on counsel's application from May 2008 to October 2008, to allow him adequate time to prepare.

The appellant requests and allocation of 5 minutes per page for the statements and 3 minutes per page for the exhibits and other items. The Contract Manager, in his response to the appeal, sets out the current agreed allowance, which amounts in essence to 2 minutes per page for statements and 1 minute per page for exhibits. He has further agreed 2 minutes per page for many items, including the defendants comment, interviews and schedules, with 3 minutes per page for the prosecution opening and the defence comments.

In appearing before the Committee, the appellant conceded that the requested allocation was excessive and produced and email from his junior which indicates that the appellants predecessor was allowed 'just over 100 hours preparation'; it does not give a breakdown of that time. The Complex Crime Unit have obtained the file for the 1st stage of the case, which shows and agreed time allowance of 2 minutes per page for statements and 1 minute per page for exhibits.

The Committee felt that the best way of doing justice to the case would be to look at the individual tasks and determine whether the time allowed was insufficient in all the circumstances of the case. This course was agreed by the appellant.

The Committee considered that there must be a reasonable allowance given to counsel, who has placed himself in the same position as the original trial counsel. Similarly, the Committee also recognised that, in this particular case, the original junior and solicitor remain, and that they should be able to save the appellant from doing unnecessary work.

The Committee considered that the following increases in time allowed to be reasonable in all the circumstances of the case:

- Item 17 Trial Transcript – 4 minutes per page
- Item 18 Prosecution Case Statement – 3 minutes per page

The Committee considered that the other allowances are reasonable and allow the appellant a significant number of hours to prepare the case properly. If the time allowed proves to be insufficient, no doubt the Contract Manager will consider more time for tasks not completed.

Appeal by solicitor and counsel – 14 May 2008
LSC decision upheld in part

- **Preparation & Distant Travel**

This appeal relates to various items requested by the appellant and subsequently refused by the LSC in relation to the stage 1 task list. The items in dispute are as follows:

Item 14 – Time to read 16 355 pages of the crown's sample '*X material*'. The LSC maintains that 1.5 mpp for the solicitors and 1 mpp for counsel is a reasonable amount of time to undertake this task.

Item 15 – Preparation of interim analysis of findings. The contract manager submitted that a significant amount of time had already been agreed for the analysis of these documents.

Item 16 – The appellants requested approval to visit the police station in order to check for further specific documents. The LSC had no objection in principle but required further information as to the relevance of the material that was being requested. Further time was also requested in order for the solicitors to photocopy the material relevant to the case.

Item 18 – The consideration of remaining *X* files which consisted of approximately 150 000 pages of material. The appellants initially requested 2 mpp for the solicitors and 1 mpp for counsel to consider these documents. The LSC maintained that a sample-based approach be adopted to this material and offered 400 hours for the analysis of a significant sample of this material.

Item 19 – The appellant requested additional time to revisit the material to compare, contrast and cross-reference certain material at a rate of 6 minutes per debt. The LSC maintained once more that this demonstrated an untargeted approach.

Items 24-28 & 38 – These items relate to the consideration of the third party material provided by the clients. The appellants requested 2 mpp each for the instructing solicitors and 3 mpp for counsel. The LSC posed unanswered questions as to the relevance and nature of this material and also maintained the opinion that the time requests were excessive and unreasonable.

Item 30 – This item relates to the appellants wish to instruct a forensic accountant to produce a report based upon the documentation served by the crown. The contract manager requested that 3 finite quotes be obtained so that an informed decision can be made with regard to this disbursement.

Items 39 & 40 – The instructing solicitors initially intended to seek to instruct a debt recovery expert in order to provide a contrast to the claims made by the crown that *X* were unfair, dishonest and extortionate on price.

Items 63 & 63a – These tasks relate to time requested for counsel to consider the spreadsheet produced by solicitors in relation to items 14 and 18. The appellants stated that they would require at least 2 mpp for this material. The contract manager had yet to form a response to these items as no agreement had yet been made with regard to items 14 and 18. Details relating to these items can be found contained within the appeal addendum submitted to the LSC 13th May 2008.

Travel – Counsel previously instructed on this case wished to appeal against the contract manager's decision to restrict their travel in accordance with the local bar rule. This amounts to a total of 1 hour travel and a disbursement of £11.25 each way or a total of £72.50.

The solicitors and replacement counsel also initially indicated a wish to appeal against this decision.

The appeal was part allowed. The decisions were as follows:

<u>Item 14</u> –
No decision sought from the committee for this item.

<u>Item 15</u> –
No decision sought from the committee for this item.

<u>Item 16</u> –
No decision sought from the committee for this item. The further 5 hours requested for this item were agreed in the appeals hearing by the contract manager.

<u>Items 18, 63 & 63a</u> –
The committee was asked to consider the appropriate time and fee earner for the *X* files to be reviewed. These files contained approximately 150 000 pages of documentation which the crown has served as 'used material'.

The committee was satisfied that as the material was served in this way, the appellant was duty bound to review it on behalf of their clients.

The committee partially allows the appeal on the basis that the review is conducted by C Grade fee earners but allows 1 mpp so that the material can be considered and scheduled in the way demonstrated in the hearing, into the spreadsheet.

The committee allows 1 mpp because the appellant has already demonstrated the ability to undertake a sample task (item 14) at a rate of 1.25 mpp. It is thought that the solicitors will become quicker with experience for the task relating to the remaining *X* material.

Following the preparation of the spreadsheet, the committee has decided that each counsel should be allowed to review the spreadsheet at a rate of 3 mpp.

Item Numbers 24-28 & 38 –
The committee was asked to consider the time needed by the appellants to review the third party material which has been provided to them by their client.

The committee refuses the appeal, in which the appellant had requested that a B Grade fee earner and each instructed counsel be given 2 mpp and agreed that the papers to be reviewed fell into the same category as unused material. The committee therefore agreed that 30 spp by a C Grade fee earner would be reasonable to consider this material.

The committee indicates that the process above should sift relevant material that will then be reviewed by counsel in the same way they would review unused material, assuming relevance. This can be negotiated when the extent of the material is known.

Item 30 –
During the hearing, an agreement was reached between the appellant and the LSC on how the process of deciding which quotes for the instruction of an expert accountant should be obtained.

Items 39 & 40 – No decision sought for this item.

Travel -
The committee have been asked to consider various aspects, the first of which was whether, on the papers, former counsel should be paid travel expenses to Preston Crown Court. They no longer represent one of the defendants and this request is based upon the travel to the pre-trial hearings attended at Preston Crown Court.

The committee allowed the appeal on the basis that one of the former counsel had previously represented the defendant in proceedings at York Crown Court which had a strong nexus to the current matter. Whilst the other counsel was not involved in that matter, travel was again allowed by the committee because he was located in the same set of chambers as the first counsel and there was therefore a saving to the public purse in their ability to work closely together on the matter during the preparation stage.

No decision was sought in relation to either the solicitors or replacement counsel. All parties verbally agreed with the imposition of the travel restrictions by the contract manager.

Appeal by solicitors and counsel – 16 May 2008
LSC decision upheld in part

- **Preparation of tasks according to stage plan**

This appeal concerns the LSC's refusal to agree the total hours requested under the following items in stage plan 8.

Item 11c – Identifying key facts and core issues in transcripts from served unused and issues analysis in CaseMap. 50,474 pages requested at 3.5 minutes / page = 2944 hours.

Item 11d – Review of diaries, hand written documents, identifying key facts and issues. 8,373 pages at 2 minutes / page = 279 hours.

Item 11e – Fact and issue identification and detailed comparison of draft witness statements (served unused) and final witness statements (used). Entry of information into CaseMap. 6,239 pages requested at 5.5 minutes / page = 572 hours.

This appeal arose out a dispute between the contract manager and the appellant concerning the time to be allowed for various tasks referred to as Item 11c, 11d and 11e. Due to the fact that the prosecution case may be dismissed at a forthcoming hearing listed for the week beginning 7th July 2008, it was unnecessary for the committee to reach a decision on the said tasks. The committee took the view on the facts of this particular case that it would be unreasonable to carry out the said tasks before a decision on the dismissal had been resolved.

It was agreed that the committee would sit again to re-visit the appeal. Both sides should prepare detailed submissions and attach any supporting examples of the relevant material. The submissions and attachments should be provided to the committee in good time for them to be considered prior to the hearing date.

Appeal by solicitor – 20 May 2008
Hearing adjourned

- **Listening to tapes – audio probe**

The appeal relates to the decision by the LSC to allow 1.5 minutes per minute of tape for the served audio probe material.

The appellants requested ''2 minutes per minute of listenable time.''

This appeal arose out a dispute between the contract manager and the appellant concerning the time to be allowed for listening to audio probe material. Furthermore the dispute extends to whether that time should reflect the actual length of the audio material or just the time during which there was actual conversation. The appellant indicated during the hearing that approximately 25% of the audio was silent.

Having heard full argument we have concluded that the LSC offer of 2 minutes per transcript page (accepted by the appellant) plus 1.5 minute per minute of non-silent audio is reasonable. Hence in this case that amounts to the transcript reading time at 2 minutes per page plus 75% of the 252 hours of audio time at 1.5 minutes per minute (283.5 hours for the audio).

Appeal refused.

Appeal by solicitor – 20 May 2008

LSC decision upheld

- **Reading Case Papers**

This appeal is in relation to draft tasks 10, 11 and 14 (stage end 4 June 2008) that the appellant's contract manager was wrong not to approve 3 minutes per page for the perusal of exhibits, 2 minutes per page for studying photographs and 2 minutes for

reading unused material and instead would only agree 30 second per page, 15 seconds per photo and 1 minute per page respectively.

Task 10 – The appellant confirmed that he originally requested 3 minutes per page for all the exhibits but has since agreed and accepted 2 minutes for transcripts of interviews and some other detailed documents including observation logs but has been offered 30 seconds per page for the remaining exhibits which he challenged. He agreed to go through the remaining documents at 30 seconds per page on the understanding that he can revert to his contract manager to request more time to consider more relevant and detailed exhibits.

The contract manager agreed a sifting process at 30 seconds per page for the remaining exhibits with the door left open for future discussions to agree more time once the relevant and detailed exhibits had been identified by the appellant.

Task 11 – The appellant appealed what he considered a point of principle that the LSC 'routinely agree' perusal of photos at 15 seconds per page. The appellant claimed he had no idea whether the solicitors were also viewing the photographs. He also pointed out that it was he who 'carried the can'. The appellant accepted that the solicitors would have to examine the photographs with the client, and also his junior, but that he should be given sufficient time to view them independently. The appellant accepted the principle that he could isolate relevant photographs by sifting and request further time to consider them as a separate task.

The contract manager confirmed that the 15 seconds per page would allow for sifting and that in principle further time could be requested where it was shown a more focussed examination of relevant photographs was necessary. The contract manager was of the view that the appellant's client had a peripheral role in the conspiracy where the principle evidence against him was cell site analysis.

Task 14 – The appellant maintained that the unused material was to be treated no differently from the served material as it was deemed to undermine the prosecution case. The appellant was under a duty to view the unused material.

The respondent confirmed 1 minute per page had been allowed for each of the solicitor and junior in the case as well as the appellant. It was also apparent that the junior was likely to be replaced.

Committee Decisions and Reasons:

References to the graduated fee scheme were unhelpful. The contract signed by the appellant on 8th April 2008 in which he accepted the contract specification makes clear that all payments for contract work must be claimed in accordance with the case contract and no claim can be made for work under any other scheme. The guiding principle is therefore one of reasonableness as set out in paragraph 2 of the individual case contract.

Task 10 – Both parties agreed that a reasonable approach would be for there to be an initial sift at 30 seconds per page of the disputed exhibits with any exhibits requiring more time to be identified by the appellant. Following this and subject to negotiation and agreement further time could be allowed.

Task 11 – The committee took the view that what the appellant considered to be a point of principle namely that the LSC routinely agree 15 seconds per page does not preclude the appellant from requesting more time in circumstances where relevant photographs were identified in an initial sifting process. This could be also carried out by his instructing solicitor and or his junior. In the circumstances of this case 15 seconds per photo was considered reasonable particularly as three sets of lawyers (possibly four if the junior is replaced) would be performing a similar task.

Task 14 – The committee unanimously agreed that the sifting process agreed at task 10 should also be applied to task 14. The appellant's instructing solicitor would be able to sift through and identify relevant material which would allow the appellant to focus on relevant documentation rather than documents which were immaterial to his client's case.

The committee unanimously agreed that appeal be refused in relation to each task.

Appeal by Counsel – 28 May 2008

LSC decision upheld

- **Fee-earner Status**

The appeal was brought on the point that the appellant's contract manager was wrong not to approve the appellant as a grade A fee earner on a fraud VHCC case.

The appellant maintained that the case put forward in support of the appellant's status involved 'serious financial impropriety' and a 'significant element of money laundering'. The appellant accepted that neither his client nor other defendants in the case were charged with money laundering. The appellant confirmed that the money laundering element of the case did not exceed £11,000. No accountant was involved in the case. The appellant also accepted that do date he had not provided any internal evidence of time recording but that he had supplied a copy of his taxed bill to the LSC.

The contract manager maintained that the case was primarily a terrorism case and did not involve serious financial impropriety or a significant element of money laundering. There was no international dimension as would normally be expected in serious fraud cases nor the usual components of such frauds such as hawala banking.

Although clearly a serious case, it was not accepted that the case involved serious financial impropriety or a significant element of money laundering because on the appellant's own admission the heart of the case involved identity fraud. The money laundering aspect, again on the appellant's own admission, involved nor more than £11,000. The case was principally one of terrorism with a minor element of money laundering. No accountant or other financial expert was required and the international dimension was deemed insignificant for the case to qualify.

Even had the case qualified, insufficient evidence of internal billing had been provided by the appellant to the respondent.

The committee unanimously agreed that the appeal failed.

Appeal by Solicitor – 28 May 2008

LSC decision upheld

- **Considering Photographs**

This appeal relates to the contract managers decision not to allow the appellant 2 minutes per page for the perusal of photographs in the case and that 15 seconds per page is reasonable for the perusal of photographs.

The appellant contended that as 2 minutes per page was allowed for exhibits in this case, photographs are exhibits and should therefore also automatically qualify for 2 minutes per page.

In signing the contract the appellant agreed that the purpose of the contract was to ensure that the cost of services is effectively controlled and provided at a price that secures the best possible value for money. The committee therefore agreed with the principle that the rate agreed for exhibits can vary during the course of a case from time to time depending on the nature of the material served.

The committee noted that 600 hours of client attendances had been agreed allowing the relevant photographs to be identified along with the appellant's client in a sift without embarking on a long scheduling exercise of possibly irrelevant material. The client had already been shown these photographs in interview.

In the circumstances the committee was of the view that 15 seconds per page was reasonable for the perusal of the 10,059 photographs shown to the client in interview.

The appeal failed.

Appeal by Solicitor – 28 May 2008

LSC decision upheld

- **Reading of exhibits**

This appeal relates to the contract managers decision to refuse 2 minutes per page for exhibits associated with the defendant's confiscation statement and to agree only 1 minute per page making a total of 75 hours rather than the 145 hours requested.

The appellant in his written grounds of appeal confirmed that the 2 minutes per page he was requesting included noting and preparing for the hearing generally, cross referencing to the core files and the section 16 statement and preparation for the cross examination of the prosecution financial expert. He also confirmed that there was a 10-hour overlap between work included in the task subject of the appeal and task 2.4 on page 3 of his task list.

He confirmed that he was not sure at this stage what level of involvement his leader would play in the confiscation hearing although he accepted that his leader had been allowed and appeared to have accepted 1 minute per page for the confiscation exhibits. However the appellant is currently taking a lead role in the preparation for the confiscation hearing where both the benefit and realisable assets were in dispute.

The appellant confirmed his instructing solicitor had been allowed and agreed 1 minute per page and had produced a document which illustrates the amount the appellant now needs to complete in time for the hearing.

The respondent contract manager agreed that a way forward could be found following the submission of a more considered task list by the appellant and further negotiation between them. She agreed that some of the preparation time requested included work which could have been allowed under a separate basket of hours for trial preparation.

In view of the parties agreement that the best way forward would be for further discussion to take place based on the submission of a more considered task list by counsel it was unanimously agreed by the committee to adjourn the hearing for the parties to seek agreement.

Appeal by counsel – 28 May 2008
Hearing adjourned

- **Category, Reading and Scheduling of Exhibits, Photocopying**

1. The LSC categorised this case as a category 3 fraud. The appellants provided submissions to categorise the case as a category 2 fraud. These submissions were not been accepted by the LSC.

The LSC accepted that this case meets one criteria from Block A, namely 'the defendants case requires legal, accountancy and investigative skills to be brought together'. The appellants submitted that this case meets three further criteria from block A namely:

'The defendants case is likely to give rise to national publicity and widespread public concern'
'The defendants case requires highly specialised knowledge'
'The defendants case involves a significant international dimension'

In order for the case to be categorised as a category 2 fraud the appellants need to demonstrate that the case meets one of the above criterion from Block A.

2. The LSC agreed for the solicitors a rate of 30 seconds per page to read the 56,892 pages of exhibits, and a further 30 seconds per page for scheduling. This gives a total of 948.2 hours. For Counsel to read the 56,892 pages of exhibit the LSC also agreed 30 seconds per page. This gives a total for each Counsel of 474.1 hours.

The appellant requested 2.5 minutes per page to read and schedule the exhibits, giving a total of 2370.5 hours. Junior counsel on this case requested 2 minutes per page to read the exhibits, giving a total of 1896.4 hours. There has been no request from the QC on the case.

3. The appellants received both electronic and paper copies of the evidence. The LSC authorised the copying of the discs that contain the served evidence for both counsel. The appellants wished to provide both counsel with paper copies of the 57,609 pages of served evidence at a potential cost of £4,608.72 to the LSC.

1. The Appellants requested, in summary, the following:

i. Category 2 rather than the current Category 3.

ii. An allowance of 2.5 minutes per page for the Solicitors to read and schedule the Exhibits and 2 minutes per page for Counsel to deal with the Exhibits, the LSC having allowed 30 seconds and 30 seconds for the Solicitor and 30 seconds for Counsel.

iii. To copy 2 sets of the papers for Counsel.

2. The allegations in this case are both complex and serious; the case concerns an alleged MTIC fraud, a family group of companies. The material already served in this case is extensive, notwithstanding that the trial date is at least 12 months from now. There are 335 pages of witness statements, 382 pages of interview transcripts, 391 pages of prosecution schedules and 56,841 pages of exhibits.

3. Category 2 or 3?

The case has thus far been categorised as category 3. The appellants submit that there are two criteria met from Block A which would make this case a category 2. The LSC conceded that one of the criteria is met, namely "the defendant's case requires legal, accountancy and investigative skills to be brought together", they do not concede any of the remaining three.

The appellants accepted the weakness of their argument that "the defendant's case is likely to give rise to national publicity and widespread public concern", in that there is no

evidence before us of any publicity in this defendant's case and it must be this case that is likely to attract the publicity and not MTIC frauds in general. This criterion is not established.

The appellants submit that their case requires "highly specialised knowledge". The solicitor submitted that there are legal, accountancy and investigative aspects of this case including the fact that there is a large body of freight forwarding evidence that will need to be understood, that mean highly specialised knowledge is required and the fact that he understands this case to be what is known as a "Maltese Cross" Fraud. Junior counsel pointed to various aspects of disclosure and the fact that they will have to deal with and understand the forensic accounting. It was the committee's view that there was nothing that they were told or have seen in the papers that would lead them to find that this criterion is established.

The appellants submitted that "the defendant's case involved a significant international dimension". The committee was shown various aspects of the papers that indicate Foreign Evidence will be served at some point during the currency of the case. The appellants pointed to the fact that there are two export deals carried out by the defendant's company. However, as it currently stands, the committee could not be satisfied that this defendant's case involves a "significant international dimension". On service of the evidence, clearly that position may change and the contract manager may have to change his view. This criterion is not established on the evidence currently before this committee.

As a result of all the above, the committee was not satisfied that the necessary criteria are established in this defendant's case to change the category from 3 to 2.

4. Exhibit Time Allowance

The appellants submitted that they were given insufficient time to review the material served in the case. Having reviewed a sample of the evidence and given the committee's significant experience of this sort of case, the committee was satisfied that insufficient allowance was given to the legal team to read and understand the material served. The committee accepted the contract manager's argument on behalf of the LSC that there should be a "swings and roundabout" approach, but considered that the proper allowance in this case should be as follows:

Solicitor- 1 minute to read and 30 seconds a page to schedule.
Counsel- 1 minute to read and annotate.

5. Copying

The committee found this problem to be a difficult one for those who conduct cases of this nature. It is unquestionably easier to work with the paper versions but they also recognised the reasoning behind the LSC's unwillingness to allow firms to blanket copy material that is served electronically for cost and environmental reasons. However, the committee was satisfied that the compromise offered by the appellants in this case is one that would do justice to this case. The appellant solicitors should prepare a core bundle of material that is relevant to the case of their client and copy those in paper form for both counsel and this should be an allowable disbursement under the contract.

Appeal by Solicitor and Counsel– 4th June 2008

LSC decision upheld in part

- **Reading of Exhibits**

Having read appeal case papers and heard oral representations from the Appellant (and the Contract Manager the committee first decided to adjourn the appeal for 21 days.

The Committee ordered that within 14 days of receiving this decision the LSC provide the "product" (referred to in the appeal) of work already undertaken by Junior Counsel. For clarity sake this should include advices on evidence, chronologies, evidential schedules, timelines.

The Committee had great sympathy with the Appellant; however, the Committee have to have regard to the work already undertaken (and paid for by the LSC) of Junior Counsel. Once the "product" has been supplied to the Committee the committee will reconvene by e-mail to make a final decision.

The Appeals Committee thanked the instructing solicitors for supplying the product of Junior Counsel's work (chronologies 1995-2003) requested in the appeals hearing. There was no Advice on Evidence. After the committee had considered the chronologies it was decided.

281 hours requested by leading counsel to read the exhibits is reasonable.

281 hours works out at 1 minute per page which is reasonable considering:

(a) there are many bank statements, motor vehicle transfer histories, trading and profit loss accounts, purchase and sales invoices, mortgage and vehicle finance payment. This evident from the chronologies prepared by Junior Counsel;
(b) there is a cut-throat element in this case.

Appeal allowed.

Appeal by counsel – 25th June 2008
LSC decision overturned

- **Preparation – Various Tasks**

Task 6:
Appeal allowed – a total of 488 hours was allowed. This is an additional 52 hours to the 436 hours so far allowed.
The Committee decided that 488 hours should be allowed, without any reference to the minutes per pages formulae for attendances upon the client referred to by the Appellants. The nature and complexity of the case warrants 488 hours, particularly as the case is approaching the trial phrase when attendances upon lay client increase and become concentrated.

Task 115:
Appeal allowed in part – a total of 50 hours granted (86.3 hours requested).
The LSC accepted that the Appeals Committee have discretion to decide upon "out-of-time" task appeals. This was a point the Appeals Committee clarified with the LSC. The committee adjudicated on this point as a matter of urgency because of the immediacy of the forthcoming trial (September 2008).
The LSC accepted that this task could have been added to a future Stage Plan. If the Appellant add this as a task the Committee would grant 50 hours for the task.

Task 116:
The committee repeats the same jurisdictional point as in Task 115.
Appeal allowed in part – a total of 40 hours granted.
The Committee decided that 1 minute per entry (of the 2400 entries to be considered) was reasonable.

Task 136:
Appeal dismissed (50 hours requested).

Tasks 137-139:
The LSC and Queen's Counsel (instructed by the Appellants) agreed the hours as follows: 24 hours for Grade C solicitor and 4 Hours for the QC.

Task 149:
Appeal dismissed (200 hours requested, LSC granted 40 hours).

Items 53 and 55:
No longer part of appeal as QC agreement with LSC.

Appeal by solicitor – 25th June 2008
LSC decision upheld in part

- **Preparation for Confiscation**

The appeal was allowed in part.

166 hours were granted for the Appellant Solicitors (as against 310 hours requested by the Appellant Solicitors).

The Committee considered that 166 hours should be allowed to the Appellant Solicitors to prepare for the Confiscation proceedings. This basket of 166 hours should be used to peruse and analyse the evidence, analyse and schedule the phone records and covert tape transcripts. The division of hours should reflect a split of 3:1 supervision by Grade A of the Grade C (who should undertake the bulk of the work, as suggested by the Appellants).

100 hours were granted for Counsel (as against 120 hours requested by Counsel).

The Committee have based their decision on the fact that the Appellant Solicitor and Counsel found themselves in an unusual and difficult situation. The basis of the guilty plea is not accepted by the Defendant, Sentencing Judge or the Prosecution. The new defence legal team have to prepare the case with a fundamental challenge to the basis of guilty plea (entered by the previous defence legal team, causing the defendant to "sack" them) which has direct relevance to the defendants criminality, which impacts on the "benefit" figure, alleged by the Prosecution, in the confiscation proceedings. The onus of disproving the benefit figure is upon the defendant. To allow a proper challenge to the confiscation proceedings the new defence team have to consider all of the Prosecution evidence. To establish the extent of the Defendant's criminality at the confiscation stage, all of which should allow the Appellants to apply for more time if unforeseen difficulties do arise.

The previous defence team undertook no work on the confiscation part of the proceedings. This is understandable as the defendant indicated a guilty plea at the pre-PCMH stage.
The Appellant solicitors had started to prepare the confiscation defence by filtering and deciding which are the relevant Prosecution papers for confiscation purposes. They helpfully, at the Appeal hearing, summarised the pages that need to be considered as follows:

1200 pages of witness statements out of 1421 pages;
700 pages of co-defendant interviews out of 1628 pages;
1200 pages of observation evidence (full);
978 pages of excel spreadsheet billing (full);
728 pages of covert audio transcript (full)

93 pages of Prosecution Case Summary (full).

The travel element of the appeal is dismissed. There is no reason to depart from the Distant Solicitor policy and there is a local Bar.

Appeal by solicitor and counsel – 25th June 2008
LSC decision upheld in part

- **Distant Travel**

This appeal related to the Contract Manager's decision to restrict the travel of the appellants to a total of 1 hour and a disbursement of £11.25 each way, in accordance to the local bar rule.

The Committee felt that whilst there may have been other issues to decide, having heard that the previous team of advocates, who are also based in the south of England, had had their travel time and expenses agreed, and there being no change in circumstances other than the change of advocates team, it was consistent to allow this appeal.

Appeal by counsel – 23rd July 2008
LSC decision overturned

- **Reading of Exhibits, Backdating of Category**

This appeal related to the following 2 decisions made by the LSC:

1. To authorise an allowance of 1 minute per page in order to read and schedule in excess of 56 000 served exhibits. The appellant requested an allowance of 3 minutes per page.
2. To backdate an uplift in case category to the date upon which the served material exceeded 10 000 pages. The appellant requested that the category be backdated to the beginning of the case, or date that the Representation Order was granted by the court.

The Committee felt: -

1. Time allowed for exhibits:
   In the absence of any attempt to provide an evaluation of the exhibits, their contents or relevance, or to provide any structure to the task the LSC's approach to this task was the correct one.
2. Backdating of category uplift:
   In this particular case the correct date for reclassification of the case was March 2008, the date upon which papers were served.

Appeal by solicitors – 23rd July 2008
LSC decision upheld

- **Distant Travel**

This appeal relates to the LSC's decision to restrict the above named counsel's travel to 1 hour and a disbursement of £11.25 each way, in accordance to the local bar rule.

1. The majority were not satisfied that at the time the Appellant received the brief and thereafter until the hearing at Kingston Crown Court in May 2007, it was inevitable that the trial of the matter would be conducted in London.

Whilst it may not have been held in Liverpool, given that there were 182 witnesses out of a total of 202 witnesses from in and around Liverpool and that 33 out of the 35 seizures took place in and around Liverpool, it was much more probable that the trial would take place at one of the other Court centres in the north of England or the Midland Circuit, much closer to Liverpool.

2. The majority were concerned that the LSC failed to deal with the application for prior authority in a timely fashion. The application was dated exactly one year prior to the Committee hearing, i.e. on 23 July 2007.

   Reminders and/or representations were sent by Counsel, through this clerk on 30 November 2007 and 22 February 2008 and by the Instructing Solicitors on 30 January 2008 and 22 February 2008.
   The decision of the LSC was not communicated to the Instructing Solicitors until 21 May 2008. The delay in giving the decision was demonstrably unfair to the appellant, who had by that time worked the case for a further ten months.

3. The majority felt that there was a significant long history and unusual background to this case which rendered it "exceptional".

Minority judgement (counsel): -

1. Whilst it was highly lamentable that the LSC had not dealt with this matter as a matter of urgency, Counsel was fully aware, when he signed the contract, that the trial had every likelihood of taking place outside Liverpool. Indeed Counsel acknowledged as much during the hearing and therefore must have appreciated the risks he had exposed himself to.
2. Therefore, in the circumstances, I am of the view the appeal must fail.
3. In coming to this decision I have taken into account all the submissions made by both parties, the guidance from Archbold 2007 and 2008 and the communiqué from the Head of the LSC's Complex Crime Unit.

The appeal allowed by majority two to one.

Appeal by counsel – 23rd July 2008
LSC decision overturned

- **Category**

The Contract Manager has awarded category 3 status based on the following criteria not being met:

Block A:

'The defendants case is likely to give rise to national publicity and widespread public concern'.
'The defendant's case requires highly specialised knowledge'.
'The defendant's case involves a significant international dimension'.

Block B:

'The volume of prosecution documentation (excluding unused material) exceeds 10,000 pages'.
'The total costs of representing the defendant(s) is likely to exceed £250,000'.
'The length of the trial is estimated over 20 weeks'.

In order for the case to be categorised as a category 2 fraud, the appellants need to demonstrate that the case meets one more of the above criterion from both Black A and Block B.

This is an appeal against categorisation in a case in which the Defendant is alleged to have been a party to conspiracies relating to the production and sale of very large numbers of counterfeit DVDs. The Appellant contends that the criteria for Category 2 are satisfied, and that accordingly the case should be uplifted from its present Category 3.

Block A, criterion 1: The case has previously attracted some national publicity, and some publicity in Hollywood USA. The committee accepted that it is likely to give rise to some further national publicity when the trial begins. However, although some features of the case are newsworthy and in that sense of interest to some of the public, they did not accept the submission that it is likely to give rise to widespread public concern. Without attempting a comprehensive definition of that phrase, the committee took the view that the circumstances of this case are not likely to be viewed with widespread public anxiety or disquiet. This criterion is not met.

Block A, criterion 2: In the committee's view, there is nothing about this case which calls for specialised knowledge beyond that which is expected of specialist fraud solicitors, and which is envisaged by criterion 4. This criterion is not met.

Block A, criterion 3: Having regard to the combination of factors on which the Appellant relies, and to the emphasis which the prosecution are likely to place on the allegations that this Defendant travelled abroad with other Defendants at significant times, and was the banker in respect of large sums of money which were sent to another country, the committee accepted that this criterion is met.

Block A, criterion 4: The Contract Manager accepted that this criterion is met.

Block B, criterion 1b: The Contract Manager accepted that this criterion is met.

Block B, criterion 2: The Appellant accepted that this criterion is not met.

Block B, criterion 3b: The Appellant provided estimates of the likely costs, recognising that these may need to be qualified in various respects. The committee took the view that the correct approach, in deciding whether this criterion is satisfied, is to exclude VAT, and to estimate the fees at Category 3 rates (since otherwise a case could be uplifted to category 2 on the basis of a pre-supposition that it had already attained that status, and must be paid accordingly). Applying that approach, the committee took the view that it is likely that the total cost of representing this Defendant will exceed £250,000, and that accordingly this criterion is met. They took the view that that is so, albeit by a narrow margin, even if excluding the costs of obtaining the accountancy evidence; accordingly, the committee did not find it necessary to determine the issue of principle as to whether such a disbursement should be taken into account when considering this criterion. The committee observed that if and when that point does call for decision in another case, the appeal committee will need very detailed submissions on both sides as to the structure and practical operation of the VHCC regulations and arrangements.

Block B, criterion 4: the Appellant accepted that this criterion is not met.

It follows from the above that in the committee's judgment 2 of the criteria from block A, and 2 of the 'b' criteria from Block B, are met. The Appellant's submissions were made on the basis that, in addition to meeting 2 criteria from block B, it was necessary to satisfy 3 of the criteria from block A: If that were the correct approach, the appeal would fail. The committee was advised, however, that it is sufficient if 2 of the criteria from block A are met. The appeal therefore succeeds, and the case should be uplifted to Category 2.

Appeal allowed.

Appeal by solicitors – 6th August 2008
LSC decision overturned

- **Preparation – Summaries of Court Notes**

This appeal relates to the Contract Manager's original decision to refuse to agree Task 5 on the Stage 5 Task List. For this task, the appellant sought and requested 2 hours a day for "preparing and dictating summary of daily court notes for counsel's perusal including full summaries of witness evidence".

The Committee was asked to rule on whether the Appellants should be entitled to 2 hours a day Grade B time in order for "preparing and dictating summary of daily court notes for counsel's perusal".

The Committee refuses the appeal on the basis that additional daily time was not felt necessary or appropriate when bearing in mind the standard of the notes taken at court and the fact time had been agreed for junior counsel to read and summarise the transcripts for leading counsel.

Appeal by solicitors – 14th August 2008
LSC decision upheld

- **Court Attendance**

This appeal relates to the Contract Manager's original decision to authorise a Grade A fee earner attending court on all important days and a Grade C fee earner on all other days.

The Appellant sought and requested to have a Grade B fee earner present throughout the duration of the trial.

The Committee allowed the appeal due to the exceptional circumstances of the case. These circumstances necessitated full preparation within 6 weeks of trial and also a period of "preparation-in trial". It was felt that a Grade B fee earner was therefore reasonable in the circumstances.

Appeal allowed.

Appeal by solicitors – 14th August 2008
LSC decision overturned

- **Distant Travel**

This appeal relates to the Contract Manager's decision to impose the Distant Solicitor Rule and authorised one hour travel time payment plus £11.25 (25 miles at 45p per mile) each way. The clients were on remand at HMP Peterborough from the point of instruction, while the appellants are based in Bradford, some 125 miles away.

The Committee felt that the Distant Solicitor Rule is clear and should and could have been considered immediately upon the solicitors accepting instructions, upon applying for legal aid, and again at the time that the contract was signed.

The committee was satisfied that there are no exceptional circumstances and that there are adequate Serious Fraud Panel Members available sufficiently closer to the prison and the trial centre than Bradford, to warrant the Distant Solicitor Rule being applied.

Appeal disallowed.

Appeal by solicitors – 3rd September 2008
LSC decision upheld

- **Preparation & Attendance at Trial**

This appeal related to the following 3 decisions made by the LSC:

1. To allow the bulk of trial attendance for a fee earner from the firm to be remunerated at Grade C rates, except where matters are being addressed that are of the utmost significance to this defendant and their case, where B grade attendance would be authorised. The Appellant sought the authorisation for a Grade B fee earner to predominantly attend trial with the Grade A attending at the start of trial and when specifically required by Counsel.

2. Deal Schedules – to authorise a rate of 30 minutes per page for the first schedule (28 pages) and 1 hour per page for the second schedule (2 pages), giving a total of 16 hrs. The Appellant originally sought 2 minutes per line (1141 lines) but subsequently sought 2 minutes 30 seconds per line for the first schedule in order to also prepare comments on the errors identified. This represents an additional 33.54 hrs on top of that authorised above. The Appellant originally sought 2 minutes per line for the second schedule (112 lines) and subsequently a further 2 hours in addition to what was agreed by the Contract Manager.

3. To allow a rate of 1 minute per page for the secondary disclosure material received from Revenue & Customs totalling 443 pages. The Appellant sought 2 minutes per page.

The appellants also submitted that as the Contract Manager's decision had not been received within 14 days of their appeal submissions, the appeal should be conceded.

Initial point

The Appellant raised the initial point as to whether or not the Commission's opposition to the appeal was time barred. The committee was referred to the Legal Services Commission's Complex Crime Unit Appeals Protocol and Procedures and in particular to "Appeal Guidance", paragraph 1.

The committee did not accept that the appeal could not be heard and did not accept that the Commission were "time barred" from opposing this appeal. The committee considered the guidance and noted that there is no sanction against the Commission for a response out of time, regrettable though that may be.

Attendance at trial

The committee allowed this appeal to the extent that Grade B rate for attendance at Court be allowed for sitting in Court.

The committee allowed Grade A for attendance at Court for the purposes of significant times and occasions e.g. 1st and 2nd day issues, conferences for trial issues e.g. whether the Defendant should give evidence. The committee did not allow for any duplication of attendance at Court. The time allowed should be for the specific conferences that actually took place.

Deals Schedule

The committee allowed 43.5 hours actually used. This was reasonable for the following reasons:

a) Lead Counsel advised solicitors to check the accuracy of the Prosecution (HMRC) Deals Schedule.

(b) 51 pages of Defence material identified errors to the Prosecution schedule and identified the correction. This was a "product" submitted to the jury as part of the jury trial bundle.

Secondary Disclosure

This Part of the appeal was not allowed. The committee considered that a minute per page was sufficient to deal with the secondary disclosure in the circumstances of this case.

Appeal by solicitors – 3rd September 2008
LSC decision upheld in part

- **Instruction of Panel Advocates**

This appeal related to the LSC's decision to allow a good will gesture, of 3.5 hours at Grade B standard rates for the consideration of email responses and attachments, together with Internet enquiries in respect of panel advocates; in accordance with internal policy. The appellants had requested 4 hours for a Grade A Fee Earner.

The committee felt that there are exceptional circumstances at this time which warrant remuneration as was conceded by the Legal Services Commission. We would allow the Appellant three hours at Grade A contract rates (i.e. not standard rates).

The selection of panel Counsel, at a time, when a substantial number of the original applicants for the Advocates' Panel are not accepting instructions on panel cases, is an exceptional one.

The selection of Counsel, especially in VHCC cases, is of considerable importance and responsibility. It carries great ramifications for the progress of the case. It is not a task suitable for a Grade B fee earner. It is one which should, and, in our view, must, be taken by the Grade A fee earner who has supervision of the case. (We would say that in the event that the Advocates' Panel is restored to full strength this task is unlikely to be so onerous to the panel solicitors or warrant a specific task).

Appeal by solicitors – 3rd September 2008
LSC decision overturned

- **Category and Preparation**

Category – This item of appeal relates to the LSC's decision to amend the category of this case from Category 2 to Category 3 following a review of the case at the beginning of stage 2. The review of the category was informed, in part, by an agreement made by the appellants in the previous appeals hearing in relation to this case heard Friday 16th May 2008. As this appeal was inextricably linked to the previous appeal, the same committee was reconvened.

Tasks 66 & 67 – These two tasks relate to the appellants request, and the LSC's subsequent refusal, for the A Grade solicitor and all 3 counsel to consider significant NDR file material exhibits at 1 minute per page. It was decided at the previous appeal that the

solicitors should consider this material at Grade C preparation rates, producing a spreadsheet for counsel to peruse.

Task 69 – This item relates to the LSC's decision to disallow time for the A Grade solicitor and counsel to consider NDR client files located during the 5 hours requested under task 68 (not subject to appeal) relating to clients who completed questionnaires sent by Lancashire police (250 clients).

At the time of the decision, no files were produced and the outcome of task 68 was pending. The LSC considered the appellants approach to be premature and untargeted at the time of the original request.

Task 70 – This task relates to the reading of material produced by the C Grade fee earner under tasks 18-22. The appellants seek for the A Grade solicitor and all 3 Counsel to peruse this material.

The decision made in the previous appeal was for the instructing solicitors to read the material at 1 minute per page and for counsel to then review the spreadsheet produced at a rate of 3 minutes per page.

Category – The committee was asked to consider whether the LSC was correct to reduce the category of this case from Category 2 to Category 3 following a decision at the outset of stage 3 that the case no longer required 'Highly Specialised Knowledge'. The committee allows the appeal by majority decision, taking into account the case as a whole, with various aspects making this a difficult case. These aspects include the debt-recovery issues, civil contracting issues and the interlinking of the 27 companies involved. The matter is not helped by the way in which it is being prosecuted.

This combination of factors, in the committee's majority opinion, led to this case requiring 'Highly Specialised Knowledge'.

Task 66 – The Committee unanimously allows this point of appeal as it is deemed necessary for the Grade A fee earner to review the sifted material from the NDR files as the Grade A fee earner will need to take instructions on the material from the defendant.

Task 67 – The Committee unanimously allows the appeal as the Grade A fee earner should review the schedules prepared by the Grade C fee earners to progress the case, taking into account it's contents.

Task 69 – Following the appellants' verbal clarification regarding the questions previously posed to them by the LSC, the subject of this appeal was decided upon in the hearing. The LSC agreed this task for all members of the defence team that the task was previously requested for, at a rate of 1 minute per page.

Task 70 – The Committee unanimously allows the appeal as per the reasons stated under task 66.

Appeal by solicitors – 11th September 2008
LSC decision overturned

- **Travel Costs to Attend Witnesses Abroad**

This appeal relates to the contract manager's original decision to refuse to remunerate the appellant for travel costs to USA, Mexico and Bahamas in order to obtain information from witnesses.

All appeals adjourned in order that the Appellants and the Contract Manager could find alternative methods of resolving areas of disagreement.

If no agreement can be reached the committee would be happy to reconvene.

Advice was offered by the committee as to possible methods of resolution.

Decision unanimous.

Appeal by solicitors – 1st October 2008
Hearing Adjourned

- **Preparation**

This appeal relates to the Contract Manager's refusal to:

1. Review material from the Czech Republic. It was disputed that the Contract Manager ever gave authorisation that these papers could be perused and agreed by both parties that no actual rate was agreed prior to the reading of the material. No payment was therefore made upon the audit of Stage 2 for this work. The appellant sought 1 minute per page to review the 148 pages of material or a total of 2.4 hours preparation.
2. It is also disputed that authorisation was sought by the appellant and granted by the Contract Manager in order to peruse the unused material. The Appellant sought remuneration at a rate of 1 minute per page for this material at a total of 16.7 hours preparation.
3. The appellant sought 5.5 hours to prepare 2 bail applications. 1 hour per bail application was previously authorised by the Contract Manager.

Appeal point 3 was abandoned and therefore not considered.

The appellant, however, did wish to pursue the other points raised. The committee reminded the appellant that VHCC's are governed by contract, signed by all parties and that any work to be undertaken must be agreed in advance. More particularly the appellant was directed to rule 14.

Appeals dismissed unanimously.

Appeal by solicitors – 1st October 2008
LSC decision upheld

- **Payment of Costs to Counsel**

This appeal relates to the Contract Manager's original decision to refuse payment to the Appellant for all fees in relation to this case. This decision was made on the basis that the Appellant was sacked by the lay client part way through trial. One of the reasons cited was that the Appellant had not been attending trial as frequently as was necessary.

The Committee has heard that the Appellant was absent for a substantial part of his client's Trial. However, the Trial Judge, the client, and the then Contract Manager knew that the Appellant would be absent for a number of days and gave their consent.

The Appellant has said that he was present when he was needed. In these circumstances, it would be unreasonable for the Legal Services Commission to refuse to pay the Appellant's fees for work agreed and completed.

Appeal by solicitors – 7th October 2008

LSC decision overturned

- **Category**

The contract manager categorised this case as a category three fraud on the basis that she did not accept the defendants case:

- Requires highly specialised knowledge
- Involves a significant international dimension
- Requires legal, accountancy and investigative skills to be brought together

The appellants have provided submissions in respect of the above three criteria and request that the case be categorised as a category two fraud.

The contract manager has not accepted those submissions.

For the avoidance of doubt the contract manager has not been provided with submissions explaining how the defendants case is likely to give rise to national publicity and widespread concern, and therefore it has not been considered as part of the contract managers decision.

The committee was satisfied that all three criteria the subject of this appeal have been met in this case. This decision has been based on all of the written submissions supplied including the submissions dated 14.10.2008.

Appeal by solicitors – 15th October 2008
LSC decision overturned

- **Preparation**

The Contract Manager had agreed an additional 1-minute per page on top of the statements, exhibits, interviews and surveillance transcripts for the completion of all ancillary work.

Based on the current page count of 2,851 statements, and 24,288 exhibits (including 780 pages of surveillance transcripts) this gives an allowance of 452.32 hours.

The appellants do not accept this and have requested an additional 1-minute per page for scheduling only, with the proviso that they can come back for more time for other tasks which they are unable to identify at this time.

The Contract Manager has agreed for the appellants to consider the served audio

- transcripts at 2 minutes per page and
- material at 1.5 minutes per minute where conversation occurs, in accordance with the Unit policy.

The appellants do not accept this and have requested 1.5 minutes per minute for all the audio material regardless of conversation.

The committee considered the appeal against the allowance of 1 minute per page to complete all ancillary work on the served evidence and took the view that this is a generous allowance that would encompass all of the work normally associated with such a case.

The second part of the appeal is adjourned with the agreement of both parties.

Appeal by solicitors – 15th October 2008
LSC decision upheld

- **Instruction of Panel Advocates**

On 12th August 2008 the Appellants requested 6 hours at grade A to complete the following tasks:

- obtain a copy of the list of signed panel advocates.
- consider the respective merits of the most suitable advocates by acquiring the relevant CV's and
- checking who would be available to prepare for and represent the defendant.

The potential trial date is April 2009 with a proposed venue of either Carlisle C.C. or Preston C.C.

Due to the potential court venue the Appellants stated that Counsel should be from the North West of England.

The LSC do not accept this and

- initially agreed 3.5 hours at B grade standard rates to select appropriate panel counsel as per CCU policy
- as the policy was amended on 12 September 2008 to an allowance of 3.5 hours at A grade preparation, this was subsequently offered to the Appellants.

The Appellants rejected the new allowance and asked for the matter to be placed before the Appeal Committee.

In the particular circumstances of this case the committee was prepared to allow a further 1-hour in addition to the 3.5 hours generally allowed. The usual allowance should generally be sufficient but we are satisfied that in this case the solicitor has acted reasonably and needs to complete the task.

Appeal by solicitors – 15th October 2008
LSC decision upheld in part

- **Photocopying**

This appeal relates to the Contract Manager's original decision to refuse remuneration of Task 129 on the solicitors task list. This task was requested in order to make 3 photocopies of 3 121 pages of transcripts served by the Prosecution on CD. This equates to 1 copy for the solicitors, 1 copy for counsel and 1 copy for the lay client.

The Committee has been asked to consider whether the Appellants, based upon the facts of this case, should be entitled to have funding from the Legal Services Commission to make 3 paper copies 3 121 pages of transcripts served on disk. One copy would be for the solicitors, one for Counsel and one for the lay client.

The Committee unanimously agreed that copies should be funded. The lay client is in custody and the provision of paper copies is the only practical route for both submission and review. The Committee also felt that copies should be provided for both solicitors and counsel.

Appeal by solicitors – 29th October 2008
LSC decision overturned

- **Pre-contract**

This appeal relates to the Contract Manager's original decisions in relation to the pre-contract audit in this particular case:

1. Reduce the hours claimed for A Grade preparation from 141 hours to 123.5 hours by: a) Transferring 3 hours A Grade preparation to C Grade preparation and b) Disallowing 14.5 hours work which has been carried out.
2. Reduce the hours claimed for B Grade preparation from 147.5 hours to 73.61 hours by disallowing 73.89 hours, which had been carried out.

This appeal also relates to a matter of 64.62 hours preparation disallowed in stage 1 by taking into consideration the agreements made in the stage 1 contract meeting in relation to the papers served and off-setting this rate against the work undertaken in the pre-contract stage.

The committee was asked to consider the following:

1. Should ancillary work be paid at 1 minute per page throughout the case, to include the pre-contract stage? In other words, should ancillary work be capped for the entire case at 1 minute per page? The Appellant argued that when he agreed stage 1, he did not agree that 1 minute per page for ancillary work covered the pre-contract work, which was extensive. The Committee were satisfied with his explanation and had been provided with the very detailed schedule that had been prepared during the pre-contract stage. The Committee therefore allows this appeal. The Committee allows 141 hours preparation for this work and 147.5 hours preparation for the work undertaken by the B Grade fee earner. There was no suggestion by the LSC that this work was not undertaken.
2. The Committee allows the appeal in relation to the pre-contract work undertaken in relation to applications for prior authority as properly chargeable work & paid under the ex post facto system.
3. Item 28 – This item was removed by agreement during the hearing.
4. Items 30 & 55 – The Committee allows the appeal in relation to these items, as per its decision in point '1.' above.
5. Item 49 – This item was removed by agreement during the hearing.
6. The Committee was asked to consider whether the Stage 1 ancillary work should be increased from the usual formula of 1 minute per page in the circumstances of this case. The Committee was provided with no relevant information to assess the reasonableness, or otherwise, of this request and therefore this is disallowed.

Appeal by solicitors – 29th October 2008
LSC decision upheld in part

- **Work done without prior authorisation**

This appeal relates to the completion of work without prior authorisation by the Contract Manager. It is not disputed that the work completed by the Appellant was reasonable but rather that the Contract Manager did not give authorisation for the completion of this work. As work was not agreed in advance no payment was made upon receipt of the Stage 1 bill.

The Appellant seeks the following payment:

Task 4 – Unused material – 65 hours
Task 14 – Advices and Submissions – 10.75 hours
Task 18 – Cross-Examination – 16 hours
Task 20 – PII – 1 hour
Task 22 – Secondary Disclosure – 43.25 hours
Task 24 – Defendant's Proof of Evidence – 7 hours

Task without a task number – Liaising with Junior Counsel, Co-Defendant's Counsel and Prosecuting Counsel – 2.25 hours

TOTAL = 151.75 hours

Having heard representations by both parties, the Committee adjourned the appeal to allow the Appellant and the Case Manager to have further discussions; this followed on from a series of e-mails that were presented to the Committee and the Case Manager on the day of the appeal.

Held: Appeal adjourned to allow the parties to resolve the outstanding issues by agreement.
Task 24 was allowed – as conceded by the Case Manager.
Task 20 disallowed – as covered by daily refresher rate.

Appeal by solicitors – 12th November 2008
LSC decision upheld in part

- **Preparation – scheduling time**

This appeal relates to the decision of the LSC to refuse 3.6 mins per page for the consideration and scheduling of 57,300 pages of exhibits served in this case. This equates to 3438 hours of B grade preparation time.

The committee awarded the appellant 3 mins per page for a grade B fee earner to prepare the schedule. The LSC accepts that the schedule was a necessity in this case. The Committee agree therefore that 3 minutes per page for a Grade B fee earner is a reasonable allowance for the preparation of this detailed
schedule. The Committee would expect that the author of the schedule, in accordance with the submissions made, will be the fee earner to take the client's instructions and to attend conferences with Counsel.

The Committee further comment that it is unusual for 3 minutes per page to be given for the reviewing of an exhibit and scheduling the same, but as the LSC had accepted that that much detail needed to be included in the schedule it was appropriate in this case to award the 3 minutes.

Appeal by solicitors – 12th November 2008
LSC decision upheld in part

- **Pre-contract – consideration of unused material**

This appeal relates to the time allowed for the consideration of the unused pre-contract material and the decision of the Contract Manager to allow only a reasonable amount of time, following review of the pre-contract audit hours carried out by the appellant firm.

The LSC have paid the appellant £218,333.55 (inclusive of VAT, exclusive of disbursements), which is for 1706 hours, (i.e. all items as claimed bar 395.6 hours of perusal and general preparation at Grade B, and 423.4 hours of perusal at Grade C), for the pre-contract work on this case.

The appellant disagrees and insists that they should be paid for 2,576.7 hours, equating to a payment total of £333,476.98, including disbursements of £18,376.72.

This is to be regarded as an isolated case due to the unusual facts and circumstances. The committee take the view that the LSC had previously authorised and/or approved the reading of this material at an agreed rate. In the absence of evidence to the contrary, the committee have no option but to allow this appeal.

Appeal by solicitors – hearing on 8th October 2008; decision on 17th November 2008
LSC decision overturned

- **Preparation – reading times**

This appeal relates to the Contract Manager's original decisions to:

1. Refuse time requested at 2 minutes per page for the B & C Grade fee earners to read the 80-page case summary. Time was allowed by the Contract Manager to read this material for the A Grade fee earner only.

2. Allow 45 seconds per page to peruse 56, 841 pages of exhibits at a total of 710.5 hours (Task 6). The Appellant requested a rate of 1 minute per page for this material, equating to a total of 947.35 hours.

3. The LSC agreed for the solicitors to read 825 pages of prosecution schedules at a rate of 2 minutes per page. This equates to 27.5 hours (Task 12). The Appellant requested 1 minute per page to check the schedules, which equates to 947.4 hours at Grade C and a further 30 hours at Grade B.

1. In relation to the appellant being paid for the case summary to be read by Grade A, Grade B and Grade C fee earners working on the case we **allow the appeal.**

2. In relation to the time allowed to read the 56,841 pages of exhibits we **refuse the appeal.** We note that no examples of the exhibits in the case were placed before us during the appeal and hence the appellant was unable to meaningfully assist with why the 45 seconds pre page offered by the CM was inadequate. Notwithstanding the lack of sample exhibits being available at the hearing, all members of the committee were well aware of the type of material under consideration by the appellant in preparing this case. We were also aware that under task 8 the CM had allowed 952 hours for a task that would involve a parallel consideration of the very exhibits for which 710 hours had been allowed by the CM under task 6 (the task under appeal)

3. In relation to task 12 which involved the consideration of the 825 pages of prosecution schedules we **refuse the appeal**. The CM has offered a page by page amount and the appellant has argued for a line by line amount. The offer of 2 minutes per page (27.5 hours) taken in isolation is manifestly inadequate to complete the task. However the task needs to be looked at in conjunction with the time allowed for tasks 6 and 8 which amount to a total of 1673.3 hours. Having had some of the schedules faxed to the Committee during the hearing of the appeal and taking into account the time allowed for tasks 6 and 8 we were able to be satisfied that task 12 was a task that could be conducted during the 27.5 hours allowed.

Appeal by solicitors – 26th November 2008
LSC decision upheld in part

- **Travel**

This appeal related to the travel costs of both solicitor and counsel to attend upon their client in Keith, Scotland to take instructions.

The CM argued that there was limited power within the VHCC Contract to allow such costs and that the circumstances of this case did not fall within the said limited power. The circumstances of this case were that the client claimed to have insufficient funds to travel to the solicitor to give instructions. The solicitor is based in Stafford.

The appellant relied upon "exceptional circumstances" but was unable to refer the Committee to anywhere in the VHCC Contact that allowed the CM to override the clear limitations set on the payment of travel disbursements. Since there was no power to allow this travel the CM was correct in not allowing the disbursement.

Appeal by solicitors – 26th November 2008
LSC decision upheld

- **Preparation – audio and video material**

This appeal relates to Item 8 on the Stage 1 Task List submitted by the Appellant. The Appellant requested 2 minutes per 1 minute of running time, at B Grade preparation rates, in order to consider 1, 145 hours 52 minutes of audio and video probe material. The Contract Manager felt that C Grade Standard preparation rates should be applied to this task, with the B Grade considering selected and particularly relevant parts of this material.

This appeal involved the consideration of audio and video material. The dispute between the CM and the appellant related to the Grade of fee earner conducting the task. There was no dispute concerning the issue of whether "silent time" could be claimed for; it clearly could not. There was also no dispute concerning the real time to listening time that was allowed; here 2:1 has been agreed.

The dispute was crystallised into what Grade of fee earner was appropriate for the case. The Committee has decided that this is not merely a checking exercise as argued by the CM. The fee earner is not merely checking a full transcript of the conversations but actually having to assess the summaries produced by the prosecution for accuracy against the words that were actually spoken. There will be some parts of the material that do have a full transcript but we are told that the vast majority of the words spoken have not been fully transcribed. In addition to checking for fairness and accuracy in the summaries some of the material has not even been summarised. Hence this is not a simple checking exercise. Nor however is it a Grade B task. It is clearly a Grade C Normal rate and not a Grade C Standard Rate task. The said Grade C will then notify a Grade B of any particular parts of the material that needs to be considered by the Grade B. This is not an invitation for duplication of the Grade C work and no doubt the areas which are said by the Grade C to warrant Grade B reconsideration will be monitored and approved by the CM.

In the circumstances the appeal is allowed to the extent set out above.

Appeal by solicitors – 26th November 2008
LSC decision upheld in part

- **Travel**

In this appeal, the appellant submits that it should be treated as a local solicitor for the purposes of distant solicitor travel rules. By way of email dated 17th November 2008, the appellant was notified that the LSC do not agree that the case should have gone to a Manchester solicitor and have therefore refused to agree travel expenses.

The Committee finds that the LSC has properly applied the VHCC Distant Solicitors Rules and the Committee has not heard of any circumstances which would justify the LSC exercising its power to award additional travel time and costs to the Appellants.

Appeal by solicitors – 10th December 2008
LSC decision upheld

- **Category**

This appeal relates to the original decision of the contract manager to categorise the case in question as a category 3 case. The appellants contest that the case should be upgraded to a category 2 case.

Only one criterion from each Block is met and therefore the Appeal fails.

Block A

Not met. The Committee has not heard anything to persuade it that the Defendant's case is likely to give rise to national publicity and widespread public concern.

Not pursed by the Appellants.

Met. The Committee accepts that the Appellants will have to make extensive enquiries in Gran Canaria to obtain evidence to assist the Defendant and that this gives the Defendant's case a significant international dimension.

Not met. The Committee is not satisfied that all 3 of these skills require to be brought together in the preparation and conduct of the Defendant's case.

Block B

Met. The value of the fraud exceeds £10 million.

It has been agreed that this criterion has not been met.

Not met. It has not been argued that the total cost of representing this Defendant will exceed £250,000.

Not met. The trial is currently listed for 3 months.

Appeal by solicitors and counsel – 10th December 2008
LSC decision upheld

- **Disbursement – refusal of forensic accountant**

This appeal relates to the Contract Manager's original decision to refuse the authorisation of a forensic accountant in the above case unless a bad character application is submitted which relates to the defendant's business dealings and not solely to his previous convictions.

This appeal was withdrawn by counsel for the appellant and the Committee were not required to make a ruling.

Appeal by solicitors and counsel – 12th December 2008
Appeal Withdrawn

- **Category**

This appeal relates to the Contract Manager's decision to classify this case as a Category 3 VHCC fraud matter on the basis that this case currently meets none of the Block A criteria, specified in the VHCC Arrangements, and only one of the criteria from Block B.

The Appellants contest that this case meets all Block A criteria and two criteria from Block B and that this case should accordingly be classified as a Category 2 VHCC fraud matter.

The appeal is adjourned. The committee found as follows:

Block A

The Defendant's case is likely to give rise to national publicity and widespread public concern.

The Committee felt that the criteria in this aspect were met. The committee accepted that whilst not presently fulfilling the criteria it is very likely that in the present global economic climate such a case would give rise to wide spread public concern given the fact that it is alleged that £229,000,000.00 was sought to be siphoned off from the British banking system by the use of a remote computer device and moved to accounts outside the jurisdiction, and further the Committee were told that had it not been for the last minute change of a computer password then the transfer of monies would have been complete.

The Defendants case requires highly specialised knowledge

The Committee were not satisfied that on the information before them presently that there was such a need for this in this case. This ground was therefore not met.

The Defendants case involves a significant international dimension.

Again the Committee were concerned that the 'letters of request' referred to in the case for the appellant had not been seen by either the LSC or the Committee. The Committee felt that on the evidence placed before them at this time, whilst there was clearly an international dimension, it was not a significant one. This ground was therefore not met.

The Defendants case requires legal, accountancy and investigative skills to be brought together.

On the basis that the initial appeal as to the use of a forensic accountant had been withdrawn and that the committee were aware that trial counsel is due to advise in writing as to the proposed remit of any required accountant's report, the committee felt that they were hindered to such a degree that they were unable to make a detailed determination, and to this end, and under the provisions of the current contract, the committee adjourned determination on this aspect of the categorisation, pending sight of the written advice of trial counsel and the consideration of the same by the LSC as to the authorisation of the use of a forensic accountant.

The committee reminded themselves that it is always open to a contract manager on behalf of the LSC to reconsider that category of a contracted case at any time during the contract if there has been a significant alteration in circumstances.

Appeal by solicitors and counsel – 12th December 2008
Appeal Adjourned

- **Reading time**

This appeal relates to the Contract Manager's decision to allow a total rate of 1.5 minutes per page in order to peruse the exhibits in this matter. The appellants sought a rate of 2 minutes per page.

The appeal was refused. The committee gave the following reasons:

1. The Appellants sought additional time for the reading of the exhibits in this matter. They had been allocated 1.5 minutes per page and argued at the appeal that they should be allowed 2 minutes per page.
2. The Committee heard that the instructed Queens Counsel had been granted 2 minutes per page at a previous appeal hearing based upon his representations that there are 5 necessary steps to undertake as part of the process.
3. The Committee is not bound by a previous decision but noted that the decision itself was based upon the specific "product" created by Queens Counsel as part of

that task, a product that would assist the appellants in the taking of the instructions from their client.

The Committee disallowed the appeal on the basis that 1.5 minutes per page was "reasonable" in the circumstances of this case.

Appeal by solicitors - 5 January 2009
LSC decision upheld

- **Preparation – cross-referencing exhibits**

This appeal relates to time allowed for cross-referencing exhibits.

The appellant requested 50 hours within their stage 1 task list to cross reference exhibits to statements (task 125). This task was refused by the Contract Manager on the basis that the Best Value Protocol (paragraph 3.3.4.1) states that cross-referencing is included within the reading rate. It is accepted by the CCU that there may be circumstances when cross-referencing is justified as a separate task however in the absence of any evidence as to why BVP should not apply the task was refused.

In terms of other work agreed, the CCU has agreed 2mpp for witness statements and interviews, 30spp for standard exhibits; 2mpp for probe and inquest transcripts, telephone evidence is currently TBA. Further a total of 67.5 hours has been agreed to prepare a chronology and 3.5 hours at standard rate to paginate the evidence.

The Committee felt that the task requested was a reasonable one and based upon information available and provided by the appellant should be allowed, as suggested by the Commission, 17.5 hours at Grade C Standard Rate.

The Committee felt that this was an administrative task.

Appeal by solicitors – 7 January 2009
LSC decision upheld in part

- **Category**

This appeal relates to the categorisation of a fraud case. The LSC had agreed that this was a category three-fraud case, and that the following criteria were met:

Block A:
The defendant's case requires legal, accountancy and investigative skills to be brought together.

Block B:
The volume of documentation exceeds (b) 10,000 pages.

The Committee allowed the appeal, saying that they felt that the Commission's view on national publicity was fundamentally wrong. The reporting of other similar/identical frauds was relevant for the purposes of demonstrating that the client's case would attract national publicity. The abuse of public finance in a project of this size would attract widespread public concern.

The Commission had placed far too much reliance on the lack of national publicity on this case at the investigative stage and at the early proceedings stage and the comparison with what was described as the "Keiron Fallon Investigation" which involved an already high profile personality, was a false one.

Additionally, the Committee felt that the defendant's case did require "highly specialised knowledge" and in their choice of counsel, they had recruited that specialised knowledge. All other items previously subject to the appeal were no longer in issue.

Appeal by solicitors – 7 January 2009
LSC decision overturned

- **Category**

This appeal relates to the categorisation of a fraud case. The appellant requested that the case be re-categorised as a category two-fraud case.

The following criteria had previously been accepted by the LSC:

Block A
The defendant's case requires legal, accountancy and investigative skills to be brought together.

Block B
The value of the fraud exceeds (b) £2 Million.
The volume of prosecution documentation exceeds (b) 10,000 pages.

The LSC did not accept that the defendant's case required highly specialised knowledge. This is the decision that was the subject of this appeal.

The appeal was dismissed, as the Committee felt that the right decisions had been made by the LSC with regard to categorisation.

The Committee recognised the considerable amount of work that was required by the legal team to understand the Vietnamese culture, as was relevant for this case. The Committee noted also that the appellants recruited and to some extent relied upon expert knowledge of the Vietnamese culture but did not feel that this amounted to the specialised knowledge contemplated when considering categorisation of cases.

Appeal by solicitors – 7 January 2009
LSC decision overturned

- **Travel**

This appeal relates to the decision of the LSC to restrict the Solicitors' and counsel's travel to court to 2 hours and £22.50 round trip (or 1 hour and £11.25 each way)

The appeal was rejected. The Committee explained that they were asked to decide two things:

a) Is the present case linked to operations X and Y to such an extent that it would be in the interests of justice for junior counsel's specialist knowledge to dispose the usual rule regarding distant travel?

The Committee took the view that whilst there were links, they were not sufficient to dispose the usual rule.

b) Would this knowledge result ultimately in cost saving thereby displacing the usual distant travel rule?

The Committee were not satisfied that there would be a cost saving.

Appeal by solicitors and counsel – 21 January 2009

LSC decision upheld

- **Disbursement – refusal of expert**

This appeal relates to the decision of the LSC to refuse funding for an expert to check the authenticity of a tape for confiscation proceedings.

The appeal was allowed. The Committee gave the following reasons:

The issue is whether this work would only be directed to the issue of whether there are grounds to appeal the conviction. The learned recorder of Stafford has directed that the prosecution make the tape available for inspection. This is a clear indication that his view is that the tape is relevant to both conviction and the confiscation proceedings.

In these circumstances, the Committee took the view that the relevance was not limited to conviction, but also extended to the confiscation proceedings. They therefore allowed the appeal and authorised the instruction of an expert.

Appeal by solicitors – 21 January 2009

LSC decision overturned

- **Backdating of category 2 status**

This appeal relates to the LSC's decision to limit the backdating of category 2 status to the date that full, detailed representations were received.

The Committee allowed the appeal, giving the following reasons:

1) The other 3 defendants were all given category 2 status at the outset.
2) Representations were made from the outset that it was a category 2 case.
3) It is not a case where new material was served causing the case to become a category 2 case, rather it was a category 2 from the outset.
4) This is a case specific decision given on the facts.
5) This is not a case where we need to backdate the categorisation. There was only one transaction and this was a category 2 case from the outset.

Appeal by solicitors – 21 January 2009

LSC decision overturned

- **Pre-contract**

This appeal relates to the decision of the LSC to limit the amount of preparation time to the
appellant in the pre-contract stage. The appellant seeks to have the hours claimed paid in full.

The appeal was adjourned. The Committee explained that they had received notification that Counsel making the appeal was unable to attend the hearing that day. This was an appeal where the committee had questions that they would have directed to the appellant. The Committee felt that it would be unfair to proceed in the absence of the appellant, as he should be afforded the opportunity to make further representations

Appeal by counsel – 21 January 2009

Appeal adjourned

- **Category**

This appeal relates to the Contract Manager's original decision to categorise this case as a Category 3 fraud VHCC. Although it was agreed by the Contract Manager that all of the 'Block B' criteria were satisfied, the Contract Manager decided that only one, of the necessary minimum of two criteria, were satisfied in 'Block A'.

The Appellant argued that this case met the necessary 2 criteria from 'Block A' and should therefore be reclassified as a Category 2 fraud VHCC.

The Committee allowed the appeal in full, giving the following reasons:

The Committee were asked to consider the appropriate categorisation of this case. The Contract Manager had assessed it as category 3. The appellant made detailed written submissions in support of category 2. It was common ground that the necessary criteria in block B for category 2 were satisfied. The issue for the committee was whether at least two of Block A criteria applied. The Commission had conceded that Block A (4) was satisfied (legal, accountancy and investigative skills). The appellant argued that both Block A (2) (Highly Specialised Knowledge) and A (3) (Significant International Dimension) applied.

Block A(2) – Highly Specialised Knowledge

The appellant made a detailed series of submissions. The committee also considered the case summary. The appellant advised the committee that a contract manager for one of the co-defendants had decided that this criterion was satisfied. However, the committee whilst cognisant of this decision were not bound by it and had to base their decision on the submissions made and the supporting documentation. In the circumstances the committee were not persuaded that there were features of this case of sufficient novelty or complexity to require "highly specialised knowledge" on the part of the defence representative.

Block A (3) – Significant International Dimension

The appellant had again made detailed written submissions on this criterion. At the hearing he informed the committee that approximately 40% of the 95,000 pages of prosecution evidence had emanated from foreign jurisdictions (primarily the product of searches in Belgium). He added that additional foreign evidence was due to be served which would increase the proportion above 50%. An unused schedule had been served which included material from abroad. The appellant maintained that it was necessary for him to review this material to properly defend the case. He anticipated that he may have to liaise with legal representatives in Belgium and Holland. The evidence in the case straddled Belgium, Holland, Ireland, Gibraltar, Germany and New Zealand.

The commission lawyer (standing in for the contract manager) maintained that the case did not have the features that the commission usually associated with category 2 cases where a significant international dimension existed. She referred specifically to the absence of letters of request from the defence in relation to foreign evidence or witnesses.

The committee were persuaded that this was a case with a significant international dimension, and that category 2 should apply.

Appeal by solicitors – 28 January 2009

LSC decision overturned

- **Preparation – reading time**

This appeal relates to the allocation of time to enable the defence to review a schedule of events served by the prosecution.

The Contract Manager's original decision was to allow 5 minutes per page for the pages in which the client's details appear and 2 minutes per page for all other entries. As there were 89 pages, this gave a total of 3.02 hours in order for the Appellant to undertake this particular task.

The Appellant contested this decision and sought an initial 50 hours for this task.

The Committee allowed the appeal in part, giving the following reasons:

As an initial observation the Committee found the schedule to be particularly unhelpful in that the prosecution had failed to identify in the body of the document the evidence underpinning each of the listed events. In order to prepare the schedule the prosecution must have done so by reference to the underlying evidence. It should surely not have been beyond them to insert that information in the document. It was the collective experience of the committee that this was the usual practice in cases they had defended. It was therefore surprising that not one of the defence advocates or representatives had taken the prosecution to task and sought further and better particulars before embarking on a wholesale review of the document.

The appellant informed the committee that the trial judge had ordered the defence to indicate to the prosecution those items that they agreed with and those that they disputed (with reasons) by the 5/2/09. There were apparently 25-26 defendants and a decision on whether to sever the indictment and order separate trials was to a certain extent contingent on the defence response to this document.

The appellant had asked for an initial allocation of 50 hours to enable her to assess the size of the job. She argued that the document was akin to a series of admissions and that she could not therefore be restricted to consideration of the events relating exclusively to her own client. She informed the Committee that other defendants had already been allowed significantly more time to review the document. She accepted that the document was inadequate in the way characterised by the committee but maintained that this was the norm in those cases that she had defended. She was prepared to take this up with the prosecution and the trial judge but was not optimistic that it would make any difference.

The contract manager took the view that the only time necessary was for the appellant to review entries that related specifically to their client. The prosecution should be pressed to make the document more user-friendly. It was not reasonable to expect the commission to fund a complete review of the document.

The committee had sympathy for both the position of the appellant and the Commission. Had a more informative document been served it would have significantly reduced the time necessary for review. The committee were not persuaded that it was necessary for the appellant to carry out a comprehensive review of the whole document. They were prepared to agree to an initial allocation of 10 hours to enable the appellant to cross-check the evidence underpinning those entries relating specifically to their client. In addition should they identify inter-linking or contingent events in the schedule it would not be unreasonable for them to seek additional time to cross-check such matters.

Appeal by solicitors – 28 January 2009

LSC decision upheld in part

- **Pre-contract – translation disbursement**

This appeal relates to the Contract Manager's original decision to limit the pre-contract disbursement claim for the translation of served evidence from English to Mandarin to a rate of £55 per 1000 words.

This equated to an overall authorised total disbursement of £8,782.40 for the translation of 159,680 words. The rate of £55 per 1000 words was authorised in accordance with the rate agreed in the pre-contract stage by the LSC's prior authority department and the rate agreed in other VHCC cases.

The Appellant instructed the expert at the rate of £80 per 1000 words and seeks full remuneration for the £12,774.40 disbursement that was therefore incurred.

The committee decided to adjourn the appeal in order to obtain the following additional information to enable them to make a fully informed decision, namely:

1. A copy of the original CDS4 with supporting documents including the three estimates from separate interpreters
2. The date of the decision by the Prior Authority Section to limit the disbursement to £55 per 1000 pages
3. A chronology of events identifying key dates including the hearings at the Crown Court.

Appeal by solicitors – 28 January 2009

Appeal adjourned

- **Preparation**

This appeal relates to the Contract Manager's decision to authorise a block of 230 hours for the solicitor advocate instructed in this case. The Appellant requested that the solicitor advocate should be allowed the same amount of time as the leading advocate and solicitor with conduct of this case. Both had been allowed a total of 270.5 hours preparation.

The Committee allowed the appeal in full, saying that the junior advocate should be granted the same amount of time to read the material as leading Counsel.

Appeal by solicitors - 18 February 2009

LSC decision overturned

- **Category**

This appeal relates to the Contract Manager's decision to categorise this case as a Category 3 fraud VHCC on the basis that only 1 of the 4 Block A criteria is satisfied. The Appellant felt that this case meets the necessary 2 criteria of Block A in order to classify this case as a Category 2 fraud VHCC.

The Committee allowed the appeal, finding that the case did have a "significant international dimension". The Defendant may have provided the publicity material from the UK but it was this same material that was used internationally to induce the "victims" to invest.

Therefore, as the LSC had already decided that the Defendant's case required "legal, accountancy and investigative skills to be brought together", 2 criteria from Block A were met. Thus the case is a category 2 case.

Appeal by solicitors – 18 February 2009

LSC decision overturned

- **Pre-contract**

This appeal relates to the Contract Manager's decision to pay a total of 174.38 hours of preparation to the Appellant in the pre-contract stage of this case. The Appellant claimed 266.68 hours preparation and sought for these hours to be paid in full.

The Committee refused the appeal, saying that the Contract Manager's decision on the amount of time for pre-contract work was not only reasonable but generous.

Appeal by counsel – 18 February 2009

LSC decision upheld

- **Preparation – standard rates**

This appeal relates to the contract manager's decision to pay for 1208 hours of 'considering and scheduling of surveillance footage' at C grade standard rates.

The Committee refused the appeal on the basis that the task was simply a matter of sifting and scheduling the recorded material. The work did not involve legal analysis or judgment and could be described as quasi-administrative. Accordingly, the Committee considered that the applicable rate was C Grade Standard rate.

Appeal by solicitors – 25 February 2009
LSC decision upheld

- **Preparation – reading time**

This is an Appeal against the Contract Manager's decision to allow 7.42 hours (5 minutes per page) for the Appellants to consider the 89 pages draft Sequence of Events. The Appellant seeks 15.16 hours (15 seconds per line) for the task.

The appeal was refused. The Committee accepted that the document was central to the Prosecution case and that all events needed to be verified by the Appellants. However the Appellants have been allowed 2 minutes per page to consider the statements and 1 minute per page to consider the documentary exhibits. In addition 1 minute per page has been allowed for scheduling. The information extracted during the course of this work should substantially reduce the time needed for consideration of the draft Sequence of Events.

In the circumstances the Committee considered the authorised 5 minutes per page to be reasonable.

Appeal by solicitors – 25 February 2009

LSC decision upheld

- **Travel**

This appeal relates to the authorisation of the travel and accommodation costs of the instructing solicitor and two counsel to attend their client in South Africa. The committee considered very carefully the representations made by both sides including the several advices from counsel.

The committee decided unanimously that in the exceptional circumstances outlined by the appellants there was no reasonable alternative to the attendance in person on their client in South Africa. The committee considered the approach adopted by the appellants to be both reasonable and expeditious. They had kept their disbursement claim to an eminently respectable level.

The committee also felt that in the peculiar circumstances of this case it was reasonable for the instructing solicitor and both Leading and Junior counsel to attend upon their client in accordance with the tightly scheduled work identified in the appeal submissions.

Appeal by solicitors and counsel – 11 March 2009

LSC decision overturned

- Travel

This appeal relates to the "distant travel rule".

The committee were asked to rule as to whether in the peculiar circumstances of this case the VHCC "distant travel rule" should be disapplied. The appellant referred to the contract manager's response in which he stated that "as the defendant resided abroad the distant travel rule is effectively disapplied". The contract manager nevertheless sought to persuade the committee that in such circumstances as prevailed in the present case (i.e a defendant who resides abroad but instructs a solicitor who is not local to the trial court) there was still a test of "reasonableness" to be applied when considering travel time outside of the immediate locality of the solicitors (primarily in this instance from the north of England to a court in London).

The committee reviewed the relevant contractual provisions in the VHCC contract as well as any other guidance that could be obtained from the General Criminal Contract. The committee were forced to conclude that it was not within their remit to apply a criterion to the circumstances of this case which had not been catered for in the governing contractual documentation. There being a consensus between the parties that the distant travel rules did not apply to this case, the appeal was allowed unanimously.

Appeal by solicitors and counsel – 11 March 2009

LSC decision overturned

- Pre-contract – translation disbursement

The appeal relates to the decision of the LSC to limit the pre contract disbursement claim for the translation of the served evidence from English into Mandarin at a rate of £55 per 1000 words. The contract manager authorised a disbursement claim of £8782.40, for the translation of 159,680 words at a rate of £55, on the basis that this was the rate agreed by prior authority and the rate that is agreed by the CCU on other VHCC contracts.

This appeal had been adjourned from a previous date to enable the commission and the appellants to supply further information to the committee. Having considered that information the committee decided unanimously that the translation fees disbursement incurred by the appellants was reasonable and should be covered in full by the commission.

Appeal by solicitors – 11 March 2009
LSC decision overturned

- Preparation – time to read defendant's own material

This appeal relates to consideration of material supplied by the client. The defendant gave to the Appellant 3434 pages that he considers will assist the Appellant in preparing his defence.

The Appellant requested 2 minutes per page but the LSC allowed 1 minute per page.

The Committee allowed the appeal in full, saying that they viewed the material in question as sifted core defence material. The original number of documents was in excess of 50,000 pages and had been sifted to 3,434 as being relevant defence material and therefore the Committee took the view that is was proper in the circumstances, as a sift had taken place, to allow the reading of this material at 2 minutes per page.

Appeal by solicitors – 11 March 2009

LSC decision overturned

- **Category**

This is an Appeal against the Legal Services Commission's decision to categorise this case as Category 3. The appellants requested Category 2.

The Committee refused the appeal, giving the following reasons:

To succeed the Appellants must demonstrate that one more criterion in Block A is met and they claimed that the criterion of significant international dimension was met. The Appellants said that their Client's role in the alleged MTIC was broader than that of an ordinary freight forwarder and that it might be necessary to interview foreign witnesses to establish legitimate business.

The Committee found that there was an international dimension in the Defendant's case as in other MTIC cases, but do not consider it to be significant. Therefore the case should remain at Category 3.

Appeal by solicitors and counsel – 23 March 2009

LSC decision upheld

- **Preparation – scheduling time**

This is an Appeal against the Legal Services Commission's decision to allow only 30 seconds per page at Grade B to schedule the served material which amounts to a total of 97,226 pages of statements, transcripts and exhibits.

The Committee refused the appeal, giving the following reasons:

The Appellants produced an example of the data-base which will be the product of this work. The Appellants had been separately authorised to spend 2 minutes per page to peruse witness statements and transcripts and 30 seconds per page to peruse exhibits. The Committee would expect this authorised work to include the preparation of a synopsis of the evidence. In view of this, and having carefully considered the Appellants' representations, the Committee found that 30 seconds per page was sufficient for this task.

Appeal by solicitors – 18 March 2009

LSC decision upheld

- Category

This is an Appeal against the Legal Services Commission's decision to categorise this case as Category 3. The Contract Manager does not accept that any of the Block A criteria are met. The Appellants argue that there is no reason to draw a distinction between their Client and the First Defendant on category as they are both indicted on a single conspiracy count.

The appeal was refused. The Committee gave the following reasons:

The Committee found that the Appellants' Client's role was limited to that of "an introducer" in a high yield investment fraud and that the Legal Services Commission had drawn a proper distinction.

The Appellants went on to argue that at least 2 criteria in Block A were met. However, the Committee considered that this was a straightforward fraud and that the Defendant's case did not require highly specialised knowledge. There is usually an international dimension in frauds of this type but the Committee did not think this to be significant in this case.

Finally the Committee found that the Defendant's case did not require legal, accountancy and investigative skills to be brought together to any greater extent than in other large fraud cases.

Appeal by solicitors – 18 March 2009

LSC decision upheld

- Preparation

This appeal relates to the Contract Manager's decision regarding the prosecution's 424-page bank statement schedule. The Contract Manager allowed a total of 24 hours C Grade standard rates in order to initially check its accuracy and a total of 8.23 hours at 1 minute per page at A or B Grade preparation in order to look through the schedule in preparation for client attendance.

The Appellant contested this decision, deeming this one task, to be undertaken by one fee earner. The Appellant sought a total of 103.5 hours at B Grade preparation rates to undertake this task.

The appeal was refused. The Committee gave the following reasons:

1. The issue before the Committee was the amount of time required by the Defendant's solicitors to consider a schedule of banking transactions, prepared, served, and to be relied upon by the Crown, in Excel spreadsheet format. The schedule contains data obtained from 925 pages of bank statements, earlier served by the Crown.
2. The Appellant confirmed that, once on notice that the Crown intended to serve the spreadsheet (and to rely on it, at trial), further analysis was discontinued, notwithstanding the allowance of hours. The Committee felt that was a responsible decision and the Appellant was to be commended.
3. The Appellant sought to persuade the Committee that the (reduced) request for the allocation 103.05 hours, at Grade B, was a reasonable request for further analysis of the schedule to be completed, for (it seems) the dual purpose of checking the schedule for accuracy, and for the purpose of preparing to take instructions from its Client, on the banking evidence.
4. The Contract Manager maintained that the task facing the Appellant, in respect of the banking schedule, should be undertaken at standard Grade C rates, (totalling 24 hours), effectively under the supervision of a Grade A or B fee earner, who

would consider the contents of the schedule for the purpose of preparing for attendance on the Client.

5. The Appellant conceded that the Excel format would be of great assistance in analysing the extent of its Client's alleged involvement in criminal activity, (both, it seems, where he used bank accounts in his name and in the names of others). That the Excel format might disclose other lines of inquiry was not a matter for this Committee, but it did seem that further tasks might arise that would require the Appellant to request another task be agreed.
6. The Committee did not consider the schedule to be new evidence, in itself; it was an aid to all parties (once its accuracy had been confirmed) in the preparation of their respective cases. The Appellant had yet to use the 16.25 hours, in hand when the banking task was suspended on receipt of the schedule, and it seemed to the Committee that those hours, (in addition to the 24 Grade C hours and 8.23 Grade A or B hours) were a reasonable allocation of hours offered by the Contract Manager. The Committee also agreed with the approach suggested by the Contract Manager, in offering those hours.

Appeal by solicitors – 1 April 2009

LSC decision upheld

- Preparation – reading time

This appeal relates to the Contract Manager's decision to agree an initial block of 225.9 hours at a rate of 30 seconds per page for the 50,000+ pages of exhibits in this case. This was agreed on the basis that further time could then be agreed for material highlighted of particular relevance once this had been highlighted. The Appellant initially sought 3 minutes per page for the consideration of this documentation. A later request was lodged for 1 minute per page to consider and 1 minute per page to schedule the material.

The Committee refused the appeal, giving the following reasons:

1 The dispute concerned consideration of documentary exhibits. The Contract Manager had allowed 30 seconds per page whereas the Appellants requested 1 minute per page.
2 There were 11 Defendants charged on the Draft Indictment. Count 1 alleged conspiracy to Cheat [VAT fraud] featuring 10 of the defendants (but not Bibi). Counts 2 and 3 alleged Fraudulent trading against 7 of the co defendants (but not Bibi). The defendant alone was charged on count 4 with doing acts tending and intending to pervert the course of justice.
3 The PCMH had not yet taken place and a Prosecution Summary was not available but the Crown had been ordered to serve one in the near future.
4 In the course of the appeal it was accepted that 90% of the case papers concerned count 1 (the conspiracy). It was also accepted that the Fraud was likely to be admitted as a fact. It had been submitted to the Committee that the appellant's client was heavily involved in the factual matrix and would be prejudiced by the inability of her litigators to deal with aspects of the case in relation to Counts 1-3 unless a minute is allowed per page.
5 The Appellant had stated that the Defendant was the head of the legal department in the impugned organization and was a proactive client.
6 The allegation against the Defendant was particularised on the draft indictment as falsifying the minutes of a particular meeting wherein a £50,000 bonus was awarded to a conspirator in count 1.
7 The contract manager asserted that if the nature of the case against the Defendant altered, then he would reconsider the position.
8 The Appeal committee was content that the Contract Manager's decision was a correct one and a flexible one and that the 30 seconds allowed per page was sufficient to cover the entire case as presently alleged against the Defendant.

Appeal by solicitors – 1 April 2009

LSC decision upheld

- Preparation – reading and scheduling

The appeal relates to time being agreed to read and schedule 77,510 pages of exhibits and 4,253 pages of interviews.

The Appellant broke down the total 81,763 pages into the different types of exhibits and requested separate rates per page for each type of exhibits, as follows:

- 46,222 pages at 2 mpp (Tasks 2.1, 2.4, 2.5, 2.6 and 2.8) – 1mpp agreed.
- 4,253 pgs at 4 mpp (Task 2.2) – 2mpp agreed (this task was later requested at 3mpp in an email dated 13/02/09).
- 30,252 pgs at 3 mpp (Task 2.3) – 1mpp agreed.
- 1,036 at 1.5 mpp (Task 2.7) - 1mpp agreed.

In total, the Appellant sought 3,362.73 hours (£369,900.30 at Category 2 rates). This would equate to an average of 2.47 minutes per page to read and schedule the above documents.

The LSC disagreed with this request and authorised 30 seconds per page to read the 77,510 pages of exhibits with a further 30 seconds per page to schedule this material. 2 minutes per page was authorised to read and schedule the 4,253 pages of interviews at task 2.2.

This equated to a total of 1433.60 hours: 1,291.83 hours of B Grade preparation for 77,510 pages of exhibits and 141.77 hours of B Grade preparation to read and schedule the 4,253 pages of interviews.

The Committee allowed the appeal in part, giving the following reasons:

The Committee heard from the appellants that the defendant was:

1. Involved in 150 out of approximately 530 transactions, which the Committee was told was more than any other defendant in this trial;

2. The defendant was of limited intellect and required more detailed schedules to assist him understand the allegations against him;

3. The Committee was also advised of other confidential factors.

Taking all of the matters into account, as well as the overall size and complexity of this case, the Committee partially allowed the appeal to the extent of an additional 30 seconds per page to both read and schedule the exhibits. That meant a total of 1 minute 30 seconds per page for the 77,510 pages of exhibits.

The Committee was of the view that 2 minutes per page for the reading of the interviews was reasonable.

Appeal by solicitors – 9 April 2009

LSC decision upheld in part

- Preparation – accuracy check

This appeals relates to whether the checking of the accuracy of transcripts against the audio and surveillance material should be remunterated at C grade standard rate rather than VHCC rate, in other words whether it was a quasi-administrative task or a fee-earner task.

The Committee allowed the appeal, giving the following reasons:

The Committee was advised by the Appellant that the process involved, not only checking for accuracy, but also considering a number of other factors, including assessing the material for relevance to the case against the defendant and any parts which may give rise to legal argument and/or requests for further disclosure.

The Committee allowed the appeal on the basis of the tasks that the fee earner will need to undertake, which should properly categorised as fee earning.

Appeal by solicitors – 9 April 2009
LSC decision overturned

- **Disbursement – forensic accountant**

This appeal relates to the authorisation of an expert accountant's disbursement. In preparation for the first trial in this case, the Contract Manager authorised a total fee of £376,984.67 for accountancy services that were provided by Accountant Firm X. The jury failed to reach a verdict in the first trial and therefore the case was to be re-tried in Summer 2009.

The Appellants did not call Accountant Firm X to give evidence at the first trial and now wished to instruct another firm of accountants to prepare for the second trial. The LSC argued that if Firm X had not provided a satisfactory service at the time of the first trial then the fees paid should be recouped and a new firm instructed. If this was not the case, and the service provided by Firm X was reasonable then there was no compelling reason why they should not continue to act for the Defendant in the retrial.

The Committee dismissed the Appeal, giving the following reasons:

The representation on both sides was of the highest quality reflecting the very substantial issue in dispute. The primary material for consideration by the committee was delivered in advance of the hearing and had been read by all three committee members. In addition considerable flexibility was allowed for either side to develop and add to their position by oral representations.

The decision to seek funding for a new expert must be looked at against the following background:

1. A tendering process conducted by the appellant led to the appointment of Firm X as the expert on behalf of the Defendant.

2. Formal instructions appear to have been given to Firm X under cover of letters 29th May 2007 (on behalf of four defence teams) and 22nd June 2007 (on behalf of the Defendant alone).

3. Notwithstanding the trial starting in March 2008 the two expert reports that were produced were dated 9th April 2008. There was nothing unusual about this fact particularly in circumstances where the defence team had decided they would not be calling their expert witness to give evidence and hence would not be disclosing the reports to the prosecution.

4. An email from a solicitor at the appellant's firm to the Contract Manager, dated 2nd April 2009 made reference to receiving assistance from Firm X throughout the trial of the Defendant and went on to state "…*We clearly struck up a dialogue with Firm X and the development of instructions from May 2007 onwards would have been dealt with through many telephone calls, emails and meetings* …".

5. During the trial between March 2008 – September 2008 evidence was given by a co-defendant who was a qualified accountant and an apparently impressive witness. He appears to have given evidence that the Defendant would have liked Firm X to give. The Committee felt that there was a difference between a professionally qualified defendant and an expert witness in relation to the flexibility they have when giving evidence.

6. It also appeared that the defence team and the Defendant were impressed by accountant firm Y who had compiled an expert report on behalf of a man who was originally a co-defendant in this case. The defendant had the benefit of two junior counsel in addition to Queen's Counsel. A meeting had recently taken place between the said two junior counsel and firm Y. The accountants had impressed and the QC was endorsing their appointment in place of Firm X.

7. Whilst the Committee had read the two Firm X reports, one of 189 pages and the other of 124 pages, they felt it was not their place to make a judgement concerning quality. What was clear however is that the defendant had been given public funding to instruct an expert of considerable standing.

8. It was clear from the advice and the oral submission of the QC that the defence legal team wanted to instruct a new expert. It was clear that the Defendant wanted to instruct a new expert. It had been made clear that unless a new expert was instructed the defence would not call any expert evidence at trial.

9. The cost incurred to-date by Firm X amounts to approximately £380,000. The committee believe this to be a very substantial amount of public funding.

Notwithstanding the fact that both the Defendant and his legal team took the view they wanted a new expert the committee <u>were not persuaded</u> that any proper basis existed for allowing public funding for such a change. The appellant did not suggest that Firm X were incompetent and nor was their any issue of conflict of interest. The fact that the defence were uncomfortable with the conclusions reached by their expert cannot be a basis in itself to authorise funding for an alternative expert who was likely to be more favourable to the defence case.

Appeal by solicitors – 22 April 2009
LSC decision upheld

- Preparation – time for perusal of disks

This appeal relates to the hours allowed by the LSC for perusal of 8 disks served by the prosecution containing a total of 550,611 pages of information copied from the hard-drives of a number of the defendants' computers.

The LSC originally proposed 10 seconds per page for the material contained on disks 2, 4, and 7 minus any pages removed by independent counsel, plus 35 hours per disk for material contained on disks 1, 3, 5, 6, & 8. However, the Appellant sought 10 seconds per page across all of the 550,611 pages, equating to a total of 1,529 hours B Grade preparation.

The Committee allowed the appeal in part, giving the following reasons:

1. The Appellant, requested, in summary, 10 seconds per page for a Grade B fee earner to sift through the computer material seized from his client and the other defendants in the case. The Contract Manager had thus far agreed to 10 seconds per page for the computer material seized from their client less any material that is removed on the grounds of privilege by an independent solicitor. He had allowed a total time of 395 hours for the task of sifting the other defendants' disks. The Committee needed to

determine whether the 10 seconds per page should be extended to all the Defendant's evidence irrespective of the removal of the privileged material. This material was all currently in the possession of the Appellant solicitors.

2. The allegations in this case were both complex and serious; it was alleged that the Defendant utilised his position as a Solicitor to construct an elaborate scheme for his clients to defraud creditors. The conspiracy was extensive and the Committee accepted the fact that as the Defendant was charged with a conspiracy, he must be given adequate time to look at the material that came from the other defendants. The Committee also welcomed the fact that the Contract Manager had perhaps unusually allowed a Grade B Solicitor to perform the sift and were conscious that as a result the Solicitor should be in a position to deal with this material in a timely fashion. The Appellant said that the task was currently taking approximately 8 seconds a page, which would equate to a total time of 644 hours across the board. However, the Committee felt that the task would become easier the longer time is spent on it and that the average would go down.

3. It was noted that a total of 23 documents were chosen after sifting through a total of 78 documents.

4. The Committee took the view that the fairest way of dealing with this issue was to allow 500 hours to complete the task of looking at the other defendants' disks, which was similar to that given to other defence teams. This was simply a task to identify what needed to be looked at in more detail and a separate task for further work may be allowed in future.

5. The Committee felt that the Appellant should be given the opportunity of reviewing the Defendant's material in its entirety; but that this should be a separate task once it was established what was to be relied on as part of the prosecution case. The Contract Manager had already allowed 10 seconds for that sift, and the Committee hoped that the Defendant himself would be able to give some guidance on the removed material to assist that task.

Appeal by solicitors – 29 April 2009
LSC decision upheld in part

- Category

This appeal relates to the LSC's decision to categorise this case as a Category 3 VHCC fraud. The Appellant argued that this particular case should be re-classified as a Category 2 VHCC Fraud.

The Contract Manager's decision was taken on the basis that the fourth criterion 4 from Block A of the Category Assessment had been met (that the defendant's case requires legal, accountancy and investigative skills to be brought together) but none of the other criteria listed in Block A were met. A Category 2 VHCC fraud requires that 2 of the criterion must be met. The Appellant deemed the defendant's case to also require highly specialised knowledge (the second criterion in Block A).

The Committee allowed the Appeal, making the following points:

1. The Defendant was charged with Conspiracy to commit an offence under section 1 of the Corruption Act 1906. The allegations were serious in that it was alleged that the Defendant and his company were awarded work to the value of £2.45m in return for a variety of hospitality awarded to those involved in the decision making process of a certain Area Police Authority.

2. The Appellant had set out in detail what was required to defend in a case of this nature. The Committee noted that he had extensive experience in this area, having defended in other high profile cases of this kind. He argued that he would need to put forward a positive defence that all work carried out was legitimate work at a

reasonable cost. In order to do this, he had to deal with and call evidence from those involved at all levels of the building industry. He would need to call a Quantity Surveyor, an Expert on the tendering process and those involved in the valuation of leases, in that one of the allegations related to the granting of a lease to the Area Police Authority by the Defendant, it being suggested at an inflated rate. The Committee accepted that this must be the way to defend this case once the hospitality was proved, in that the burden of proof would in reality be reversed on to the Defendant, even if not legally.

3. It was noted that the criterion under Block A states:
"The Defendant's case requires highly specialised knowledge". The Prosecution allegations may be relatively straight forward but it does not mean that the defence case is the same. The Committee asked the Contract Manager for an example of the sort of case that meets this criteria and she referred us to an MTIC ("Carousel") fraud that requires knowledge of company law and cases where knowledge of bankruptcy law is required. The Committee agreed with her but saw no difference to the situation that presented itself to the Appellant, and accordingly found that this criterion was met and that the case should be Category 2 for this defendant.

Appeal by solicitors – 29 April 2009
LSC decision overturned

- Category and preparation

This appeal related to the following items:

Case Category – The Contract Manager decided that this case should be categorised as a category 3 VHCC fraud matter. The Appellants believed that this case met sufficient criteria to warrant a category 2 VHCC fraud categorisation.

Tasks 2 & 3 on the Stage 1 Task List – Consideration of served evidence – statements, interviews and routine & non-routine exhibits.

Task 14 – A Grade perusal of documents prepared at B Grade.

Task 15 – Preparation of Defence Case Statement.

Task 17 – Preparation of Instructions to Counsel.

The Appeal was allowed in part, as follows:

1. Category of Case. Appeal Refused.

The committee did not feel that the case fell within Category 3 in that it did not pass the threshold for legal accountancy and investigative skills to be brought together (Block A).

2. Appeal on Task 2 to be allowed to the extent of 3 minutes per page.

3. Appeal on Task 3 to be allowed to the extent of 2 minutes per page.

Appeal on Tasks 14, 15 and 17 refused as the committee felt that the times allowed by the Commission for the tasks described were sufficient and reasonable

Appeal by solicitors – 11 May 2009
LSC decision upheld in part

- Preparation – counsels' prep for trial

This Appeal related to the Contract Manager's decision to authorise 80 hours to be split between both Counsel in order to prepare for trial. The Appeal was made by Leading Junior Counsel in respect of this trial preparation task. The Committee were presented with the benefit of all papers including a work log of Counsel for March 2009. The Committee allowed the appeal, but only to the extent of the 143 hours worked, and not the 150 hours requested.

Appeal by counsel – 6 May 2009
LSC decision upheld in part

- **Category**

This was an Appeal against the decision to categorise the case as Category 3. The Appellants requested category 2.

The L.S.C. accepted that two Block B Criteria had been met and that the Highly Specialised Knowledge Criterion in Block A had also been met. The Appellants agreed that the National Publicity and Widespread Public Concern Criterion in Block A had not been met.

The Committee considered whether either or both of the other two Criteria in Block A had been met and decided as follows:

1. Significant International Dimension

This case had an international dimension but this is typical of a "Ponzi type" fraud. The Appellants had, to some extent, already relied on some international elements to meet the Highly Specialised Knowledge Criterion. However, after considering all the material submitted by the Appellants including Counsel's notes, the Committee did not consider that the international dimension in the Defendant's case to be significant.

This Criterion was not met.

2. The Defendant's case requires Legal, Accountancy and Investigative Skills to be brought together

Having considered the submitted material including the Appellant's analysis of the movement of monies, the Committee found that the legal, accountancy and investigative skills demonstrated by the Appellants in dealing with this Defendant's case were not over and above what is normal in a V.H.C.C. case and that in any event investigative skills had not been evidenced by the Appellants.

This Criterion was not met. Therefore the Appeal failed.

Appeal by solicitors – 20 May 2009
LSC decision upheld

- Category

This is an Appeal against the categorisation of this case as Category 3. The Appellant requested Category 2.

The L.S.C. accepted that two Block B Criteria had been met but did not agree that any of the Block A Criteria had been met. The Appellants sought to establish that Criteria A1, A2 and A4 from Block B were met.

The Committee found as follows:-

A1 The Defendant's case is likely to give rise to National Publicity and Widespread Concern

The case had not yet attracted National Publicity and such publicity was, in the Committee's view, unlikely. No members of the public had lost money as a result of the fraud and the Committee considered that public concern was unlikely.

This Criterion was not met.

A2 Defendant's Case requires Highly Specialised Knowledge

The Appellants had already represented this Defendant in disciplinary proceedings. The Committee accepted that the surveying and valuation issues in this case were more complex than in most mortgage fraud cases.

The Committee found that this Criterion was met.

A4 Case requires Legal, Accountancy and Investigative Skills to be brought together

The Committee found that the legal, accountancy and investigative skills required in dealing with the Defendant's case were not over and above what is normal in a V.H.C.C. case. The Appellants had not, to the Committee's satisfaction, demonstrated that the three elements were inter-related and needed to be brought together.

This Criterion was not met.

Therefore the appeal failed.

Appeal by solicitors – 20 May 2009
LSC decision upheld

- Preparation – re-reading evidence for second defendant

This appeal is concerned with a dispute over time allowed for re-reading evidence served in relation to a second defendant, who was charged in this case some three months after the solicitors' first client. The solicitors had claimed 60.75 hours and the contract manager had allowed 40 hours.

The Committee allowed the appeal, giving the following reasons:

The first defendant was initially charged on the 1st August 2008 with a drugs conspiracy. The second defendant was charged with a money laundering offence on the 11th November 2008. In fact, the second defendant only appeared on the main conspiracy on the final trial indictment. The indictment and case summary put before the Committee seemed only to refer to the second defendant in an allegation of money laundering.

The Appellant submitted that the two cases were quite separate and that there was no duplication of work. This was not disputed by the Contract Manager.

The Contract Manager accepted that the work claimed for was done but felt that the solicitors should have been more economical with their time given the fact that they already had a defendant in the case.

The committee took the view that the exercise carried out by the Appellant in relation to the first defendant was quite separate. The Committee had the advantage of seeing the attendance notes

for that work and this served to confirm that view. As a result, the appellant solicitors should be paid in full for the work undertaken on behalf of their second client in stage 0.

Appeal by solicitors – 27 May 2009
LSC decision overturned

- Pre-contract – payment for second defendant

This appeal relates to the payment of pre-contract work for a defendant (the "second defendant") who was added later to the VHCC contract, when the solicitors were already representing another defendant (the "first defendant").

The Appellant requested that **all** work done on behalf of the second Defendant as of the date of the first Representation Order (31/07/08), namely the Pre Contract Stage, up until the 10/11/08 namely the date when the Prosecution decided to add the additional charge of Conspiracy to Defraud to the second Defendant, be properly remunerated as a separate case.

This is due to the fact that the second defendant was initially only charged with Perjury and Conspiracy to Pervert the Course of Justice and was in fact only added to the VHCC Contract Case of the first defendant (Conspiracy to Defraud) on the 10/11/08.

The Contract Manager was only prepared to allow this work as a 50% uplift of the rates agreed for the first Defendant, on the basis that the Appellant was representing two defendants.

The Committee allowed the Appeal, giving the following reasons:

The appellant solicitors were claiming that all work done on behalf of the second defendant, up until the 10th November 2008 should properly be remunerated as a separate case rather than a 50% uplift as awarded by the contract manager.

The second defendant was initially charged on the 23rd April 2008 with a conspiracy to pervert the course of justice. The first defendant was also charged with this offence but had already been charged with conspiracy to defraud on the 11th April 2008, a case that had been contracted by the unit on the 11th July 2008. It is right to say that both cases concerned a local election result that had been decided in favour of the first defendant and the subsequent investigation into that election.

The Appellant submitted that these cases had separate indictment numbers, the second defendant was not charged with the main conspiracy and although it was anticipated that the prosecution would seek joinder of the two indictments, this would always have been opposed and indeed, the Appellant's counsel prepared a skeleton argument to that effect for the hearing on the 10th November 2008. It seemed that, in addition, as far as the second defendant was concerned, they were only served with papers in relation to the second allegation up to that hearing. In the end, events overtook them in that the second defendant was added to the main conspiracy at that hearing. It is worth noting that they agreed with the 50% uplift from that date.

The Contract Manager accepted that the work claimed for was done but submitted that at the very least the obligation to report the fact they had a second defendant arose at two points in the chronology of this case: Firstly, on the 8th August 2008, when it was said in Court that the prosecution would be likely to seek joinder of the second charge and secondly on the 1st October 2008, when papers were served with the second defendant's name on them. As a result, the correct way to approach this would be to only pay 50% uplift.

The committee considered carefully the regulations in relation to the obligation to report a case and unanimously came to the conclusion that the obligation to report had not arisen.

The cases were treated as separate cases for a significant period of time until the hearing on the 10th November 2008. Indeed, had the Appellant's Counsel been successful in opposing the joinder of the two indictments, the perverting the course of justice case would have remained a graduated fee case and no obligation to report would have arisen at all. As a result, the Appellant solicitors should be paid in full for the work undertaken on behalf of their second, Mahboob Khan up until the 10th November 2008.

Appeal by solicitors – 27 May 2009

LSC decision overturned

- Pre-contract preparation

This appeal concerned a dispute over the assessment made on the stage 0 bill. The appellant sought a total of 98 hours for a grade A fee earner to review the work product (totalling some 1000 pages) of a Grade B fee earner. The contract manager had agreed that this task should be remunerated at the rate of 2 minutes per page and had therefore allowed a total of 35 hours. Having considered representations from both parties and considered the nature of the material that had been reviewed the committee were unanimously of the view that a rate of 3 minutes per page was reasonable. They therefore found that the appropriate allocation of time for this task would be 50 hours.

Appeal by solicitors – 15 July 2009

LSC decision upheld in part

- Advocacy & waiting time

This appeal was in relation to court advocacy and waiting times paid to counsel. The Committee dismissed the appeal as follows:

Appellant counsel appealed the following decisions by the contract manager:

- court attendance on nominated dates to be for a half day rather than full days as claimed (relying on Contract Specification p.17 footnote 3)
- court attendance whilst the jury were in retirement to be allowed as half day refreshers + waiting time and not full day refreshers a claimed.
- waiting time on specified dates to be 11 mins and 1 hour 35 mins (as opposed to 1 hr 55 mins for each day as claimed)

The committee considered the written representations of both parties and unanimously dismissed the appeal. Applying the Contract Specification outlined the committee had no alternative other than to uphold the decision of the contract manager. With regard to the waiting time claimed by the appellant in the absence of a documented record to support the time claimed the committee upheld the finding of the contract manager.

Appeal by counsel – 15 July 2009

LSC decision upheld

- Preparation

This appeal was concerned with a dispute over time allowed for the preparation of a Dramatis Personae and a Chronology.

The committee dismissed the appeal, giving the following reasons:

1. The solicitors requested a total of 40 hours for the task at Grade B or an uplift of 3 mins per page for the Statements, 2 mins per page for the Interviews and Exhibits at Grade A.

The contract manager was prepared to allow 1 min extra per page for all ancillary work on the papers in the case for this task at Grade A.

2. The defendant was charged with both a drugs conspiracy and money laundering. The defendant was said to be a drug dealer and linked to the supply of 30 kilos of skunk cannabis.

3. The committee took the view that in all the circumstances the approach of the contract manager was both reasonable and generous to the appellant. It may well be that in the end her proposal would give the appellant more time than he had in fact requested.

Appeal by solicitors - 22 July 2009
LSC decision upheld

- **Preparation**

This appeal was concerned with a dispute over time allowed for the reading of part of 43,000 pages of evidence served by the prosecution but provided to the prosecution by a co-defendant in the case.

The Committee dismissed the appeal, giving the following reasons:

1. The material had been served over the course of the last 12 months. The LSC approach to the first 30,545 pages was to allow 45 secs per page for 80% of the material and 10 secs per page for 15%. The rational for this approach was that the Prosecution had indicated that this was the breakdown for what was to be used and unused. This information came from the solicitors who provided the material in the first instance. The appellant sought the same breakdown for this tranche, namely the 12,487 pages. The contract manager had adopted the same approach in agreeing 10 secs per page for this material, because the information currently available for the Prosecution via the same route was that all of this material was unused. The contract manager suggested the following approach in the response to the notice of appeal: "*..the contract manager authorised the material at 10 seconds per page, giving a total of 35 hrs to skim this material and select those documents that may assist the client's defence. The contract manager stated that once the material was sifted she would agree further time to consider those documents in more detail..*"

2. The defendant was charged with a VAT Fraud. The defendant was said to be in a cut-throat with the majority of his co-defendants including the defendant who supplied the material, which took the form of business records of a car dealership, who supplied the defendant with a significant number of vehicles.

The committee took the view that the approach of the contract manager was reasonable and consistent with the approach taken in relation to the initial 30,545 pages and accepted by the appellant. Clearly, if the information provided was incorrect and the material was in fact served as used material, the contract manager would no doubt alter her position without the need for further appeal.

Appeal by solicitors - 22 July 2009
LSC decision upheld

- Preparation

This appeal related to the decision of the Contract Manager to authorise a rate of 5mpp (***3.6 hours***) plus reasonable time at conference with Counsel in order to confirm the 44 pages of proposed agreed facts. The appellant sought 1 hour 46 minutes per page (***78 hours in total***).

At the hearing, the Committee were unable to reach a decision and asked the Appellant and Respondent to consider certain questions and then come back to the Committee once these questions had been resolved.

Once the requested information had been provided, the Committee agreed that an appropriate and reasonable allowance for this task was 40 hours. They were persuaded to grant more than was originally allowed because:

The task required considerable cross-checking, without references being provided by the Crown, between the facts to be agreed and the core material, much of which would not have been covered by ancillary preparation.

The appellants, unlike other solicitors, were not involved in the previous trial.

A response document would be prepared for consideration by counsel.

Many of the facts upon which agreement was sought were relatively complex.

It was anticipated that duplication of work would be avoided where work already carried out enabled agreement of any facts.

Appeal by solicitors – 26 August 2009
LSC decision upheld in part

- Travel – business class flights

This was an appeal against the refusal of the LSC to allow the cost of a business class return flight to Hong Kong for the purpose of foreign enquiries.

The appellant argued that it was necessary to undertake work relating to the case whilst travelling. The LSC argued that such work could and should have been undertaken beforehand.

The Committee found, by a majority, having regard to various factors advanced, including the length of travel and the tight timetable of meetings scheduled in Hong Kong, that it was reasonable for the appellant to undertake work whilst travelling.

On that basis the Committee considered the only guidance available in relation to travel allowance over and above standard fares. This is to be found at p.21 of the "CST Policy and Procedures Manual (version 2)" – *"If public transport is to be used, we would not authorise 1st class rail travel unless the solicitor could argue that they will be engaged in work on the preparation of the case whilst on the train. In these circumstances we would pay for the 1st class ticket, we would also pay for any preparation work done within the agreed hours but we would not pay for travel and waiting in addition to this"*.

Applying that guidance to our factual findings (per para 3 above) and substituting business for 1st class and air for rail, we have concluded, by a majority, that this appeal should be allowed to the extent of the lower of the two quotes, namely £2,636.60 or the actual cost if less. (It should be noted that travelling time of £500 cannot be claimed.)

NB. The Committee is of the firm view that clearer guidelines are required as to the factors to be taken into account in determining when business class travel should be allowed.

Appeal by solicitors – 26 August 2009
LSC decision overturned

- **Classification of fee earner**

This was an appeal against the refusal of the LSC to classify one of the Appellant's fee earners as a Grade B fee earner.

The criteria which must be satisfied to classify a fee earner as a level B litigator are set out in Annex 2 of the VHCC (Crime) Panel Contract for Panel Members, section 1.2.2 –

A Level B litigator must

Be a solicitor/solicitor advocate or employed barrister, or

Be a Fellow of the Institute of legal Executives, or

Have substantial knowledge and experience of criminal defence casework. Generally this would be expected to include 10 years experience of criminal defence casework and some experience of serious and complex criminal cases.

The fee earner in question retired from the police force in 2000. As a police officer he had been involved extensively in the investigation of serious and complex crime, particularly fraud. He had gained considerable expertise in the field of confiscation as a financial investigator. Between 2000 and 2004 he worked for a County Council Safer Travel Unit, which he was responsible for developing. Since 2004 he had worked as a consultant caseworker for defence solicitors, specialising in fraud and confiscation.

The appellant sought to argue that although (a) and (b) were plainly not met, the fee earner satisfied (c), namely having substantial knowledge and experience of criminal defence casework. Although he had no more than about 5 and a half years experience of criminal defence work, this, combined with his experience of serious criminal casework in the police force and the fact that he had obtained police station accreditation, gave him "substantial knowledge and experience of criminal defence casework".

The LSC argued that whilst the "expected" 10 years experience of actual defence casework was not to be rigidly applied in assessing the extent to which the criteria in (c) were satisfied, significantly more than 50% was required. The skills required for dealing with cases from a defence perspective were significantly different from those required within the criminal justice system generally.

Whilst having little doubt that the fee earner was knowledgeable and experienced in the field of complex crime generally, the Committee, by a majority, were unable to agree that the period he had been working for defence solicitors was sufficient to be able to treat him as having sufficient experience of criminal **defence** work to satisfy the criteria under (c). Accordingly the appeal was dismissed.

Appeal by solicitors – 26 August 2009

- Preparation – Livenote transcripts

This appeal related to time allowed for reading:

1. Grade A fee earner time to read defence schedules and linked exhibits

This item was resolved between the parties before the appeal hearing and therefore no decision was required by the Committee.

2. Reading of daily livenote transcripts

The CCU had allowed 1 minute per page to read the livenote transcripts from the earlier trials in this case. The Appellant appealed this decision, requesting 1 minute 25 seconds per page, based on the time spent to date reading the transcripts.

The Committee considered the appeal bundle as well as a sample of some 10 Livenote pages supplied by the Appellants covering those pages of the trial evidence wherein the defendant was mentioned. They considered that the overall rate of 1 minute per page was reasonable. Therefore this section of the appeal was dismissed.

Appeal by solicitors – 2 September 2009

LSC decision upheld

- Category

This was an appeal against the contract manager's decision to classify this MTIC fraud case as a category 3 fraud. The appeal concerned the question of whether 2 of 4 necessary criteria in Block A were satisfied. If 2 criteria were satisfied, then the case would be categorised as a Category 2 VHCC and if they were not satisfied then the case would be categorised as a Category 3 VHCC. The LSC classified this case as a Category 3 Fraud. The Appellants contended that this case was a category 2 fraud.

The Block A criteria in dispute were:

1. The defendant's case requires highly specialised knowledge.
2. The defendant's case involved significant international dimension.
3. The defendant's case requires legal, accountancy and investigative skills to be brought together.

The Block B criteria were not in dispute and would meet the 2 'b' requirements for Category 2.

The Committee understood that it was conceded that the 'national publicity' criterion was not met in any event. They therefore considered the three remaining criteria of which at least 2 must be met:

The defendant's case "requires highly specialised knowledge"

The defendant's case involves "a significant international dimension"

The defendant's case requires legal, accountancy and investigative skills to be brought together

The Contract Manager contended that none of these criteria were met or perhaps at most the third criterion may be met.

The Committee dismissed the Appeal, making the following findings:

(i) this case did not require "highly" specialised knowledge.

(ii) all MTIC cases have, by their very nature, an international dimension. The test is whether there is a "significant" international dimension? In the Committee's opinion, there was not such a "significant" international dimension.

Therefore, as two of the criteria in Block A could not be engaged, the appeal was dismissed.

Appeal by solicitors – 2 September 2009
LSC decision upheld

- Reading time
  This appeal was in relation to reading time for 23,530 pages of exhibits.

The appeal was withdrawn prior to its conclusion with the assent of the Appellant, CCU and the Appeal Committee.

Appeal by counsel – 2 September 2009
Appeal withdrawn

- Category

This appeal related to the Contract Manager's decision to categorise this case as a Category 3 VHCC fraud. The Appellant was of the view that this case met the necessary criterion to be considered a Category 2 VHCC fraud case. The Appellant made representations to support the view that this case required both Highly Specialised Knowledge and a Significant International Dimension.

The Committee dismissed the Appeal, giving the following reasons:

Highly Specialised Knowledge
On the material available to the Committee, they were not satisfied that at this stage this was a case that required such knowledge. It may be that at a later stage further information might become available that would change the position but insufficient particulars were placed before the Committee at the hearing.

Significant International Dimension
Although there was clearly an International Dimension to this case, the Committee were not satisfied on the material available that this was "significant". If further information became available the position could change.

Appeal by solicitors – 9 September 2009

LSC decision upheld

- Pre-contract

This appeal related to the Contract Manager's decision to disallow preparation undertaken in relation to the Appellant's reading of the served evidence in the pre-contract stage.

The Appellant spent 94.5 hours reading 480 pages of comment interviews, 72 pages of no comment interviews and 2,397 pages of volume C exhibits. The LSC disallowed 36.1 hours of the time spent.

The rates applied to the material were: 2 minutes per page for the consideration of the interviews and 1 minute per page for the consideration of the exhibits.

The Committee dismissed the Appeal, giving the following reasons:

The overall time allowed in this case was reasonable and the further hours were not justified. Two of the factors that they took into account were that the examples of exhibits did not assist the Committee in assessing the extra hours and the solicitors were able to undertake the work in the time allocated.

Appeal by counsel – 9 September 2009
LSC decision upheld

- **Reading time**

This appeal relates to the Contract Manager's original decision to refuse the Appellants request to consider 30,000 pages of material at a rate of 2 minutes per page.

The material was received by the Appellant after the client's plea and sentence. The material is disclosure from a large MTIC case that collapsed due to the HMRC policy not to disclosure vital information regarding the involvement of the freight forwarders.

The Appellant wished to consider the material in relation to their client's Confiscation proceedings

The Committee dismissed the appeal, giving the following reasons:

1. This appeal related to a claim for time by the appellant firm to read and consider material served upon them post plea and sentence but pre-confiscation hearing. The material in issue was substantial and amounted to approximately 30,000 pages. The initial request made by the appellant was a rate of 2 minutes per page which factors up to approximately 1000 hours of grade A time. We understand that this amounted to approximately £140,000 worth of work. The Appellant made it clear that the rate of 2 minutes per page was a starting point and he was willing to negotiate the eventual block of time.

2. The material came into the hands of the appellant as a result of a decision by the Court of Appeal relating to the failure of the prosecution to properly disclose unused material in the trial of the client's co-defendants. In the circumstances the Court of Appeal ordered that all defendants in the case be served with the unused material. The appellant informed us that the material is irrelevant to any appeal against conviction or sentence in the client's case.

3. The area where it is suggested that the material may be relevant is in relation to the outstanding confiscation hearing. In particular the Appellant referred to the case of R v Sivaraman [2008] EWCA Crim 1736 .With respect to the Appellant there seemed to be a substantial difference between the facts of Sivaraman and his client. However in coming to this decision it is unnecessary to make any decision on that point. The reality of this case is that there exists no evidence to suggest that the information contained within the 30,000 pages disclosed could possibly assist the Appellant's client in his forthcoming confiscation hearing.

4. In reaching this decision we note that the Contract Manager in an email dated 10th August 2009, invited the Appellant to deal with the issue in the following terms:

   "If you do wish to argue that discrete areas of material are relevant to confiscation then please highlight such areas to me, explain why they are relevant and provide the material for my perusal."

5. Whilst it is right that there is no obligation upon the appellant to deal with his dispute in correspondence with his Contract Manager and he is entitled to proceed to the appeal process. There is however an obligation at some point, either with the CM or the Committee, to deal with the relevance of the material.

6. Having failed to demonstrate how the material may be relevant to the forthcoming confiscation hearing the appeal is dismissed.

Appeal by solicitors – 30th September 2009

LSC decision upheld

- **Preparation**

This appeal relates to Task 17 on the Task List, and the Contract Manager's decision to agree 20 seconds per page in order for the Appellant to consider 'potentially relevant' material, sifted from an original 671,513 pages of downloaded hard-drive evidence served in this case.

The Appellant sought a rate of 35 seconds per page for the sifted material.

The Committee dismissed the appeal, giving the following reasons:

1. Following a hearing on 29th April 2009 a differently constituted Committee heard an appeal on behalf of this Appellant. On 5th May 2009 that Committee gave its decision in relation to the time to be allowed to consider a very large amount of material contained on a number of hard-drives seized during the investigation into the alleged offences. The consideration was intended to reduce down the material by discarding all but the potentially relevant materials; that sift has been completed.

2. This appeal relates to the time to be allowed to re-look at all the potentially relevant material and either confirm that status or discard it. If retained it would be subject to a scheduling exercise. The parties have agreed to work on the basis that 17% of the material will end up on the said schedule. If that figure turns out to be incorrect appropriate variations will be made in relation to time allowed.

3. The dispute turns on the Contract Manager concluding that 20 seconds per page is reasonable for the task as against the appellant's who contend that 35 seconds per page is the minimum required.

4. Unusually in the experience of the Committee the CM has actually conducted a detailed assessment of 305 randomly selected samples of the potentially relevant pages. That of itself is not conclusive of the matter but having heard the contract manager and the Appellant we heard nothing to suggest that the assessment of the contract manager was unrepresentative or unfair. It was suggested by the Appellant that there may exist in the vast volume of material some exceptional pages. He specifically referred to schedules. The contract manager made it clear that exceptional items could be considered on a basis other than the standard 20 seconds per page.

5. In the circumstances we dismiss the appeal.

Appeal by solicitors – 30th September 2009
LSC decision upheld

- **Pre-contract**

The appeal relates to 3 areas of work undertaken and claimed by the Appellant's in the pre-contract stage of this case:-

4.5 hours Grade A preparation claimed in relation to preparation of case plan, task list and submissions in relation to the case category. 8.5 hours preparation originally claimed – 4 hours of this time was assessed as reasonable upon audit and has been paid.

8.5 hours Grade A preparation claimed in relation to an initial “skim read” of the witness statements served in the case.

77.75 hours preparation claimed in relation to an initial “skim read” of the exhibits served in this case.

The Contract Manager’s original decision was that:-

The LSC does not accept that 8.5 hours preparation is a reasonable amount of time in order to complete this task.

The LSC agreed that a detailed consideration of the witness statement is a necessity but would assert that the taxpayer should not be expected to remunerate for multiple considerations of this material. The skim reading was seen as unnecessary duplication.

The LSC felt that it was not necessary or reasonable to skim read the served material in the pre-contract stage.

The Committee was asked to rule, following oral submissions by both parties as to whether:-

8.5 hours overall preparation should be allowed for preparation of the task list and category submissions.

Whether 8.5 hours of Grade A preparation claimed in relation to the skim reading of the served witness statements was reasonable

Whether 77.75 hours preparation claimed in relation to an initial skim read of the exhibits served in this case was reasonable.

The Committee dismissed the appeal, giving the following reasons:

The Committee felt that the time allowed in relation to the preparation of category submissions and task plan was reasonable.

The Committee heard from the Appellant that a large volume of material was received from previous solicitors and it was reasonable to “skim read” the case prior to reading the case in Stage 1.

The Commission accepts that separate tasks may have been necessary in terms of administration and for familiarisation – for example it may have been reasonable for a C Grade to have sorted the papers out – but the appeal is based upon the documentation and submissions and accordingly the Committee feels that the “skim reading” of material amounts to duplication. If separate tasks can be identified they should be at the earliest possible stage. It is not in dispute that the LSC state that it is reasonable for the supplier to be remunerated for one, detailed, consideration of the material at the appropriate preparation rates. It is well established that the LSC does not deem it reasonable for the taxpayer to remunerate for multiple considerations of the same material by separate fee earners.

Appeal by solicitors – 21st October 2009

LSC decision upheld

- **Disbursement – defendant’s accommodation costs**

The appeal relates to the funding of the Defendant's accommodation costs insofar as they exceed £70.00 per week to attend his trial. The Contract Manager has not been persuaded that it is a reasonable decision.

The Committee was asked to rule on the basis of paper documentation supplied as to whether the funding of the Defendant's accommodation costs insofar as they exceed £70.00 per week during a lengthy trial were a reasonable disbursement. The Committee considered the documents supplied by the Appellant and the LSC.

The Committee dismissed the appeal, giving the following reasons:

Taking all of the matters into account and noting that the trial is now underway and the Defendant has apparently managed to attend and that it does not appear that the availability of a bail hostel was ever mooted with the Court, it is not felt that the Defendant's accommodation expenses should be met from public funds. The Committee accepts the Defendant's financial circumstances may be extremely difficult and straitened however the overall circumstances of his case are not sufficiently difficult or unusual to meet the very high threshold of exceptionality in this context.

Appeal by solicitors – 21st October 2009
LSC decision upheld

- **Preparation – only one read permitted**

This appeal relates to tasks 1, 2, 6 & 7 on the task list and the Contract Manager's original decision to disallow time requested in relation to the consideration of the served statements and exhibits.

The Appellants requested an initial amount of time in order to gain an overview of the case, and then requested further time for a detailed consideration of this material.

The Contract Manager maintained that the LSC would only remunerate for one, detailed consideration of this material.

The Committee dismissed the appeal, giving the following reasons:

The global figure of 2 minutes per page for consideration and cross-referencing of witness statements and 1 minute per page for exhibits (tasks 1,2,6 and 7) allowed by the LSC is reasonable in all the circumstances of this case.

This is a case involving four Conspiracies to Supply Class "A" and "C" drugs, Transfer Prohibited Weapons and Ammunition (with Case Dismissal arguments successful on the two firearms counts).

Appeal by solicitors on behalf of non-Panel advocates – 4th November 2009
LSC decision upheld

- **Preparation – scheduling time**

This appeal relates to Task 18 on the task list and the scheduling of the 511p Witness Statements, 23,515p exhibits and 197p Interview Transcripts served in this case.

The LSC agreed a rate of 45 seconds per page (over and above the time agreed for the consideration of this material) for ancillary work in relation to this material. This included the production of a deal schedule, Dramatis Personae, and Chronology.

The Appellant sought 60 seconds per page for the same.

The Committee dismissed the appeal, giving the following reasons:

The global figure of 45 seconds per page on the total page count, allowed by the LSC Contract manager, for scheduling, is reasonable.

Initially Task 18 was agreed as 72 hours to prepare a DP and Chronology. Subsequently this was amended to an amalgamated task to encompass all scheduling. This was accepted by the appellant as an appropriate way to proceed on the task list in question rather than specific tasks for certain schedules. It was agreed by the contract manager that time may be agreed for targeted and focused tasks and defence lines of enquiry which might arise out of the scheduling of the papers. The Appellant had initially agreed a 45 seconds per page for consideration of the exhibits and the additional time sought on this agreed amalgamated task was not reasonable.

Appeal by solicitors – 4th November 2009
LSC decision upheld

- **Preparation – reading and scheduling time**

This appeal relates to Task 3 on the task list and the consideration and scheduling of the served exhibits in this case.

The Contract Manager agreed 30 seconds per page in order for counsel to consider and schedule this material. The Appellant sought 2 minutes per page.

The Committee allowed the appeal in part, giving the following reasons:

Both appeals allowed to the following extent:

The 30 seconds a page to read and consider the exhibits, allowed by the LSC Contract manager is unreasonable;

1 minute a page should be allowed to read and consider the exhibits;

Further time should also be allowed, for negotiation between the parties, for the following separate tasks arising from a read of the exhibits:

Preliminary legal arguments, including abuse of process, disclosure and Case Dismissal

Evidential admissibility

Development of a positive “genuine trade” defence case, which will include analysing the deal chains and audit trail.

This is a complicated “missing trader” case involving multiple layers of “buffer” companies, involved in the alcohol supply chain, with the Defence advancing that the clients’ company was involved in genuine trades. This will involve the Defence re-creating missing supply deal documents.

Appeal by solicitors on behalf of non-Panel advocates – 4th November 2009
LSC decision upheld in part

- **Category**

The Contract Manager has assessed this case to be a category 3.

The appellants have made representations that it meets category 2 criteria.

2. The Contract Manager has refused all copying costs other than the reproduction of disks, as the evidence has been served electronically.

The appellant has requested copying fees to reproduce 3 copies of the served case papers.

3. The Contract Manager has agreed, for the instructing solicitors, 1 minute per page across the 23,530 pages of served exhibits. This allowance combines 30 seconds/page to read the exhibits and 30 seconds/page to schedule the exhibits. The Contract Manager has also agreed, for counsel, 30 seconds/page for the 23,530 pages of exhibits.

The appellants have requested 2 minutes per page for the instructing solicitors to read and schedule the served exhibits and 1.5 minutes per page for counsel to read and analyse the served exhibits.

The Committee allowed the appeal in part, giving the following reasons:

1. **Category assessment**

   Appeal allowed this is a Cat. 2 case.

   Block A :
   Legal, accountancy and investigative skills satisfied (and accepted by LSC and Appellant)
   Highly specialised knowledge satisfied. The defence being advanced by the client involves refuting the Prosecution assertion that the use of a FCIB account is a "badge" of an MTIC fraud. The defence will attempt to give the FCIB account usage a "clean bill of health"
   Significant International Dimension satisfied. Elements of Dutch criminal procedure and banking law will be considered by the defence team in challenging the admissibility of FCIB evidence.

   Block B :
   Two accepted by Contract manager and Appellant.

2. **Copying costs**
   During oral submissions, the Appellant withdrew this element of the appeal, as the Contract manager made a tolerance concession that 10% of the papers could be copied. The parties intend to liaise on this point.

3. **Reading time for exhibits**

   Appeal allowed to the following extent:

   Counsel to be allowed 1 ½ mins per page of exhibits to read, consider and analyse. Counsel to provide a detailed worklog to accompany payment claim to assist auditing purposes.

Solicitor to be allowed 1 ½ mins per page of exhibits to read, consider and schedule; as this is a complex MTIC fraud with an "offset" cover up fraud element.

Appeal by solicitors – 11 November 2009

LSC decision upheld in part

- **Return of brief**

The Appellant spent 158 hours between 22 November 2008 and 6 May 2009 reading the witness statements and exhibits. The Complex Crime Unit (CCU) advised that whilst it was able to pay the 114 hours the Appellant spent reading the witness statements and exhibits up to the contracting of the case as a VHCC on 19 February, subject to an assessment of reasonableness, it was unable to pay the 44 hours spent from then up to 7 May when the Appellant was authorised to work on the VHCC. The refusal to pay the 44 hours was on the basis that this time had not been agreed in advance.

The Appellant returned the brief because of the decision not to pay the 44 hours. The CCU considered this to have been an unreasonable basis for the return of the brief and consequently made a decision that it should not pay for the whole of the time (158 hours) spent by the Appellant reading the witness statements and exhibits.

The Committee allowed the appeal in part, giving the following reasons:

Held: 158 hours have been disallowed by the Case Manager.

The Committee felt that the return of the brief was reasonable, because initially this was a non-contracted case, and for that reason:

Appeal has been allowed to the following extent:

The preparation undertaken by Counsel up to 19th February 2009 should be paid, subject to an assessment of reasonableness of the time spent.

Appeal dismissed to the following extent:

The 44 hours preparation undertaken by Counsel from 19th February 2009-7th May 2009 , during the contract period, with no prior agreement, is disallowed. The fundamental principle of a VHCC case is that Counsel must agree **in advance** the work, tasks and hours to be undertaken.

Appeal by solicitors on behalf of non-Panel advocate – 11 November 2009

LSC decision upheld in part

- **Disbursement - printing**

The appellant has asked to print out 46,931 pages of material from five discs served by the Prosecution. This material is set out in the following tasks:

Task 10 – 1 disc of Telecommunication evidence dated 11.12.08 – 25,829 pages
Task 12 – 2 discs of Sequence of Events and Telecommunications evidence – 13,396 pages
Task 37 – 1 disc of Telecommunications evidence dated 15.04.09 – 7,067 pages
Task 38 – 1 disc of Unused resumee Document for Audio Product (telephone intercept schedules) – 639 pages

The Contract Manager has disallowed this printing as she considers that the material should first be sifted electronically, and then if shown to be relevant, necessary and reasonable, certain sections could then be printed if that could be shown to lead to an overall reduction in preparation time, or if these particular sections can only be shown to the client in hard copy format.

The Committee allowed the appeal, giving the following reasons:

The cost of printing one set of Prosecution served material, (£1642.59) should be paid by the LSC.

It is imperative to ensure the Defendant's right to a fair trial that his solicitors be allowed to have a publicly funded paper copy set of the Prosecution served material. The Defendant is a Polish speaking male, with mental health issues, remanded in custody, until his trial due to begin on 25th January 2010. The vulnerability of this defendant makes a hard copy of the papers essential in the solicitor taking instructions (on four drugs and firearms conspiracy counts).

Appeal by solicitors – 11 November 2009

LSC decision overturned

- **Disbursement & reading time**

1.The Contract Manager has refused all copying costs other than the reproduction of disks, as the evidence has been served electronically.

The appellant has requested copying fees to reproduce 3 copies of the served case papers.

2. The Contract Manager has agreed, for the instructing solicitors, the following hours for consideration of served exhibits:

FCIB Material – 1688 pages at 2 min/page plus 1 min/ page for scheduling and other ancillary work.

Banking & Other complex material – Estimated at 2000 pages by the LSC – at 2 min/page plus 1 min/page for scheduling and other ancillary work.

Remaining exhibits – 6302 pages at 30 seconds/page plus 30 seconds/page for scheduling and other ancillary work.

Counsel is offered the reading time as above but without any of the scheduling hours.

The appellants have requested 3 minutes per page for the instructing solicitors to read and schedule the 'remaining exhibits' and 1.5 minutes per page for counsel to read and analyse the 'remaining exhibits'.

The Committee allowed the appeal in part, giving the following reasons:

Two issues appealed:

Copying costs

During oral submissions, the Appellant solicitor withdrew this element of the appeal, as the Contract manager made a tolerance concession that 10% of the papers could be copied. The parties intend to liaise on this point.

Reading time for exhibits

Appeal allowed to the following extent:

We agree that the time of 3 minutes for reading and scheduling the 1688 pages of the FCIB exhibits is reasonable in the circumstances, and we further agree that the 3 minutes for reading and scheduling the remaining financial exhibits of approximately 2000 pages is also reasonable. The item in dispute therefore is the allowance of 1 minute per page for the remaining exhibits. We do not think this figure is reasonable and we would allow 1.5

minutes per page for scheduling and reading the remaining exhibits for solicitor and counsel.

Appeal by solicitors – 11 November 2009

LSC decision upheld in part

- **Two teams of fee earners, reading times and other preparation**

These decisions relate to the five appeals (one appeal having been withdrawn on the day) heard on Wednesday 18th November 2009 – all appeals related to co-defendants on the same case. Not all decisions will relate to all the appellants but this document covers all the points raised in the appeals.

The Two Team Approach

1. Having read the written submissions and heard extensive oral argument form both sides we dismiss the appeals on this point. Notwithstanding this it is accepted by the CCU that there will be an uplift in the time allowed for tasks carried out by firms representing two defendants. There will need to be some certainty about the extent of that uplift and having looked at the variety of offers made by the Contract Managers in their written submissions we have decided that the uplift should be as follows:

   Material rated 2 minutes per page will receive an uplift of 1 minute per page and material rated at 1 minute per page will receive an uplift of 30 seconds per page. Hence a 50% uplift across the board.

2. This decision does not extend to the consideration of used material which is yet to be served. It is anticipated that this material will be substantial in volume. It was made clear during the appeals that the firms representing two defendants would be able to conduct the analysis of unused material without the need for any uplift on the time allowed.

Additional Readers

3. Having read the written submissions and heard extensive oral argument form both sides we dismiss the appeals on this point. The appellants have argued that fee earners carrying out significant tasks such as taking instructions on discrete issues will need to read all the material relating to that discrete issue. By way of example it is suggested that approximately 100 hours be allowed to read materials in Sections A, B and C. We believe that the fee earner taking the lead in this case should prepare a briefing note for the fee earner carrying out the discrete task. There should also be a meeting between the two fee earners if this is necessary. In addition any fee earner carrying out a significant amount of work on this case – 100 hours or more – should read the case summary at 2 minutes per page.

Reading Time (without uplifts or scheduling / summarising etc.)

4. Having read the written submissions and heard extensive oral argument form both sides we dismiss the appeals on the major issue of reading time for the vast majority of the material but allow it in relation to the 840 pages in Section J (up from 1 minute to 2 minutes per page). In view of the fact that the CCU have already agreed that approximately 75% of the material served can be copied (once) from the hard drive served. The appellants have argued that the format in which the material has been presented on the hard drive makes it very difficult to efficiently navigate. We have taken a pragmatic view in relation to this and have decided that the appellants be allowed to copy 100% of the hard drive material (once) at the relevant rate of 4p per page. It was argued that even if the reading

rate of 2 minutes per page for the vast majority of the material was not increased to 2.5 minutes per page that rate of 2.5 minutes per page should apply to any material that has already been considered without the aid of a printed document. Notwithstanding the decision that 100% of the hard drive material can be copied we do not accept that that a reading time of 2.5 minutes should apply to the material.

Reading Case Summary

5. Having read the written submissions and heard extensive oral argument form both sides we allow the appeals in the teams appearing in paragraph 2 above: any fee earner carrying out a significant amount of work on this case – 100 hours or more – should read the case summary at 2 minutes per page.

Comparing Interview Transcripts To Audio / Video

6. Having read the written submissions and heard extensive oral argument form both sides we allow the appeals in part as follows:

   The checking of the accuracy of the transcripts of the interviews under caution of the present defendants is to be done at Grade C standard rate at 1.5 x real time. We understand that these interviews were video recorded.

   Checking the interview transcripts which pre-date the present defendants interviews will need to be considered for more than simple accuracy. The issues that may have arisen during those interviews relating to the original defendants and the perjury witnesses appear to go to many of the central issues in the case. It is therefore appropriate that a Grade B normal rate at 1.5 x real time be allowed for this task. This allowance reflects the fact that by allowing the work at this rate it will avoid the need for any further review of this material within the solicitors tasks (including the Grade A having overall conduct of the case).

7. For the avoidance of doubt these tasks are in addition to the time allowed for the Grade A reading the transcripts.

Drafting / Agreeing Stage Task List

8. Having read the written submissions form both sides we dismiss the appeals on this point.

Supervision Etc.

9. In view of the decisions made above the appellants are asked to renegotiate this task with their Contract Managers (only in dispute in cases involving the two teams appeal).

Liaison With Prosecution And / Or Co-defendants Teams

10. Having read the written submissions form both sides we believe that the time allowed and the approach suggested is fair and reasonable and we dismiss the appeals on this point.

Conferences With Counsel

11. Having read the written submissions form both sides we believe that the time allowed and the approach suggested is fair and reasonable and we dismiss the appeals on this point.

Appeal by solicitors x 5 – 18th November 2009
LSC decision upheld in part

- Travel

The Contract Manager has refused to pay for the appellant's funding to travel to Dubai to take instructions from the client who is a resident there.

The appeal is against the Contract Manager's refusal to fund travel and disbursements to enable the Appellants to travel to Dubai to take instructions from their client who is resident there. The Defendant is subject to a Restraint Order, which allows the Defendant a weekly draw for living expenses. The Appellants say that flights cost as little as £280.

The Committee dismissed the appeal, giving the following reasons:

The Committee agrees with the Contract Manager that the Defendant should apply to the Court for variation of the Order to cover travel expenses and that a legally aided Defendant who is on bail is expected to attend his Solicitor's offices. The fact that the Defendant does not want to bring sensitive tax documents into the jurisdiction is of no relevance.

Appeal by solicitors – 2nd December 2009
LSC decision upheld

- Category

The appellant wishes to appeal the VHCC categorisation criterion "The defendant's case requires highly specialised knowledge". The following criteria have already been accepted:

Block A:

- The defendant's case requires legal, accountancy and investigative skills to be brought together.

Block B:

- The value of the fraud exceeds (a) £10 million.
- The volume of prosecution documentation exceeds (a) 30,000 pages.
- The length of trial is estimated at over 3 months.

The contract manager has agreed that when a two counsel rep order is granted she will accept that the defence costs are likely to exceed (b) £250,000.

In order for a case to be classified as a category 2 it is necessary for the defence team to demonstrate that they meet two criteria from block A and two criteria from block B. This means that if the appellant's representations are successful the case will be categorised as a category 2 case.

This is an appeal against the Contract Manager's decision to categorise the case as Category 3. The Contract Manager has agreed that at least 2 Block B criteria are met and that criterion 4 of Block A is satisfied. The parties agree that Block A criteria1 and 3 do not apply. The issue to be considered by the Committee is whether Block A criteria 2 (Highly Specialised Knowledge) is met.

The Committee dismissed the appeal, giving the following reasons:

The Committee has heard the representations made by the Appellant and considered the written submissions. The case is unusual as it combines M.T.I.C fraud and Diversion fraud. The Appellant has told the Committee that in his view the Defendant's alleged role

was more than that of money courier. The Appellant has also said that the level of difficulty and complexity of the case requires a high degree of specialised knowledge.

The Committee has had regard to these submissions and the facts of this Defendant's case but is unable to find any element of the Defendant's case, which requires the application of highly specialised knowledge. The combination of M.T.I.C and Diversion frauds does not call for such knowledge nor is the case so complex and difficult as to require such knowledge.

Appeal by solicitors – 2nd December 2009

LSC decision upheld

- **Category**

The Contract Manager has categorised this case at category 3.

The Contract Manager cannot agree that the following block A criteria are met, i.e. that the defendant's case

- is likely to give rise to national publicity and widespread public concern,
- requires highly specialised knowledge,
- involves a significant international dimension.

This contract has accordingly been classified as a Category 3 fraud. Only one block A criterion has been met, in that the defendant's case requires legal, accountancy and investigative skills to be brought together.

The Block B criteria would enable a Category 2 classification to be agreed, on the value of the fraud (£300m) and the page count (over 10,000 pages).

This appeal has been decided on the submitted papers and is an appeal against the Contract Manager's decision to categorise the case as Category 3. Two Block B criteria are agreed to be met as is criterion 4 in Block A. The issue is whether any of the three remaining Block A criteria are met.

The Committee allowed the appeal, giving the following reasons:

A1. The Appellants say that the fact that a similar prosecution recently failed at huge public cost may well give rise to large scale media interest and public concern. The Committee has seen nothing to support this contention and in any event does not think that the case is likely to attract national publicity.

Not met.

A2. The Appellants claim that the defendant's case requires highly specialised knowledge of the systems, which should have been in place for a foreign currency exchange business to comply with Money Laundering Regulations. The Committee does not consider that the knowledge required can be regarded as highly specialised.

Not met.

A3. The Committee has considered the facts set out in the Prosecution Summary and has concluded that this Defendant's case involves a significant international dimension. The Defendant is charged with dealing with the proceeds of crime within the UK jurisdiction but substantial transfers were made outside the jurisdiction, which will have to be investigated.

Met.

Appeal by solicitors – 2nd December 2009

LSC decision overturned

- **Category**

The contract manager has assessed this as a category three case – the Appellant disagrees and believes this is a category two case.

The contract manager has not agreed that any of the Block A criteria are met. The Block B criteria have been met on the basis of the value of the fraud (£300 million) and the number of pages (more than 10,000).

This appeal has been considered on the submitted papers. It is an appeal against the Contract Manager's decision to categorise the case as Category 3. The Defendant faces two counts of failing to report suspicious transactions.

The Committee dismissed the appeal, giving the following reasons:

Two of the Block B criteria have been met but the Contract Manager does not agree that any of the Block A criteria are met. The Committee has considered whether two or more of the Block A criteria are met and finds as follows:-

A1. The Appellants argue that the Defendant's case is likely to attract national publicity and widespread public concern because very large sums of money are involved and because prosecutions of money laundering officers are highly unusual. They also say that the fact that the M.T.I.C case collapsed will attract such publicity and concern. The Committee does not agree that this is likely.

Not met.

A2. No submissions.

Not met.

A3. The Appellants argue that the Defendant's case has a significant international dimension. The M.T.I.C case collapsed and the Prosecution have served evidence, which purports to prove that fraud. The Defence is entitled to challenge this evidence. The Appellants will seek to prove that the First Curacao International Bank was a legitimate institution and the authenticity of foreign documents will have to be investigated. The Committee agrees that all this amounts to a significant international dimension.

Met.

A4. The Appellants say that the Defendant's case requires legal, accountancy and investigative skills to be brought together. The Appellants anticipate instructing an Accountant but have not applied for authority. The Appellants have not demonstrated how these three elements will be used to advance the Defendant's case or how they will compliment each other.

Not met.

The Committee finds that only one Block A criterion has been met, so the appeal fails.

Appeal by solicitors – 2nd December 2009

LSC decision upheld

- **Reading and scheduling time**

This appeal relates to Task 11 on the Task List, and the Contract Manager's decision to allow the consideration and scheduling of the served Exhibits at 1 minute per page.

The Appellant sought 1.5 minutes per page

The committee was asked to review the decision of the contract manager to allow 1 min per page for the scheduling of the exhibited material in this case. The appellant sought to argue that an allocation of 1.5 mins per page should be allowed.

The committee reviewed all of the material supplied by the appellant and carefully considered the arguments advanced by both sides. It was the unanimous view of the committee that the decision of the contract manager to allow 1 min per page to be divided between the grade A and C fee earner was reasonable in the circumstances of this case.

Appeal by solicitors – 18th December 2009
LSC decision upheld.

- **Category and reading time**

There were two separate items in dispute in relation to this case:

1. Categorisation – This part of the appeal relates to the Contract Manager's decision to Categorise this case as a Category 3 VHCC fraud case. The Appellant believes that this case meets the necessary criteria in order to be categorised as a Category 2 VHCC fraud case.
2. Consideration of the served Exhibits – This part of the appeal relates to the Contract Manager's decision to refuse the Appellant's request to consider the served Exhibits at a rate of 1 minute per page. The Contract Manager believed that the appropriate rate for this material was 30 seconds per page.

The committee was asked to decide on two issues:

1. The appropriate categorisation of the case
2. Whether an allowance of 30 secs per page for the reading of exhibited material was reasonable.

Categorisation

The contract manager had decided that this was a category 3 case. She did not find any of the criteria in Block A to have been made out. The appellant sought to argue that two of the criteria had been made out, namely:

(a) Highly Specialised Knowledge
(b) Legal, Investigative and Accountancy Skills

<u>Highly Specialised Knowledge</u>

The appellant argued that based upon the prosecution case summary and their consideration of the evidence against their client to date this was a case that required highly specialised knowledge on the part of the defence lawyer. They referred in particular to the interviews conducted with their client and the fact that his role was evidently more extensive than appears from the relatively brief description in the case summary. The contract manager had not had the advantage of considering the interviews but nevertheless stuck to her assessment of the case as one which did not require highly

specialised knowledge. She placed particular significance on the limited role he appeared to have played in the fraud.

The committee considered all the submissions both written and oral and were not persuaded that this case met the criteria for highly specialised knowledge.

Legal Investigative and Accountancy Skills

The committee considered the material supplied and the oral submissions from both parties. It was their unanimous view that this case did not currently meet this criteria. However, it was conceivable that upon the service of additional evidence, in particular forensic accounting analysis by the Crown, this criteria could be satisfied.

The committee therefore decided unanimously that this case was correctly assessed as Category 3 and this aspect of the appeal was not allowed. The LSC decision in this respect was therefore upheld.

Appropriate Rates for Reading of Exhibited Material

The contract manager had decided to allow 30 secs per page for the reading of exhibited material. The appellant sought to argue that an allocation of 1 min per page was more appropriate given the detail and complexity of the case. Having considered all written material and oral submissions the committee decided unanimously that 1 min per page was a reasonable allocation of time for reading the exhibited material in this particular case.

Appeal Allowed on this point.

Appeal by solicitors – 18th December 2009

LSC decision upheld in part

- **Category**

Categorisation – This part of the appeal relates to the Contract Manager's decision to Categorise this case as a Category 3 VHCC fraud case. The Appellant believes that this case meets the necessary criteria in order to be categorised as a Category 2 VHCC fraud case.

The LSC and the appellant are in agreement that the criterion of legal accountancy and investigative skills has been met, and that enough criteria from block B are met in order to satisfy the application of category 2 or category 3.

The dispute therefore centre around the following 3 Block A criteria-

National Publicity & Widespread Public Concern
Highly Specialised Knowledge
Significant International Dimension

The contract manager has categorised this case as Category 3, in that he does not accept that the criteria has been met, in that the defendant's case does not meet any of the National Publicity, Highly Specialised Knowledge or Significant International Dimension criteria. We have read extensive submissions from both parties and heard from the Appellants and the Contract Manager in the hearing today.

The Defendants are charged with Conspiracy to Defraud, one defendant additionally with False Accounting. It is alleged that between 2004 and 2007, the defendants, whilst directors of Firm X were involved in a large scale conspiracy that involved selling

case/battery eggs as free range or organic. By falsely labelling the eggs, the sale price was increased by over 100% and is thought to have led to over 10 million eggs being sold.

Dealing with the National Publicity criteria first, the Contract Manager submits that the publicity should be sustained throughout the life of the case, he does not mean on a daily basis and that widespread concern should be evidenced by some editorial comment on the case.

Block A states as follows:

"The defendants' case is likely to give rise to:

(a) national publicity; and

(b) widespread public concern."

The committee take the view that with respect to the Contract Manager, he has set the bar too high, the committee have to assess what is likely to occur, in that many cases receive very little press coverage until the start of the trial and in some case at the conclusion. The committee have to look at the subject-matter of the Indictment and form a view in many cases of what is likely to happen, sometimes there will be evidence in the form of the reporting of the arrests, sometimes there may be a press embargo on reporting that means such evidence is not available at the time of the decision.

In this case, the committee take the view that this is a multi-million pound fraud that affects every single member of the public. As Queen's Counsel quite rightly points out, it affects everybody's pocket at some point. This is the first time that DEFRA have taken a case to the Crown Court; the committee have no doubt that there will be extensive press coverage.

As a result of our decision above, the case meets the criteria for category 2 and we do not need to go on to consider the remainder. We should remind the appellants that we are only considering an appeal of the decision of the contract manager on the 11th November 2009; the category cannot be backdated any further as no appeal was undertaken against the decision in the previous stage.

The committee would wish to thank the Appellant for the way in which the appeal bundle was presented which made an always difficult task somewhat easier.

Appeal by solicitors and Queen's Counsel – 11 January 2010
LSC decision overturned

- **Preparation**

Contract Manager's original decision:

To consider pre-interview disclosure (referred to as unused material) at 30 secs/pg. 20 sec/pg has been allowed by the contract manager at this time.

To consider schedule of unused material at 30 sec per item. 2 min/pg has been allowed by the contract manager. The overall time sought for this task (6.8 hours) was conceded by the contract manager to include both tasks – considering and highlighting relevant material and for preparation of instructions, so this item was not considered by the committee.

To check the accuracy of the Prosecution Provenance Schedule at 2 min per line. 2 min/pg has been allowed by the contract manager.

To check the accuracy of the Prosecution Summary of Company Information at 2 min per entry. 1 min/pg has been allowed by the contract manager

This appeal is concerned with a dispute over time allowed for three tasks in relation to material served by the prosecution.

a. To consider pre-interview disclosure at 30 seconds a page, 20 seconds a page has been allowed by the contract manager.
b. To check the accuracy of the prosecution provenance schedule at 2 mins a line, 2 mins per page has been allowed by the contract manager.
c. To check the accuracy of the prosecution schedule of company information at 2 mins per entry, 1 min per page has been allowed by the contract manager.

We have read submissions from both parties and heard in the hearing today from the Appellant and the contract manager. We have also been shown examples of the material concerned in this appeal.

The case concerns a large and complex investigation into the nationwide misuse of HMRC Construction Industry Documentation. The defendant ran a number of payroll companies associated with the fraud.

Pre-Interview Disclosure:

The appellant has been served with 19,359 pages of material under this heading.

It seems that 8330 pages was considered in stage 0 and the task took 47.25 hours, approximately 20 secs per page, providing the basis of the allowance in this stage. The committee take the view that this represents almost half of the material. The Appellant submits that the material to be considered in this stage is of a different nature, in that there were a number of invoices in the other material. The contract manager has helpfully indicated that were they to exhaust the time allowed, she would be willing to allow further time to consider the material. Notwithstanding the Appellant's desire to have time "in the bank" given the pressure of time he is working under, we note that allowance has been given to a Grade A solicitor and there should be little difficulty in going back should the need arise. We therefore refuse the appeal in relation to this item.

Prosecution Provenance Schedule:

The committee take the view, having considered the example shown to us that insufficient time has been allowed for the detail required to be considered in this task. The committee take the view that 10 mins per page should be allowed.

Prosecution Summary of Evidence:

The committee take the view, having considered the example shown to us that insufficient time has been allowed for the detail required to be considered in this task. The committee take the view that 4 hours should be allowed for this task.

Appeal by solicitors – 11 January 2010
LSC decision upheld in part

- **Category and preparation**

Contract Manager's original decision:

1. Category of Case – The appellants suggest this case satisfies the Cat 2 criteria whereas the contract manager believes this is a Cat 3 case.

2. Tasks 1,2,3 and 5 – **7 hours have been requested. 3 hours have been authorised.**

3. Task 4 Supervision time – **The contract manager has agreed to one hour per week per grade of fee earner (as opposed to per fee earner). The appellant disputes that this is a reasonable figure.**

4. Task 10. Listen to tapes of interviews and compare to transcripts – **1.5minutes for every 1 minute of tape at grade B requested. The contract manager agrees with the times suggested but believes this is a grade C standard task.**

5. Tasks 23 & 26. Liaison with the Prosecuting Authority and Liaison with co-defence teams – **The contract manager as authorised 6 hours with a view to further time being agreed. The appellant has requested 13 hours.**

6. Additional Task (Preparation of a chronology) – **82 hours for all ancillary work (scheduling, chronologies etc) for the original 4,361 pages of exhibits. The appellant wants a further 8 hours specifically for a chronology.**

7. Additional Task (Grade A reading the synopsis at 2mpp) – **20 hours requested for this stage alone. The contract manager feels sufficient reading and supervision time has already been agreed.**

Categorisation. The Committee take the view that is a Category 2 case and the requirements of block A and block B (Block B conceded by LSC) have been met;

a. In respect of the other appeal points the Committee adjudicates as follows:

i. Tasks 1, 2, 3 and 5 - 7 hours allowed;

ii. Task 4 - appeal refused; Task 10 (withdrawn but would have been refused);

iii. Tasks 23 and 26 - 13 hours allowed;

iv. Additional task - preparation of chronology - appeal allowed;

v. Additional task A Grade reading synopsis - appeal allowed.

Appeal by solicitors – 20 January 2010

LSC decision upheld in part

- **Category**

Contract Manager's original decision:

The Contract manager believes this is a category 3 case and has accepted that the defendant's case meets the legal, investigative and accountancy criterion.

The Appellant disagrees with the Contract Manager and argues the case warrants category 2 on the basis that highly specialised knowledge criterion is also met, having accepted that the national publicity and widespread concern criterion are not met.

The Committee unanimously took the view that there was nothing exceptional and/or unusual in this MTIC to suggest that there should be anything other than a Category 3 categorisation for this defendant.

Appeal by solicitors – 20 January 2010

LSC decision upheld

- **Distant travel**

Contract Manager's original decision:

The appellants seek for full travel, accommodation and subsistence to be paid as an expense for the contract, for both counsel instructed in the case.

Both counsel are located in London, with the case being heard in Liverpool. The reason for their instruction was because the defendant expressed concern at the outset of the case to his instructing solicitor regarding the instruction of a local bar because he believed that there would be a lack of objectivity and independence were the local bar to be instructed. Former counsel had to return the brief due to professional embarrassment, as he had apparently had a conversation locally, which meant that he felt he could no longer represent the defendant. This also resulted in counsel having to be found who could conduct the case at short notice.

The contract manager has applied the 'distant travel' rule to both counsel, and has accordingly allowed £145 per day individually for travel for counsel to spend as they wish. The reason for this decision is that whilst the LSC agree that the instruction of local counsel may lead to a suspicion of prejudice and/or a lack of objectivity**,** this would not preclude instructing from Leeds or Birmingham bars.

Appeal allowed due to the unique and unusual exceptional circumstances of this case.

Appeal by counsel – 20 January 2010
LSC decision overturned

- **Category and reading rates**

Contract Manager's original decision:
This appeal relates to the Contract Manager's following decisions:

1) To categorise this case as a Category 3 VHCC Fraud matter.
2) To allow 45 seconds per page for the consideration of the served Exhibits

The Appellant contested that the case against the above defendant met the necessary criteria to be classified as a Category 2 VHCC Fraud matter. The Appellant also contested that the served Exhibits should be considered at a rate of 1 minute per page.

On the 27th January 2010 the Appeals Committee of the Very High Cost Case Unit of the Legal Services Commission sat to hear an Appeal by the Legal Representatives of the defendant.

Following written and oral representations for both Counsel and Solicitors for the defendant (The Appellant) and Solicitors and Contract Manager for the Legal Services Commission, the Appellate Committee ruled as follows:

"This is an Appeal by Solicitors and Counsel who represent X. The Appellant seeks to challenge a decision by the Legal services Commission as to the categorisation of the case in accordance with the Legal Services Contract provisions and further to challenge the permitted time allowed by the contract manager for the perusal of served papers.

The Committee has had the benefit of reading all papers submitted by the Appellant and also in hearing oral representations from both parties.

The Committee took the view that, whilst this case did indeed involve an 'international dimension', it felt that it was not significant in this instance.

However, the Committee is satisfied that that this is a case that does require 'highly specialised knowledge' in accordance with the criteria. The Legal Services Commission

has already conceded that one other criterion has been met in Block A and the Committee is satisfied that there is now a second. To that end the Committee ruled that this case properly ought to be classified as a category 2 case.

Accordingly the Appeal as to this part, is allowed.

The Committee then considered the question as to the amount of time allowed by the Legal Services Commission for the perusal of the papers. The Committee felt that the 45 seconds a page allowed was more than sufficient and it was always open to the Appellant to apply for extra time if that request was merited.

Accordingly this part of the Appeal is refused."

Appeal by solicitors and counsel – 27 January 2010

LSC decision upheld in part

- **Various tasks in stage 0 and stage 2**

This appeal is concerned with a dispute over time allowed for a number of tasks in Stage 0 and Stage 2. We have read submissions from both parties and heard in the hearing today from counsel, solicitor and the contract manager.

The Committee decided as follows:

Stage 0:

The test for pre-contract work is work reasonably and necessarily done as with any ex post facto determination. The work done was reasonable and necessary, 14.9 hours is agreed.

Stage 2:

Items still in dispute after the Appeal Hearing:

Task 55:
The Committee take the view that an initial 10 hours is reasonable to deal with this task and if more is required the appellant should go back to the contract manager.

Task 56:
The Committee take the view that insufficient time has been allowed for the detail required to be considered in this task. The committee take the view that 3 hours should be allowed for this task.

Task 59:
The Committee refuse the appeal in relation to this item, given that extra time had been allowed in the reading stage for this task.

Task 60 and 61:
The committee take the view that a total of 15 hours is reasonable for the two tasks.

Task 62:
This item is refused on the grounds that sufficient time has been allowed on other tasks in relation to the client.

Task 68:
As with task 62, the committee take the view that the client should have significant input on this task and there is sufficient time allowed for this, this item is refused.

Appeal by solicitors and counsel – 3 February 2010

LSC decision upheld in part

- **Travel – overnight accommodation**

This appeal is concerned with a dispute over whether the contract manager should allow two overnight stays in a hotel for the purposes of the appellant attending a conference with his client at HMP Haverigg in the Lake District. We have read written submissions from both parties.

The Committee decided as follows:

It is reasonable for the contract manager to allow only one night's stay in relation to the proposed conference and still to return home at a reasonable time after the conference.

Appeal by counsel – 3 February 2010
LSC decision upheld

- **Hours disallowed from sols claim**

This appeal relates to the Contract Manager's original decision to reduce the hours claimed in relation to task numbers 1a & 1b in the solicitor's stage 2 claim for payment.

These two tasks relate to DVDs served by the prosecution. The Appellants sought 996.23 hours in relation to task 1a and 3704.4 hours in relation to task 1b. The Contract Manager did not deem this time reasonable, and stated that time should have been deducted for periods of silence or inactivity, in accordance with the agreement made in relation to this material.

Task 1A

Following an appeal hearing on 26th November 2008 a committee including two of the current committee members allowed the appellant's appeal relating to the grade of caseworker who should carry out the task of listening / watching covert footage. The decision was given on 3rd December 2008. The CCU had argued that the material should be dealt with by a Grade C standard and the appellant had argued for a Grade C normal. The material under consideration was in a real running time format. The running time to listening / watching time had been agreed at two minutes for every minute of running time. Both parties agreed that silent time would not be claimed. This material appears at Task 1A on the appellant's task list.

The decision:

We believe that the decision of 3rd December 2008 is clear and we add nothing to it. It is for the parties to agree what elements of the task falls to be paid and what element falls into the "silent" category.

Task 1B

After the hearing relating to task 1A the prosecution served upon the defence solicitor a large amount of DVD material. There was no audio on the 83 DVD's. The material was therefore all silent. It was served in a format that condensed 24 hours into 1.2 hours and hence ran at a considerable speed. Notwithstanding the speed of the running time there appeared to be large amounts of inactivity, particularly during the night.

In an email from the appellant solicitor to the CCU dated 13/01/09 it is suggested that the new material be dealt with on the same basis as the Task 1A material. In reply the contract manager indicates that the material is agreed at the same Grade C rate as agreed on appeal. If the 3rd December 2008 decision is taken literally, the fact that the Task 1B material is all silent, its totality should be excluded from the amount payable under the task. This is in stark contrast to the claim made by the appellant who argued that the appeal decision meant that the material could be claimed at 48 hours for every 24 hours of recorded time less time deducted for inactivity. In effect the condensed time should be slowed down to 24 hours of running time then doubled to match the 2:1 time agreed for Task 1A. The CCU argued that the 2:1 time should relate to the 1.2 hours of actual running time with inactivity deducted from the time claimed. It is of note that that the appellant's own Task List indicates that they are seeking time to consider the actual running time as their task 1B.

The decision:

We reject the suggestion that it was ever agreed that the task should be paid on the basis suggested by the appellant. Consistent with the appeal decision relating to Task 1A we conclude that Task 1B should be paid at the rate of twice the actual running time of each DVD (which we understand to be 1.2 hours per 24 hours). In relation to the element of time that needs to be deducted from the claim – the silent time in task 1A – we have been persuaded that no time should be deducted. This reflects the fact that the DVD's run at a considerable speed and it would be unfair to the appellant's solicitor to decide otherwise.

Appeal by solicitors – 24 February 2010
LSC decision upheld in part

- **Various items of case preparation**

This appeal relates to the Contract Manager's original decisions in relation to the following 4 items:

1. Reading time – The Appellant requested 5 minutes per page in order to consider the evidence served by the prosecution on disc due to it's complexity. The Contract Manager did not deem this reasonable.
2. Level of Fee-Earner – The Appellant has requested that the Grade A fee earner considers the case papers. The Contract Manager has deemed it reasonable for the overwhelming majority of case papers to be considered at Grade B preparation rates.
3. Copying of the papers – The Appellant insisted that funding should be provided in relation to the provision of a hard copy of the papers served.
4. Number of Fee-Earners – The Appellants requested that 11 fee earners should be allowed to consider the material served in relation to this case. The Contract Manager deemed 3 fee earners reasonable in order to carry out the necessary preparation.

The issue in dispute:

It was argued by the appellant that additional reading time should be allowed due to the fact that the case materials had been served in an electronic format that made navigating the material more time consuming than would normally be the case. The appellant immediately accepted that if he were funded to make a hard copy of the materials then the navigation problem raised would be solved.

The decision

Allow funding for a single copy of the case materials. The reading time will therefore be the same as allowed following the appeal of 5 co-defendant firms of solicitors – decision made 24th November 2009 (hearing 18th November 2009)

The issue in dispute:

The appellant appeared to be under the belief that the CCU would only allow a grade B solicitor to have conduct of the case. The CCU in fact had no objection to a grade A solicitor having conduct of the case. The confusion may have arisen as a result of a decision by the appellant solicitor's that they would appoint a grade B solicitor as the solicitor with conduct of the case and then seek funding for a grade A solicitor to supervise that grade B. It was then argued that the said grade A solicitor would be failing in his professional duty if he was unable to read the entirety of the case materials. The consequence would be that both the grade A and the grade B would be funded to read the case papers. A far simpler and more cost effective way of dealing with the case was to have a grade A solicitor conducting the case.

The decision

A grade A solicitor can have conduct of the case.

The issue in dispute:

The issue of a hard copy of the case materials.

The decision

Solicitor to have funding for one copy of case materials copied from hard drive.

The issue in dispute:

The appellant solicitor wished for 11 caseworkers to work on the case. The CCU took the view that any number of caseworkers could work on the case subject to there being no duplication of work. This did however raise the potential consequence that may arise if all 11 were entitled to read the prosecution case statement. In the appeal committee decision of 24th November 2009 it was decided that a caseworker carrying out substantial work on a case (100 hours or more) would be funded for reading the prosecution case summary. The use of a large number of caseworkers would distort the intention of the committee that decided the appeal on 24th November 2009.

The decision

The number of grade caseworkers funded for reading the case to be limited to a maximum

of three.

Appeal by solicitors – 24 February 2010

LSC decision upheld in part

- **Additional reading time for 2 defendants**

This appeal relates to the Contract Manager's original decision to allow a further 50% uplift for the Appellants to consider the served material in relation to a newly-added second defendant in this case.

The Appellant sought a 75% uplift in relation to this material.

The issue in dispute:

The appellant solicitor had represented a single defendant in this case for a considerable amount of time and had effectively read all the served material when a new defendant was charged. That newly charged defendant instructed the appellant's and a representation order was granted in their name. It was agreed between the parties that any future material would be considered with 50% uplift. The CM argued that the re-reading of the material already considered should also be paid at 50% uplift. The appellant argued that it should be at 75%. It was said that the facts of this case could be distinguished from the normal case where the original read was in the context of representing two defendants; in this case the reader was only representing one defendant at the time the material was considered.

The decision

The rate of 75% should apply to the re-reading of the material in issue.

Appeal by solicitors – 24 February 2010

LSC decision overturned

- **Category**

This appeal relates to the Contract Manager's original decision to categorise this case as a Category 3 VHCC fraud.

The Appellant felt that the case in relation to the above defendant met the necessary criteria in order to be classified as a Category 2 VHCC fraud.

In this matter the appellant sought to argue that the case should be remunerated as a Category 2 Fraud. The Commission had decided that the case did not qualify as a category 2 fraud because only one of the Block A criteria (Legal & Accountancy Investigative Skills) applied. The appellant argued on appeal that both the Highly Specialised Knowledge and Significant International Dimension criteria were made out. Two block A criteria were required before the case could qualify as category 2.

The Committee considered the very detailed written submissions and supporting documentation supplied by the appellant and the Commission. They also heard lengthy oral submissions from defence counsel as well as a response from the contract manager.

Highly Specialised Knowledge

The committee decided unanimously that such was the degree of complexity evident in this case that it did require highly specialised knowledge on the part of the defence solicitors. In reaching this decision the committee were persuaded by factors other than those relied on in support of Legal & Accountancy Investigative skills.

Significant International Dimension

The committee decided by a majority (one member dissenting) that whilst there was obviously an international dimension to this case nothing in the submissions made by the appellant or the documentation relied on elevated it to the status of a "significant international dimension".

Appeal Allowed. Category 2 is the appropriate category for this particular case.

Appeal by solicitors – 3 March 2010

LSC decision overturned

- **Category**

This appeal relates to the Contract Manager's original decision to categorise this case as a Category 3 VHCC fraud.

The Appellant argued that the case in relation to the above defendant met the necessary criteria to be classified as a Category 2 VHCC fraud.

In this matter the appellant sought to persuade the committee that the appropriate category for remuneration was category 2. The Commission had agreed that Legal & Investigative Skills were applicable. However, they argued that none of the other block A criteria applied. The appellant argued that both Highly Specialised Knowledge and Significant International Dimension were applicable.

The committee considered the written submissions of both parties and further oral representations made at the hearing.

Highly Specialised Knowledge

The committee decided unanimously that this was not a case where highly specialised knowledge was required on the part of the defence solicitors. Nothing in the submissions heard elevated it above the level of a standard MTIC fraud case.

Significant International Dimension

The committee decided unanimously that whilst there was an obvious international dimension to this case it did not amount to a "significant" one and thus this criteria was not met.

Appeal Dismissed. Contract manager's decision upheld. The appropriate category for this case is category 3.

Appeal by solicitors – 3 March 2010
LSC decision upheld

- **Category**

This relates to the Contract Manager's original decision to categorise this case as a Category 3 VHCC fraud matter.

The Appellant contested that this case meets the necessary criterion in order to be categorised as a Category 2 VHCC fraud matter.

The Committee has had the benefit of written representations from both the Appellant and the Respondent.

The Committee had regard to those representations and to the further oral representations that were subsequently made at the Appeal hearing.

The Committee noted, significantly, the concession made by the Contract Manager in written representations that the case in question involved "an element of international dimension" and further during the appeal itself when he "conceded totally there is an international dimension".

In the light of those concessions the Committee invited further representations as to the definition of what amounted to "significant" in the context of this appeal.

The Committee formed the opinion that this was a complex fraud of its type and the involvement of FCIB banking dimension and that from other jurisdictions to include,

though not exhaustively, Poland, Dubai, Tanzania and Sweden, simply served to complicate an already complex case.

The Committee therefore came to the conclusion that the involvement of the FCIB, augmented by the other detailed foreign investigations which the Appellant referred to within their oral and written pleadings, inevitably points to a conclusion that there is a "significant international dimension" to this case and, as a consequence, the Committee found in favour of the Appellant on this point.

The Committee further noted that having found in the Appellant's favour on this point, it was unnecessary for the Committee to consider whether this case met the other criteria within Block A, namely whether the Defendant's case was likely to give rise to national publicity and wide spread public concern or required highly specialised knowledge. Given the concession previously made by the Contract Manager in this case that it has previously been agreed by the Commission that the relevant second Block A criteria, namely the Defendant's case requires legal accountancy and investigative skills to be brought together, had already been conceded.

Appeal by solicitors – 17 March 2010

LSC decision overturned

- **Category**

This relates to the Contract Manager's original decision to categorise this case as a Category 3 VHCC fraud matter.

The Appellant contested that this case meets the necessary criterion in order to be categorised as a Category 2 VHCC fraud matter.

On the 24th March 2010 the Appeals Committee of the Very High Cost Case Unit of the Legal Services Commission sat to hear an appeal by the Legal Representatives of Mr M.

Following written and oral representations from the Solicitor Advocate for Mr M and the Contract Manager and Legal Representative for the Legal Services Commission the Appellate Committee ruled as follows:

"This is an Appeal by the solicitors for Mr M against a decision by the Legal Services Commission as to the categorisation of this case. This is a trial that is currently ongoing.

The Legal Services Commission suggests that this is a category 3 fraud and the appellant seeks to argue that this is a category 2 fraud.

The Legal Services Commission concedes that the relevant criteria under section B are met but go further to say that there are insufficient grounds under section A to consider re-categorisation.

The appellants argue that this case requires highly specialised knowledge and the need for legal accounting and investigative skills to be brought together.

Detailed representations were made to the committee by the appellant.

The committee have considered all of these representations and remind ourselves as to the content of Para 1.1.6. Annex 5 of the Contract specifically referred to us by the contract manager. It is on that basis that we feel that as the appellant submits to us specific evidence in respect of one criterion then this cannot be used to support his submissions for the second

The committee knows that there exists a high bar to be met in such cases but are of the view that the skills required in this case are those expected of any panel member.

All parties accept that there are certain discrete areas that need to be considered in this case and whilst specialised knowledge is always necessary, this case, in our view, does not meet the criterion of requiring 'highly specialised knowledge'.

Accordingly this appeal is refused.

Appeal by solicitors – 24 March 2010
LSC decision upheld

- **Preparation**

The contract manager has refused to allow 3 hours at Grade A to produce a core bundle.

In this appeal the issue was the allocation of 3 hours for the preparation of a core bundle by the category A fee earner. The purpose of the bundle being to enable lower grade fee earners to understand the case in general terms before they embarked on delegated tasks.

The appellants accepted that this task had been requested following the refusal of the contract manager of another request for the lower grade fee earners to be allowed to read the prosecution case summary. They also conceded that if the committee allowed the task there would almost certainly be a further request for each grade B fee earner to be allowed time to read the bundle. Their submission in general terms was that the Contract specifically allowed for the preparation of core bundles in appropriate circumstances and that this was not limited to exceptional situations as argued by the contract manager in her response.

The contract manager repeated the submissions she had already made in writing. She did not feel that it was reasonable for time to be allocated to the task in the particular circumstances of this case. She did however concede that it was not unreasonable for lower grade fee earners to be given some information about the case to enable them to carry out ancillary tasks. It also emerged that one of the grade B fee earners in the present case had already been allocated a significant amount of time to schedule the prosecution statements and exhibits.

The committee were not persuaded that the allocation of time for the preparation of a core bundle by the grade A fee earner was necessary in the circumstances of this case. However, they observe that it is customary in most VHCC cases for lower grade fee earners to be allowed time to read the prosecution case summary before they embark on ancillary tasks. In principle it was difficult to understand why this had not been allowed in the present case, although it would seem inappropriate and unnecessary in relation to the fee earner who had scheduled the prosecution evidence.

Appeal Refused.

Appeal by solicitors – 28 April 2010
LSC decision upheld

- **Reading time**

Solicitors have requested 3 minutes per page to read and schedule the witness statements and 2 minutes per page to read and schedule the exhibits. The contract manager has authorised 2.5 minutes per page for the statements and 1 minute per page for the exhibits

Counsel has requested 1 minute per page to consider 11,331 pages of exhibits, which the contract manager has refused suggesting that 30 seconds per page is a more reasonable allowance.

In this appeal the issue was the appropriate allocation of time for the reading and scheduling of prosecution statements and exhibits. The Contract Manager had allowed 2.5 mins per page for witness statements and 1 min per page for exhibits in relation to the appellant solicitors. Counsel had been allowed 2 mins per page for statements and 30 seconds per page for exhibits. Both the solicitors and counsel appealed these decisions.

Defence Counsel appeared on behalf of both the appellant solicitors and himself. He argued that the case was in fact far more complex than might have appeared at first blush when the contract manager had first considered the matter. He drew the attention of the committee in particular to three features :

(1) The role of the co-defendant T who had since become a prosecution witness and was almost certainly a "participating informant". The defence were pursuing further disclosure with a view to establishing that this may have amounted to a "state sponsored crime" and thus an abuse of process;
(2) The co-defendant R had in interview blamed the appellant's client for the wholesale fabrication of records in relation to cars that were sold from his garage. This would have the effect of increasing the number of car sales to which she could be linked to a figure well in excess of the 33 currently identified;
(3) In interview the appellant's client had stated that she had been selling cars for a man named "M". It transpired that the two lead defendants had also named this character in their interviews as being a prime mover in the fraud in league with T and I. This further expanded the number of linked transactions that would have to be reviewed.

In summary counsel argued that the case had proven to be a lot more complex than it had first appeared. A considerable amount of cross-referencing and scheduling would be required in order to properly understand the extent of the evidence implicating the client and to assist in taking her instructions.

The contract manager did not add anything substantially to her written submissions in which she argued that the time allocated for reading and scheduling by both solicitors and counsel was, in her estimation having considered the information supplied by the defence, reasonable in all the circumstances.

Having considered the full submissions from both parties the Committee decided unanimously that:

(1) The appropriate allocation of time in respect of the appellant solicitors for the task in question was 2.5 mins per page for statements and 1.5 mins per page for exhibits.
(2) The appropriate allocation of time for counsel to read and schedule the prosecution evidence was 2 mins per page for statements and 30 secs per page for exhibits.

The committee observed that it was open to counsel to apply for additional time in respect of exhibits that he could identify to the contract manager were of particular complexity and related to his client.

Appeal allowed in part.

Appeal by solicitors – 28 April 2010
LSC decision upheld in part

- **Category**

The Appellant has requested that this case meets the Category Two criteria. The Contract Manager accepts the Block B criteria is met, as well as 'Legal, investigative and accountancy' from Block A.

The only item in dispute is that of 'Highly specialised knowledge', which the LSC would argue is not met.

This appeal concerned the appropriate categorisation of this case. The Contract Manager had found that only one of the Block A criteria applied to this case, namely, Legal and Accountancy Skills. The appellant sought to argue that there were features of the case that required the application of highly specialised knowledge on the part of the defence solicitors. All Block B criteria were satisfied. Thus the issue was whether this was a category 3 or 2 case?

The appellant asserted that the case required knowledge of Building Law; Contract Law; Tax Law; and Civil law & Procedure as it related to Bankruptcy and its impact in a criminal case. The appellant argued that on the facts of this case his personal experience in the above spheres elevated the case above the norm and triggered the requirement for highly specialised knowledge.

The Contract manager (supported by the Commission Legal Advisor) accepted that there were fraud cases where knowledge of other areas of law and/or procedure would be relevant. However, they sought to draw a distinction between "ordinary" knowledge which might be expected of any qualified lawyer and "specialised" knowledge based on practice and experience. On the basis of the information supplied by the defence they did not feel that the need to have "specialised" knowledge was triggered in this particular case.

The committee considered very carefully the submissions made by both parties and decided unanimously that in this particular case the need for highly specialised knowledge in the fields of law identified by the appellant was not made out. The case had thus been correctly categorised.

Appeal Refused.

Appeal by solicitors – 28 April 2010
LSC decision upheld

- **Preparation**

The Contract Manager has agreed 30 seconds per page for all ancillary documents on this MTIC matter. The Contract Manager arrived at this allocation after agreeing additional uplifted analysis time for significant sections of the material for both Solicitor and Counsel.

This allocation represents a total of 301.28 hrs at grade B for 36,154 pages of exhibits. The Appellants request a total of 602.57 hrs for the **scheduling only** (with 492.53 hrs having been agreed for full consideration of the served exhibits).

This specifically excludes the creation of any other documents such as chronologies, dramatis personae etc.

Ancillary documents have been confirmed to the Appellants as any documents they wish to prepare which are founded from the served evidence, such as schedules, dramatis personae, chronologies etc.

The Appellants contend that they want 1 minute a page for scheduling only, with the ability to come back and make further requests for any other documents they may wish to prepare on the served evidence.

This Appeal is against the Contract Manager's decision to allow 30 seconds per page for scheduling exhibits. The Appellants seek 1 minute per page. The Appellants have already been allowed between 30 seconds and 3 minutes for perusal of the same exhibits. They have argued that as the Contract Manager has agreed uplifts above 30 seconds per page for perusal of a large section of the exhibits, then it is logical that scheduling time should also be uplifted.

The Committee does not accept this argument. The Committee is surprised that the perusal and the scheduling of exhibits has been split between A and B Fee Earners as these are ultimately a single task. The Committee has not seen any summary or other document produced on perusal of the exhibits. The uplift on perusal time could reasonably be expected to have eased the task of scheduling.

The Committee considers, having taken into account all representations, that 30 seconds per page for scheduling is reasonable.

The Appeal fails.

Appeal by solicitors – 28 April 2010
LSC decision upheld

- **Reading time and preparation**

Reading Time for No Comment Interviews (Task 1) –
2 mins per page requested by **solicitors and counsel**
1 min per page allowed by the contract manager

Ancillary Tasks from reading Depositions and Interviews (Task 1) –
1 min per page requested by **solicitors only**
30 Seconds per page allowed by the contract manager

Reading Time for Exhibits (Task 2) –
1 min per page requested by **solicitors and counsel**
30 Seconds per page reading time allowed by the contract manager (1 min per page allowed for solicitors however this is to include scheduling which was requested at an additional 30 seconds)

Reading Time for Served Unused Material (Task 4) –
2 min per page requested by **solicitors and counsel**
1 min per page allowed by the contract manager

This Appeal has been decided on the submitted papers including the Solicitor's letter and Counsel's written representations both dated 26 April 2010.

The Appeal is against the Contract Manager's decision in 4 areas. These are:-

1. The decision to allow to both Solicitors and Counsel 1 minute per page for reading no comment interviews. The Appellants request 2 minutes per page for this task.

The Committee has considered both Solicitor's and Counsel's representations and has inspected the samples provided. The Committee has also had regard to the nature of this Defendant's case and has concluded that an allowance of 1 minutes per page for this task is reasonable.

2. The Appellant Solicitors have been allowed 30 seconds per page for ancillary work relating to witness statements and interviews and ask for 1 minute per page for this task. The Appellants have been allowed 2 minutes per page to read this material and could reasonably be expected to have produced some form of summary in the course of the read.

In the Committee's view a total of 2 ½ minutes to read and to carry out ancillary work is a proper allowance having regard to the nature of the case.

3. The Appellant Solicitors and Counsel have been allowed 30 seconds per page to read exhibits and they request 1 minute per page for this task.

The Committee has had regard to the alleged role of the Defendant in this case and considers that the allowance made by the Contract Manager is sufficient for this task.

4. The Appellant Solicitors and Counsel have been allowed 1 minute per page to read the served Unused Material and both ask that 2 minutes per page be allowed.

The Committee understands that much of this material consists of statements and commented interview transcripts but regards the allowance sufficient in view of the alleged role of the Defendant.

The Appeals by both Appellants fail.

Appeal by solicitors – 28 April 2010
LSC decision upheld

- **Preparation**

Exhibits:

The LSC has assessed a rate of 1 min/page as an appropriate consideration rate across the 6,083 pages of served exhibits to include consideration and scheduling.

This amounts to 101.4 hours at B grade.

The appellant submits that instructing solicitors will require 3 minutes per page for consideration and scheduling of the exhibits (2 minutes per page to read and in minute per page to schedule).

This amounts to 304.2 hours at B grade.

Interview transcripts:

The LSC has assessed a rate of 2 minutes per page for commented interviews and 1 minute per page for no comment interviews as an appropriate consideration rate across the 771 pages of served interview transcripts to include consideration and required scheduling.

The appellant submits that as instructing solicitors they will require 3 minutes per page for consideration and scheduling of the interview transcripts (2 minutes per page to read and 1 minute per page to schedule).

This Appeal is against the Contract Manager's decision to allow 1 minute per page for reading and scheduling exhibits. The Appellants seek 3 minutes per page for this task. (Item 9 in the Solicitor's Stage 1 Task List)

The Contract Manager has made his decision after analysing a sample of the exhibits and the Committee has been provided with samples of exhibits and the schedule produced by the Appellants. The Committee accepts that this is an unusual and complex case and after considering all representations has decided that 3 minutes per page to read and schedule these exhibits is reasonable. (2 minutes read, 1 minute schedule)

This part of the Appeal is allowed.

The Appellants also appeal the Contract Manager's decision to allow 2 minutes per page for reading and scheduling commented interview transcripts. The Appellants request 3 minutes per page for this task.

Again the Committee has seen samples of the transcripts and the schedule but the Committee considers that 2 minutes per page is a proper allowance for reading and scheduling commented interview transcripts and 1 minute per page for similar work on no comment interview transcripts.

This part of the Appeal fails.

Appeal by solicitors – 28 April 2010
LSC decision upheld in part

- **Reading time**

The LSC has offered 500 hours at Grade C plus 100 hours at Grade A for 163,917pgs of payroll data served.

The Appellant finally requested 45 seconds per page at Grade B, after the initial request of 2 minutes per page.

This case concerns a conspiracy to cheat the Revenue by dishonest manipulation of a construction industry taxation scheme. The indictment alleges a loss to the Revenue of some £8-11 million, and some £6 million in VAT.

This particular appeal arises out of the Contract manager's decision of 17th February 2010 of the grade of fee earner and time to be allowed for perusal of exhibits served in December 2009.

The said exhibits amount to 3971 payroll files containing 163,917 pages.

The LSC have offered 500 hours (ie 10 seconds) at Grade C and 100 hours at Grade A for this task.

The Appellants contend that task deserves reviewing at 2000 hours, or thereabouts, ie 45 seconds at Grade B.

The LSC concede that the material, despite being "unused" material need to be considered.

The appellants contend that a greater amount of time is merited because, to quote their QC's advice, the material is *"..the raw material of the alleged fraud.."*. However, they, nor the QC cannot give any reasons at all as to why this material is highly important and therefore meriting such a large amount of time.

Accordingly the Committee finds unanimously that the original offer made by the LSC of 500 hours (ie 10 seconds) at Grade C and 100 hours at Grade A for this task is reasonable and therefore the appeal is dismissed.

That said the Committee were of the view that if the Appellants can, in the future, point to good reasons why more time is necessary, they ought to be allowed to argue the point. To that extent the matter is still open.

Appeal by solicitors – 5 May 2010

LSC decision upheld

- Non payment of work not agreed in advance

The CCU has refused to make payment for any work done by either counsel after 25th July 2009, on the basis that this work was not agreed by counsel or any other member of the defence team.

This case concerns what has been described as the largest importation of cannabis from continental Europe into the United Kingdom. The value of the drugs was some £45 million.

The PCMH took place on 24th February 2009. Junior counsel attended and it understood that a time estimate of 4-6 weeks for the trial was given.

Following that hearing, it would seem that some confusion occurred.

The appellants instructing solicitors were informed that on 30th April 2009, the case was "contracted". The appellants contend that they were never informed of this and approached the case as if it were a graduated fee case. As such they say they ought to be remunerated under the graduated fee scheme.

The contract manager (attending) concedes that confusion had occurred. However, the LSC are of the view that this is a "contract" case and ought to be remunerated as such. Nonetheless, as a concession, the LSC would allow the contract date to commence on 24th July 2009 as opposed to 30th April 2009.

It is from this that the appeal arises.

Following submissions by the appellants and reply by the LSC the committee have decided that despite the confusion junior counsel was sent a stage 1 template on 3rd September 2009 and Queens Counsel was sent a similar package on 12th October 2009. Accordingly the Committee were of the view that the "contract" commenced on those dates for those particular individuals. Any work completed before those dates, for those individuals would be considered to be "pre-contract" work. To this extent the appeal is allowed. Unanimous.

Appeal by counsel – 5 May 2010

LSC decision upheld in part

- Reading time

Task 05 (a) – Considering and cross-referencing exhibits – 94, 526 pages.

The appellants have requested 1 min per page each, making a total of 1575.4 hours each for QC and led junior counsel for the exhibits.

The Contract Manager has allowed 30 secs per page, making a total of 788 hours each. Appeal on papers submitted to the Committee and representations made in person.

This case concerns a conspiracy to defraud.

The appeal centres upon the request for considering and cross referencing some 94,526 of exhibits by both Queen's counsel and junior counsel at 1 minute per page. The contract manager has allowed 30 seconds per page.

Having considered the various submissions the Committee were of the opinion that no meaningful decision could be made at this juncture and have requested that further details are supplied.

In the circumstances the matter was adjourned for further more detailed submissions to be made by Queen's Counsel.

The Junior Counsel's rate was agreed at 45 seconds per page.

Unanimous.

Appeal by counsel – 5 May 2010

Appeal adjourned

- Reading time

This appeal concerns the allowed time for consideration of served exhibits by both instructing solicitors and instructed counsel.

Solicitors

The LSC has assessed a rate of 1.25 minutes/page as an appropriate consideration rate across the 59,226* pages of served exhibits to include consideration and scheduling.

This amounts to 1,233.88 hours at B grade.

Counsel

The LSC has assessed a rate of 0.50 minutes/page as an appropriate consideration rate across the 59,226* pages of served exhibits to include consideration. (Counsel will rely on the solicitor's scheduling).

This amounts to 493.55 hours at QC rates and 493.55 hours at led junior rates.

The appellant submits that instructing solicitors will require 3 minutes per page for consideration and scheduling of the exhibits and that both counsel will require 2 minutes/page to read the exhibits, presumably in conjunction with the instructing solicitor's schedule.

This amounts to 2961.3 hours at B grade, 1974.2 hours at QC rates and 1974.2 hours at led junior rates.

The appellant seeks to challenge the LSC's assessment.

*Since the exhibit bundle was assessed and the appeal lodged, the volume of served exhibits has increased to 69,402 pages. Since the LSC's assessment is based on the original figures, they will appear throughout the response document, but of course whatever decision the committee reach in terms of rate per page will be scaled up to reflect the increased page count.

Appeal on papers and oral representations submitted to the Committee.

The appeal concerns the defence request for 3 minutes per page (Solicitors) to peruse and schedule the content of the exhibits and 2 minutes per page (Queen's Counsel and junior Counsel) to peruse the same.

The case itself is of such complexity that HHJ Rivlin QC extended the representation order to include Queen's Counsel and Junior even before the papers were served.

The case is the most valuable "boiler room" fraud prosecuted to date.

It is the Crown's case that the appellant's client was the controlling mind in the share fraud schemes in that he

- was central to the procurement of shares for sale through boiler rooms;
- he secured allocations of large blocks of shares to himself, his family and friends or organisations in which he had an interest;
- Instructed others to create entities, open bank accounts to facilitate and perpetuate the said fraud and
- Directly and indirectly received a significant proportion of the victims funds.

It is agreed by the LSC that the client is indeed the controlling mind and that the papers served thus far are voluminous.

However, the LSC contends that the request be limited to 1 minute and 15 seconds per page to peruse and schedule for solicitors and 30 seconds per page for counsel.

Having read the papers submitted and listened to the submissions made by both parties the Committee were of the view that the task should be undertaken as follows:-

2 minutes and 30 seconds per page for solicitors

and

1 minute per page for Counsel.

The time allocated for Counsel was taken with the fact that the scheduling will be completed in a format chosen by Counsel.

Unanimous

Appeal by solicitors and counsel – 12 May 2010
LSC decision upheld in part

- Attendance at co-defendants' trial

A Stage 6 task list was submitted on 14th April 2010. One of the tasks requested on this list was for a Grade B fee earner to attend the first trial of co-defendants in this case which begins on 17th May 2010. The first trial relates to the alleged key personalities in the fraud.

The Contract Manager replied on 16th April 2010 and indicated that this was not an approach she would take in this situation. She suggested that the team request from the Judge an extension to the representation order for a noting brief and then instruct Junior Counsel from a local chambers for a fixed fee of £115 per day. This person would then produce a note that could be read by all the defence teams.

Appeal on papers submitted to the Committee

This case concerns a conspiracy to defraud. The conspiracy relates to a number of car wash businesses and specifically their "operation" between 5th October 2000 and 8th October 2006. The Crown allege that the Defendants were involved in a phoenix style operation that manifested itself in the avoidance of the payment of liabilities such as utility bills for the sites and national insurance for their employees.

The Crown allege that the Defendant V acted as a manager of several of the sites, and did so acting in a fraudulent manner.

The case for management reasons has been divided up.

One of the tasks requested in the present case is for a Grade B fee earner to attend the first trial of the co-defendants. This case relates to the alleged "key" personalities in the fraud.

The Contract Manager suggested that rather than a grade B attending the trial of the co-Defendants that a noting brief is requested from the trial judge.

Having considered the papers submitted and read the trial judges views, the Committee are of the view that a junior Counsel or Solicitor acting as a "noting brief" attend the said trial and take a note.

The decision was unanimous.

Appeal by solicitors – 12 May 2010

LSC decision upheld

- Reading time

Exhibits have been allowed at 30 seconds per page but counsel have claimed for 1 minute per page.

Appeal on papers submitted to the Committee and representations made in person by the appellant

Appeal allowed 1minute per page for Counsel as requested.

Unanimous.

Appeal by counsel – 12 May 2010

LSC decision overturned

- Category

The appellant is appealing against the Contract Manager's decision to categorise the case as a category 4 non-fraud case rather than a category 2 non-fraud case.

The category criteria in dispute that mean that the case has not been categorised by the Contract Manager as a category 2 non-fraud case are as follows:

a) Block A – The case is likely to attract national interest;
b) Block A – If the case involves drugs; their total value is estimated by the prosecuting authority to exceed 10M;
c) Block B – The total costs of representing the defendant is likely to exceed £400,000.

The CCU now accept that criteria b) and c) have been met and therefore the only outstanding criteria in dispute is whether the case is likely to attract national interest.

If the Committee consider that the case is likely to attract national interest it will be categorised as a category 2 case; otherwise it will remain a category 4 case.

This is an appeal by Solicitors and Counsel for W against a decision made by the Legal Services Commission Complex Crime Unit.

Mr W faces trial on Indictment before the Crown Court at Winchester. The indictment contains two counts , both being conspiracy to contravene Section 170 of the Customs and Excise Management Act 1979 contrary to Section 1(1) of the Criminal Law Act 1977.

In short the allegation against Mr W and his co accused is that between 1st October 2002 and the 31st August 2003 together, they imported a class A controlled drug namely cocaine.

This is a retrial following a ruling of the Court of Appeal.

On the 1st March 2010 approval was sought by the Appellants as to the categorisation of the case. They sought to say that this case fell to be categorised as a category 2 case. The Contract Manager responded that in his opinion the case was a Category 4 case and it is that decision that the appellant seek to challenge today.

We have read all the papers placed before us and we have received oral representations both from Solicitors and counsel for Mr W and also from the Contract Manager and Solicitor for the Legal Services Commission.

We have been made aware that when this case was originally tried it was subject to a VHCC Contract and at that time was categorised as a Category 2 case.

Having considered the representations from both parties we can see that there can be no difference in the presentation of this trial, which alleges the possible importation of $400,000,000 of illegal drugs, to that which was originally before the court.

We note that it is now accepted that this case is accepted by the CCU as satisfying the criteria under (b) and (c) and the only outstanding question is whether or not the case would attract national interest or cause public concern.

We are told that the appeal generated considerable media interest and that there is in place a gagging order by the Court of Appeal. We are not surprised by this and we feel that there will be national interest as to this case.

In the circumstances we feel that this case should properly be categorised as a Category 2 case and we therefore allow this appeal.

Appeal by solicitors – 19 May 2010
LSC decision overturned

- Category

The Contract Manager has classified this case as a Category 3 fraud on the basis that only block a (4) has been met, that the defendant's case requires legal, investigative and accountancy skills to be brought together.

The Appellants contend that the block a (1) is also met, that the defendant's case is likely to give rise to national publicity and widespread public concern.

This is an appeal by the Solicitors who represent Mrs C against a decision made by the Legal Services Commission as to the categorisation of the case.

Mrs C facts trial in indictment at the Crown Court at Southwark.

She faces one count on the indictment in that it is alleged that committed an act of money laundering contrary to Section 329 of the Proceeds of Crime Act 2002

The allegation concerns the alleged fraudulent operation of an online ticket agency and its failure to supply thousands of tickets for various sporting and music events

The case has been categorised as a Category 3 case and the appellants seek to argue in their written representations that it should be a category 2 case as it will give rise to national publicity and widespread public concern.

This appeal is considered on the papers provided by the parties. Neither the appellant's nor the LSC sought to make oral representations.

The Committee do not accept the argument that that Mrs C's case can be divorced from that of her husband and we have read the items of media comment produced to us.

Having considered all the papers produced, the committee is of the view that this case will indeed will give rise to national publicity and widespread public concern and accordingly this appeal is allowed.

Appeal by solicitors – 19 May 2010
LSC decision overturned

- **Category**

The Contract Manager has classified this case as a Category 3 fraud on the basis that only block a (4) has been met, that the defendant's case requires legal, investigative and accountancy skills to be brought together.

The Appellant is of the view that the criteria has been met for a category 2. They have made submissions on both criterion 2 and 3 – (The defendant's case requires highly specialised knowledge) and (The defendant's case involves a significant international dimension).

The Committee had considered the written representations from both parties, with supporting documents. During the hearing of the Appeal the Committee heard lengthy oral representations from the appellant in particular.

Significant international dimension:

The Committee felt that there was clearly an international dimension to this case (as there had to be given its nature); however, this did not amount to "significant" and the issues in the case (relating to "theft of identity") were ones which a Panel firm would be expected to deal with comfortably.

<u>Highly specialised knowledge:</u>

Although it was accepted that some "specialised knowledge" was required in this case, it was felt that this had already adequately been reflected within the other accepted criterion involving "legal accountancy and investigative skills" and certainly did not amount to "highly" specialised knowledge now being required.

Accordingly the Appeal was dismissed.

- **Re-reading time**

The appellant defended a co-defendant on this case in one of the five trials, which after 14 weeks concluded on the 28th December 2009. He has therefore fully considered the served evidence. Accordingly the LSC proposes to allow the appellant 200 hours to refresh on the evidence and focus in on that evidence is relevant to his new defendant.

The appellant has requested 958.5 hours based on 2 mpp for all statements and comment interviews, 1 mpp for no comment interviews and 30 seconds per page for all exhibits.

The appellant has previously been allowed 1 mpp to consider the Livenote transcripts for the defendant's original trial. The Contract Manager has therefore agreed 1 mpp again for these transcripts. The appellant has requested 2 mpp.

The Committee had considered the written representations of both parties, with supporting documents. The Committee heard oral representations from both parties.

The Appellant had been instructed in relation to a defendant in a re-trial to commence in September 2010, having already acted for a linked defendant in an earlier trial.. He had spent approximately 2,600 hours defending his former client.

The Appellant had requested:

i) 958 hours to re-read the Prosecution evidence for the re-trial; and

ii) 2 minutes per page to re-read the Livenote from the first trial, which the Appellant had not been involved in.

The LSC's position was:

i) Initially in January 2010, to agree the 958 hours, but upon realising that the Appellant had been involved in the case already, to reduce this to 200 hours in total.

ii) Initially agreeing 2 minutes per page for reading Livenote, but on realising as above, to reduce this to 1 minute per page.

The Committee unanimously took the view that it was inappropriate to allow the Appeal in full in this case. The Appellant was acting as Junior Counsel to Mr Peter Griffiths QC; in addition the Appellant had carried out a great deal of work in the earlier case and therefore had a substantial amount of "transferable knowledge".

The Committee also took the view that the "offer" of 200 hours was insufficient in the particular circumstances, and decided that this figure should be increased to the equivalent of 40% of the 958 hours requested.

As far as the Livenote reading was concerned the Committee noted that the Appellant had already in the earlier case read the relevant transcript at 1 minute per page, and therefore agreed that the Appellant should be allowed to re-read the transcript at the same rate.

- **Reading time**

The Contract manager has authorised a block of 1188 hours plus additional supervision time to be split as follows between the defence team:

- 880 hours @ Grade C standard rates
- 300 hours @ Grade B rates
- Increase supervision time from 6.5 hours to 13 hours per stage @ Grade A, B and C.
- Time to be negotiated for counsel upon the completion of the schedule.
- 1188 hours in total
- In monetary terms this equates to £75,067 (inclusive of VAT)

The appellant seeks:

- 4075 hours @ Grade B rates (1.5 mpp)
- 2716 hours for junior counsel (1 mpp)
- 2716 hours for QC (1 mpp)
- 9507 hours in total
- In monetary terms this equates to £425,837 for the instructing solicitor, £206,416 for junior counsel and £323,204 for Q.C.

£1,122,661 (inclusive of VAT) in total for the defence team

This case concerns a conspiracy to cheat the Revenue by dishonest manipulation of a construction industry taxation scheme. The indictment alleges a loss to the Revenue of some £8-11 million, and some £6 million in VAT.

This particular appeal arises out of the Contract manager's decision of the time to be allowed for perusal of exhibits served most recently namely 3971 payroll files containing 163,917 new pages.

The LSC have offered some 1188 hours at various rates. However, this was on the understanding that the material was "used". It later came to the contract manager's attention that the material IS in fact "Unused"

The Appellants contend that task deserves reviewing and appealed the offer of 1188 hours in total.

The LSC concede that the material, despite being "unused" material needs to be considered, however, the initial offer has now been withdrawn owing to the fact that the material is Unused.

The Committee heard representations from both parties and allow the appeal in part.

Decision:-

452 hours for the grade B, solicitor advocate to consider/schedule the said new material.

100 hours for the solicitor advocate to liaise with Queen's Counsel and Instructing solicitor with regard to the schedules. This time to be fully accounted for in the audit.

50 hours for Queen's Counsel to liaise and have overview/input into the said schedules with the solicitor advocate.

50 hours for the instructing solicitor to liaise/supervise and have overview/input into the said schedules with the solicitor advocate

Decision – Unanimous

- **Category**

The Contract Manager has assessed this as a category 3 case, on the basis that none of the Block A criteria are met. It is accepted that 2 Block B criteria have been met.

The Appellant argues that this is a category 2 case, and that criteria A2 – the defendant's case requires highly specialised knowledge, A3 – the defendant's case involves a significant international dimension and A4 – the defendant's case requires legal, accountancy and investigative skills to be brought together – are met.

For the avoidance of doubt, the Contract Manager has not accepted that criterion A1 – the defendant's case is likely to give rise to national publicity and widespread public concern – is met, and the Appellant is not contesting this.

It is clear that both the Appellant and the Contract Manager have the disadvantage of an absence of a
definitive Prosecution Case Statement against which the scope of the Defendant's part in the alleged
conspiracies to cheat the Revenue and to transfer criminal property.

Having heard representations, as to the requirement for "highly specialised knowledge" (Block A2) in
the preparation of this case, the Committee agrees with the Contract Manager's assessment that it does
not.

In the course of the hearing, the Appellant was able to provide the Contract Manager with further
information to support the assertion that this case "involves a significant international element",
(Block A3).

The Committee commends the Contract Manager for agreeing to re-consider her assessment that the case does not satisfy this criterion, once she receives written submissions (by way
of further information) demonstrating how this criterion is satisfied.

The Committee finds that the submissions made, in respect of Block A2, in fact made the case for
satisfying Block A4. This case satisfies Block A4.

The Committee, therefore, adjourns this appeal in order that the Appellant can make written
submissions on the Block A3 criterion. Were the Contract Manager to be satisfied that the Block A3
criterion is met, then it follows the case will be re-categorised.

In the alternative (and on the basis the Contract Manager is still not satisfied the case is made, in respect of Block A3), it is open to the Appellant to request the appeal be re-convened.

Appeal by solicitors – 16th June 2010

Appeal adjourned

- **Category**

The Appellant has requested that this case be categorised as a Category 2 case. The Contract Manager is of the view that the case remains a Category 3 case based on the information available to date

The Committee was advised that the Contract Manager had conceded Block A4 had been satisfied.
On that basis, the Committee indicated it first wished to be addressed on Block A3.

Having heard representations, from both the Appellant and the Contract Manager, the Committee
found that the Block A3 criterion had been satisfied.

It was, therefore, unnecessary for the Appellant to address the Committee, in respect of Block A1.
Blocks A3 and A4 having been satisfied, the case should be re-categorised Category 2.

Appeal by solicitors – 16th June 2010
LSC decision overturned

- **Reading time**

The Appellant is requesting that he be allowed to review exhibits at 2 minutes per page versus the 1 minute per page agreed by the previous contract manager.

Appeal on papers submitted to the Committee.

The appeal concerns the defence request for 2 minutes per page to peruse the exhibits.

The LSC originally reviewed the matter and authorised the reading of the aforementioned material at 1 mpp.

For various administrative reasons, the contract manager changed, but no issue is taken with this aspect.

The LSC further reviewed the file and Counsel's (the appellant) Clerk was liaised with. At the time it was noted that Counsel for the Crown had been allowed 2mpp. The appellants were of the view that they too ought to be given the same amount of time.

The LSC, however, noted that *"…If I apply the rational that the Pros [sic] are reviewing the exhibits for relevance on behalf of 3 defendants, that would mean they are being reviewed at 40 seconds per defendant, which is one third less than his current rate*…"

Counsel's Clerk was liaised with further and it was suggested that if further submissions were made a further review would take place.

The relevant contract manager was then on annual leave and upon return found that on the 29th June 2010 the matter was subject to an appeal. It is this appeal that the Committee now turns to determine.

The Committee have read all the material supplied and are of the view that no cogent reasons have been submitted by the appellant to increase the allocation of time. Accordingly the appeal fails.

Appeal by counsel – 30th June 2010
LSC decision upheld

- **Category**

The Appellant has stated that they believe this to be a category 2 case.

The Contract Manager has assessed this as a category 3 case, as it does not currently meet any of the criteria in Block A.

The Contract Manager has confirmed that the case currently meets criteria B1 (value of fraud over £10m) and B2 (page count exceeds 10,000 pages). For the case to be awarded category 2 status, it would need to meet two criteria from Block A.

Appeal on papers submitted and oral representations made by both parties to the Committee.

The subject matter of the criminal case itself are well known to all parties in short the Crown allege the Defendants were embroiled in what is commonly referred to an "MTIC" fraud.

The case was deemed to be a category 3 case by the LSC. The appellants now appeal that categorisation and argue that the case is in fact a category 2 case.

All parties are agreed that all four elements of Block B, in this case, are satisfied and therefore do not require consideration. Block A, however, does.

The appellants make submissions in both writing and orally, as to criteria A1, 2, 3 and 4 and submit that these criteria are indeed met.

The LSC in written and brief oral submissions argue that the criteria are Not met.

The Committee concurs.

Having heard and read all submissions made by both parties, the Committee are of the view that, at present the criteria are not met. However, the Committee are of the view, that potentially some or maybe all of the criteria could be met, but that stage has not yet come to fruition because of the crown's piecemeal service of papers and material. Therefore the appeal fails.

Appeal by solicitors – 30th June 2010
LSC decision upheld

- **Payment for work not agreed in advance**

The first part of the appeal relates to whether there exists the right of appeal in line with section 19 of the VHCC Contract Specification.

The second part of the appeal relates to the decision of the LSC to refuse payment for items of work where no hours were agreed in advance, in accordance with the requirements of the VHCC Contract Specification, the VHCC Individual Case Contract and the Barrister Acceptance Form signed by the Appellant.

Appeal on papers submitted and oral representations by both parties to the Committee.

The subject matter of the criminal case itself are well known to all parties and are not relevant to the determination herein. In the circumstances, we do not propose to repeat the same herein.

In short the appeal relates to the decision of the LSC to refuse payment for items of work where no hours (the LSC's stance) were agreed in advance.

The appellants contend that the work was agreed, if not the time was not refused.

It was agreed by both parties that the areas to be determined by the committee fall in into two categories.

The first is:-

Does the Committee have any jurisdiction to hear an appeal ?

If the answer to this is in the affirmative we would then be asked to move onto the second determination.

If in the answer to the first determination is in the negative, the matter ends there.

In short the Committee are of the view that they have no jurisdiction and the matter ends there. Accordingly the appeal fails.

The appellants did on 12th June 2008 submit a "stage plan" to the LSC, that the Committee have seen. It is noted that hours have been "agreed" on that document. That is a request was made by the appellants to the LSC, that was considered and was allowed in whole or part or declined by the LSC. Accordingly agreement was reached as to the allocation of time to undertake specified tasks.

The problem arises where the appellants have submitted a tentative proposal of work to be undertaken. Because of the nature of the work, the appellants, quite properly felt that no honest or meaningful submissions as to the amount of time required could me made – at the time. Accordingly they have put on the aforementioned "stage plan" the expression "TBC", that is to be confirmed, next to such items as "preparing an advice" for example.

Subsequently work was undertaken by the appellants as regards items that were marked as "TBC". No one, including the Committee, would suggest that such work was not undertaken, nor completed competently. Rather all agree the work was undertaken in a proper professional manner.

At issue is the "agreement". The LSC submits that no agreement was reached as no suggestions were made as to the number of hours required. The appellants contend that agreement was reached or at the very least the work suggested under "TBC" was not refused by the LSC, and therefore they ought to be paid for the work undertaken under "TBC".

The appellants concede that they did not "pin down" the time required of the LSC.

The LSC view the "TBC" items as "potentials" for future discussions and or agreement. They say this does not equate to passive acquiescence on their part.

The Committee note that the spirit of the VHCC scheme was, inter alia, to achieve certainty as to costs and to that end prior authority was to be requested and approved before payment could be made.

Whist the Committee recognise that it is often a sensible and honest approach to initially indicate "TBC" as against certain items of work, there comes a time when certainty needs to be clarified for the sake of all parties. If certainty is not achieved the intention of the VHCC scheme fails.

The committee reminds itself of s.19 of the VHCC Contract Specification, Part 4 of the VHCC Arrangements and of the Barrister's and Solicitor's Acceptance forms.

Most strikingly the Committee notes that (s.19) VHCC Contract Specification states that

"*There is no appeal if a stage is not approved due to the omission of the required details and information "*

The Committee are of the view that because the items marked "TBC" were not clarified there was an "omission" as to the required "details and information". Accordingly the Committee do not have jurisdiction and consequently the appeal fails.

Nonetheless, the Committee are of the view that the Appellants have, throughout the case and these proceedings, acted with professionalism and propriety. Unfortunately the spirit of the scheme requires certainty.

Appeal by counsel – 30th June 2010
LSC decision upheld

- **Category**

This is an appeal against a decision by the Contract Manager of the Complex Case Unit as to the categorisation of this case, currently determined to be a Category 2.

The Appellants seek to argue that that decision is flawed and the case should be reclassified to fall within Category 1.

We have received written and oral representations from both the appellant and the Legal Services Commission.

The LSC accepts that the defendant's case meets the required criteria for a Category 2 standing.

The requirement for reclassification is that the case must possess two classifying criteria from block A of the contract criteria, namely;

That the defendant's case gives rise to national publicity and wide spread public concern.

The defendant's case involves a significant international dimension.

We are satisfied that this case does involve a significant international dimension.

The question that we are left with therefore is to consider whether or not the defendant's case gives rise to the cause of national publicity and widespread public concern.

The committee feel, by a majority, that at the present time there is insufficient evidence before them that would show that this defendant's case is likely to give rise to national publicity and widespread public concern.

'Boiler room frauds' by their very nature are capable of giving rise to national publicity and public concern but the committee feel that this defendants case had not yet reached that threshold. It is always open for the appellant and the LSC to reconsider this single aspect of the appeal at a later date.

This Appeal is dismissed.
Appeal by solicitors – 14 July 2010
LSC decision upheld

- **Reading time**

This is an appeal against a decision by the Contract Manager of the Complex Case Unit to refuse to fund the reading of a quantity of documents. The reading time originally requested by the Appellant was to be 1 minute per page with a further request for each document to be 2 minutes per page. 30 seconds per page have been allowed by the Contract Manager for the reading of the exhibits.

We have received written and oral representations form both the appellant and the LSC.

We are aware that the defendant in this case represented himself at trial following the refusal of the learned trial Judge to transfer legal aid. We note the Judge's decision and make no comment upon it. We also note that the defendant has through the currency of this case sought to instruct three separate sets of counsel before putting the current representation in place.

We have had it confirmed to us that the appellants are involved only in the confiscation proceedings that follow their clients conviction. Representatives of the appellants were not aware as to whether or not there is an ongoing appeal against conviction or sentence. We are therefore only concerned in a request for preparation time that relates to confiscation proceedings alone. From the papers before us and from the confirmation from the Appellants the benefit figure pleaded by the Crown amounts to some £280,000 with the realisable assets being in the region of £54,000.

The Section 16 statement served by the Crown narrows the issues in the case very considerably and it is felt by this Committee that it would be a relatively simple task to identify any dispute between the realisable assets and the benefit. The question for the Court therefore will be limited to definite issues.
The Committee felt that the time allowed by the LSC is sufficient for the appellants to properly perform their duty not only to the client to prepare their case for hearing but also to the Court and further bearing in mind the narrowness of the issues.

The committee do feel that they would have been greatly assisted had the case manager appeared before them. The attending fee earner did her utmost to present the issues, for which the Committee were very grateful, but it was clear that she lacked some of the detailed knowledge of the case thus prohibiting her from dealing with some of the points raised by the committee.

Appeal is dismissed.

Appeal by solicitors – 14 July 2010
LSC decision upheld

- **Reading time**

This is an appeal against a decision by the Contract Manager to refuse to allow a request of the appellant to peruse certain exhibits in this case. This is a retrospective request the appellant having carried out the work and now seeking authority for payment.

The Appellant sought 285.60 hours to peruse 8567 pages of exhibits at a time that would equate to two minutes per page. The contract manager allowed initially thirty seconds per page but again retrospectively increased this for certain documents to a minute per page.

We note the contract manager's assertion that the defendant is said to have a limited role in this case and we have read the Crowns Case Summary. We have been told that it was necessary to peruse and indeed through defence counsels efforts this work was able to

protect his client's interests. However the Committee felt that two minutes a page was excessive and could not be justified.

However, the committee did feel that due to the assistance rendered to the client, the court and the interest of justice a rate of 1 minute per page was justified and to this end with this limitation this Appeal is allowed in part.

Appeal by solicitors – 14 July 2010
LSC decision upheld in part

- **Recoupment of payments**

This appeal is against the C.C.U's decision to recoup £111,040.20 from the Appellants. The Appellants were paid this money for perusing 74,027 pages of exhibits which consisted of attachments to e-mails.
The decision was made several months after the work had been authorised, audited and paid for by the C.C.U.

The C.C.U. retrospectively disputed the reasonableness of the work and the Appellants argue that the C.C.U. had no power to recoup these funds. The Appellants further argue that hindsight can play no part in the V.H.C.C. system.

The Committee by a majority accept the Appellant's argument. The Chairman dissented.

Appeal by solicitors – 28 July 2010
LSC decision overturned

- **Category & reading time**

This Appeal is against the categorisation of this case as Category 3.

The C.C.U. accepts that sufficient criteria in Block B are satisfied and that one criterion in Block A is met. The Appellants seek to satisfy the Committee that the Defendants case requires highly specialised knowledge and/or that the Defendant's case involves a significant international dimension.

The Appellants say that the case is a more sophisticated variation of M.T.I.C. fraud because it involves contra trade transactions. They list seven other areas where in their view highly specialised knowledge is required. They also rely on the high loss to the Revenue. The Committee does not accept that any of these features require highly specialised knowledge or skills beyond those normally required of fraud panel members.

The Appellants claim that there is a significant international dimension because they need to understand the workings of both banking law and criminal procedure in the Netherlands. The fraud encompasses numerous countries. The committee does not regard any of these features as giving the case a significant international dimension.

The Appellants also appeal the Contract Manager's decision to allow only 1 minute per page to read and schedule exhibits. The Appellants say that this work is actually taking 2 minutes per page. However having heard details of the Contract Manager's analysis and assessment, the Committee considers that a total of 1 minute per page for reading and scheduling is reasonable and sufficient.

Appeal by solicitors – 28 July 2010
LSC decision upheld

- **Consideration of unused by counsel**

This is an appeal by Junior Counsel against the refusal of the Contract Manager to authorise the work listed in items 6, 26 and 27 of Junior Counsel's task list for the 4th stage. The work requested relates to the perusal of a total of 14,869 pages of 'Schedule E Material'. This material is unused by the Prosecution but has been served as material which might undermine the Prosecution case.

Leading Counsel also appeals the same decision although surprisingly he has not submitted a Task list for stage 4 which ends on 31st July 2010. The Contract Manager has generously agreed not to argue that there has been no decision on Leading Counsel's tasks as no task list has been submitted.

The Committee notes that this material has been in the hands of the Defence for several months. On 23rd Feb 2010 solicitors were allowed 50 hours to commence their read. On 11th March 20 hours were allowed to Junior Counsel for a preliminary read of filtered material. On 25th May the C.C.U. increased the hours for solicitors and Junior Counsel to enable them to read 10% of the material.

The Committee has been told that this work has not been completed. The Contract Manager expects the solicitors to read and sift this material before agreeing further time for Junior Counsel to peruse material considered by solicitors to be relevant to this Defendant's case.

The Committee cannot be concerned with any failure of case management by the Defence Team and considers the Contract Manager's approach to be entirely reasonable.

Appeal by counsel – 28 July 2010
LSC decision upheld

- **Reading time**

In this matter the committee were asked to decide on the appropriate allocation of time for the consideration of exhibited material. The commission had allowed 0.5 mins per page for all of the exhibits. The appellant counsel argued that he should be allowed 45 secs pp for the “standard” exhibits and 2 mins pp for the “financial” exhibits.

The committee were informed that the appellant’s instructing solicitors had completed their reading of the exhibited material pre-contract and had asked for approx 1.5 mins per page. The contract manager had allowed them 0.5 mins per page in the stage 0 audit. The solicitors had lodged an appeal against this decision but had subsequently withdrawn it. The appellant counsel believed that the appeal had been withdrawn because the commission had conceded that if the rate for counsel was increased it would be retrospectively for his instructing solicitors. The contract manager agreed that if the rate for counsel were increased by the committee then they would have to re-consider the rate paid to the instructing solicitors.

The committee then listened carefully to submissions for the appellant counsel. They noted with interest that the contract manager indicated the instructing solicitors had not claimed for any time for the preparation of schedules and the appellant counsel had to confirm that. When questioned he answered that he had what was described as an “incomplete proof”. He had also been hampered by the late service of evidence and supporting schedules by the prosecution. The trial was scheduled to commence on the 6th September 2010 and forensic accountants and handwriting experts had still to be instructed. He argued that the financial material could be reduced to 2300 pages and was of fundamental importance to understanding the case against his client. Nevertheless he

was charged with conspiracy and, he contended, he needed to properly review all of the evidence and cross-reference where necessary. It was his contention that 0.5 mins per page was wholly inadequate for him to properly review, annotate and cross-reference the material. He has already read a substantial proportion of the exhibits at an average rate of 45 secs per page.

The contract manager argued that the defendant played only a peripheral role in this particular fraud. The case was not especially document heavy when compared to other VHCC Frauds. In her estimation 0.5 mins per page represented a reasonable allocation of time for consideration of the exhibits.

The committee decided unanimously that the appropriate allocation of time for counsel to consider the exhibits in this case was 1 min per page. This allocation of time to be broken down as 30 secs for reading the material and a further 30 secs for annotation, cross-referencing and scheduling of the same.

Appeal allowed (in part)

Appeal by counsel – 18 August 2010
LSC decision upheld in part

- **Reading and scheduling time**

In this matter the committee were asked to decide upon the appropriate rate for the consideration and scheduling of exhibited material and the transcripts of no comment interviews.

The appellant argued that insofar as the exhibits were concerned they should be remunerated at the rate of 1 min per page (counsel and solicitor) to read the material and 1 min per page (solicitors only) to schedule the same. The Commission argued that 0.5 mins to read and a further 0.5 mins to schedule was reasonable.

Insofar as the no comment interviews were concerned the appellant argued for 2 mins per page (solicitor and counsel) to read the same and 1 min per page to schedule (solicitor only). The Commission had agreed to 1 min pp (reading) and 0.5 mins pp (scheduling).

The appellants argued that although the case summary suggested that their client played only a peripheral role in the alleged fraud she was the niece of the main defendant. There was a significant prospect of there being a cut-throat defence. It was incumbent on them to consider all of the evidence given the nature of the conspiracy charge. This included reviewing all of the banking evidence and the related mortgage applications. They had a draft proof of evidence and had filed a defence statement although this was subject to amendment once they had had the opportunity to fully review the evidence and take their client's instructions on the same. Their client was a woman of previous good character.

The contract manager maintained that given the peripheral role of the defendant (she had been severed off from the main defendants) and the relatively straightforward nature of the evidence concerning her, the time allocated was reasonable. He refuted the suggestion that he had allocated a block of time and then set the rate retrospectively to justify it. The rate had been the starting point in his calculation.

The committee decided unanimously that in the particular circumstances of this case the rates allowed by the Commission were reasonable.

Appeal refused
Appeal by solicitors – 18 August 2010
LSC decision upheld

- **Category & reading time**

In this matter two issues were in dispute:

(1) Categorisation – the Commission had assessed the case as a category 3 matter. The appellant argued that it was category 2. The commission conceded that it was a case that required Legal, Accountancy & Investigative Skill. However, they argued that no other Block A criteria applied. The appellant argued that the case required Highly Specialised Knowledge.

(2) Exhibits Reading Time – The Commission had allowed 1 min per page at grade B for reading and scheduling the exhibited material. The appellant argued that a more appropriate allowance would be 1.5 mins per page to consider the exhibits and a further 0.5 mins per page to schedule the same also at grade B.

Categorisation

The appellant prayed in aid of his contention for highly specialised knowledge the following factors:

- his firm's experience in MTIC cases and specifically it's knowledge of the MTIC Protocol; CPIA; Codes of Practice; Disclosure Issues; Linked Cases and Databases
- the international features of the case including the Curacao Bank material; admissibility of foreign evidence etc…
- the fact that the case featured contra-trading and that this was a relatively novel feature of MTIC frauds giving them a further level of complexity

The contract manager contended that all of the factors relied on by the appellant (save for contra-trading) were common to most MTIC frauds and thus could not be argued as adding a level of complexity or novelty triggering a need for highly specialised knowledge. As far as contra-trading was concerned he maintained that it fell more correctly under the legal, accountancy and investigative skills criteria and thus could not be relied on to support highly specialised knowledge. The commission lawyer informed the committee that the Commission were increasingly seeing contra-trading as a feature of MTIC frauds.

The committee decided unanimously that in this particular case, bearing in mind the role played by this defendant (and it was noted that he features in the lead trial) and the overall level of complexity the case did require the application of highly specialised knowledge. In reaching this decision the committee took into account factors other than those argued in support of the legal, accountancy and investigative skills criteria.

The appropriate category is therefore Category 2.

Exhibits Reading Time

The committee considered very carefully the arguments advanced by both parties in relation to the appropriate reading time for the consideration and scheduling of exhibits. It was decided unanimously that 1.5 mins per page to read the material and a further 0.5 min per page to schedule the same at grade B was reasonable in the particular circumstances of this case.

Appeal Allowed.

Appeal by solicitors – 18 August 2010
LSC decision overturned

- **Reading and scheduling time**

Appeal on papers submitted to the Committee and representations made in person via video link.

The facts are well known to all parties and we do not propose to repeat the same herein.

A.

The appeal centres upon, firstly, three requests for the following items

i. Exhibits (item 6);

ii. Interviews (item 7), and

iii. Dramatis personae (item 41 and 42)

Having considered the various submissions the Committee were of the opinion that the Legal Services Commission's decision on items:-

iv. Exhibits (item 6);

v. Interviews (item 7)

Were well founded, and accordingly the appeals as against theses two requests fail.

However, the Committee were of the opinion that requests for items

vi. Dramatis personae (item 41 and 42)

Were well founded and consequently the appeal in this respect is allowed.

B.

The second part of the appeal (separate documentation), regards

i. Stage 1 (item 3) the case statement, request for 3mpp.

Having heard the various submissions and having had the opportunity of reading the material the Committee were of the view that the request was well founded and accordingly the appeal succeeds in the this respect.

Unanimous

Appeal by solicitors – 8 September 2010
LSC decision upheld in part

- **Reading time**

Appeal on papers submitted to the Committee and representations made in person via video link.

The facts are well known to all parties and we do not propose to repeat the same herein.

The case is in short a conspiracy to defraud

The appeal centres upon two requests for the following items

vii. Reading the case summary at 4mpp, and

viii. That the aforementioned task be carried out by both an A and B grade solicitor

Having read all the material supplied and having considered the submissions made by all parties, the Committee were of the view that

i. The appeal regarding the request for 4 mpp be disallowed. The Committee were of the view that little had changed from the first version of the document and its present form.

ii. However, the Committee were of the view, that having regard to the all the circumstances and proposed working patterns that it was essential that both grade A and B read the document. Again at 2mpp each. In this respect the appeal succeeds.

Unanimous

Appeal by solicitors – 8 September 2010
LSC decision upheld in part

- **Reduction of forensic accountancy disbursement**

This is an appeal against the CCU's decision to authorise only £52,517.60 plus VAT for a forensic accountant's report. The appellants have received a quotation of £78,021 plus VAT for this work.

The Committee has considered the reductions in the quotation made by the Contract manager and the appellant's representations.

The Committee find the reductions to be justified.

Missing trader cases even when contra trading is involved are not difficult and the figure authorised for a report of this nature is reasonable.

Appeal by solicitors – 8 September 2010
LSC decision upheld

- **Category**

The appellants maintain that this is a category 2 case and that three block A criteria are met namely, highly specialised knowledge, significant international dimension and legal, accountancy and investigative skills. The LSC maintain this is a category 3 fraud case and that of the block A criteria, only the final one is met. The national publicity criterion is not being pursued. There is no disagreement over block B criteria

The committee is satisfied as a matter of fact that this defendant's case involves a significant international dimension.

Appeal allowed.

Appeal by solicitors – 8 September 2010
LSC decision overturned

- **Reduction of forensic accountancy disbursement**

The item in dispute is the forensic accountant's quote dated 8 July 2010, which can be found at appendix 3 of the Appellant's appeal.

The forensic accountant's quote outlines three areas for review:

1. Duplication within the cahsbooks
2. Total income and expenditure of the defendants' company
3. Payments to the defendants
4.

The CCU has agreed in principle to each of these three areas being reviewed and costs have been agreed for the work relating to point 1 and the meeting with the accountants that prepared the financial statements of the company after 1 April 2006 which forms part of point 2. However, in dispute are the costs for the rest of point 2 and point 3.

The CCU has attached at appendix 1 to this response section 19 of the forensic accountant's quote that provides a breakdown of the time and costs requested and has marked those items where the costs are in dispute with an asterisk (*).

The appeal relates to the disbursement for an expert report from a forensic account. A large bundle of papers accompanied the appeal and there was substantial oral argument and clarification. In addition to the appellant and the respondent there was representation from the jointly instructed expert

The quote from the expert appears in the bundle at tab 3 and is dated 8th July 2010. The total quote amounts to £41,292. It appears that the majority of that quote is based upon guess work. It is obviously acceptable for an expert to give an informed estimate concerning the amount of time any particular item of work will take. There does however need to be an objective basis for that estimate. For example the report contains quotes for consideration of cheque stubs - 13 (iii) - £1915. It became clear during the hearing that the cheque stubs were not even available to the expert to briefly review and hence estimate the amount of time that would be needed. It was also disclosed that other material for review by the expert and quoted for was not available.

The committee conclude that it is simply impossible to assess the reasonableness of a quote when the material upon which that quote is based has not even been considered for volume and complexity. In the circumstances we cannot conclude that the decision taken by the Legal Services Commission is unreasonable. We suggest that the expert resubmit a quote which is supported by some objective evidence of the task at hand.

There remains the issue of to what extent the expert is to rely upon and use the work carried out by the solicitors as part of the 236 hours at grade C agreed for them to consider and schedule the material relating to income and expenditure. It turns out that 61 hours of the 236 hours have not been used by the solicitors. Hence 175 hours have been used by the solicitor - amounting to £14,000 costs.

The email setting out the justification for the granting of 236 hours work at grade C rate of £80 per hour (£18,880) states as follows:

"The defence exhibits that I want to analyse (with co-defending solicitor) are records of *purchases* from *suppliers*. In other words, it's what the company has *spent*. This is important ….. If we can show that they've spent all the money then there will be nothing to recover. As things stand …. The accountant could analyse the expenditure but it would be far more costly that if we did it and in any event, we need to make contact with suppliers so it makes sense for us to schedule the material." Defending solicitor email 20/05/10

The committee believe that it would be inappropriate for the Legal Services Commission to pay twice for the same work. The expert report goes wider than the task outlined in the above email. Even as the quote stands the Income & Expenditure of the company for the period from incorporation to 31 March 2006 is contained between paragraphs 12 (i) to 13 (vii) and amounts to £30,855. The remaining £10,437.50 involves work unrelated to the work referred to in the above email.

The appeal is further complicated by the offer by the CCU of 24 hours at Partner level to review the schedule produced by the defence and an additional 10 hours at partner level for drafting a report on the outcome of the review. This would amount to costs of £6120. The problem is that the items contained in paragraphs 12 (i) to 13 (vii) are wider than the work the defence referred to in the email. The impression given in the appeal hearing was that the contract manager was working on the basis that all the items in paragraphs 12 (i) to 13 (vii) were covered by the work referred to in the email of 20th May 2010.

The confusion needs to be removed so that the expert report can be produced. The committee conclude that the parties should then decide the extent to which the £14,000 costs already incurred by the solicitors should be taken into account. If the parties cannot agree on this matter then the case should come back before the committee.

Appeal dismissed.

Appeal by solicitors – 22 September 2010
LSC decision upheld

- **Preparation**

The item in dispute for consideration is Task 13 which involves the examination of the Crowns Master Schedule.

The defendant and 11 others are charged with conspiracy to cheat the Revenue contrary to common law. The defendant had been the Director of a Company known as X since its incorporation and the conspiracy took the form of withholding VAT due to HMRC which had been paid for metal goods to the principal Company namely X, by means of a false audit trail for other metal goods apparently purchased in the UK by X using the device of purporting to show that the goods had been exported to other European Union Member States and were zero rated for VAT purposes. X then sought to set off VAT on those purchases against their liability to pay VAT on sales within the UK so as to reduce its liability tenfold. HMRC states that not even the lesser sum was paid.

As part of the Crowns case, a Schedule has been served referred to as the master deal chain schedule. There are 182 entries within the schedule.

The Appellant seeks 181 hours to work on the schedule for the reasons set out within the application for Appeal.

In contrast the Contract Manager suggests that in terms of examination of the schedule 15 minutes per page at grade B is reasonable.

Having considered the Representations of the Appellant and the Representations in response from the Contract Manager the Committee take the view that the time allowed by the Contract Manager of 15 minutes per page is reasonable and that the amount sought by the Appellant is disproportionate.

Appeal dismissed.

Appeal by solicitors – 22 September 2010
LSC decision upheld

- **Reading and scheduling of exhibits**

APPEAL PART 1 (OUT OF TIME ISSUE)

Decision

By a majority decision the committee concluded that the appeal was out of time. Upon a proper interpretation of Annex 14 of the Panel Contract the appeal is out of time. By a majority the committee finds that the "… original decision …" was made on 18th March 2010 and hence the appeal of 12th April 2010 was more than 10 days from the original decision.

Annex 14 of the Panel Contract

3. Appeal Process: Deadline: Any appeal must be lodged with the Committee clerk within ten working days of receipt of the original decision.

APPEAL PART 2 (TIME FOR SCHEDULING)

This relates to the time for scheduling exhibits. The rate of 1 minute per page for reading is accepted. The appellant's argue for 1 minutes per page scheduling and the Legal Services Commission argue 30 seconds per page. The appellant has provided a copy of the schedule that they have compiled to-date. Having considered the documents provided for the appeal, oral submissions and the said schedule the committee conclude that the 30 seconds for scheduling is reasonable and dismiss the appeal.

Appeal by solicitors – 22 September 2010
LSC decision upheld

- **Reading time**

Decision

The background to this appeal is fully set out in the papers that were before the committee. In addition we heard full argument from both sides.

Tasks 1,2,3,12,13 and 14

In brief the issues under appeal concerned the time allowed to consider the key prosecution schedules. The case was unusual in that the trial of the defendant had already begun and all of the defendant's lawyers had taken decisions on what they believed to be reasonable and necessary in the proper representation of their client.

The committee considered the following to be important factors in reaching the decisions set out below:

1. This is a retrial
2. The contract manager has already allowed 1000 hours to leading counsel, junior counsel and solicitor for the retrial period. The case having been fully prepared by the same legal team during the initial trial.
3. There is a degree of duplication within the schedules by reference to the initial trial and by reference to each other; the combined chronological schedule appears to be the key document.
4. The total of 600 hours consideration of the schedules by leader, junior, solicitor and grade C standard make the committee certain that the defendant's case will be properly presented at trial.

Tasks 17, 23 and 25

The committee agree with the submissions set out by the contract manager in his VHCC Appeals Response Form dated 26th July 2010.

Task number	Task	Decision
1	consideration and analyse combined chronological schedule	110 hours each for Leader, Junior + Solicitor
2	consideration and analyse of the trading schedules	20 hours each for Leader, Junior + Solicitor
3	consideration and analyse telephone and text message schedules	20 hours each for Leader, Junior + Solicitor
12	checking accuracy of combined chronological schedule	Total of 150 hours grade C standard rate to complete tasks 12,13 + 14
13	checking amended trading schedule	Total of 150 hours grade C standard rate to complete tasks 12,13 + 14
14	checking accuracy of telephone schedules	Total of 150 hours grade C standard rate to complete tasks 12,13 + 14
17	review schedule of company X's trading history	appeal dismissed
23	defence team conference / liaison	appeal dismissed
25	considering co-defendant's jury bundles	appeal dismissed

Appeal allowed in part.

Appeal by solicitors & counsel – 22 September 2010
LSC decision upheld in part

- **Category**

This is an Appeal by Solicitors against the decision of the Contract Manager to categorise the case as Category 3. To achieve Category 2 the Appellants need to meet one more criterion in Block A.

The Appellants argue that the Defendant's case requires highly specialised knowledge. In particular, the Appellants say that detailed knowledge of conveyancing and Solicitor's practice and conduct is required. The Committee considers that panel members can be expected to be familiar with such matters and that this criterion is not met.

The Appellants also argue that the Defendant's case involves a significant international dimension. The Appellants have clearly established that there is an international dimension. The Prosecution have outstanding enquiries abroad, the Defendant is domiciled abroad and has property abroad and victims were based abroad. Monies were transferred and received from abroad through the Defendant's accounts. The Appellants say that lawyers based abroad may have to be traced. However, none of these features and other matters raised by the Appellants, persuade the Committee that the international dimension involved in the Defendant's case is significant.

Appeal by solicitors – 6 October 2010
LSC decision upheld

- **Reading time**

The Appellant in this case asks for 2 minutes per page to consider a 175 page linked case summary. The document has not yet been served and in the absence of details of the relevance of this material to the Defendant's case the Contract Manager has offered 1 minute per page.

The Committee considers that it is reasonable to require 2 minutes per page to consider a linked summary.

The Appeal is allowed.

Appeal by solicitors – 6 October 2010
LSC decision overturned

- **Category**

The Appellant is appealing the contract Manager's decision to categorise this case as a category 3 fraud case.
The Appellant considers that the case should be categorised as a category 2 fraud case. The Complex Crime Unit (CCU) has accepted that sufficient Block B criteria have been met in order for the case to be categorised as a category 2 fraud case. However, in order for the case to be categorised as a category 2 fraud case, two Block A criteria also need to be met.

The Appellant has made submissions on two Block A criteria:

. The defendant's case involves a significant international dimension.
. The defendant's case requires legal, accountancy and investigative skills to be brought together.

The CCU has accepted neither of these criteria. The items in dispute are therefore these two individual criteria and consequently whether this case should be categorised as category 2 or 3 fraud case

This is an Appeal against the decision of the Contract Manager to categorise the case as Category 3. The Appellant needed to meet 2 criteria in Block A to attain Category 2.

Having heard the Appellant, the Committee is satisfied that the Defendant's case requires legal, accountancy and investigative skills to be brought together.

The Appellant argues that the Defendant's case involves a significant international dimension. As in other M.T.I.C. frauds there is an international dimension in this case but the CCI says that it is not significant. An unusual feature of the case is that a Dubai Company was used as the final destination for stolen VAT and had a pivotal role in moving monies. The Prosecution seeks to connect the Defendant with the Dubai Company and if the Prosecution is successful the Defendant's case will be undermined. The Committee considers that the international dimension is significant.

Two criteria in Block A are met and the Appeal succeeds.

Appeal by solicitors – 6 October 2010
LSC decision overturned

- **Reading and scheduling time**

The Appellants are seeking 2 min/page to consider and analyse the exhibits. The contract manager has allowed a total of 1min/page, or 30 sec plus 30 sec/page to consider and schedule the same.

The appellants are also appealing on behalf of counsel, who seeks 1 min/pg for consideration of the exhibits. 30 sec/page have been allowed by the contract manager.

The Committee allows the appeal in part. The Committee takes the view that an appropriate amount of time to consider and schedule the exhibits in this case should be 1 minute 30 seconds per page for Solicitors and 1 minute per page for Counsel.

Appeal by solicitors – 13 October 2010
LSC decision upheld in part

- **Category**

The Appellant has requested that this case be categorised as a category 2 fraud. The Contract Manager is disputing the significant international dimension and legal, accountancy and investigative skills criterion.

Please note that upon receiving the appellant's representations, the Contract Manager now concedes national publicity and widespread public concern.

The Committee allows this appeal on the basis that Category 2 criteria have been met. The Committee acknowledges that the LSC has conceded the national publicity and widespread public concern from Block A and at least 2 criteria are met from Block B.

The Committee further confirms that a unanimous decision has been reached whereby the legal accountancy and investigative skills have been met. Accordingly, Category 2 is allowed on the basis on of 2 from Block A and 2 from Block B have been met.

Appeal by solicitors – 13 October 2010
LSC decision overturned

- **Category**

The Contract Manager does not accept that the case meets two of the criteria from Block A. It is accepted that the case meets the relevant block B criteria and that it requires legal accountancy and investigative skills to be brought together, from Block A.

This is an appeal against a ruling by the Very High Cost Case unit of the Legal Services Commission and in particular a decision as to the categorisation of a case. The appellants seek to argue that the Legal Services Commission are incorrect in their assessment of this case and it should not be categorised as a category three level case but instead should be a category two case.

For a case to satisfy and be classified as a category two case then to criteria from Block A of the contract must be met and at least two criteria from section A or section B of Block B must also be present. In this case all parties agree that the Block B criteria are satisfied.

We have considered on both written and oral representations by counsel and solicitors for the defendant and the contract manager and legal representation for the Legal Services Commission.

We are most grateful to all parties for their assistance in the presentation of their respective cases.

The appellants seek to argue that the defendant's case is likely to give rise to national publicity and widespread public concern. Further they take the view that the defendant's case requires highly
specialised knowledge. Finally they seek to say that the defendant's case involves a significant international dimension.

We accept that for the categorisation to change the criteria must relate specifically to the case of the defendant in question.

Having considered all the representations placed before us and we are of the opinion that this case does give rise to national publicity and widespread concern. The defendant is accused of involvement in a complex and serious set of attempts to effectively steal the identity of innocent parties and the pass those identities on to others. As part of the investigation into this case it has been shown that it was possible to obtain for a fee counterfeit documents that purport to come from people who included a former Home Secretary of this country.

The defendant was a director of a company called X Ltd. The Crowns case is that he supplied ' fake ' documents including false bank statements and also supplied a telephone diverting service for people who wish to pretend that they were in employment when they were not.

There is no doubt in our mind that the issues to which this case relates and in particular to this defendant, are such that there will be national publicity and widespread public concern.

The appellants in their written submissions to us seek to say that if this case does not qualify for the criterion that it involves a significant international dimension then it is difficult to understand how any case could. We agree.

We are however, of the opinion that this is a case that can quite properly be dealt with by a practitioner firm and experienced counsel who deal with this type of case routinely.

We accept that this is a substantial case and that the prosecution assertion is that of the bare minimum the loss could amount to a sum of £80 million.

We do not have a feel that there is anything particular about the defendant's case that

would require highly specialised knowledge that is not within the command of the practitioners who are currently defending his case..

As we do therefore find that there are two criterions from Block A that are now satisfied namely a significant international dimension and that this case will give rise to national publicity and widespread public concern, we are of the opinion that this case should in fact be recategorised as a category two case.

This appeal therefore succeeds.

Appeal by solicitors – 27 October 2010
LSC decision overturned

- **Category**

The appeal relates to the decision of the Contract Manager to categorise the case as a Category 3 fraud from the Stage 2 representations of Counsel.

The Appellant seeks re-categorisation of the contract to category 2 from the beginning of the case.

In order to qualify as a Category 2 Fraud the Appellants require 2 criteria from Block A, as the contract manager has accepted 2 criterions from Block B have been met.

The Appellant is appealing 3 criteria from Block A:

- The defendant's case requires highly specialised knowledge
- The defendant's case involves a significant international dimension.
- The defendant's case requires legal, accountancy and investigative skills to be brought together.

The Appellant has not provided any submission on the national publicity and widespread concern criteria; therefore the contract manager accepts it is not met.

This is an appeal against a ruling by the Very High Cost Case unit of the Legal Services Commission and in particular a decision as to the categorisation of a case. The appellants seek to argue that the Legal Services Commission are incorrect in their assessment of this case and it should not be categorised as a category three level case but instead should be a category two case.

For a case to satisfy and be classified as a category two case then criteria from Block A of the contract must be met and at least two criteria from section A or section B of Block B must also be present. In this case all parties agree that the Block B criteria are satisfied.

The appellant in this case was represented by Counsel.

We are grateful to the appellants and to the respondents for their written and oral representations made to us.

The appellant seeks to argue that the Legal Services Commission is incorrect in their assessment of the case in so far as it should be categorised under category three as a fraud. They seek to say that this case does require highly specialised knowledge does involve a significant international dimension and also requires legal, accountancy and investigative skills to be brought together.

Having considered all representations we accept that this is 'not a run of the mill MTEC type case' and we accept further that there are aspects of this case that are novel but we do not accept that there is a requirement for highly specialised knowledge over and above that that would normally be properly brought to bear on the case by a VHCC contracted

firm and experienced counsel such as those instructed

Further we are not satisfied that this case involves a significant international dimension. Clearly this is an allegation that can be described insured as a diversion fraud where it is alleged that between March 2006 in July 2008 all defendants agreed, the Crown will say is, to obtain alcoholic goods from outside the United Kingdom and sell them to cash and carry outlets within the United Kingdom through the medium of buffer companies thereby avoiding excise duties were due and payable. Clearly the goods had come from somewhere and in this instance they came from the continent. We are of the opinion that this alone does not a significant international dimension.

We are told by counsel that it is likely that certain accountancy skills will have to be brought to bear on this case from external sources.

In the circumstances we are not satisfied that the categorisation of this case should be amended from a category three fraud to that of a category two.

Accordingly, this appeal is dismissed.

Appeal by solicitors – 27 October 2010
LSC decision upheld

- **Preparation**

This is an appeal against a determination by the Legal Services Commission with regard to the amount of time allowed to conduct certain tasks in preparation of the case for the defendant

The appellants ask us to consider that the time currently awarded to them is insufficient to enable them to carry out the task in hand.

We have been greatly assisted by both the written and oral representations from the appellant, the contract manager and the legal representative for the legal Services Commission.

We understand and fully accept that the nature and complexity of this case is such that already the appellants have been allowed 1.25 minutes per page to consider and schedule exhibits in this case. We further understand that the totality of the task to date has necessitated the consideration of in excess of 100,000 pages. The appellants seek to persuade is that the time given to that task – in excess of 2000 hours – needs now to be extended for further work on the preparation and perusal of further schedules. We understand that the Legal Services Commission accepted that this is work that is properly to be carried out by the appellants and have therefore awarded some 200 hours at standard grade C rate for work to take place to verify the accuracy of relevant schedules within the jury bundle. The appellants say this task can only be completed in 350 hours for permitted.

This case is due for trial at the end of November 2010.

We are not satisfied that there is a need for the additional 150 hours requested by the appellants over and above that awarded by the legal services commission to be worked in this case.

We are aware that consultant forensic accountants have been instructed, at considerable cost, to review the evidence and report on behalf of the defendants. We are also aware that the Legal Services Commission will give time, upon request, to consider the contents of a report that is disclosed.

We are of the opinion that the work can probably be carried out prior to the commencement of the trial within the time currently allocated to it.

Accordingly this appeal is dismissed.

Appeal by solicitors – 27 October 2010
LSC decision upheld

- **Instruction of a forensic accountant**

Appeal on papers submitted to the Committee and representations made in person via video link.

The facts are well known to all parties and we do not propose to repeat the same herein.

In short the appeal concerned the instruction of a forensic accountant.

The Committee having read all the material relied upon, and having heard the submissions made, felt unpersuaded.

Consequently the appeal fails.

The instruction of a forensic accountant at the expense of the public purse cannot be justified.

Appeal by solicitors – 10 November 2010
LSC decision upheld

- **Reading and scheduling time**

Time requested for reading and scheduling exhibits (currently 8162 pages plus 67 photo exhibits. Time requested is 1 minute per page read and 1 minute per page schedule (grade B) and 1 minute read for counsel. The contract manager's decision is for 45 seconds pp read and 45 seconds pp schedule (solicitor) and 45 seconds pp read for counsel.

Appeal on papers submitted to the Committee and representations made in person via video link.
The facts are well known to all parties and we do not propose to repeat the same herein.

The Committee having read all the material relied upon, and having heard the submissions made, were of the view that the appeal fails.

The Appellants have not demonstrated in any fashion that they have spent any more time than that already been given.

This is perhaps best illustrated by the fact that the absence of any time sheets completed by the Appellants.

Unanimous decision.
Appeal by solicitors – 10 November 2010
LSC decision upheld

- **Travel costs for 2 fee earners travelling to and from court**

Appeal on papers submitted to the Committee and representations made in person.

The facts are well known to all parties and we do not propose to repeat the same herein.

In the unique circumstances of this case and all the logistical factors concerned, the Committee were of the view that the appeal had merits.

Consequently the appeal is allowed in full.

Unanimous decision.

Appeal by solicitors – 10 November 2010
LSC decision overturned

- **Reading and scheduling time**

This is an appeal against a decision by the Complex Crime Unit as regards an allowance of time given to solicitors acting for the defendant.

We have received representations from both orally and in writing from the appellant, and from the contract manager from the Complex Crime Unit of the Legal Services Commission.

We are grateful to both parties for providing us with this information and, we have considered it together with the representations made.

This appeal is by way of a challenge as to the award of time made by the Legal Services Commission for the consideration of exhibits (task 3) and the preparation of schedules -- to include all aspects of ancillary work (task 16).

With regard to task 3 the appellant seeks to argue that a rate of one minute per page should be allowed as against 45 seconds per page that has been authorised. Further, as regards task 16 the appellant seeks to argue that 495.13 hours should be allowed as opposed to 292.07 hours that have been awarded.

As part of the allocation process the appellant was initially given 30 seconds per page but this was increased to 45 seconds per page following his representations. The contract manager requested sight of a sample of the exhibits in the case to enable her to assess the task that she was being asked to authorise.

We are told that the appellant instructed a fee earner working on the case to pick at random a file of exhibits and forward them to the contract manager. The file that he chose contained a series of e-mail transmissions generally forming e mail chains. We were told that this was not a particularly good example of the exhibits not being a full representative sample but that the exhibits were complex and lengthy.

In support of his appeal, the appellant sought to persuade us of this fact by forwarding to us a copy of the exhibit schedule prepared by the Crown.

We were not shown any exhibits other than those contained within our papers provided to us by the appellant. We understand that the contract manager also has not had produced to her copies of the exhibits to enable her to consider the matter is fully.

We understand that this trial has actually started and indeed will conclude mid December 2010.

We further understand that all the exhibits have been perused and to this end this is a retrospective appeal for time.

The appellant was prepared for and asked us to consider the appeal upon his representations and upon the papers provided. At the conclusion of the appeal, following all parties having had opportunity to address us the appellant explained that he had a 300+ page schedule in which he would ask us to consider and indeed had requested some 50 pages that to be e-mailed across to him. This document had not been considered by the contract manager, nor had she had an opportunity to consider it prior to the hearing.

This evidence coming so late in the day we are of a mind, having heard all the representations, to rule on the case as advanced to us. We do not consider an adjournment necessary or equitable.

This committee is concerned that is being asked to consider material that has not been seen by the contract manager, although ample opportunity has arisen for is to be seen and, that we are being asked to consider such material so late in the day.

In all the circumstances, and having considered the nature of the case, the nature of the exhibits as exhibited to us and the nature of the representations made in writing and orally we are of the opinion that the amount of time awarded to the appellant by the contract manager to carry out tasks three and 16 is more than sufficient.

Accordingly this appeal is dismissed.

Appeal by solicitors – 17 November 2010
LSC decision upheld

- **Distant travel**

This an application for leave to appeal by solicitors acting for the defendant against a decision by the Legal Services Commission as to the allowance that is paid for travelling by the solicitors to see their clients who is currently in custody serving a period, post a conviction, of 10 years imprisonment. (He was convicted after trial by jury at the Crown Court at Birmingham).

We have the benefit of considering both oral and written representations from all parties we are also referred to the Criminal Bills Assessment Manual page 34 paragraph 2.15.

The appellant seeks to argue that there has been a material change in this case which allows him to appeal to us where otherwise he would be barred from doing so as he is out of time to lodge an application.

The defendant in this case was a man who at the time of the preparation for his defence enjoyed bail. Following his conviction he was sentenced as detailed above to a period of 10 years imprisonment.

We are of the opinion that there has been a material change in the circumstances and as such we grant leave to appeal.

This is an appeal whereby the appellant seeks to argue that the decision not to pay more than £72.50 per round-trip for his travel to a prison in Nottinghamshire is unreasonable and should be overturned.

The appellant accepts that he is bound by the ‘distant solicitor’ rules.

We are conscious that this is an appeal against a decision made in accordance with the provisions of a very high cost case contract. It is not a decision born out of a general criminal contract taxation.

We are also conscious that a very high cost case contract contains its own provisions and whilst the criminal bills assessment manual is of interest and persuasive we do not find that it binds those parties to a very high cost case contract.

We have considered at length the representations made very ably by the appellant ,however we are of the opinion that as this is a "distant solicitor case" then the legal services commission are only required to pay a contribution which is reasonable towards the travel costs incurred by a contracting firm.

The appellants in this case had the benefit of this allowance for the currency of the trial and were content with it. Prior to the trial, gain as has been mentioned above, the lay client enjoyed bail and was able to travel to meet with his solicitors in London. It is any therefore after his incarceration that the problem has arisen.

On the basis that the legal services commission are duty bound to pay a contribution towards the costs we are of the opinion that the cost contribution of £72.50 per journey is reasonable.

Accordingly this appeal is refused

Appeal by solicitors – 17 November 2010
LSC decision upheld

- **Category & reading time**

There are two items in dispute: category and time for the exhibits.

Category

The Appellant is appealing the Contract Manager’s decision to categorise the case as a category 3 fraud case. The Appellant considers the case to be a category 2 fraud case.

The Complex Crime Unit (CCU) accepts that sufficient Block B criteria have been met in order for the case to be categorised as category 2 fraud case, but not Block A criteria.

Two Block A criteria must be met in order for the case to be categorised as a category 2 fraud case and the CCU accepts neither of the two Block A criteria for which the Appellant has made submissions have been met.

The two Block A criteria in dispute are as follows:

- The defendant’s case involves a significant international dimension;
- The defendant’s case requires legal, accountancy and investigative skills to be brought together.

Exhibits

The Appellant is appealing the Contract Manager’s decision to allow 825 hours (36,154 pages of the initial exhibits at 45 seconds per page and 44,722 pages of NAEs at 30 seconds per page) each for the solicitors and counsel to consider the exhibits served.

Instead the Appellant considers that 1 minute per page should be allowed for all exhibits, making a total of 1,350 hours (80,876 pages) each.

VHCC Appeal Committee Decisions

All parties were content that the appeal continues with only two Committee members due to travel disruption.

Appeal on papers submitted to the Committee and representations made in person and via video link.

The facts are well known to all parties and we do not propose to repeat the same herein.

The Committee having read all the material relied upon, and having heard the submissions made, were of the view that the appeal succeeds *in part* to this extent:-

Categorisation

The Committee were of the opinion that, on the very particular facts of this Defendant's cases (not necessarily the case as a whole), that a "significant international dimension" was present.

Furthermore the Committee were of the opinion that this Defendant's case (the above general caveat repeated here) requires "legal, accountancy and investigative skills to be brought together".

Therefore the category 2 criteria are met. This part of the appeal succeeds.

Unanimous decision

Exhibits

The Committee were of the opinion that the all material served including the latest NAE ought to be read at 45 seconds per page, as were the initial tranche.

The Committee were of the view that the second tranche would have been served earlier but for time constraints and therefore the distinction made by the LSC was arbitrary.

To that extent, the appeal succeeds.

It may well be that parts of this material may require more time, but this will have to presented and evidenced properly for the LSC to make a decision first.

The FCIB material does not form a part of this appeal and therefore we declined to rule.

Unanimous decision.

Appeal by solicitors – 1 December 2010
LSC decision upheld in part

- **Preparation time**

25 August 2010
A request was made for 150 hours preparation during the trial in this international complex MTIC fraud which is required in order to analyse the evidence given at Court, comparing the same with witness statements and exhibits and lay client instructions with a view to

preparing cross examination on a daily basis. There are in excess of 5000 pages of used evidence.

50 hours have been allowed by the Contract Manager.

02 September 2010
A request was made for 30 hours conference time between Counsel, Solicitor and the lay client.

No hours were allowed by the Contract Manager

All parties were content that the appeal continues with only two Committee members due to travel disruption.

The appeal was heard on papers alone. No party wished to make any oral representations.

The Committee having read all the material relied upon were of the view that the appeal fails. Although points of written appeal were made, they were not supported by any evidence or cogent reasoning.

Therefore the appeal fails.

Unanimous decision.

Appeal by solicitors – 1 December 2010
LSC decision upheld

- **Category**

This is an appeal against a decision by the Legal Services Commission that this case be categorised as category 3 case. It is submitted that this is a case which clearly falls within category 2. It is accepted by the LSC that sufficient block B criteria have been met for the case to be categorised as category 2. However, the LSC's position is that none of the block A criteria are satisfied . It is submitted that 3 of the block A criteria are satisfied namely:

2. that the Defendant's case requires highly specialised knowledge.
3. that the Defendant's case involves a significant international dimension; and
4. that the Defendant's case requires legal, accountancy and investigative skills to be brought together**.**

This is an appeal by the legal representatives acting for the defendant against a decision by the contract manager of the complex crime unit legal services commission to categorise the case against her for the purposes of preparation and advocacy and in accordance with the very high cost case contract as a category 3 fraud.

The appellants seek to argue that the case should be re-categorised as a category 2 fraud.

On their behalf the complex crime unit had accepted that sufficient block the criteria have been met in order for the case to be categorised as a category 2 fraud, however, they dispute that the case has the requisite category A criteria to satisfy in the categorisation.

And the appellant has made submissions on the three block A criteria: --

2. That the defendant's case requires highly specialised knowledge
3 That the defendant's case involves a significant international dimension

4. That the defendant's case requires legal, accountancy and investigative skills to be brought together.

We have received from both oral and written submissions from the appellants and from the respondents. We are very grateful to both parties for the detailed representations that they had made in the documents that they have produced.

We have been addressed by counsel and have read with care his document dated 8 December and headed submissions.

We are of the opinion that the arguments under the heading 'highly specialised knowledge 'and ' legal accountancy and investigative skills' can be pleaded in satisfaction of each other.

The appellants concede this point in their submissions to us. We are of the view that the argument should properly be placed under the heading of legal accountancy, and investigative skill, and indeed having heard submissions of the appellant very ably put by counsel, we agree that this case in so far as it relates to this defendant does require these items to be brought together. We do not feel that we are able to differentiate and utilise the same argument to satisfy the criteria of highly specialised knowledge.

We do therefore find that this criterion is not met.

We are therefore left to consider whether or not the case against this defendant has a significant international dimension.

We are satisfied that there is no question that the case overall has an international dimension. However, we are not satisfied that so far as this defendant is concerned that that international dimension is significant.

We are told that the defendant based herself in the UK whilst other people accused of this conspiracy worked in Belgium Germany Spain and Hong Kong as well as other countries. We are not satisfied on the submissions that we have received that her involvement is such that it could be argued that she is **significantly** involved in the international dimension of the case as it was conceded that in fact her duties in the UK were those of an effective administrator.

We do not seek to trivialise the allegations that the defendant faces, however we are required to consider the case against her as it is represented by the appellants and to consider the representations of the respondent and to that end we asked not satisfied as to the international dimension insofar as it relates to her and in so far as it could be argued to be significant.

Accordingly, this appeal is dismissed.

Appeal by solicitors – 15 December 2010
LSC decision upheld

- **Reduction of disbursement**

The decision by the contract manager of the Complex Crime Unit of the Legal Services Commission was to decline to permit the payment in full to the expert witness proposed to be instructed by the defence for their expenses in connection with the perusal of papers and the preparation of a report.

The appellants requested for a global amount of £34,755 plus VAT, this amount being reduced from an original amount of £44,760 plus VAT. A total amount of £10,880 plus VAT was allowed by the contract manager.

This amount was based on proposed rates and hours which the Contract Manager re-assessed and allowed as a reasonable amount under contract management principles.

This is an appeal by the Legal Representatives of the defendant against a decision by the contract manager of the Complex Crime Unit of the Legal Services Commission to decline to permit the payment in full to the expert witness proposed to be instructed by the defence for their expenses in connection with the perusal of papers and the preparation of a report.

We have received extensive written and oral submissions from the appellant and we have considered them in depth.

We have also read and heard from the contract manager.

We are extremely grateful to all parties for their assistance in this case.

The appellants concede that their initial indication that it was their belief that the Legal Services Commission had refused to permit the instruction of an expert was all wrong and indeed the Legal Services Commission are content to provide funding for an expert but are concerned and, do not accept, that the quotation forwarded by the appellants is just and reasonable.

For the appellants, the defendant's solicitor has told us that the case against his lay client is one that has such complication and requires such specialisation that there is only one expert available who can properly provide a report to assist the defence. We are further told that number of experts in the London area – one who has a branch office in Manchester – had been approached.

It would seem for what we are told that they would not be able to bring sufficient expertise to this case to assist.

We are a further told that the case against the defendant has commenced and indeed at the time of this appeal parties are involved in legal arguments with a plan to put the defendants in charge of the jury in early January 2011.

The appellants make great play of the fact that in their opinion the issues in this case are extremely complex and there is a need for expert opinion.

We do not doubt for one moment that there is a proper need for expert evidence to be obtained to form part of the defence however, we note that the Crown had not sought to instruct inexpert in the furtherance of their case and to date no party is aware that the defence intend to instruct or call a witness of expertise. We do however find it strange that there is only one expert in the UK that can properly assist. We question how the Crown would be expected to rebut any conclusion in a report were that to be the case.

We understand that the learned trial judge has not been made aware that the calling of a defence expert could be the proposed course of action. Whether or not he has that is a matter for the court and not ourselves.

We have been shown in detailed quotation and breakdown of the work that the experts propose to do. We note from this breakdown that the experts intend to split their workload between directors, partners and lower grade staff members.

We also note that it is the experts' belief that a reasonable rate of time to peruse what is in effect approximately 1000 pages of evidence should be five minutes per page at director level.

We are not required, nor do we seek to question the charging rate of any expert.

We are required, however, to consider the reasonableness of any request and we note that the Legal Services Commission have already authorised substantial funds to cover the preparation of a report.

We are told that any report that is prepared may be shared between the defendants.

We note also that from the date of request for prior authorisation to the time of the appeal a short time has elapsed. We are conscious of the speed that the Legal Services Commission acted to assist the defence in an attempt to facilitate funds being made available.

We are not satisfied that the request made on the behalf of the appellants is reasonable. Indeed we are of the opinion that the request is excessive. We are of the opinion that the funds that have been made available are adequate and reasonable in all the circumstances.

To this end, this appeal is dismissed.

Appeal by solicitors – 15 December 2010
LSC decision upheld

- **Payment of defendant's travel costs to court**

The defendant has requested that the LSC pay for his travel costs to attend the trial, which began on 29 November 2010. The LSC have refused this request.

The appellants note in their submissions that there are two key tests to be applied in this matter

Whether a defendant may use otherwise restrained assets to meet his travel expenses; and

Whether the defendant's circumstances are so exceptional as to merit the payment of these expenses through the Legal Aid Fund.

<u>VHCC Appeal Committee Decisions</u>

DECIDED ON THE PAPERS

THE ISSUE:

The simple issue in this case is whether the LSC should fund by way of a disbursement the travel expenses incurred by the defendant in attending court. We have been helped by the full written arguments. It does appear that the LSC have in the past, in wholly exceptional cases, met the type of disbursement appealed. We agree with the Contract Manager that this case does not meet the very high threshold evidenced in the cases referred to by the Contract Manager. In addition we note the following:

1. Restraint Order – 28th August 2009 at paragraph 14 "… The ability of the defendant to agree with the prosecutor that the order may be varied in any respect but any such agreement must be in writing …"

2. The fact that the Restraint Order already appears to allow £210 per month for travelling expenses; this can now go towards the court travel costs and demonstrates a willingness on the part of the prosecutor to meet travel expenses.

Appeal by solicitors – 15 December 2010
LSC decision upheld

- **Reading time**

In Stage 1- the Appellants requested to consider:

- statements at 2mins pp,
- telephone & cell charts 3 mins pp,
- comment interviews 2mins pp,
- No comment 1 min pp,
- general exhibits 1 min pp – initial core read of summary/comparison with main statements/interviews

as an "...initial block of hours sought for stage 1 ...[for]...Initial papers received almost 28,000 pages."

The Contract Manager refused and authorised each Appellant Counsel :

- witness statements and comment interviews at 2 mins per page
- no comment interviews at 1 min per page
- exhibits at 30 seconds per page

Specifically stating that they should "... note the relevant number of pages considered in your work log. Please revert separately for time on the telephone material"

The stage 2 task list was submitted which requested the continuation to read the same 28,000 pages, and was agreed

<u>VHCC Appeal Committee Decisions</u>

DECIDED ON THE PAPERS

THE ISSUE:

What was agreed between the parties for the reading of exhibits over the stage 2 periods? The conflict between the parties cannot be decided on the papers alone. In the circumstances we are unable to reach a decision without the parties appearing before the appeal panel.

Appeal by counsel – 15 December 2010
Appeal adjourned

- **Category**

The appellants submit that, firstly, the Defendant's case requires "highly specialised knowledge"; and, secondly, that his case involves a "significant international dimension".

"Highly Specialised Knowledge"

Central to the alleged fraud is the promotion of shares in a "boiler room" operation. To quote, from the submission of James Walker of Counsel dated the 11th October 2010, *"(T)he shares were often overpriced, often restricted with regard to their onward sale or have little or no ready market and thus little realisable value."*

The shares were promoted in anticipation of future flotation and listing on recognised share exchanges and it is because of that the Appellant claims highly specialised knowledge of the mechanics of flotation and the operation of the relevant sections of the Companies Act is required. By the same token, however, the Appellant recognises that expert evidence on flotation and related Companies Act obligations may be required.

In recognising the potential requirement of instructing an expert, the Appellant anticipates *"a general awareness of this particular area would not be sufficient given the fact this particular element goes to the heart of the case against the defendant."* In making this observation, the Appellant concedes it does not have the requisite highly specialised knowledge.

In instructing an expert, the Appellant will be in a position of receiving the advantage of that expert's expertise, to the potential benefit of its Client, the better to enhance the Appellant's general awareness of the mechanics of company flotation. It could not be said, however, that the Appellant brought highly specialised knowledge to the preparation of its Client's defence.

This criterion is not satisfied.

"Significant International Dimension"

The Appellants submit that most, if not all, boiler room frauds operate outside of the jurisdiction of the United Kingdom and asserts that it is not incidental that the instant fraud operated from Spain. To

It seems to the Committee that the Spanish aspects of the fraud are incidental as the physical location of the boiler room is no more relevant than if, for example, the boiler room was located in Singapore.

This criterion is not satisfied.

Appeal by solicitors – 12 January 2011
LSC decision upheld

- **Reading time**

Exhibits – allowed 30 seconds per exhibit plus more time may be requested for FCIB material – submitted 1.5 minutes per exhibit for solicitors (Inc 1 minute reading and 30 secs, scheduling etc). Both Leading Counsel and Junior Counsel to be allowed 1 Minute per page each to read and consider the exhibits.

THE ISSUE: As detailed above as well as appellants' submissions

Appeal allowed in full for Solicitors and Counsel. Reasons having regard to the details of this case, it was appropriate to allow this appeal in full.

Appeal by solicitors and counsel – 12 January 2011
LSC decision overturned

- **Preparation**

The appellants have requested 611 hours and 57 minutes at Grade C rates to check the accuracy of the Prosecution deal schedule

The Contract Manager has agreed 175 hours at Grade C standard rates

The appellants have requested 208.13 hours at Grade rates to check the accuracy of 96 further schedules totalling 2,925 pages. These schedules include banking schedules, telecoms schedules, car schedules, and telephone schedules.

The Contract Manager has agreed 100 hours at Grade C standard rates.

Judgement reserved if appropriate as parties likely to reach an agreement in the meantime.

Appeal by solicitors – 12 January 2011
Appeal adjourned (judgement withheld)

- **Disbursement**

The appeal relates to the contract manager's decision in relation to hours requested for a forensic accountants report. The forensic accountants have quoted for a total of 298.2 hours at the various rates (128.78 at £160, 88.40 at £120, and 81.02 at £90), at a total cost of £38,504.77 + VAT.

The contract manager's has allowed 189.26 hours at the varying rates would equate to a total of £23,252.50 + VAT (65.29 at £160, 54.96 at £120 and 69.01 at £90).

This is a supplemental quote and is in addition to £75,000 already authorised, and a further £38, 3984.00 subsequently quoted in various additional quotes which are still under negotiation. The total costs agreed/quoted by the accountants are in excess of £153,000. This burden to the taxpayer must also be taken into account when considering the reasonableness of the quote.

The appeal will be allowed in part.

The Appellant's were requesting a total of 298.2 hours (128.78 hours at £160, 88.4 hours at £120 and 81.2 hours at £90) for the preparation of a supplemental expert accountant's report at a total cost of £38,504.77 + VAT. The contract manager had agreed the request in part to a total of 189.26 hours (65.29 at £160, 54.96 at £120 and 69.01 at £90) at a total cost of £23,252.50 + VAT. The difference between the request and the grant was helpfully summarised in a spreadsheet produced by the Appellant which was agreed by the parties to accurately reflect what hours had been offered by the contract manager and the areas of dispute.

The committee noted that the first report produced by the expert was finally authorised by way of an allocation of 425 hours to a value of £75,000 + VAT and that the report itself took some 90 hours to prepare out of an estimated 800+ hours undertaken in total. The committee considered that the experts were rightly considered to be very familiar with the case.

The committee has read the pre submitted paperwork and was grateful for the spreadsheet produced on the morning together with the examples of the schedules under consideration and listened with care to the oral submissions of both the Appellant and Respondent.

This decision should be read in conjunction with the spreadsheet which, for the avoidance of doubt, should be appended to, and regarded as part of, this decision.

The committee's view was that the reading, understanding and checking for accuracy (together with limited comment) of the schedules produced by the prosecution (in part incorporating changes made as a result of acceptance of criticisms of the prosecution charts by the experts in the first report) should be at the 30 seconds per line requested by the Appellant given the significant changes and the completely new material described as Parker 0003. However the committee felt that, upon review of the extracted material provided by the Appellant and having heard the submissions, there was no appropriate reason why this could not be undertaken by members of the expert's team at the rate of £90 per hour.

Therefore:

Dealing with items in part allowed by the contract manager first (in blue upon the spreadsheet):

In relation to App. 2 lines 1-4 on page 1 the time requested of 20.17 hours (from 13.45 hours offered by the contract manager) has been reinstated but at £90 per hour rather than £120 per hour.

In relation to App. 2 lines 3-4 on page 3 the time requested of 2.39 hours (from the 1.59 hours offered by the contract manager) has been reinstated but at £90 per hour rather than £120 per hour. The committee notes the concession on this item by the Appellant but due to the overall construction of the decision felt it was both fair and logical for this item to be treated in the same way.

In relation to Ch 3 lines 1-2 on page 3 the requested time of 20.27 hours (from 13.51 hours offered by the contract manager) has been reinstated but at £90 per hour rather than £120 per hour. In relation to line 3 on page 4 the 5 hours has been reinstated at £160 per hour.

In relation to Ch 3 lines 5-7 on page 4 the requested time of 36.5 hours (from 24.33 hours offered by the contract manager) has been reinstated but at £90 per hour rather than £120 per hour.

In relation to Ch 7 on page 5 the requested time of 0.83 hours (from 0.16 hours offered by the contract manager) has been reinstated at £160 per hour.

In relation to the preparation of the report on page 5 the committee noted that there was some confusion as to what had been allowed on the last occasion but that contract manager rightly accepted the block of hours finally offered and accepted superseded the 50 hours originally offered for the preparation of the first report. As there was no question that the first report – double the size of this report – had as a matter of fact taken 90+ hours to construct the committee felt it was reasonable to allow the 50 hours requested at £160 and that item is reinstated in full.

This however has consequences for those items refused entirely by the contract manager.

Dealing with the items refused entirely by the contract manager (in red upon the spreadsheet):

As a result of the increase in time for the preparation of the report to 50 hours at £160 per hour the committee felt it was reasonable that any time spent by the expert being briefed by subordinates should be subsumed into those 50 hours. The contract manager's decision to refuse all time by the expert to be briefed as a separate item is therefore upheld.

However the committee felt it was reasonable that the person(s) doing the briefing of the expert as a result of their work should be remunerated. As a result of the committee's decision as to the appropriateness of the level of that work (see 'blue' items above) the 22 hours requested for the briefing party is reinstated but at a rate of £90 per hour.

Appeal by solicitors – 19 January 2011
LSC decision upheld in part

- **Preparation**

There were 2 issues on this appeal.

1. (This appeal addendum relates to the Contract Manager's refusal to authorise the instruction of a trade and VAT expert.

2. The Appellants sought to peruse the exhibits in this case by sharing the task between an A grade and a B grade. We now understand that the Contract Manager has only authorised this task to be undertaken by a B grade (or grades).

Task 1 **– case planning conference which the contract manager believes is unreasonable**

Task 5 **– agreement of the task list with the contract manager, which is considered to be included within the time agreed for preparing and drafting the task list**

Task 9 **– the allowance of 1 minute per exhibit page (there are circa. 126,000 pages of exhibits), where the appellant has requested 2 minutes per page to read and schedule the same**

Task 1 + 5 = **We allow the appeal in part** = allow 6 hours in total – 2 at A and 4 at B. The appellant to provide the contract manager with sufficient evidence of the said 6 hours preparation.

Task 9 = We do not allow the appeal = This case is yet another example of appellant's advancing a case to justify an increase in the time needed to consider a particular item without presenting the committee with any examples of the material in dispute. Whilst no prompting is necessary or required the failure on this occasion was more surprising since the appellant had been specifically asked to provide examples for the appeal hearing. Upon the material available to the committee we can see no reason to doubt the reasonableness of the contract manager's conclusion that a total of 1 minute per page for exhibits meets the needs of this case. The separate issue, concerning the extent to which a change in representation impacts on who is bound by a pre-change decision of a committee did not need to be decided.

The expert's report = We allow the appeal in part = We allow the expert a total of 30 hours to prepare his report. The very helpful advice of Queen's Counsel has crystallised the issues that need to be considered. We expect the expert to be able to read the prosecution case summary, the prosecution expert report and address the relevant issues in the 30 hours allowed.

Appeal by solicitors – 19 January 2011
LSC decision upheld in part

- **Category**

The appellants submit that this case is a category 1 fraud case having met all the Block A criteria and 4 a's from Block B

The Contract Manager submits that the case is a category 2 fraud. He does not accept that the defendant's case is likely to give rise to national publicity and widespread concern. He does accept that the other 3 block A criterion have been met and 4 a's from Block B have been met.

If the appeal committee agree that the defendant's case is likely to give rise to national publicity and widespread public concern the case will be categorised as a category 1 fraud.

Issue in dispute = The defendant's case is likely to give rise to national publicity and widespread public concern.

We allow the appeal = The combination of environmental issues, large scale tax evasion and celebrity is in the opinion of the committee likely to give rise to national publicity and widespread public concern. Whilst evidence of national publicity and widespread public concern having actually occurred is a factor it is not determinative of what is likely to occur. There can be all manner of reasons why the press have not reported on a large scale a case that at some later point will be reported on a national scale and engage widespread public concern.

Appeal by solicitors – 19 January 2011
LSC decision overturned

- **Disbursement**

24 hours were agreed for an outside QC to write an advice on the EU legal and regulatory framework relevant to the transactions in which the defendant was involved, and which have led to him being accused of knowing involvement in dealings in counterfeit pharmaceuticals.

The item in dispute is the hourly rate for these 24 hours of work.

- **The appellant is requesting an hourly rate of £416.67, making a total of £10,000;**
- **The complex Crime Unit (CCU) has allowed an hourly rate of 95.50 (the hourly rate for a QC in a category 3 case, the category of this case), making a total of £2,292.**

Issue in dispute = The rate to be paid in a publicly funded case for an expert report – the expert being Queen's Counsel and the expertise being extremely rare.

We allow the appeal in part = The contract manager's approach of capping the expert's fee at the rate available to Queen's Counsel in the category into which the substantive case fell, was wrong. It was a mere coincidence that the expert in this case was Queen's Counsel. The appellant should not be prejudiced by that fact. The expertise was of a rare and learned nature. Whilst there is no actual cap stipulated in the relevant regulations or arrangements it is a fact that the highest rate generally paid for expert opinions is capped at £160 per hour. The committee take the view that it is reasonable to pay that rate to the expert in this case.

Appeal by solicitors – 19 January 2011
LSC decision upheld in part

- **Category**

The LSC has assessed category as category 3 on the basis that only the criterion of legal, accountancy and investigative skills is met from block A.

The appellant submits that the case should be recorded at category 2 on the basis that the criteria of highly specialised knowledge, and legal, accountancy and investigative skills are met from block A.

The appeal concerns the application of the Highly Specialised Knowledge criteria from block A. If this criterion were to be considered met, the case will be a category 2.If not met the case would be a category 3.

The Committee, having read all the material relied upon, and having heard the submissions made, felt unpersuaded.

Any firm appointed to the panel is deemed to have knowledge above and beyond that of any ordinary "high street" practitioner. In this instance, the Committee were not presented with any cogent or indeed persuasive submissions. We found no evidence of specialised knowledge required to defend this individual case.

Furthermore, we were not presented with any cogent or persuasive arguments that the defence team possessed any specialised -let alone "highly specialised" - , skills in the areas of solicitors training or conveyancing.

Consequently the appeal fails. The original categorisation will stand.

Unanimous decision.

Appeal by solicitors & counsel – 2 February 2011
LSC decision upheld

- Category & reading time

The contract manager does not accept this case meets any of the criteria from Block A. The contract manager has accepted that this case meets 2 of the criterion from Block B . The defence team submit that this case should be categorised as a category 2 case, not a category 3 case.

(11) Exhibits

The appellant has requested the following rates for the exhibits served:

(a) Financial exhibits 11638pgs @ 4mpp = 775.9hrs or 3 64787.65 at category 3 B grade rates.
(b) Analysis exhibits 1493pgs @4mpp= 99.5hrs of 8,308.25 at category 3 B grade rates.

There are a third set of exhibits, search, arrest and interview exhibits, of which there are 1244 pgs. The appellant initially requested a rate of 2 mpp to read and schedule but has accepted the agreed rate of 1.5mpp and therefore is not appealing the rate in relation to these. However as the rate agreed is a composite rate it has taken into consideration all the exhibits served and as such the search, arrest and interview exhibits must be considered as part of this appeal.

The CCU has agreed a rate of 1minute per page to read and 30 Seconds per page to schedule for all exhibits served in this case. The total page count served is 14375pages which at a rate of 1.5minutes per page to include scheduling equates to 359.38hrs or £30,008.23 at category 3 B grade rates.

The contract manager had originally decided that the case did not meet any of the criteria from Block A, but did meet two from Block B. Therefore the appeal to succeed, in this instance, would need to meet just two criteria from Block A.

In the interim, the contract manager had conceded (email dated 16.8.10) that if a forensic accountant was instructed that would meet criteria 4 of Block A.

A forensic accountant has now been allowed. Therefore, one criteria was now required for the appeal to succeed.

On the papers as originally submitted, the Committee were of the view that the initial LSC decision had been correct. However, a bundle was submitted prior to the hearing. This bundle contained copies of schedules prepared, but more importantly an advice authored by junior Counsel.

That advice along with oral submissions made today detailed a conference dated 13.1.11. That conference was between Counsel for the Crown and for the Defence. What emerged from that conference altered the landscape, significantly for *this* Defendant. It is now clear is that, inter alia:-

i. The Crown concede that they operated participating informants;
ii. The Crown were aware of the nefarious use of FCiB accounts and ignored that criminality;
iii. The modus operandi of FCIB and of UK wholesale currency traders was important to *this* Defendant's case

With this in mind the Committee are of the view that, *uniquely*, this Defendant's case requires highly specialised knowledge. That required knowledge is met by counsel.

The Committee were not entirely convinced that criteria 1 was met, and certainly not criteria 3.

The appeal succeeds to the extent that this is a category 2 case from the date of appeal only.

Unanimous decision.

(II) Exhibits

This appeal was presented following the categorisation appeal. The same parties present.

This part of the appeal concerns the contract manger's decision to allow 1.5 for the Solicitors to consider and schedule the financial exhibits (as originally described on page 5 of the appeal bundle. The descriptive passage begins "At present the financial….").

Counsel were given 1 mpp to consider. They are content and do not appeal.

The Solicitors request 3mpp to consider and 1 mpp to schedule.

Having heard submissions made and seen the work thus far completed, the Committee are of the view that the solicitors ought to be allowed:-

1mpp to consider the financial exhibits and

1mpp to schedule the financial exhibits as originally described at page 5 of the bundle.

This appeal relates to all work completed and to be completed hereon.

Therefore the appeal succeeds to this extent only.

Unanimous decision.

Appeal by solicitors and counsel – 2 February 2011
LSC decision upheld in part

- **Disbursement**

The item in dispute is the costs of the forensic accountant. It has a long history, which is set out above below before confirming the actual costs in dispute.

As indicated above, this matter has previously been considered by an Appeals Committee.

The issue at the previous appeal was that a quote of £41,292.50 had been submitted by the forensic accountant but that the CCU had only allowed costs of £17,224.50.

The previous Appeals Committee dismissed the appeal, but on the basis that matters needed to be clarified and further information provided in order for a decision to be reached

The Appellant submitted a revised quote dated 24 September totalling £39,152.50 that set out the further information that the Appeals Committee had indicated should be provided

The CCU met with the Appellant and the forensic accountant on 25 October to discuss the revised quote, at the end of which the CCU allowed costs of £33,087.50

On 19 November the Appellant advised that the forensic accountant had expended the allowed costs of £33,087.50 and requested an additional £11,400 in order for the forensic accountant to complete their report

The item in dispute is these additional costs of £11, 400, which the CCU refused in whole in an e-mail dated 23 November

The appellants sought additional costs for a forensic accountant in the sum of £11,400 (equating to a further 105 hours work).

The Commission had approved costs of £33,087.50 on the 25th October 2010 following protracted negotiations. This equated to a rate of 1.5 mins per page for consideration of the relevant data, its subsequent analysis and the preparation of a report to be relied on by the defence. At that time the defence were subject to a tight deadline as the report had to be served on all parties by the 3rd December 2010.

On the 19th November 2010 the appellants informed the contract manager by e mail that the forensic accountants had exhausted the allocated time and were requesting an additional 105 hours to complete the task. Accompanying the e - mail was a letter from the forensic accountant setting out the additional work that needed to be completed. In a further e mail dated the 26th November 2010 the accountant further elaborated on the additional work required. He also identified the fact that the complexities of the task had not been fully appreciated on the 25th October and could not have been fully evident until they had actually engaged in detailed analysis of the collated data.

In response the Commission refused to increase the allocated hours on the basis that neither the letter nor the accountant's email identified any new tasks or work that had not been discussed at the meeting of the 25th October 2010. It was therefore their view that all of the work identified should be completed within the parameters of the hours that had been granted.

The committee heard oral submissions from the accountant and one of his colleagues Further submissions were made by counsel and instructing solicitors. The accountants enumerated the practical complexities which had become evident whilst carrying out the task. They also produced a report which set out these problems in more detail. The general thrust of their submissions was that it would not have been possible to anticipate all of these difficulties until they commenced the detailed analysis of the collated data. This process had not been commenced in earnest until after the meeting of the 25th October. They had contacted the Commission to outline their difficulties and request the additional time as soon as was practicable. The accountant made it clear that he personally had never accepted that the time allocated to the task by the Commission would be sufficient based upon his experience of carrying out similar analysis in other cases.

The Commission responded by re-iterating their stance that nothing in either the written or oral submissions was particularly new. All of the matters identified had been foreseen and discussed on or before the 25th October. They had factored all of these matters into their decision to grant the hours at the conclusion of that meeting. They were surprised to learn that no analysis had apparently been carried out of the collated data prior to the 25th October. It had been their impression that some analysis had in fact been completed. They were also surprised to learn that the data collection which had largely been completed by the 25th October had in fact taken longer than the 1.94 mins per page claimed by the appellants at that time.

The Commission calculated (and this was not disputed) that if the appeal was to be allowed the cumulative rate for completion of the aggregate hours (which would total 205 hours) would be 3 minutes per page. They did not accept that this would be a reasonable allocation of time for the completion of this task.

Having carefully considered both the written and oral submissions with great care the committee decided by a majority decision (the chair having the casting vote) to allow the appeal. In the peculiar circumstances of this case it was felt that the issues that had arisen since the 25th October were sufficiently novel and complex as to give rise to a legitimate claim for more time to enable the forensic accountants to properly complete the work necessary to provide a detailed report on behalf of the defendant.

<u>Dissent (recorded by one committee member)</u>

Whilst this doesn't affect the decision above it may be of some benefit to the Appellant and the Commission for a brief summary of my reasoning.

As has been stated the committee considered both the written and oral submissions with great care. For the avoidance of doubt there is no question that the work that has been done and is being done has been undertaken with diligence and effort on the part of the experts and the legal representatives and is likely to prove of great use to the defendants.

The issue however was whether or not by the 25th October the subject matter of the appeal was either known or was reasonably foreseeable so as to be able to have been injected into the full budget discussions taking place on that day (which had it then been rejected by the Commission could have prompted an appeal there and then).

I entirely accept that no one from the defence team knew that these issues would arise. However, in my view, given the allowance of 1 minute per page granted on 5th October it was reasonably foreseeable that they could had work been undertaken in a way that would have revealed that (which it could have been). Then the generalities of topics such as currency conversion could have been ventilated in detail and with a short amount of actual working to demonstrate the problem.

I note we were provided with a useful paper showing why in fact the data extraction alone took 3 minutes per page on average; a document not provided to the Commission on 25th October.

In those circumstances the budget set after the 25th October was to my mind a reasonable one and I would have dismissed the appeal.

Appeal by solicitors – 9 February 2011
LSC decision overturned

- **Reading time**

In Stage 1 the Appellants requested to consider:

- statements at 2mins pp,
- telephone & cell charts 3 mins pp,
- comment interviews 2mins pp,
- No comment 1 min pp,
- general exhibits 1 min pp – initial core read of summary/comparison with main statements/interviews

As an "...initial block of hours sought for stage 1 ... [for]...Initial papers received almost 28,000 pages."

The Contract Manager refused and authorised each Appellant Counsel:

- witness statements and comment interviews at 2 mins per page
- no comment interviews at 1 min per page
- exhibits at 30 seconds per page

specifically stating that they should "... note the relevant number of pages considered in your work log. Please revert separately for time on the telephone material"

The stage 2 task list was submitted which requested the continuation to read the same 28,000 pages, and was agreed

The appellant sought to appeal an audit decision by the Commission to reduce the amount paid to counsel for completing the reading of general exhibits.

The Commission had agreed to a rate of 30 seconds per page for reading approximately 28,000 pages of general exhibits in Stage One of the contract after a request for 1 minute per page. No appeal was submitted. At the beginning of Stage Two the appellant counsel had submitted a task document which allocated an increased rate of 1 minute per page to complete reading the general exhibits. The contract manager had responded by stating that the time claimed was agreed in the comments column of the task document. Counsel had thus continued to perform the task on the basis that the increased rate per page had been agreed. The time claimed at the audit stage was based on that assumption. The Commission sought to argue that the contract manager had made a genuine mistake in agreeing to the increased rate per page and had in fact assumed that the task was simply rolled over to Stage Two at the originally agreed rate of 30 seconds per page. Counsel had thus only been allowed 50% of the time claimed.

It was common ground between the parties that:

(a) Counsel had not indicated in the covering email that a further 'bid' for one minute per page for exhibits was being made for stage 2
(b) The contract manager had made a genuine error in failing to notice the increased rate per page and the uplifted hours claimed in the task document

for Stage Two. Had she noticed this she would not have agreed to the increased hours in the absence of further submissions from the appellant;

(c) counsel had in good faith performed the task at the increased rate assuming that the contract manager had agreed to the uplift;

(d) counsel had provided documentary proof to the commission that the task had been completed within the hours claimed

Having considered the submissions from both parties with great care the committee decided unanimously to allow the appeal in the specific circumstances of this case. It was their view having heard from both in detail that both parties had acted in good faith and that no criticism could be made of the conduct of either side. However, counsel had performed the task on the basis that the hours requested had been agreed and had subsequently produced documented proof of the completion of those hours. The committee did not feel in the circumstances that they could go behind the agreement evident on paper notwithstanding the honest mistake of the contract manager.

The committee observes that for future reference it would be good practice for counsel or solicitors to submit to the commission in a separate e mail their reasons for requesting an uplifted rate for a particular task and not to rely simply on an amended task document. In that way a repetition of the unfortunate circumstances of this appeal could be avoided.

The committee notes that where the Commission asserts deliberate mistake of fact or fraud as the basis for it having agreed time when it otherwise would not have done so then the contract specification provides no right of appeal whatsoever.

In future a covering email setting out the position is likely to provide the protection against an allegation of bad faith.

The Committee suggests that this decision, suitably anonymised, should be drawn to the attention of practitioners.

Appeal by counsel – 9 February 2011
LSC decision overturned

- **Preparation**

Item 6 & 7 – The appellants have requested 100 hours to attend on the client and 50 hours to prepare for the attendances. The Contract manager has agreed 40 hours combined.

Item 2 & 3 – The appellants have requested 50 hours for conferences with Counsel and 25 hours to prepare for the conferences. The Contract Manager has agreed 20 hours combined.

This appeal concerned the appropriate allocation of time to be allowed for the following tasks:

Task 2 – Preparation for conferences with counsel

Task 3 – Attending conferences with counsel

(In relation to these two tasks 75 hours had been requested and only 20 allowed)

Task 6 – preparation for conferences with client/taking instructions

Task 7 – attendances on the client to take instructions

(In relation to these two tasks 150 hours had been claimed and only 40 allowed)

Having considered the written submissions of both parties the committee decided unanimously that the appeal should be refused. The committee took the view that the time already allocated for the tasks in question had been unusually generous considering the nature of the case. It was thus their view that the time allocated by the contract manager for further meetings was eminently reasonable.

Appeal Dismissed

Appeal by solicitors – 9 February 2011
LSC decision upheld

- **Category**

The contract manager considers the case is a category three fraud. The appellant considers the case is a category two fraud. The LSC accepts:

The case requires legal, accountancy and investigative skills to be brought together.

The value of the fraud is in excess of £10 million.
The volume of prosecution documents exceeds 10,000.

One further criterion from block A must be met in order for the case to be awarded category two status.

All parties were content that the appeal continue on papers only. No party appeared in person.

The facts are well known to all parties and we do not propose to repeat the same herein.

The Committee having read all the material relied upon, and having read and considered the submissions made, were of the view that the appeal succeeds with regard to categorisation. That said we are of the view that this was a borderline decision.

Unanimous decision.

Appeal by solicitors – 16 February 2011
LSC decision overturned

- **Reading time**

The Appellant has requested 1 minute per page to consider the exhibits. The contract manager has agreed 30 seconds per page.

The Appellant has also requested time to prepare an abuse of process argument on the basis that the defendant cannot have a fair trial because counsel has insufficient time to read the exhibits. The Contract manager has refused this request.

This appeal was heard with representations made by learned counsel, the contract manager and the reviewing lawyer. We also had the benefit of papers served and other material.

We considered all.

The Committee were of the view that the appeal fails.

Whilst we accept the veracity of counsel's assertions that he undertook much work, he did not set out his stage plan in a coherent fashion. Therefore the LSC properly decided not to remunerate him for the work he undertook.

Each item of work must be set out in individual "tasks" that are strictly defined and quantified.

Furthermore, once the work has been completed, or part completed, it must be accurately recorded with reference to time consumed, material read, considered, viewed or produced. This must then be defined and related to the individual task previously agreed

We remind all parties that the LSC's VHCC panel scheme was, inter alia, designed to be transparent.

Unanimous decision.

Appeal by counsel – 16 February 2011
LSC decision upheld

- **Reading time**

The Contract Manager is willing to agree to 1 minute per page to read and schedule 14, 336 pages of exhibits in stage 0, whereas the appellant has requested 1.5 minutes per page.

Appeal on papers submitted to the Committee and representations made in person by the instructing solicitor.

The LSC were represented by the contract manager

The appeal is in regard to the LSC's decision to allow 30 seconds per page to read and 30 seconds per page to schedule the exhibits. The Appellants ask for 1 per page to read, making a total of 1.5 minutes per page.

Having read the material provided and having heard the submissions made the Committee were of the opinion that the appeal be allowed.

Unanimous.

Appeal by solicitors – 23 February 2011
LSC decision overturned

- **Non-payment of work not agreed in advance**

The items in dispute are two tasks that were disallowed on the Appellant's stage 3 claim on the basis that the time had not been agreed in advance. The tasks were as follows.

2.5 hours spent reading the revised prosecution case summary /opening note;

7.5 hours spent preparing for the pre-trial review hearing.

The attendance at the PTR hearing was paid.

The appeal was on papers alone. Neither the LSC nor the appellants were represented.

Having read all the material provided, the Committee were of the opinion that the appeal be allowed in full.

The Committee were of the view that Counsel, though his clerks, had made every effort to agree matters in advance. However, due to an error on the part of the LSC, the work in question was not dealt with.

In the absence of any response from the LSC, Counsel was left in the unusual position of having to continue with the work. It is in those circumstances that appeal is granted.

Appeal by counsel – 23 February 2011
LSC decision overturned

- Preparation

The following items from the Appellant's task list are in dispute:

Task 5 (Composite schedule for preparation of counsel's role and function at trial)

- 50 hours requested
- Disallowed altogether

Task 6 (Chronology of interrelationship of key events between co-conspirators)

- 25 hours requested
- Disallowed altogether

Task 7 (Chronology of interrelationship of key individuals i.e. non defendants as related to key events i.e. behaviour of other traders not charged)

- 25 hours requested
- Disallowed altogether

Task 10 (Reading/annotating exhibits)

- Requested 2 minutes per page for 40,166 pages – a total of 335 hours.
- Allowed 30 seconds per page for 40,166 pages (with further time to be agreed for key and complex exhibits) – a total of 1,340 hours

Task 17 (Indexing key statements/documents re defendant and co-defendants that will be used against him at trial)

- 15 hours requested
- Disallowed altogether

In total for considering the exhibits and drafting schedules and chronologies of the evidence 1,455 hours have been requested (at category 2 junior alone rates of £85.50 per hour costs of £124,402.50) and 335 hours (costs of £28,642.50) have been allowed.

Appeal on papers submitted to the Committee and representations made in person by counsel. The LSC were represented by the contract manager

The appeal concerns five different tasks. They are tasks 5, 6, 7, 10 and 17. Those tasks are well known to all parties and we do not propose to repeat them herein.

Having considered all the material provided and heard the representations the appeal is allowed in part.

Task 5 is allowed in full. This is now better described variously as “advocacy presentation” or “cross examination planning”. This is unusual at this stage, however it does reflect the enormity and complexity of the case. The Committee are of the view that this allowance is unique and such planning is normally better dealt with at later stages of a case.

Task 10 is allowed in part. 1mpp for “reading / annotating” the “key and complex exhibits” to be allowed. Both parties are aware of the parameters of that description.

Therefore tasks 6, 7 and 17 are not allowed.

This is an unusual case and the decisions made reflect this case alone.

Finally the Committee were of the view that if any further appeals arise they are reserved to this committee as constituted today.

Appeal by counsel – 23 February 2011
LSC decision upheld in part

- Preparation

The appeal relates to the decision of the Contract Manager to authorise a block of 152 hours at Grade C standard rates for the amended schedules.

This is broken down as follows:
- 1 months work for a Grade C i.e. 4 x 38 hours = 152 hours
- In monetary terms this equates to £5,244

The appellant seeks 1000 hours at Grade C standard rates.

This is broken down as follows:
- 45 seconds per line
- 25 seconds per populated cell
- In monetary terms this equates to £25,500

The appellant and the Contract Manager agree that the task should be undertaken at Grade C standard rates.

The Appellants request 750 hours for this task. Having heard the Appellant's representations the Committee considers that the Contract Manager's approach is reasonable. The Appellants have had 2084 hours for work on the exhibits and will be very familiar with the evidence. If after 152 hours work inaccuracies have been found then it would be reasonable to indicate that the schedule could not be agreed. The appeal is dismissed’.

Appeal by solicitors – 2 March 2011
LSC decision upheld

- Reading time & preparation

There are a number of items in dispute between the appellant and the contract manager.
The appellant submitted his tasklist and case plan and requested that the contract manager attend a face to face meeting. The contract manager and a colleague went to great lengths to attend this meeting by travelling to Surrey, a journey which took four hours each way. The contract manager made all efforts to ensure there was sufficient time to discuss both tasklists and the category of the case. The appellant subsequently feels the meeting was unsuccessful and that not all tasks were discussed. The LSC entirely refute this. The contract manager has made every effort to assist the defence team and make herself available to discuss requests. All tasks were discussed in the meeting.

In order to be responsible with public funds the LSC discourages the purchase of open return rail tickets therefore there was a time constraint on the meeting but over two hours is a reasonable amount of time to discuss a tasklist. The appellant also states that only "a few minutes" was spent considering counsel's tasklist. The tasklist in fact runs to 19 tasks and it would not have been possible to agree all 19 of the tasks if we only spent a few minutes discussing it. The fact that we discussed and agreed counsel's tasklist after the appellant's tasklist shows that adequate time was spent at the meeting.

During the meeting the contract manager found it disappointing that the appellant constantly referred to whether the case was "commercially viable" and when discussing tasks were he calculated the costs rather than concentrating on if he had sufficient hours to prepare the client's defence and whether proposals were reasonable with regard to the needs and instructions of the client.

The agreements that were reached should be considered in the light of the clients clear indication to enter a plea of guilty. The appellant produced an email which he had sent to the CPS head of advocacy stating:

"Further to our discussions in relation to the above matter, I am mindful of the significance of the stage at which a defendant indicates his willingness to plead guilty (Sentencing Guidelines Council's guideline on reduction of sentence for a guilty plea at D4.3 and at Annex 1), and I therefore write on my client's instructions to place on record the fact that (subject to the eventual indictment being a true and proper reflection of the evidence against him) this is his intention"

The LSC feel the time agreed on the stage 1 tasklist is sufficient to advise the client on his plea and in some instances could even be considered generous given that it appears very unlikely there will be trial.

The contract manager was further disappointed when the appellant chose to go straight down the appeal route in relation to category. The initial category representations sent in by Taylor Street were not sufficient and after discussions at the meeting an extension of time was agreed for the appellant to submit further representations in light of the comments made by the contract manager. The appellant did not do this and has instead submitted an appeal on category. The contract manager shall address this point later on.

For the convenience of all the contract manager has listed all items in dispute alongside her understanding of where the agreement currently stands.

Task 2: Stage plan, case plan, tasklist meetings to formulate and prepare stage plans including time allocated to comparing the evidence served in digital format with evidence served subsequently.

Requested by appellant:

- *18.50 hours grade A and 32 hours grade B*

Agreed by contract manager:

- *3 hours grade A for preparing stage plan, case plan and tasklist*
- *13.8 hours grade C standard rate for sifting evidence*
- *2 hours grade A for preparing stage 2 tasklist*

Task 3: Weekly team meetings.

Requested by appellant:

- *72 hours grade A and 48 hours grade B*

Agreed by contract manager:

- *6 hours grade A, 6 hours grade B and 6 hours grade C.*

Task 4: Considering case summary.

Requested by appellant:

- *4 hours grade A and 4 hours grade B*

Agreed by contract manager:

- *1 hour (based on 29 pages agreed at 2mpp to be split between fee-earners, if deemed appropriate by he firm)*

Task 7: Considering exhibits

Requested by appellant:

- *3 minutes per page*

Agreed by contract manager:

- *1 minute per page plus 1 minute ancillary work*

Task 8: Supervision by grade A fee-earner.

Requested by appellant:

- *18 hours grade A*

Agreed by contract manager:

- *This task was refused as supervision time had already been authorised under task 3.*

Task 10: Lawyer only conferences with counsel.

Requested by appellant:

- *7 hours grade A and 21 hours grade B*

Agreed by contract manager:

- *12 hours Grade A or B for conferences with counsel (task 9)*
- *12 hours Grade A or B for conferences with counsel and client(amended task 10)*

Task 13: Handover attendances with client.

Requested by appellant:

- *4 hours grade A and 2 hours grade B*

Agreed by contract manager:

- *This task was refused as an initial amount of 34 hours has already been agreed for attendance on client (Task 12) Contract manager felt that task 13 was a duplicate task.*

Category

Requested by appellant:

- *Category 2*

Agreed by contract manager:

- *Category 3*

This is an appeal against the Contract Manager's decision to categorize the contract as Category 2. The Appellants also appeal the times allowed for Tasks 2.3.4.7.8.10.13. During the course of hearing the appellant has accepted that his argument on category is not strong and he has withdrawn the appeal on categorization. The appellant has subsequently confirmed that an indication of his client's intention to plead guilty had been given to the Prosecution prior to the Contract Meeting. The Contract Manager was only advised of that the following month. The appellant has withdrawn the remainder of the appeal'.

Appeal by solicitors – 2 March 2011
Appeal withdrawn at hearing

- **Disbursement**

This is an appeal against various decisions made by the Contract Manager in respect of the forensic accountant.

We have been very helpfully provided with copies of the application by the appellants and the responses by the Contract Manager.

We have also had sight of documents that have been sent by email running to many hundreds of pages that relate to various quotations for work that it is proposed that should be carried out by experts retained by the defence.

We have seen a transcript of a ruling on an application to adjourn the trial that was heard by the trial judge on the 24th. January 2011.

We have also heard oral representations by solicitor for the appellant and also from the contract manager for the Legal Services Commission. We have had the opportunity to examine the expert witness retained by the defence via a video link.

As already mentioned this appeal arises out of the refusal by the Legal Services Commission to allow the use of public funds to pay for the specific use of consultant forensic accountants to consider and to report on aspects of this case and to attend meetings with the experts instructed by the Crown.

We are aware that the contract manager has agreed certain time but currently declines to authorise payment for all the work that the defence say that is necessary.

In their appeal we are told that the allegations that the defendants in this case face are those of a Missing Trader Inter-Community fraud (MTIC)

We hope that we will be forgiven if we do not rehearse in this ruling the full details of the allegations as they are very well known to all the parties but it can be said that this fraud concerns chains of transactions for the sale of mobile telephone the said sale of which may well not be genuine.

We are told that the value of the alleged fraud is actually not quantifiable but runs into hundreds of millions of pounds.

Specifically, we are told, the Crowns Expert Accountants report exceeds some 600 pages.

As we have mentioned earlier in this ruling this appeal relates to the contract manager's decision in relation to hours of time for preparation requested for six supplemental quotes in relation to a forensic accountants report as well as the initial applications for time for meetings and the preparation of a supplemental report by the defence

These quotes we are told, are in addition to over £111,632.77 already authorised in quotes 1, 3, 4 and 7, plus £10,184.00 quoted at Quote 2, also the subject of this appeal .

We detail them as follows:

Quote 2 relates to a proposed meeting between the expert accountants - both for the Crown and the Defence. The appellants wish to seek the attendance of **two** members of their expert accountants firm to attend at a meeting with the Crowns expert and the Commission having considered the application is only prepared to authorise the attendance of one. This meeting having been ordered by the Trial Judge. [We are told that the Learned Judge has actually ordered that both members are to actually meet]

Quote 5 relates to a further 68 hours of work at £160 p/hr in order to consider and respond to the Prosecution's TD/1 Prior and TD/1 Parker schedules, totalling £10,880.00 + VAT.

The contract manager has agreed 13.9 hours - £2,224.00 + VAT. Again the appellants argue that this allocation is insufficient.

Quote 6 relates to an additional 71 hours of work at £90 p/hr in order to check alterations to schedules provided by the prosecution, totalling £6,390.00 + VAT (not £11,360 as originally quoted).

The contract manager has allowed 14.23 hours - £1,280.70 + VAT.

Quote 8 relates to an additional 97 hours of work at £160 p/hr in order to consider and respond to the Prosecution's TD/2 Prior schedule (and appendices), totalling £15,520 + VAT.

[We were told that TD/2 was a response to the replies to TD/1. We are assured that there is nothing in this task that is duplicate work]

The contract manager has agreed 55 hours - £8,800.00 + VAT. Item 1 only is at issue for the purposes of this appeal.

Quote 9 relates to an additional 25.5 hours of work at £160 p/hr and 3 hours of work at £90 p/hr in order to consider and report on 3 pieces of unused material, totalling £4,350.00 + VAT.

The contract manager has agreed 10 hours at £160 p/hr and 3 hours at £90 p/hr - £1,870.00 + VAT.

The total cost authorised to date plus unresolved quotes above is therefore £157,756.77 + VAT.

Dealing with the representations that have been made to us we seek to comment as follows:

In their written representations to us, the Commission state that whilst they would not seek to prevent both the defence experts, from attending the meeting. The Commission does not feel that the burden of this cost should be laid at the door of the tax payer, something that the Commission feels should always be taken into account when assessing the reasonableness of any application in any case.

Dealing with the attendance at the meeting of two members of the defence experts firm (Quote 2 - item 1) the Commission takes the view that this requirement is only deemed necessary because the Experts Accountants have sought to outsource some of the work - '...assign separate fee-earners to deal with issues independently and have accepted instructions on a matter that is not completely within their area of expertise.'

A matter that they say is fully admitted by the expert accountant.

[For sake of clarification, we ought to say at this point that this accountant is the director in the firm of instructed experts]

The Appellants seek to argue that it is necessary for two members of the team to attend the meeting as they say that as there are two limbs to the report that has been produced each limb having been undertaken by a separate fee earner with separate skills and

therefore both should attend to discuss and answer questions raised on their respective sections of the report.

Further they say that the instruction and allocation of work was a matter specifically detailed in an advice prepared by Junior Counsel. We have not had sight of that advice but are happy that this was the case as it has been confirmed to us as being so.

We are told by the appellants that to limit the expenditure only to permit one expert to attend the meeting would place the defence at a distinct disadvantage and it would not be in the interests of justice to limit them in such a way as it is presumed that the expert for the Crown will be supported by others notably the officer in the case, who the appellants tell us is deeply involved in this aspect of the case with considerable knowledge and input to the Crowns working on the accountancy issues.

The appellants simply say that the amount of time allowed by the Commission is not sufficient to allow the supplemental report to be produced. we are told that the '....review and comparison of the documents.....takes 4 minutes a page'.

On its part, the Commission states that as the experts are already familiar with much of this documentation and having already considered the Crown Experts report and indeed his supplemental report the time that they proposed to authors is sufficient.

This appeal is can be simply summed up by saying that we are asked to consider the requests to be reasonable in all the circumstances. In short we are asked to allow this expenditure to ensure the equality of arms.

We are asked to decide on the issues in dispute and rule. We can dismiss the appeal, allow it in part or in full.

This ruling should be taken as our written reasons.

We were somewhat concerned to note that Junior counsel was unable to attend as we were led to believe that she would but we are told that she was actually in court and we are grateful to the solicitor for stepping into the breach to seek to present the appellant's case. His contribution has assisted us greatly.

As regards Quote 2 we were told that the Commission were made aware that the meeting should always be a multi handed.

The Commission accepted that they have had had a copy of Counsels advice.

Not only did the Judge order the meeting , he also named the respective experts.

The Commission were aware of this.

We are told that the requirements for meetings and reports are driven by the Trial Judge.

We are told that the Trial Judge considered the question of case progression prior to Christmas 2010.

The Judge initially ordered the meeting {Quote 2} some considerable time ago.

The Defence now propose that the supplementary request for work to be done on the case should now take precedence over the actual meeting.

We take the view that the consideration of the results of the meeting is a 'mechanical task' rather than 'forensic' and we are concerned that there is a seeming need for experts to further review the works that experts have already undertaken.

We are told that counsel have met with the experts and discussed those aspects of the case that can be admitted.

We are led to believe that the aim of the parties is to resolve any expert conflict with the preparation of lengthy admissions.

Quotation 5. We heard specifically that the work requested has actually already taken place. This is a retrospective request. We are told that actual time taken exceeded the total amount of time requested. {TD/1 Prior }.

In so far as the schedule TD/1 Parker is concerned that this work has not yet been undertaken.

The Commission were of the view that there was still matters outstanding issues requiring clarification that related to quotation 5.

This was not accepted by the appellants.

The appellants contended that there was a need not only just to read the schedules but to check the accuracy of the schedules and prepare their response and that the time allowed was simply not enough.

In so far as Quotation 6 is concerned, it was asserted by the appellants that there had been so many errors in the Crowns original report.

In so far as Quotation 8 is concerned, the appellants were able to accept that some of the questions could be dealt with in short order. But they contended that irrespective of this the totality of time would not reduce markedly but the appellants would accept that 50 hours would enable them to carry out the work on item one only therefore a reduction of 12 hours was agreed.

Finally as far as Quotation 9 is concerned the appellants contend that this technical information and the time requested would be the time that it would take to complete the task.

We are told that some of the Crown witnesses are only part way through their evidence and will be recalled to answer further questions that will arise out of the meeting that are detailed above.

Assessing this in the round it would seem that there is about 200 hours of work that the appellants say is necessary prior to the meeting taking place.

Having considered the arguments for both parties and having considered in depth all the papers submitted prior to this hearing we find as follows:

Quotation 2

We find that the prior knowledge of the Commission as to the number of experts who were required to attend the meeting and this requirement endorsed by the Learned Judge in his direction confirm that it is necessary that experts with individual expertise in aspects to the case attend at a meeting to discuss relevant issues with those of the Crown.

It is right therefore that this meeting take place and it is also that those persons identified should attend.

We do however note that preparatory work my well result in any meeting being foreshortened.

To this end this appeal is allowed.

Quotation 5

Having heard the responses to the questions put by this Committee we were concerned to note that the work in TD/1 Prior had actually taken place. However, we were persuaded that irrespective of the fact that the initial request was exceeded the appellants restricted this appeal to the initial 28 hours originally asked for. We were content that this work was necessary to the furtherance of the case.

This retrospective allowance is unique to this case and a reflection of the pressures imposed on the defence by the Court to expedite this case.

As for TD/1 Parker we reiterate the arguments detailed in TD/1 Prior and are of the view that this is necessary and has proved to be beneficial to the advancement of the case. We note the discovery of the 20 million pound error in the Crown case has already come to light as a direct result of the experts work.

Accordingly, this appeal is allowed.

Quotation 6

We are of the opinion that this is necessary, the issue is who should carry it out. In normal circumstances we would expect a grade C fee earner to undertake the task. So to that end the appellants' agreement to undertake the work at 90 pounds per hour is a saving to the public purse.

We would comment that this is not a standard fee task given that there is element of analysis of the errors and explanation may well be required to be given to other members of the defence teams.

This Appeal is allowed.

Quotation 8

The Appellants have the 247 separate queries is now reduced with an attendant reduction of hours from 62 hours to 50 hours.

This we accept and allow the appeal to this degree.

Quotation 9

We take the view that this unreasonable. The material to be viewed is unused. It is crucial, however, before considering this item to have the Crown formally confirm that nature of the same. i.e. whether the material is to be used or not. It is always open to the defence to revert to the Commission if the standing of the material or its importance as to its relation to the existing evidence can be demonstrated.

We hope that if the Commission is given further relevant further information they will act with due expedition.

This appeal is dismissed.

Appeal by solicitors – 16 March 2011
LSC decision upheld in part

- **Category**

The Contract Manager has agreed this as a category 2 case, and that this category should apply from 8 November 2010, when category submissions were first made. The Appellants say that the category should apply from the start of the case.

The facts of the case are unimportant save to say that it is clearly a serious fraud related case. The issues between the parties relate to:

Is there a right of appeal at all?

If there is a right of appeal then what date should the Category 2 status run from?

The brief background to the case involves protracted negotiations between the parties as to what the correct categorisation of the case should be. This came to a head when the contract manager set a deadline for the receipt of final representations re- Category. The trigger for the start of the 10 days deadline was the defence receipt of the Prosecution Case Statement. That document was received by the defence on 19th October 2010.

The contract manager's email to the appellant on the issue is dated 25th August 2010. It states "... If reps are submitted outside the deadline, any uplift will only apply from the date they were received. This deadline is not negotiable for extension ..."

In the circumstances the position could not have been clearer. The strict contractual deadline for representations re-Category had long passed. The CM in her discretion extended it as set out in the email. That extension was missed and the CM has stuck to the terms of the extension. The representations were received on 8th November 2010 and they have been accepted as supporting the case as a Category 2 case from that date. They have not however been taken into account re-categorisation up to that date. The CM is entitled to stick to the discretionary extension granted and the committee can see nothing unreasonable about this position.

The separate issue of whether the service of the indictment impacted on the extension granted is decided against the appellant.

Since we find that the appeal should be dismissed on its merits we need not consider the point concerning the right to appeal.

Appeal by solicitors – 23 March 2011
LSC decision upheld

- Reading time

The appellant faces allegations relating to cheating the revenue in the context of a VAT fraud, including the laundering of the proceeds of the fraud. The contract manager has

allowed 30 seconds to the solicitor at grade B for reading plus a further 30 seconds at grade b for scheduling the exhibits. 30 seconds for reading has been allowed to junior counsel. The present page count of exhibits = 34,150 which amounts to 284 hours at 30 seconds per page. Both solicitor and junior counsel arguer that 1 min pp reading should apply.

1. Material Considered:

- Prosecution Case Summary dated 5th August 2010
- VHCC Appeals Representations Form (received 17th February 2011)
- Combined extracted pages from appeals relating to exhibit reading time under the previous contract.
- Disk containing the exhibits under review.
- VHCC Appeals Response Form dated 3rd March 2011

2. The Question

Is the allowance referred to above unreasonable and if so what is a reasonable allowance for both solicitor and counsel.

2010 VHCC Specification

1.4 The work that you carry out under this Contract must fall within the Access to Justice Legislation and the scope of this Contract. You must also refer to any LSC Guidance in respect of VHCC Work

2010 VHCC Guidance

4.30 Where the prosecution serve tranches of evidence at the outset of the case, it will be expected that the Contract Manager will apply the following rates according to the nature of the evidence:

Witness statements 2 minutes per page

Exhibits 30 seconds per page

Interview transcripts, full comment 2 minutes per page

Interview transcripts, no comment 1 minute per page

3. My Approach

The guidance is merely guidance but it is specifically referred to in the 2010 Contract. It is a starting point that can be varied depending upon the individual case.

4. This Individual Case

- I have had the advantage of reviewing the exhibits disk
- I have the PCS to assist with placing the appellant's individual case in context
- It is alleged that the client's company traded as a "buffer" trader in a trading chain between June and September 2004. This falls into the first part of the two part conspiracy. There is also the issue of continued involvement after the liquidation of the company.

5. The Time Allowance

- The combined time allowed to the solicitor at grade B for reading and scheduling is 1 minute pp for 34,150 pages = 569 hours. That amounts to 71 eight hour days or 14 five day weeks; over 3.5 months working on the exhibits.
- In addition junior counsel will have half that time again by virtue of the 30 seconds pp allowance for counsel.
- I repeat that I have seen the disk containing the exhibits and understand the case against the appellant.
- I am certain that the combined time of 850 hours for solicitor and counsel to consider the 34,150 pages of exhibits in this case is more than adequate and **I DISMISS THE APPEAL.**

Appeal by solicitors and counsel – decided on papers by single adjudicator, 24 March 2011

LSC decision upheld

- **Category**

The appellant faces allegations relating to cheating the revenue in the context of a VAT fraud, including the laundering of the proceeds of the fraud. The CCU have categorised the case as a Cat 3 and the appellant submits that it is a proper case for Cat 2 status. There is a significant financial implication for the appellant if he fails in this appeal. The written submissions have been full and informative. The case will satisfy Cat 2 if the "… defendant's case involves a significant international dimension …" Counsel has drafted

the written submissions on behalf of the appellant and the contract manager has responded in writing on behalf of the CCU.

1. Material Considered:

- Written submissions of counsel dated 17th February 2011
- Amended Prosecution Case Summary dated 14th September 2010
- VHCC Appeals Response Form of 3rd March 2011
- Appellants Comments on 3rd March 2011 document dated 9th March
- Contract Manager's response to 9th March 2011 document

2. The Question

Does "…The defendant's case involves a significant international dimension; "

In reaching a decision regard must also be had to the 2010 VHCC Guidance.

2010 VHCC Specification

1.4 The work that you carry out under this Contract must fall within the Access to Justice Legislation and the scope of this Contract. You must also refer to any LSC Guidance in respect of VHCC Work

2010 VHCC Guidance

The defendant's case involves a significant international dimension

4.21 To satisfy this criterion, the defence team would need to show that a particular aspect of their case preparation involved a non UK element of either fact or law, or both. For the international dimension to be deemed "significant", the defence team would have to demonstrate it had a direct effect on their understanding of the case, and substantially affected case preparation.

4.22 With regard to a legal dimension, the need to understand the workings of non-UK jurisdictions, substantial liaison with lawyers abroad or foreign authorities, or the need to understand and assess parallel or linked proceedings in foreign jurisdictions, would be persuasive factors.

4.23 For a factual dimension, the defence team would need to show that key elements of the offence were perpetrated abroad, and that in analysing these the defence team would require understanding of the workings of systems or institutions different from those in the UK.

4.24 Incidental details would be insufficient to meet this criterion, such as:

- The defendant is a foreign national
- There are foreign witnesses
- Goods or money have been received from, or deposited, outside the UK
- Commissions Rogatoires

3. The Case Against the defendant (see paragraph 72 - 74 of PCS)

- In February 2006 the client's company's Habib Bank Account was over £400,000 overdrawn
- The company traded as a "broker" from 19th January 2006 to 9th February 2006. Over that period of less than a month it arranged 76 export containers said to contain high value exports. 50 of the containers were intercepted, searched and found to contain low value materials. The remaining 26 containers were cancelled before they could be checked.
- The defendant had signed the packing lists and purchase invoices and also raised the sales invoices to a company in the UAE.
- There was a fundamental difference between the paperwork relating to what was purported to leave the UK and that which was said to be arriving in the UAE. The defendant was linked to the outward and the arrival paperwork. 6 containers had outward invoices amounting to a value of £2.5 million and arrival UAE values of £66,000.
- The total invoices from the defendant's company to the company in the UAE amounted to 528 tons of fabrics and yarns to the value of £24 million. On the back of that volume the defendant signed a February 2006 VAT return claiming £2.4 million.

4. <u>The Defendant's Case (see paragraph 4.2 of Written submissions of counsel dated 17th February 2011)</u>

- He believed he was involved in legitimate trade with legitimate companies in the UAE.

5. <u>What are the central features of how the defendant proposes to establish the defence?</u>

- Investigation into the various companies the client dealt with in the UAE to see who has control over them and their links to any other elements of the prosecution case.
- Enquiries in the UAE with the company who made contact with the defendant wishing to trade with him in relation to low value textiles.
- Enquiries re. the appellant's own advertising campaign in the UAE.
- The issue re X.

6. <u>Category criteria in the Contract Specifications</u>

- I understand that the appellant has managed to satisfy the contract manager that the defendant's case requires legal, accountancy and investigative skills to be brought together. I have not seen the submissions that supported that claim so am unable to agree or disagree with the decision. What I can say is that case against the appellant appears strong and his defence is fundamentally based upon his knowledge of what was actually contained in the containers he was involved in exporting. In relation to how the appellant seeks to defend the case, I take the view that none of the factors appearing in paragraph 5 above involve a significant international dimension.
- In any event Paragraph 4.17 of the Contract Specifications dictate that the VHCC Supervisor is unable to use representations in support of one category criterion as specified in Paragraph **4.22**, to support a second category criterion when completing the VHCC Category Assessment Sheet. Notwithstanding the fact that I

have not seen the submissions that supported the LAI criterion I am sure that the work said to fall under a significant international dimension is covered by the LAI criterion.

7. Conclusion

- The reference to "… The defendant's case …" in "The defendant's case involves a significant international dimension", includes both the prosecution and defence case.
- The prosecution side of the case does not in my view involve a significant international dimension. There case is that the fraud could not be committed without the involvement of a VAT free zone. That zone is outside the UK. Apart from that aspect there is no significant international dimension.
- It has not been established on the balance of probabilities that "the defendant's case involves a significant international dimension".

Appeal by counsel – decided on the papers by single adjudicator, 24 March 2011
LSC decision upheld

- **Category**

1. The prosecution case against the defendant is that he was behind a "boiler room" fraud selling shares. The full facts of the prosecution case are set out in the PROSECUTION SUMMARY dated 30th July 2010. This document was made available to all parties and has been carefully considered by the Appeal Committee. The defendant appears on one of the five counts in the indictment. This is a very serious case and a substantial period of custody will inevitably follow if convicted.
2. The appellant's case was presented by Counsel and the respondent's case by the Contract Manager. In addition to oral representations the Committee were assisted by detailed written representations from both sides.
3. The dispute related to whether the case is a Category 2 or a Category 3 fraud. The CM accepted that the defendant's case required legal, accountancy and investigative skills to be brought together. The appellant had in his written representations asserted that the defendant's case required highly specialised knowledge but in oral argument wrapped that feature of the defence up with the central claim that this was a case where the defendant's case involved a significant international dimension.

4. In oral submissions counsel expanded upon the submissions contained in his Advice relating to "… Significant International Dimension …" dated 29th March 2011. There was no dispute that the defendant's case involved an international dimension. Looking at the prosecution assertions in the indictment and the principal overt acts relied upon there is reference to operating outside the jurisdiction to avoid regulations (this appears a letter (b) of five principal overt acts). The appellant's basic answer to the regulations avoidance allegations is that location can be innocently explained. The issue of understanding the regulatory regime relevant to a particular location appeared to the Committee to engage an international dimension but not one that met the test of a case where the defendant's case involved a significant international dimension.
5. The issue of a bad character application concerning previous dealings of the appellant was developed in oral submissions. This concerned the appellant having to master overseas regulatory systems in order to understand and if appropriate challenge the prosecution assertions. It is correct that the appellant is entitled to rely upon any regulatory system that favours him. That however does not, in the Committee's opinion, elevate that aspect of his defence to a defence case involving a significant international dimension.
6. Having reached the above conclusions the Committee **DISMISS THE APPEAL.**

Appeal by solicitors & counsel – 6 April 2011
LSC decision upheld

- **Category**

1. The appellant faces substantial and serious allegations relating to pension fraud. The amount of money allegedly defrauded is vast and this is unsurprisingly a SFO prosecution. At the hearing before the Committee the appellant was represented by the instructing solicitors and the respondent by the contract manager.
2. All four of the Block A criteria were in dispute between the parties, however the Appellant need only succeed on two to satisfy Category 2. The Committee was assisted by the detailed written and helpful oral submissions from both sides. There appeared to be a degree of frustration on the part of the CM in the

appellant's failure to address the specific tests set down in Block A. Since the CM is bound to test all submissions against the set Criteria it is understandable that she asserted that general attributes, no matter how serious, cannot be allowed to trump the set Criteria.

3. Having taken all proper matters in to account the Committee concluded:

    a. Notwithstanding the existence of some media coverage and inevitable public concern about pension fraud the Committee were not satisfied that the defendant's case is likely to give rise to national publicity and widespread public concern.
    b. The Committee found overwhelming evidence that the defendant's case requires highly specialised knowledge. The Defence Case Category Assessment Sheet, page 2, presents a clear case on this issue.
    c. The Committee were not satisfied that the defendant's case involves a significant international dimension.
    d. The Committee found overwhelming evidence that the defendant's case requires legal, accountancy and investigative skill to be brought together.

4. Having reached the above conclusions the Committee **ALLOW THE APPEAL**

Appeal by solicitors – 6 April 2011
LSC decision overturned

- **Preparation**

The Appellant has appealed a large number of tasks and disbursements on its stage 4 task list which is attached at annex 1 of this response.

The Complex Crime Unit (CCU) accepts that the following tasks and disbursements listed by the Appellant are disputed items that fall to be adjudicated upon by the Appeals Committee (and has provided reasons for its decisions on these tasks and disbursements further into this response):

50, 51, 58, 62, 67, 70, 71, 78, 79, 83, 86, 87, 92, 93, 95 & 96

The following tasks have not been formally refused by the CCU as further information was requested in e-mail correspondence of 10 November 2010 to which the Appellant has not responded. It may be that the Committee quite properly take the view that these should not be the subject of this appeal, especially taking account of the volume and extent of the issues to be considered. However, in a

spirit of co-operation and in the hope that matters may be moved forward as much as possible, the CCU have addressed the following tasks at the end of this response:

53, 59, 63, 80, 81, 82 & 90

The appeal was presented on papers and by oral submissions made by the instructing solicitor.

We do not propose to rehearse the background criminal allegations faced by the defendant as they are well known to all parties.

Furthermore we do not propose to set out the areas of appeal as they are too numerous and broad.

Having read all the material submitted by both parties and having heard the submissions made by the solicitors and then those of the LSC we are of the view that **all areas of appeal fail.**

For the sake of clarity that includes all putative appeals that were not properly before the Committee as well.

We firmly take the firm view that the solicitors' tactics are at best a "fishing exercise".

As the contract manager observed, the tactics deployed were hopeful of a successful abuse of process argument rather expectant. In the circumstances the taxpayer cannot possibly be expected to fund such a speculative exercise.

Finally, as is our duty, we confirm that we are gravely concerned with the conduct of the case and would ask that the LSC to keep a firm eye on matters.

Appeal by solicitors – 11 May 2011

LSC decision upheld

- **Category**

The appeal related to the contract manager's decision to categorise this case at category 3. The appellants requested category 2.

This Appeal was submitted to the Committee on papers alone.

Having read all the material and carefully deliberated, the Committee were of the view that the contract manager's original decision was correct.

The case is to remain at the same category. The appeal therefore fails.

Appeal by solicitors – 11 May 2011

LSC decision upheld

- **Category**

The appeal relates to the decision of the Contract Manager to categorise the case as a Category 3 Fraud.

The Appellant seeks re-categorisation of the contract to Category 2

This Appeal was submitted to the Committee on papers and the instructing solicitor and counsel attended.

Having read all the material and carefully deliberated, the Committee were of the view that the contract manager's original decision was correct.

The case does not require "highly" specialised knowledge. This case requires what is expected of a panel member.

This case does not have a "significant" international dimension.

The case is to remain at the same category, if anything the Committee considers this case to be a very run of the mill MTiC. The appeal therefore fails.

We would remind all Appellants that it is improper and unfair to present new material to the LSC and the Appeals Committee *at* the appeal. All material must be presented to the LSC in good time in order that they can properly consider the position.

Unanimous.

Appeal by solicitors & counsel – 25 May 2011
LSC decision upheld

- **Travel**

The appeal relates to the Contract Manager's decision not to fund the defendant's travel, accommodation and subsistence costs during the trial. The client's wife's travel and subsistence costs have also been refused.

The Appellants applications are refused in whole.

2. The reasons provided by the contract manager are upheld.

3. The Appeals Committee have reluctantly accepted that the application falls within its remit to consider the disbursement asked for. Such applications should not be a matter of routine.

4. The position of this defendant is no worse than many other Defendants who appear at Trial and who are subject to a restraint order; regard has been had to the fact that the order has been in force since 2007 and that the Trial date is in 2011 but the defendant has not demonstrated that he has made every effort to ensure his attendance for the Trial .

5. Application has been made to release nearly £1800 to contribute to the cost of travel to date; consideration should be given to an early cashing in of the standard life Annuity which would release funds to the Defendant. He has equity in a property albeit subject to a restraint order and taking all things into consideration he cannot be said to be impecunious.

Unanimous

Appeal by solicitors – 25 May 2011
LSC decision upheld

- **Reading time**

This appeal was heard on 25th May 2011. We were assisted by substantial oral submissions from Queen's Counsel who represented the interests of all appellants. We also had the benefit of the following documents:

1. Advance consideration of a disc containing the prosecution exhibits.
2. An endorsement from prosecution counsel
3. A 15 page document headed OUTLINE SUBMISSIONS dated 18th May 2011
4. A document setting out the full reasons for the contract manager's decision dated 24th January 2011 and associated Appendix 1-10.
5. A document setting out full reasons why the appellants disagreed with the contract managers decision with attachments.
6. LSC additional submissions 24th May 2011
7. During the appeal hearing we considered a letter from the solicitors dated 19th May 2011 which contained additional submissions.
8. During the appeal hearing we considered a sample of the schedules prepared by the solicitors reflecting their analysis of the exhibits in the case.

On the basis of the all the above we reached the following decisions and indicated that our reasons would follow:

Solicitor's Appeal

1. The amount of pages to be covered by the 200 hours of grade C work allowed to review the work of previously instructed solicitor was 12,000 pages. This appeared to reflect the undertaking given to the Court upon transfer (see letter from the solicitors to Southwark Crown Court dated 17th September 2010) and appeared to be an acceptable compromise between the parties to the appeal. The 12,000 pages to be deducted from the first tranche of exhibits which have been agreed at 2 mpp.

2. We dismissed the appeal against the Contract Manager's decision to reconsider the appropriate rate for consideration and scheduling the second tranche of exhibits; the decision to reduce the rate for consideration and scheduling to 1 mpp.

Counsels Appeal

1. Whilst the page split between the two tranches of exhibits differed between solicitor and counsel the exercise of reducing the amount of time for the reading of exhibits was also imposed upon counsel. In the case of counsel the first trance was agreed at 1 mpp for reading and the second tranche set at 30 spp. In relation to counsel we allowed their appeal and hence the rate of 1 mpp would apply to all the exhibits under consideration by this Committee.

Following the conclusion of the appeal, concern was raised by the solicitors in an emailed letter dated 25th May 2011 and received by the Appeal Committee on 27th May 2011. The concerns were:

1. The failure of the contract manager to place the solicitors' letter of 19th May 2011 before the committee (Note this letter was actually seen and considered by the Committee during the appeal hearing).

2. That there was insufficient time allowed to the appellant to fairly advance the case for allowing their appeal.

The solicitors asked that they be allowed to make both oral and written submissions to deal with the said concerns. They stated that "… We would not anticipate that any rehearing would take more than a few minutes …"

Conscious of the important commercial implications of our decision and endeavouring to address the said concerns the Committee took the view that the best way to deal with the appeal was to invite the appellant to put their "… few minutes …" of proposed oral submissions into writing.

The Committee have now been provided with a helpful and informative OUTLINE SUBMISSIONS from the solicitors dated 6th June 2011. We have also been assisted by the helpful note of the contract manager dated 10th June 2011.

We take this opportunity to state that with all this information we could not be in a better position to reach the correct decision in this appeal. Having considered the post-appeal material we have concluded that all our initial decisions of 25th May 2011 remain the same.

REASONS

Solicitor's Appeal

1. The 12,000 pages reflected the undertaken give to the court.

2. Section 1.5 of Annex 8 of the Panel Members Contract is not a bar upon the Contract Manager expressly amending the rate for consideration of a particular item of preparation during the life of a stage. It was made clear in the email from the contract manager dated 5th October 2010 that the issue of time to consider material served at some future date was open to review.

3. The real issue for the Committee was whether the product of that review was reasonable. We have carefully considered the reasons put forward by the Contract Manager for reducing the time as indicated above and we take the view that the conclusions are fair and reasonable. We were fortunate to have had an opportunity to review the very exhibits under consideration by sampling from the Exhibits Disc. We also note that we were particularly unimpressed with the quality of the defence schedules reviewed by us during the hearing of 25th May 2011. We also take into account the very substantial amount of hours the team of Solicitor, Queen's Counsel and Junior Counsel have been given to consider the exhibits in this case. Whilst accepting that each lawyer will have their separate role it would be wrong to ignore the collective effort.

Counsels Appeal

1. We concluded that both Leading and Junior Counsel were taking a substantial role in assisting their instructing solicitor in meeting the very pressing timetable associated with this case. We were impressed with the quality of work being carried out by counsel and did not feel it was fair or reasonable to reduce the time allowed to them to consider the exhibits in this case.

Appeal by solicitors and counsel – 25th May 2011
LSC decision upheld in part

- **Reading time**

The Appellant has requested 2 minutes per page for the financial material and 1 minute per page for other exhibits.

The Contract Manager has agreed 1 minute per page for the financial material and 30 seconds per page for other exhibits.

Telecoms material has been agreed at 2 minutes per page.

This Appeal was submitted to the Committee on papers and in person (via video link) by the Appellants.

Having read all the material and listened to the oral submissions, the Committee were of the view that the contract manager's original decision was correct.

In short, the substantive criminal case concerns a young man who has imported large amounts of industrial chemicals. The Crown say that the reason he did so was, not for legitimate reasons, but to be used in the "cutting" of narcotics. The Crown says their case is further bolstered by the fact that the Defendant does not have any legitimate accounts, or at all.

The appeal centres on the contract manager's decision to agree to 1mpp for the financial and surveillance material and 30 seconds per page for all other exhibits. Telecoms material had been agreed at 2mpp.

The contract had originally been held by another firm who had agreed with the contract manger's position.

The representation order was then transferred to the Appellants on 12th August 2010. This date is crucial in the opinion of the Committee

The Appellants now contend that the financial material should be at the rate of 2mpp and 1mpp for other exhibits. This, they say, is correct and would give them parity with the co-defending firms of solicitors.

When the Appellants were pressed on the rationale behind their contention, they could not demonstrate why the extra time was needed. Indeed they conceded that they were taking a "broad-brush approach"

The Committee are of the opinion that there is no room for "broad brush approaches" when applying for limited public funds. Any application must have a proper foundation, supported by reasoned arguments.

Moreover we are concerned that with a trial date set for early September 2011, the Appellants could neither volunteer nor provide under questioning detail either as to nature or content of the financial documents they say are important nor why they are important, nor could they provide any argument or detail as to why they required the time sought for perusal of these documents. This is especially puzzling since the representation order was transferred in August 2010. The Appellants ought to be fully conversant with all trial documentation at this late stage.

Furthermore, the fact that other defence teams have different agreements is of no concern to this Committee. We are not privy to their contracts nor are we (nor the individual contract managers) allowed to factor their agreements into our decision.

In all the circumstances the appeal fails

In the circumstances we are of the opinion that the contract manger's decision and this ruling should not be used as an excuse for delaying the start of the trial, and the Learned Trial Judge and / or the Recorder of Leeds ought to be made aware of this judgement.

Unanimous.

Appeal by solicitors – 8 June 2011
LSC decision upheld

- **Preparation**

Various items of work were disallowed as they were not requested by the appellant and not agreed by the contract manager.

This Appeal was submitted to the Committee on papers and in person by the Appellant

Having read all the materials provided by both parties and others requested by the Committee and then listened to the oral submissions, the Committee were of the view that the contract manager's original decision was correct in all parts.

It is axiomatic that the raison d'être for the VHCC scheme was to give financial certainty to the tax payer in publicly funded criminal litigation, in that expenditure and work is to be agreed in advance of its' satisfactory completion.

The Appellant conceded that he did not submit any stage plans. Rather he stated that work was agreed by implication. In support of this he pointed to his bundle that contained emails from his instructing solicitors to the LSC.

The Committee note that only in the minority of those emails is "Counsel" specifically mentioned and then agreed by the LSC. In all other aspects, no prior agreement had been reached for Counsel to undertake work, nor to be remunerated for such.

Furthermore we look to the "Contract Specifications" and the "Barrister's Acceptance Form " that states,

"I also accept that payment to me is conditional on my compliance with the Individual Case Contract and Contract Specification and that, in particular:

- I will not be paid for undertaking tasks that are not included in the Approved Stage Plan except where the Contract Specification permits. "

This form has to be signed by any member of the Bar undertaking a VHCC case.

Distant travel, equally, requires prior authority from the LSC.

In all the circumstances, we are sorry to say that the appeal fails in toto.

Unanimous

Appeal by counsel – 8th June 2011
LSC decision upheld

- **Preparation**

77 pages of schedules have been served by the crown. The appellants have requested 82 minutes per page, based on two minutes per line to check the accuracy of the schedules and update and extend the schedules. This has been requested at grade C rates.

The contract manager has offered 15 minutes per page to check the schedules at grade C standard rates and suggested that additional time to extend and update the schedules be taken from the time already agreed for the creation of schedules.

There is an additional dispute regarding how the 30spp agreed for scheduling exhibits should be used. The appellants believe that this time was agreed for the drafting of a chronology alone and the contract manager believes that this time was agreed for all ancillary scheduling work.

This Appeal was submitted to the Committee on papers and in person by the Appellants.

We do not propose to rehearse the facts of the case as they are well known to all parties.

Having read all the materials provided by both parties and then listened to the oral submissions, the Committee were of the view that the appeal succeeds in all aspects.

Unanimous.

Appeal by solicitors – 8th June 2011
LSC decision overturned

- **Preparation**

Consideration of Livenote during course of trial. Livenote has been authorised and the appellants are seeking rates of 1 minute per page. The contract manager is allowing a block of 2 hours per week.

In this matter the appellants had requested that they be allowed to review the Livenote transcripts from a related trial at the rate of 1 minute per page. The Commission had only been prepared to allow them 2 hours per week to review the transcripts. However, the Commission had in addition authorised a Grade A fee earner to be present during the case opening and when 11 key witnesses gave evidence, with a Grade C fee earner being authorised for the balance of the trial. In their response the Commission stated that all other contract managers had agreed the same allocation of time with the other defendants in the case.

Having considered the submissions made in writing by both parties the committee decided unanimously that the allocation of 2 hours per week to review the Livenote transcripts was reasonable in light of the fact that the appellants would have a fee earner present throughout the trial to take a note of the evidence. Where following a review of the transcripts particular sections were identified to be of particular significance to the appellants case it was always open to them to apply for additional time to review those sections.

Appeal Refused.

Appeal by solicitors – 22nd June 2011
LSC decision upheld

- **Disbursement**

There is one item in dispute which is the Contract Manager's refusal to agree the photocopying charges of 14p per page charged by the CPS to photocopying material that is held by HMRC and needed by the defence team.

In this matter the appellants sought to appeal against a refusal by the Commission to fund the photocopying of exhibited material beyond the standard rate of 4p per page.

The appellants had been allowed access to inspect 50 banke.rs boxes of exhibited material by the prosecution. The CPS Central Fraud Group North Division had also agreed to supply copies of the material but at the grossly inflated rate of 14p per page. The appellants had sought authority from the Commission to incur this expenditure. The Commission had refused to authorise expenditure over and above the normal rate of 4p per page. The appellants were thus faced with the prospect of funding the difference from their own resources or doing without the material at the forthcoming trial.

The trial judge, whilst sympathetic to the dilemma faced by the defence, had ruled that this was a matter to be resolved "between the Legal Team and the Legal Services Commission". Hence the present appeal.

The committee considered very carefully the submissions made by both parties. However, whilst they were extremely sympathetic to the predicament faced by the appellants, they did not think it reasonable for the Commission to be expected to fund the photocopying of material at a rate 350% greater than the norm. They expressed the hope that the trial judge might be prevailed upon once again to order the disclosure of the relevant material to the defence in a format that would enable them to deploy it at trial where appropriate.

Appeal Refused.

Appeal by solicitors – 22nd June 2011
LSC decision upheld

- **Preparation**

The disallowance of the entirety of Leading Counsel's work completed in Stages 1 and 2, namely 324.9 hours

In this matter Leading Counsel appealed against a refusal by the Commission to pay any of the hours that he had claimed for the representation of the defendant.

As a preliminary issue it was necessary for the committee to determine whether the work in question had been "agreed" by the Commission. In the absence of any such agreement it was accepted that the committee would have no jurisdiction to hear the appeal (applying s.2.2c of Annex 14 Panel Contract).

Was there an agreement?

Appellant counsel conceded that due to an oversight by his instructing solicitors the task document for stage one of the contract had not been forwarded to the contract manager. However, relying on the totality of the evidence, and specifically an e mail exchange between counsel and the contract manager on the 29th September 2010, he argued that an agreement between himself and the Commission for him to carry out the specified work could be inferred. Furthermore he argued that the e mail received by junior counsel (ccd to Leading Counsel) on the said date consenting to the extension of the current task list so that it covered both stages 1 and 2 gave rise to a reasonable expectation on his part that he would be remunerated for the work. He pointed out that at no stage did the contract manager raise with any of the defence team the absence of a task document from Leading Counsel. Indeed this issue was not raised by anyone at the Commission until he submitted his claim for payment in March 2011.

For her part the contract manager did not accept that at any stage had she authorised the appellant to carry out the work contained in the draft task document which had been sent to his instructing solicitors on the 29th June 2010. She had never received this document

so how could she have authorised any of the time contained in it? She did accept in her written submissions that her e mail to junior counsel of the 29th September 2010 could be interpreted as a concession to the extension of the current task documents of both counsel. This she speculated may well have been because she had erroneously assumed that authority had been given to Leading Counsel at an earlier date. However, she maintained that having never actually given such an authority it was not reasonable to infer any such agreement from the e mail traffic alone. She did concede that had she received the task document within the life of the first stage she would almost certainly have approved the work requested.

The committee considered both the written and oral submissions received from all parties with great care. Having reviewed the totality of the evidence before it the committee came to the unanimous conclusion that there had been an agreement between the appellant and the Commission that he would be remunerated for the work contained in the task document. This could reasonably be inferred from the e mail communications of the 29th September 2010 and the subsequent e mail by the contract manager addressed to both counsel on the 18th November 2010 setting out the revised arrangements for securing payment under the contract. Leading Counsel had been copied into all communications between his junior and the Commission since early July 2010. He had reasonably assumed that the task document prepared by his junior had been forwarded to the commission in June. Nothing that had occurred subsequently could have given him cause to doubt this. Indeed the e mail exchanges in September could only reasonably be interpreted as confirmation that both he and his junior could extend their collective hours into stage two. The work that he had conducted on behalf of his client was clearly both reasonable and necessary and it was common ground between the parties that, but for the administrative oversight by the instructing solicitors, it would have been approved without difficulty.

Having concluded that there was an agreement between the parties for the work to be conducted the committee thus found that they had jurisdiction to consider the appeal. There being no substantial dispute between the parties as to the reasonableness of the work requested by the appellant the appeal would be allowed. The claim for payment should thus be processed by the contract manager subject to the usual audit procedure.

The committee wish to stress that in making this decision they were not setting a precedent which would justify the flouting of the procedures set down in the Contract. This matter had been decided on its exceptional and peculiar facts. Furthermore the committee made no criticism of either of the contracting parties in this appeal both of whom it considered to have acted in good faith throughout.

Appeal Allowed.

Appeal by counsel – 22nd June 2011
LSC decision overturned

- **Preparation**

Task 15 and 27 on the stage 3 task list, namely a defence chronology and abuse submissions. The contract manager has refused to agree payment for these items on the basis that the work was done without prior agreement.

The CCU has submitted that no right of appeal exists as per Annex 8, para 1.5 and Annex 14 para 2.2 of the VHCC Panel Contract, and therefore the contract manager is correct to refuse to payment for items of work where no hours were agreed in advance
This Appeal was submitted to the Committee on papers and in person by the Appellant.

This appeal centres on the contract manager's decision with regard to tasks 15 and 27.

The Committee are of the view that:-

1. The appeal as regards task 15, fails. This task, whilst recognised by all parties as worthy and productive[1] was not agreed in advance. Therefore, we cannot allow it.

2. Task 27 is, however, somewhat different in this instance. As early as stage 1, the Appellant set out or rather identified that this specific work would have to be carried out. He attempted, as best he could, to estimate how much time this would take at an early stage.

3. He did so and estimated some 50 hours for this specific piece of work. At that point the LSC did not think this was exorbitant

4. The Appellant then repeated in later stages and emails that this specific piece of work would still need to be carried out.

5. It cannot be said that any party was unaware that this work was necessary.

6. The reason why an estimate as to the amount of time needed could not be made was that the specific material had not been served by the Crown.

7. We are of the view that the Appellant had agreed the "work" and had tentatively agreed the "hours". He then went on to complete the work in well under his original estimate.

8. In the unique circumstances of this case, having regard to the correspondence we are of the view that this appeal ought to be allowed in full.

9. We do not accept the LSC's arguments in this unique case, with regard to "roll-over".

10. Equally, in this unique case, we do not accept the LSC's argument regarding agreed "hours" and "work". If we took this argument to the "N"th degree that would mean, perversely, that when hours are agreed and a party does not claim all those agreed hours, that the said party is in breach of the agreement.

Decision, unanimous.

Appeal by counsel – 6th July 2011
LSC decision upheld in part

- **Category, preparation & disbursement**

This appeal centres on the contract manager's refusal to :-

1. categorise this as a Category 2 case;

2. authorise a Computer Expert to enable efficient handling of the evidence in this case;

3. authorise time to read the Administration section of the "DarkMarket" website;

4. authorise an American Attorney to provide expert advice on aspects of United States' statutory law, investigative Codes of Conduct and Procedures.

[1] We note the Learned Trial Judge's comments (31.1.11) and the fact that other parties utilised the document

This Appeal was submitted to the Committee on papers and in person by leading and junior counsel and by a representative of the instructing solicitors [herein the Appellants].

Preliminary Matters

It may well be trite, but worth repeating nonetheless. This Committee can only make decisions on the case as it stands *now* as against *this* Defendant. We cannot and will not speculate what may happen in the future.

Equally, for that matter, any contract manager is placed in exactly the same position when making contract decisions.

We note that many of the applications / appeals made are reliant upon disclosure (in the future) by the Crown. No doubt the Crown realise their statutory on-going responsibilities in this regard.

For the purposes of this hearing, we have been provided with a substantial amount of material. However, within this plethora of material we were not provided with the cardinal document, vis-à-vis the defence case statement.

It is only upon direct questioning today, that it was this provided to us. This document, in essence, puts the Crown to strict proof. No positive defence is asserted. This is fundamentally important.

In the circumstances of disclosure it seems to the Committee that any requests for material from the Crown may well be viewed as a "fishing exercise". If this is so, the taxpayer cannot be expected to fund such a speculative exercise.

Finally, before turning to our considered decisions we note that throughout these appeals a latent theme has been levelled at the Legal Services Commission [LSC] by the defence. That is to say that the LSC and the individual contract manager are in some way subverting justice for the sake of penny pinching. This is not the case.

Whilst it is right to say that they are the guardians of the public purse on the one hand. Equally they will approve *proper* applications for work to be undertaken, with reasonable amounts of time and remuneration if the individual case merits such.
We find the original decisions made by the contract manager reasoned and proper in the circumstances of the case as it currently stands as against this Defendant.

We take that view, especially in the light of the 1 page DCS

Furthermore, we have been told by a member of the defence team at the conclusion of their representations, wholly improperly in our view, that the Defendant is concerned that other defence teams have been granted applications made to the LSC because they are represented by Caucasian lawyers.

We sincerely hope that this "concern" was not presented to this Committee as some sort of threat.

We find no evidence that the LSC are in any way racist. Equally we would expect all parties to agree that nor is this Committee.

Summary of Appeals

The Appeal centres on the following points:-

1. The contract manager's decision to categorise the case as Cat.3;
2. Not to allow a computer expert to be instructed;

3. Not to allow time to read the administration section of the "DarkMarket" website;
4. Not to allow an American attorney to provide expert advice / evidence.

Decisions

Dealing in that order, the Committee are of the view that:

1. Category

Firstly all 4 criteria from Block A have to be met. At this stage the Committee are of the view that criteria A4 is possibly met in *this Defendant's case*. However, in the absence of other criteria, we need not go any further at this stage.

The **categorisation remains** as originally designated by the contract manager.

The fact that other defence teams have been given different categorisation is of no concern here. We are not asked to adjudicate on their contract specifications, nor are we privy to the details therein.

The decisions made in other co-defending cases are a reflection of those cases, not this one.

The Rules specifically state that we cannot be influenced by other decisions. We adhere to those rules.

2. Computer Expert

At present the Committee are not satisfied that an expert in addition to the joint expert is justified. We note that this Defendant does not put forward a positive defence; he was only allegedly involved in the offences for 3 months and only made 21 messages on the DarkMarket forum.

We are of the view that the contract manager's **original decision stands**.

3. Reading DarkMarket.

We **allowed** this aspect of the appeal. We refer to the Defence document "Counsel's and Solicitors' Joint Submissions to the VHCC Appeals Committee" dated 8.6.11, at paragraph 182 on page 30 and the request therein. The appeal is limited to that specific request only.

In allowing this aspect, we do not find the original LSC's decision unreasonable. Rather we find that in the light of all the material provided and the submissions made today, that this task is necessary.

American legal expert

We are of the view that this application is premature. The material has not been served by the Crown yet. Therefore this appeal is **refused**.

Conclusion

In the light of the vast amount of material that we have had to read already, we now reserve all potential future appeals in this particular defence case to ourselves.

We ask that a copy of this judgement is sent to the Learned Recorder of Manchester and the Learned Trial Judge.

We can respectfully assure the Court that the LSC are not impeding the defence in this case.

The LSC are properly discharging their statutory duties with regard to the proper administration of justice and their duties to the public purse.

Unanimous decision in all aspects.

Appeal by solicitors & counsel – 6th July 2011
LSC decision upheld in part

- **Grade of fee earner to read unused**

I am adjudicating upon a single issue as to whether to not the sifting of the following should either be at Grade B (as requested by the appellant), or Grade C standard (as suggested by the Respondent). The material in issue consists of:

925 pages of emails;

3212 pages from emails;

4760 pages of text files;

9905 pages of webpages.

I have not been asked to adjudicate on any other material which has been identified and served.

The appeal is allowed in full.

The reason for my decision is as follows:-

This decision is made on the facts of this case alone;
Whilst I have not received previous email traffic between the two parties, I refer to the opening line of the contract manager's email of the 23rd May 2011 at 12:00pm apologising for the length of time that it has taken her to reply to this request;
It is for this reason that I am allowing the appeal as it is simply not practical, eight days prior to a trial, to expect a Grade C standard rate to sift the material and then ask a Grade B to consider his/her findings. The task in these circumstances is a Grade B task and would advance the case and thus would be a fee earning task.

Appeal by solicitors – decided on the papers by single adjudicator 18th July 2011
LSC decision overturned

- **Category**

The appeal relates to the decision of the Contract Manager to Categorise the case as a category 3 Fraud. The appellant seeks re-categorisation of the contract to category 2.

In order to qualify as a category 2 Fraud the appellants require 2 criteria from Block A; the appellant is appealing 3 criteria from Block A:

The defendant's case require highly specialised Knowledge
The defendant's case involves a significant international dimension
The defendant's case requires legal, accountancy and investigative skill to be brought together.

The appellant has not provided any submission on the national publicity and widespread concern criteria.

Block B has never been fully assessed as it did not form part of the appellants second or third sets of submissions .However based on the case category Assessment sheet at annex 1, the contract manager can accept the criterion 2 and 4 are met at this time.

This Appeal was submitted to the Committee on papers and in person by the appellants

The Appeal centres on the categorisation. The LSC contend this a category 3, the Appellants' category 2.

Having heard all the submissions, the Committee are satisfied that in *this defendant's case*, that the criteria are met and that this case ought to be re-categorised as category 2 case.

We also decide that this decision should be back dated to 1.7.10, as all the evidence in support of categorisation was in the hands of the Appellants at that time.

Unanimous decision in all aspects.

Appeal by solicitors & counsel – 20th July 2011
LSC decision overturned

- **Preparation**

The appellant is appealing the decision of the complex crime Unit to allow 200 hours for counsel only to consider three discs of banking evidence.

The Appellant has counted a total of 49039 A3 pages on three discs and is requesting for both solicitors and counsel 1 minute per page to read and 1 minute per page to schedule a total of 1534 hours each.

This Appeal was submitted to the Committee on papers and in person by the Appellants.

This appeal centres on the contract manger's decision with regard to allow 200 hours read and analyse the "Lambert discs".

The Appellants contend that reading and analysing this material, some 49,039 pages of A3 financial spreadsheets is a large and complex task. Therefore they would request 2mpp amounting to 1,634 hours.

At this stage it should be noted that the Appellants request is for a pool of hours for the A grade solicitor and counsel. This time to be divided as they see fit
The Committee, having read all the material submitted, having seen a sample of the printed "Lambert discs" and heard all the submissions made make the following decision.

We are of the view that this material is integral to the defence of this defendant. We are impressed with the in-roads the Appellants have made thus far, which is based on a demonstrable intimate knowledge of the case, as we saw this morning.

However, we are mindful that 1,634 hours is a substantial amount of time to authorise at the publics' expense.

Therefore we have decided that the Appellants be allowed a pool of 817 hours to commence the task of reading/ analysing / scheduling the "Lambert discs". This is at the

rate requested ie 2mpp, as a pool for a grade A and Counsel to use as they see fit. Therefore there is no duplication.

We authorise half the time requested to see what progress can be made.

Once this allocation has been used we suggest that both parties meet again to discuss the situation, and what further work needs to be undertaken, if any.

In the event of a further appeal on *this aspect* of the cases' funding we would reserve judgement to ourselves.

We do not necessarily mean that we will give an identical further instalment. If a further appeal arises on this aspect, it will be made on the facts as they are at that stage.

Finally, it seems that the various defence teams have encountered difficulties in quantifying the number of pages contained in the "Lambert discs".

We know, and expect that the Appellants will notify the LSC if the current page count is incorrect, and amend the time allocation accordingly.

Decision, unanimous.

Appeal by solicitors & counsel – 20th July 2011
LSC decision upheld in part

- **Preparation & copying expenses**

This Appeal was submitted to the Committee on papers and in person by the Appellant.

In short the appeal centres on two aspects:-

i. Further time in addition to the 7.8 hours to consider the Orange phone material,

And

ii. 6p per page for photocopying bundles.

The LSC has thus far refused these two requests and hence an appeal is made to the Committee

Having read all the material presented and heard the submissions made we are of the view that both appeals fail.

i. With regard to the Orange phone material, we note that it is just an ordinary bill. It is not a complicated document, like say a cell site A3 spreadsheet with numerous numbers, codes and information.

Furthermore, we are concerned that the daily basket of 4 hours per day was not adequately accounted for.

Therefore, we cannot see why further time would have been granted.

ii. With regard to the photocopying, we are not persuaded that other, cheaper arrangements could not have been made to copy the bundles.

Furthermore, we note that in any event the standard rate is 4p per page.

Accordingly, all appeals fail.

Decisions unanimous.

Appeal by solicitors – 20th July 2011
LSC decision upheld

- Reading rate for multiple defendants

Appellants are seeking a minimum of 7.5 min/page to consider and schedule the witness statements (or 2.5 min/page x 3 teams)

Appellants are seeking a minimum of 4.5 min/page to consider and analyse the exhibits (or 1.5 min/page x 3 teams)

Appellants are seeking a starting point (with an unspecified number of hours to follow).

This funding appeal involves to 2 distinct but linked issues:

1) How to undertake work if a firm is acting for more than one defendant
2) Whether a sift of served evidence (not unused) is appropriate

Preliminary issue

The determination as to whether there is a conflict of interest or a potential conflict is a matter of professional judgment in accordance with the Solicitors' Conduct Rules.

The firm in this case represents 5 defendants. There is no suggestion that the firm cannot act for all 5 defendants. However it is the committee's view that firms should not seek to act for more than one defendant in criminal cases of this magnitude particularly where some defendants are represented by the same team given the obvious potential for conflict and equally obvious professional difficulties which would arise from resolving the same.

The appellant argued economies of scale seeking to compare the cost if each defendant was separately represented. With respect that is a hollow argument as the defendants are not; nor is it a proper basis on which to assess the cost of work to be undertaken by reference to monies saved. It also fails to acknowledge the considerable work required in monitoring instructions to avoid the possibility of conflicts in instructions.

The committee in reaching their decision has to consider: what is a reasonable time for the work to be undertaken on the case in question, based on there being no necessity for the defendants to be separately represented?

Decision

1) The appellant proposed that 3 teams were utilized to undertake the work in relation to this case and were seeking 7.5 minutes in total to consider and schedule statements (2.5 mpp x 3 teams) and 4.5 minutes to consider and schedule exhibits(1.5 mpp x 3 teams).

The contract manager allowed 6 mins per page for statements and 3 mins per page for exhibits.

How a firm undertakes work on a case is a matter for that firm. The committee however has concerns that the utilization of 3 teams may exacerbate the risk of potential for conflict.

A significant amount of cross-referencing of what each defendant is saying in relation to co-defendants must be required which if the firm were only acting for one defendant would not arise. It was agreed by the appellant that a very significant period of supervision time was taken up thus.

The committee believes that an appropriate starting point(if acting for one defendant) for statements is 2 minutes per page to read and 1 minute per page to schedule and 1 minute per page to read exhibits and 0.5 minutes to schedule. It is our view that there should not be duplication of this task even if a firm is acting for more than one defendant.

It is of course acknowledged that if a firm does act for more than one defendant then each statement affects each defendant differently; accordingly there has to be some uplift. That uplift should be reflected in additional scheduling, in our view. So if one refers to the defendants as D1 through to D5 (we accept that this is not indictment order) the breakdown should be as follows:

Statements
D1 2mpp reading and 1mpp scheduling
D2 45 secs. pp scheduling
D3 45 secs. pp scheduling
D4 45 secs. pp scheduling
D5 45 secs. pp scheduling
TOTAL 6 minutes per page. The appeal fails.

Exhibits
D1 1mpp reading and 0.5mpp scheduling
D2 0.5mpp scheduling
D3 0.5mpp scheduling
D4 0.5mpp scheduling
D5 0.5mpp scheduling
TOTAL 3.5minutes per page. The appeal is partially successful.

2. 580000 pages of evidence **(hard drives**) have been served in the case. It is evidence upon which the Crown rely.

The appellants were seeking 1500 hours (grade A) to initially consider this material without a breakdown as to how the hours were to be utilized. Understandably the LSC were not prepared to grant that. The LSC were proposing a sift of the material. Initially we were uncertain as to whether we could deal with this issue as an appeal point, as the nature of the material had not been determined when the appeal had been submitted. It was an accepted fact that it is served material (not unused). We were asked to determine the issue as to whether a sift was appropriate as this material is self-evidently voluminous.

We determined that:

i) Served material must be considered in its entirety. A sift is not appropriate.

ii) A blanket rate is not necessarily appropriate for all the material. It is appropriate for a contract manager to request samples of the exhibits to determine the appropriate time to allow for both consideration and scheduling. This is particularly so in this case where the document will only have to be read once and there may be a necessity for uplift for the additional scheduling dependent upon the nature of the document.

iii) The Contract manager needs to request samples of the exhibits to determine the appropriate time to allow for both consideration and scheduling as there may be a necessity for uplift for the additional scheduling dependent upon the nature of the document.

Appeal by solicitors – originally considered by single adjudicator and referred to a committee – 21st September 2011
LSC decision upheld in part

- **Reading time**

This is an Appeal in relation to served exhibits pertaining to website activity. An external expert has reduced the number of non –duplicated pages to 61957.

It is accepted by the LSC that served evidence must be considered by the defence. The issue is the time permitted.

The defence accept that the Crowns case at its height does not implicate either of their clients through this evidence. They have been permitted 550 hours to consider the material (in excess of 30 seconds a page). They are seeking 1 minute per page. Their clients defence statement makes it clear that their client(s) have no knowledge of any activity on this website nor indeed have ever accessed it.

The issue is therefore one of relevance to these defendants. The evidence has to be considered and the 550 hours provided for are in the view of the committee more than adequate.

The Appeal therefore fails.

Appeal by solicitors – 21st September 2011
LSC decision upheld

- **Category & reading time**

<u>Grounds of Appeal</u>

By a timely appeal dated the 16th August 2011 the Appellant solicitors challenge three decisions of their Contract Manager, namely:

The decision to categorise the case at level 3 as opposed to level 2 because, in the view of the LSC, the case was not one that:

Required highly specialised knowledge and/or

Involved a significant international dimension

The decision to permit in respect of all the exhibits served in the s.51 Crime and Disorder Act 1998 bundle a cumulative time of 1 minute 15 seconds made up of 45 seconds reading and 30 seconds for the scheduling (allowance 711 hours) and

The decision to permit in respect of the exhibits served in the 1st Notice of Additional Evidence a cumulative time of 1 minute made up of 30 seconds reading and 30 seconds for scheduling (allowance 531 hours).

Put simply the Appellant contends that the case is a category 2 case and the contract manager is wrong in her assessment of one or both criteria under review[2].

Further, that in relation to exhibits that concern count 2 on the indictment (as well as for these purposes the papers that support count 1), a cumulative time of 1 minute 30 seconds for reading and scheduling is appropriate as it is the material that relates to the Appellant's client's case. The Appellant then suggests that for the counterfeiting material (which does not seem to touch and concern his client's case directly) a cumulative rate of 1 minute per page – based on 30 seconds reading and 30 seconds scheduling – could be applied.

It is important to note the nature of the appeals in relation to exhibits. There are clearly two decisions under review (s51 and NAE 1 exhibits). Whilst within each of those decisions a separate exercise over core and counterfeit papers exists the appeal is against the time permitted for consideration overall. If I accept the Appellant's arguments in whole the appeal will succeed in whole. If I accept a part of what he says it will succeed in part. If I reject what he says it will fail.

There is also a request by the Appellant, which I shall come to later, to have the appeal determined by a committee rather than a single adjudicator. That request is opposed by the Legal Services Commission Complex Crime Unit (LSC).

Papers

For the avoidance of doubt in considering my decisions I have reviewed:

The Appellant's VHCC Appeals Representation Form dated the 16th August 2011 together with the supporting document containing the submissions the Appellant makes[3]

The Contract Manager's VHCC Appeals Response Form dated the 1st September 2011 containing the LSC's submissions opposing the appeal[4]

The supplemental representations made by the Appellant dated the 2nd September 2011

[2] To succeed in elevating the case to category 2 the Appellant needs only to satisfy me on one of the criteria
[3] Although the disquisitive document itself is undated and unpaginated the email word document provided to me is entitled 'Text for Appeal (doc)- 16 08 11-.doc'
[4] The response and addendum response on behalf of the contract manager were not in fact drafted by her. This is due to her being on annual leave when the response was due and the Appellant refusing to allow an extension of time. It would appear that an LSC reviewing lawyer is the author of both the original and addendum responses

The addendum response prepared on behalf of the contract manager dated the 8th September 2011

The Indictment in the case

The prosecution's case summary in the case

A series of emails namely:

From the contract manager to the appellant dated 7th July 2011 at 18:12 (the final decision in relation to categorisation and what I will call the first decision in relation to exhibits)

From the appellant to the contract manager dated 8th July 2011 at 13:03 in response to i. above

From the contract manager to the appellant dated 8th July at 19:07 in response to ii. above

From the appellant to the contract manager dated 14th July 2011 at 17:45 in relation to iii. above

From the appellant to the contract manager dated 21st July 2011 at 10:32 in relation to iii. above

From the contract manager to the appellant dated 28th July 2011 at 15:20 (the final decision in relation to exhibits).

A 50 page packet of supporting documents provided by the Appellant containing some of the emails referred to above together with samples of the exhibits from, as I understand it, a different matter in which the Appellant is also instructed (page 6 being headed 'Op Vaulter').

As there was a request for the matter to be referred to the committee rather than be dealt with by a single adjudicator backed up with a not so veiled threat of a judicial review I also asked for, and was provided with, the applicable VHCC Specification for Organisations, Contract for Signature and Guidance.

All of these documents have been copied to the appellant, the contract manager and the reviewing lawyer and I have had no further representations that there is anything

inappropriate contained within the bundle or anything missing that should otherwise be there.

I should also note that I was emailed directly by the appellant, copied to the contract manager, on the 8th September 2011 on two occasions at 18:10 and 18:23 prior to my receiving the appeals bundle. Whilst there is an element of informality in the appeal process any communication ought really in my view to have been through the Appeals Manager.

I can see circumstances where such contact would be highly inappropriate however as they were copied to the contract manager and no objection has been raised I shall consider them.

These emails between them re-iterated a number of the concerns that the Appellant had already addressed in his appeal documentation. In the first email 5 points were made. Point 2 is new information to me. Point 3 was subsequently withdrawn. I would have dealt with the other points in due course but it is convenient to address each now.

Point 1. Insofar as there is a complaint of a lack of reasoning being provided by the contract manager as to her decision in relation to the time allowed for exhibits I can and do assure the Appellant that no prejudice to him will be occasioned by that.

Point 2. Insofar as another defendant (albeit the Appellant's client's brother) has secured a category 2 based on a significant international dimension, just as I would not consider decisions of other adjudicators in relation to co-defendants that favoured the LSC so, it seems to me, I cannot consider the favourable outcome secured by the client's brother. Whilst there are close parallels between the two, the cases are separate and it is upon the Appellant's client's case that my decision must be made. That is true of how the contract manager must perform her task. It must equally follow that other cases, specifically in this case those in which the Appellant is instructed, cannot be considered. The fact that in MTIC 'A' the Appellant has persuaded the LSC that 1 minute 30 seconds for reading and scheduling exhibits is reasonable has, in my view, of itself no bearing upon the decision called to be taken in this case. What is reasonable for the purposes of reading and scheduling exhibits will always be a fact specific exercise.

Point 4. The Appellant has taken the opportunity to submit supplemental representations. I am able, from the material before me, to establish the history of what has occurred.

Point 5. The Appellant points out that the LSC's response wasn't drafted by the contract manager and therefore cannot reflect her reasoning. Whilst correct that it was not the contract manager who drafted the response it would seem that the Appellant, no doubt because he wanted the matter decided as expeditiously as possible, refused an extension to the LSC for the contract manager to do just that after her return from annual leave. If that were not the position I would have expected the supplemental representations to have objected to that assertion made by the LSC in its original response. It seems to me that the Appellant cannot have it both ways in this regard. However in any event, and on analysis of the LSC's position, the heart of the appeal papers reflect what the contract manager has decided by email and the other points made are what might be termed the 'standard' positions adopted by the LSC when it comes, in particular, to issues of categorisation. I am satisfied that the Appellant suffers no prejudice from this.

Referral to a Committee

I am unpersuaded that there is anything in this appeal that requires me to exercise my discretion to refer the matter to a committee.

The Appellant contends that the matter is both "exceptionally complex and significant" and that it would be "in the interests of justice" for me to refer it to a committee.

These phrases are not used accidentally. In the VHCC Specification at p32 paragraph 6.6 mandates appeals being heard by single adjudicators. The only exceptions, found in paragraph 6.7, are if the LSC consider the appeal is "exceptionally complex or significant" or the single adjudicator considers it to be "in the interests of justice" to refer it to a committee.

Thus any decision to refer is mine and mine alone at this stage.

When all is said and done this is an appeal against categorisation and exhibit rate in the context of an MTIC fraud allegation. Given the terms of the Specification referral to the committee is the exception rather than the norm. Nothing in this appeal is "exceptionally complex or significant" and the LSC has chosen not to refer it. I, as the single adjudicator, have a wider discretion within which I may refer a matter – "the interests of justice". In my view that phrase can, and does, encompass the concepts of exceptional complexity or significance – therefore permitting me, if I was of that view, to refer an appeal on those grounds even if the LSC had chosen not to.

What else maybe captured in this context as being “in the interests of justice” is not capable of being defined exhaustively and I do not attempt to do so.

The Guidance (and I remind myself that it is only guidance) at pages 25/56 and paragraph 4.111 offers no real assistance as to what sort of situation might warrant referral save to injunct that a ‘lack of clarity’ in written submissions would not of itself merit a referral.

In this case it is my view that I, as the single adjudicator, am perfectly able to deal with it. I have, to my mind, the information that I need and, in my view, as there are no wider implications in my decisions (because there cannot be under paragraph 6.29 of the Specification), there is no unfairness to either side and the interests of justice do not dictate a referral.

For the avoidance of doubt I do not require the Appellant to make oral representations. It is difficult to see what could be added to the copious written submissions.

Having spent four pages dealing with preliminaries I move onto the appeal.

Case Categorisation

Highly Specialised Knowledge (‘HSK’)

I do not accept that this criterion is made out.

I entirely accept that this allegation of MTIC fraud requires a degree of specialised knowledge, particularly in relation to disclosure and cross over cases, and that the Appellant possesses this. I do not think that this topic in the context of this MTIC fraud can be as easily dismissed as the LSC does as being within ‘the remit of general day to day criminal practice’.

However here the issues relating to the restraint order, contempt of court, disclosure, antagonistic defences (cut-throat) and John Deuss whilst complicated and, in part, inter related do not, in my view, in the context of the case against the Appellant’s client, demonstrate a requirement for highly specialised knowledge. The Appellant’s submissions do not justify a finding that the particularly high threshold of HSK is met because, in this case, they cannot.

Significant International Dimension (‘SID’)

I do accept that this criterion is made out.

As a preliminary point I do not agree with the LSC's suggestion that as the Appellant has relied on the issue of 'cut throat' for the purposes of HSK that may not be prayed in aid to establish SID.

In my view this misunderstands the Appellant's respective representations. For the purposes of HSK the Appellant relies on the issue of the 'cut throat' in itself in what is in effect an equality of arms argument. For the purposes of SID it is clear the Appellant is relying on the circumstances behind the suggestion of 'cut throat' rather than the 'cut throat' itself.

In my view these concepts are distinct. The Appellant in my view may rely upon the circumstances in relation to SID. That is consistent with my reading of paragraph 4.17 of the Specification which considers 'representations' in relation to categories.

It seems to me, having considered with some care paragraphs 4.21 – 4.24 of the Guidance (and again reminding myself that it is only guidance), that this case does have a significant international dimension.

In my opinion, contrary to the LSC's position, that what matters is not where the Appellant's client was based or whether he was a controlling mind but whether for the Appellant, in preparing their case, there is at least a significant element of non-UK fact or law.

'Significance', as per the Guidance, requires the Appellant to demonstrate the facts have a direct affect on their understanding of the case and substantially affect case preparation.

Without repeating it verbatim I am satisfied that the content of the Appellant's representations from the anti-penultimate paragraph through to the final paragraph under the heading ***3. The Defendant's case involves a significant international dimension*** satisfies what is required by paragraph 4.21 of the Guidance whether it falls into 'law', 'fact' or both.

In particular the emphasis on how the companies were regulated abroad by their domestic regulators and the importance that has on the Appellant's client's case as set out seems to me to be the salient feature. Through such enquiry if it can be shown the foreign regulators provided a veneer of legitimacy and/or that Ali is in fact an alias for a co-defendant that would appear to have considerable ramifications for the Appellant's client.

I should add that were it not for this part of the Appellant's case then it would have been difficult for the Appellant to demonstrate this criterion in what seems otherwise to be a 'confess and avoid' approach to the case. There would have been many incidental international aspects but nothing otherwise that would have had a significant impact on his case.

Exhibits

Here it is again important to reflect on the nature of the appeals. It is against, in relation to the s51 bundle, a cumulative allowance (that is to say reading and scheduling) of 711 hours and, in relation to NAE 1, a cumulative allowance of 531 hours.

If I conclude that the Appellant is correct in his submissions relating to the core material and the counterfeiting material the appeal will be allowed in whole. If my conclusion is that he is right in relation to the core material but not the counterfeiting material then, provided my decision does not reduce the total allowance below that allowed by the Contract Manager, the appeal will succeed in part. If I reject his submissions entirely, in favour of those of the LSC, the appeal will fail and the current allowances will stand.

In my view the reasonable rate for exhibits that directly relate to the defendant's case (that is those that are don't relate to counterfeiting) is 1 minute per page for reading and 30 seconds per page for scheduling.

For the counterfeiting exhibits my view is that it is reasonable to allow a reading time of 30 seconds but no scheduling time at this stage. Of course if material is identified within these pages which proves to be of greater relevance than first thought a separate request to the Contract Manager can be made.

For the avoidance of doubt the pages to which each allowance relates to are to be calculated from those set out in the Appellant's emails of the 14th and 21st July 2011.

As it will be seen the net result of this decision is to increase the total allowance for considering the exhibits in the s51 bundle and NAE 1 and so the appeal is allowed in part.

Unusually, the reasoning of the LSC is not straightforward to reconcile. On the 18th May 2011 the contract manager spent a considerable amount of time viewing the exhibits in the case. It appears to be common ground that her provisional view on that day was that the exhibits generally warranted overall an allowance of 45 seconds for

reading and 30 seconds for scheduling. This exercise and judgment by an experienced contract manager are entitled to a good deal of respect.

However I pause to note that even with that allowance the contract manager, as she was entitled to do, moved outside the tabulated rates set out in the Guidance at paragraph 4.30.

On the 7th July at the end of a lengthy email the contract manager reduced the allowance she provisionally indicated to that of 30 seconds for reading and 30 seconds for scheduling. Her reasons were briefly given.

After representations by email from the Appellant dated 8th July 2011 the contract manager replied simply stating she looked forward to receiving details of those pages that related to the false accounting allegation (count 1) only.

In fact what was provided was that relating to the counterfeiting allegation (count 3). The Appellant had explained why the false accounting material, although relating to a charge his client wasn't facing, was still of importance.

On the 28th July 2011 the contract manager made her final decision on exhibits. Here she has, in part, reverted to her provisional view in relation to the s51 bundle expressed at the Appellant's offices on 18th May 2011 therefore changing her mind for the second time and allowed 45 seconds for reading and 30 seconds for scheduling.

It seems to me that the Appellant is correct when he says that what must have happened is that the contract manager made a deduction of time from 1 minute to 45 seconds for reading <u>all</u> the exhibits in the s51 bundle <u>because</u> of the existence of a percentage of material that related to the counterfeiting charge. That much is elicited from the third paragraph of the email of the 28th July 2011. In particular the contract manager states:

'… that about 16% of the original exhibits served relates to the counterfeiting charge, which may not require looking at in so much detail, my decision is that 45 secs per page not 1 min per page is reasonable …'

In my view the deduction penalises the reasonable time for consideration of the evidence relating to the MTIC fraud of which the Appellant's client is very much a part of. As no other reasons to reduce the time requested by the Appellant have been given I am driven to this conclusion.

The contract manager appears to have accepted the argument in relation to false accounting (count 1) by virtue of not referring to it at all in her decision of the 28th July 2011. As a result if the only reason for the deduction of 15 seconds is the existence of the counterfeiting evidence – which the Appellant had identified to the nearest page he was able to – that is unreasonable.

Put another way, if the counterfeiting evidence had never been served at all, there is no expressed reason for not allowing the Appellant's request for 1 minute for reading the exhibits that affect his client which implicitly is otherwise in my view considered to be reasonable.

In relation to the time allowed for the NAE the only difference expressed by the contract manager in allowing 30 seconds for reading rather than the 45 seconds allowed for the s51 bundle is that the proportion of counterfeiting material is higher – 28% rather than 16%. The same logic applies in my view to the NAE as it does to the s51 with if anything more force.

However in reaching this favourable view to the Appellant of the core material I must also consider what is reasonable in relation to the counterfeiting material. I cannot see, given the accepted circumstances, how it can be a useful exercise to schedule material that on the Appellant's concession 'required less investigation … as the client didn't face this count'[5].

I have had regard in particular to paragraph 4.40 of the Guidance and that in allowing scheduling as an activity the Contract Manager herself didn't reasonably distinguish between the core material and the counterfeiting material.

As I have explained that failure works to the Appellant's benefit in relation to core material, but the corollary of that is to his detriment in relation to the counterfeiting exhibits.

I have considered what is said in the LSC's response but this takes the original decision no further in my opinion.

Conclusion

In relation to categorisation the appeal succeeds as I am persuaded on the facts of this case that there is a significant international dimension. That would have been

[5] Appellant's email to the contract manager dated 8th July 2011 at 13:02. This is to be distinguished from the false accounting material that does affect the Appellant's client's case and is therefore included in the core paperwork

sufficient to dispose of the matter but out of respect for the competing arguments I have, as can be seen, dealt with the issue of Highly Specialised Knowledge and found in favour of the LSC.

In relation to exhibits the appeals, as I judge them to be, are allowed in part so that as it stands 51,617 pages may be read and scheduled at 1 minute 30 seconds cumulatively (1 minute reading and 30 seconds scheduling) totally 1,290.43 hours and 14,412 pages may be read at 30 seconds per page totalling 120.1 hours.

This is, as a matter of fact, 168.53 hours more than the LSC originally permitted in total. In relation to the s51 bundle the total allowance is 715.13 hours for the core material and 46.2 hours for the counterfeiting material. For NAE 1 it is 575.3 hours for the core material and 73.89 hours for the counterfeiting material.

As for the s51 bundle and NAE 1 material the individual totals are greater than that allowed by the LSC but less than that put forward by the Appellant the appeals succeed in part.

Appeal by solicitors – considered on the papers by single adjudicator – 29th September 2011
LSC decision upheld in part

- **Preparation**

On 05.04.11, the Contract Manager disallowed in part Tasks 6, 7 and 8.
Task 6, Peruse exhibits, 57,351 pages, 716.9 hrs
Task 7, Peruse UBS exhibits, 3436 pages, 42.95 hrs
Task 8, Peruse financial exhibits, 909 pages, 11.36 hrs.

The Contract Manager had agreed a rate of 45 seconds per page to peruse those exhibits.
The total amount of time agreed in those three tasks was 771.21 hours.

Counsel claimed 771.21 hours.
He submitted a task list and work log in support of his claim on 20.01.11.]

On 05.04.11, the Contract Manager allowed 348.08 hours, therefore disallowed 423.13 hours.

This is an appeal requesting that the remaining 423.13 hours be paid in full.

In her decision of 05.04.11, the Contract Manager explained the basis of her decision to reduce the number of hours that would be remunerated.

So far as relevant it reads,

*"**Page count issue** – A rather critical issue has arisen since I last emailed you both. We have now received a letter from the FSA confirming the exhibit count as 27,764 pages. In terms of the 525 electronic spreadsheets, we have obtained a copy of the disc and one of my colleagues has performed a manual page count and has reached the total of 14,006 pages of schedules. A copy of her analysis of the spreadsheets is available upon request. Therefore, to summarise the total page count for the exhibits is 41,770 pages as opposed to the 68,660 pages claimed. All defence teams will be notified of this development. Therefore, once the stage 1 queries have been resolved, only reading time for 41,770 pages can be paid and this will reduce your claims accordingly.*

Counsel has included page counts on his work log showing the number of pages considered on each occasion. The total number of pages considered comes to just over 58,000. Please can this be explained, given that it now appears there are only 41,770 pages of exhibits served.

***Counsel claim** – Thank you for sending in the disc.*

We do not feel that this is a reasonable amount of work, given that the claim is for 716 hours. We do not feel it represents value for money for the tax payer where Counsel merely reads the exhibits and makes only the scantest of notes and sorts exhibits into electronic folders in the time that is available to him. In our experience where the agreed rate is 45 seconds per page, Counsel will be able to achieve a full read through with extensive notes that will form the basis of trial preparation, in respect of both your client's evidence-in-chief and cross-examination.

We think that a reasonable way to resolve this is to reduce the time allowed for Counsel to 30 seconds per page based on the revised page count, which provides a new block of 348.08 hours. We think this is a reasonable payment taking into account the work that has been produced."

Summary Basis of Decision 05.04.11

Counsel's claim for 771.21 hours was reduced to 348.08 hours on the following basis:

1. The page count was 41,770 pages, not 62,000 as claimed by counsel.

2. The amount of work produced by counsel was not reasonable. Counsel's "work product" is said to amount to "scant notes" and "exhibits sorted into electronic folders". This did not represent value for money for the tax payer. As a consequence counsel would be paid at a rate of 30 seconds per page instead.

3. By reason of 1 and 2 above, the total number of payable hours would be 41,770 x 0.5 min per page = 348.08 hours.

2. 06.04.11

The Contract Manager revoked a decision (from 19.01.11) to allow reading time for 4423 pages (Task 22, Stage 2), which at the time was the balance of material that remained to be read. It is the Contract Manager's assertion that material beyond page 43,295 does not exist.

3. 19.04.11

The Contract Manager allowed 30 seconds per page perusal time to read exhibits (Task 38, Stage 2). She had previously allowed 45 seconds per page for all exhibits having agreed that the material warranted 45 spp after considering material submitted by the defence solicitor (at the request of the Contract Manager). Counsel had requested 1.28 hrs to read 103 pages (this is at a rate of 45 spp).

The Appeal against the hours of work carried out by Junior Counsel was withdrawn.

The Appeal as to page count was adjourned to a date to be fixed to allow further negotiation to take place between the parties.

Appeal by counsel – 5th October 2011
Appeal adjourned

- **Disbursement**

Disbursement costs of a conveyancing expert required to challenge the Crown's own expert evidence. The hourly rate to be charged is in dispute. The hours needed for the preparation of the report (15hrs) are not disputed. The total figure sought for the report is £3750. The LSC are willing to pay a maximum of £2400.

This is an appeal against a decision by the Contract Manager of the Very High Cost Case Unit of the Legal Services Commission.

Under the provisions of the Contract the Legal Representatives of the Defendant in this case have sought to appeal against an initial ruling.

We have had the opportunity to consider the written submissions from both the Appellants and the Legal Service Commission who respond.

In this case the issues relate to the refusal of the contract manager to allow a sum of money payable at an hourly rate to be paid to an 'expert' that the defence wish to instruct.

In this case the field of expertise is the conveying of land.

We are told that the proposed expert is a leading authority in his field – we do not doubt that but we have not been provided with any assistance to show that.

Irrespective of that comment we are of the view that the proposed sum to be allowed by the LSC is in all the circumstances fair and reasonable and the sum requested is in our view excessive.

Accordingly this appeal is refused.

Appeal by solicitors – 5th October 2011
LSC decision upheld

- **Preparation**

This appeal follows the disallowance of certain items upon audit of the stage 1 task list. The table below sets out those disallowances.

Task	**Hours Agreed***	**Actual Hours**	**Disallowance**	**Reason**	**Appeal?**
4 - Supervision	6.5 (A and B)	10.5 (A and B)	10.5 (A and B)	Work not agreed	Yes
10 – Preparation of schedules	24.33 (A)	24.55 (A)	24.55 (A)	Work not agreed	Yes
12 – Perusal of NAE	8 (A)	7.1 (A)	4.67 (A)	Only witness statements agreed	Yes

14 – Conferences with Counsel	12 (A)	4 (A) and 11.5 (B)	3.5 (B) and £10 travel disbursement	Exceeded agreement +no receipt provided	No
16 – Conferences with client	50	53	3	Exceeded agreement	No
17 – Conferences with client and Counsel	12	12	£10 disbursement	No receipt provided	No
18 – Prep of clients proof	25	36	11	Exceeded agreement	No
19a – Consider disc of unused	20 (B)	8 (A)	Work downgraded to B grade	B agreed	No

* As will become apparent there is a dispute under certain tasks as to what work was agreed
There are therefore three items in dispute – tasks 4, 10 and 12 (for the avoidance of doubt where the hours have exceeded what was agreed Solicitors seek the agreed hours)

Task 4 – 6.5 hours Grade A and 6.5 hours Grade B
Task 10 – 24.33 hours Grade A
Task 12 – 4.67 hours Grade A

A total therefore, of 35.5 hours Grade A and 6.5 hours Grade B.

The issue in dispute for all these items is whether this work was agreed or, in all the circumstances of the case, whether it was reasonable for Solicitors to assume that the work had been agreed.
This is an appeal against a decision by the Contract Manager of the Very High Cost Case Unit of the Legal Services Commission where by the Contract Manager

Under the provisions of the Contract the legal Representatives of the Defendant in this case have sought to appeal against that initial ruling.

We have had the opportunity to consider the written submissions from both the Appellants and the Legal Service Commission who respond.

Further legal representatives have addressed us for both the Appellant and the Commission.

In this case the issues relate to the disallowance of a block of time as the LSC say that the time was not authorised prior to the work being carried out.

In considering this appeal we are able to dismiss the appeal, allow the appeal in part or allow in full.

We are required to provide full written reasons and we direct that this ruling should be taken as those reasons.

We note that the issue in this case is a simple one, namely that the Appellants have on a number of occasions emailed the Contract Manager with various requests for time and they have taken the Contract Managers silence in replying as authority to proceed. The Commission on the other hand states that silence can never be taken as an assent to any request.

We note that the 2010 Contractual provisions make this quite clear but this case predates those provisions.

We are satisfied that the Appellants can show that the emails were sent. The LSC cannot confirm that they were not received.

We note that earlier email traffic had no problem in being both transmitted and received.

We also note that the appellants invite the LSC to audit the work that has been carried out prior to any payment being made.

We are of the opinion that it would be only right that the appellants be permitted to undertake the work that they have so done and that their invitation for audit be taken up by the Commission.

We do feel, by way of comment, that the Appellant could well have avoided the necessity of the appeal if he had taken the time to telephone the Contract Manager and enquire as to the progress of the request for time.

To this end this appeal is allowed.

Appeal by solicitors – 5th October 2011
LSC decision overturned

- **Preparation**

Contract Manager's original decision:

To refuse requests for additional time for the review (and scheduling) of third party material potentially subject to LPP, as follows.

Task 20:
The appellants requested 260 hours (initially 344); the CM has authorised 150 hours (123 plus 27)

Task 21:
The appellants requested 130 hours (initially 167); the CM has authorised 75 hours (60 plus 15)

Adjudicator's Decision:

To allow the Appeal in part by awarding a further 30 hours to the appellants in relation to Task 21 and to recommend that both tasks are now merged as requested by the appellants, and accepted by the CM.

Reasons:

1. The issues here have been complicated by estimated figures as to the contents of boxes of papers, and the interpretation of the general term "review". Both of these factors however resulted in something of a "suck it and see" approach as far as these tasks are concerned. I make no criticism of this, as these are frequently encountered problems in VHCC work.

2. As far as **Task 20** is concerned, in relation to the interpretation of "review", in addition to the actual mechanics of undertaking this work (which must involve some noting, annotating, and separation of documents) the e-mail from the CM dated 21st June 2011 at 15:46 is important. In the second paragraph the CM states that her understanding of the appellants' request…"is that you have two lists and are creating a third from it". The appellants' e-mail in reply 6 minutes

later does not query or challenge this understanding which in my view incorporates scheduling in these circumstances.

3. The appellants on the 22nd June 2011 requested a review of the decision authorising 123 hours, on the basis of further material then supplied, but again did not query or challenge the "creation of a list" understanding.

4. The CM on the 29th June 2011 raised a number of queries in connection with the request for review of the (then) 344 hours applied for. I have seen no response to those queries. The CM on the 19th July 2011 by e-mail at 14:35 confirmed that she had not received a response to her queries and was therefore not prepared to authorise any more time over and above the 123 hours previously agreed. Whilst I appreciate that by that time Task 21 had become an issue, I do not think that the appellants can complain about a refusal to authorise further hours when requested information had not been supplied. In the event, the appellants subsequently refined the request from 344 hours down to 260, and the CM increased the hours authorised from 123 to 150, based on the revised estimate of 9,000 additional pages. The CM has applied a consistent and reasonable formula to this work, resulting in the additional hours being authorised.

5. As far as **Task 21** is concerned, I am not persuaded that paragraph 5.20(c) of the 2010 VHCC Specification applies in this case. The "extra" work unfortunately was carried out, in good faith, but inadvertently beyond the hours then authorised for that task and in those circumstances Section 5.20 (c) cannot apply. Regrettably, Section 5.20 cannot assist the appellants now, despite the two tasks hopefully being merged, as strictly speaking the "extra" work was not "agreed in advance".

6. In an e-mail from the appellants on the 25th August 2011 at 13:04 a request is made for an additional 30 hours in relation to Task 21 in order to create a schedule of non-LPP material. This is clearly properly "additional" work over and above that which was originally envisaged. It is an important task to ensure protection of the defendant's rights, particularly because of the "errors" noted by the judge on the part of the Police and others. I am satisfied that the number of hours requested is reasonable, based on the expertise and efficiency demonstrated by the appellants thus far. This part therefore of the Appeal should be allowed.

Appeal by solicitors – considered on the papers by single adjudicator – 18th October 2011
LSC decision upheld in part

- **Expert disbursement**

Contract Manager's original decision:

The refusal of the contract manager to allow in a full a quote for £1800.00 from a medical consultant treating the defendant

The requested quote of £1500 for preparation of a medical report at £300 per hour is simply too high for a publically funded case. The request was for the defendant's consultant to draw together the report for a medical history. The rate of £160 per hour is reasonable for the circumstance and should be sufficient for the consultant to prepare their report.

Appeal by solicitors – 19th October 2011
LSC decision upheld

- **Attendance/reading time**

Contract Manager's original decision:

Appeal 1 – 1x B grade and 1x C grade attendance at an all day defence conference, in addition to the supervising A grade solicitor – the contract manager has agreed A grade attendance only.

Appeal 2 – consideration of 3,492 pages of unused material at 2 min/pg – the contract manager has allowed only 1 min/pg.

The committee, having heard detailed representation from the appellant, orally and in writing, decided:

That it was only reasonable in circumstances for A and B grade fee earners to attend a full day's defence strategy conference, with client, leading and junior counsel.

That taking into account, no time was in effect allowed for counsel to consider the disputed tranche of unused material (3492 pages), it was reasonable in the specific context of this case and its agreement contract history, that a maximum of 2 minutes per page for solicitors to review this particular tranche of unused material should be allowed

Appeal by solicitors – 19th October 2011
LSC decision upheld in part

Category

Contract Manager's original decision:

Refusal to contract the case under category 2 as requested by the appellant. Contract manager arguing that only one of the Block A criteria applied to this case.

1. In this matter it was common ground that all of the relevant Block B criteria had been satisfied. In order that the case qualify under category 2 the appellant had to satisfy the adjudicator that at least two of the Block A criteria applied. The appellant argued that the following Block A criteria were satisfied, namely:

(a) The defendant's case involved a significant international dimension;
(b) The defendant's case required legal, accountancy and investigative skills to be brought together.

2. The contract manager contended in his response that the defendant's case did not involve a significant international dimension. He was only prepared to concede that

legal accountancy and investigative skills were required if the "significant international dimension" criteria was rejected, He justified this position on the basis that largely similar arguments had been used to support both criteria and that arguments utilised in supporting one criteria could not be used to support another criteria.

3. The adjudicator considered the following material in making his decision:

- Appellants submissions
- Contract Manager's Response
- Complete Case Summary

Significant International Dimension ?

4. The adjudicator considered very carefully the submissions made by the appellant. This is clearly a case that involves an international dimension. However, that is a common characteristic of carousel frauds of this type. The issue was whether the international dimension in this particular defendant's case was sufficiently "significant" to meet the test. In deciding whether the case met this requirement the adjudicator had to consider whether the international dimension had a direct effect on the defence's understanding of the case and substantially effected case preparation.
5. With regard to the legal dimension of this case the adjudicator considered with care the appellant's submissions that there was a need to understand the working of a foreign jurisdiction (namely Dubai) and/or to engage the services of foreign-based lawyers or professionals. However, given the more peripheral role played by the defendant in the overall conspiracy to cheat the adjudicator was not persuaded that these issues were sufficiently engaged. Whilst they may well be of relevance to defendant's further up the indictment the adjudicator was not persuaded that they were likely to be of comparable importance to this defendant.
6. The adjudicator then turned to consider whether the factual dimensions of the defendant's case could be said to satisfy this criteria. The adjudicator acknowledged that certain elements of the conspiracy were perpetrated in Dubai, However the core evidence against this defendant was largely generated in the

UK and it could not be said that in order to defend him effectively his defence team would require an understanding of the workings of systems or institutions in Dubai.

Legal, Accountancy and Investigative Skills?

7. The adjudicator was persuaded by the appellant's cumulative submissions that this was a case that required legal, accountancy and investigative skills to be brought together.

8. There being only one of the Block A criteria applicable to the case the adjudicator dismissed the appeal and upheld the contract manager's decision.

Appeal by solicitors – considered on the papers by single adjudicator – 20th October 2011
LSC decision upheld

Category

Contract Manager's original decision:

Assessment of the case as Category 3 fraud on the basis that none of the criteria in Block A have been met

The Appellants argue that their Client's case meets two of the Block A Criteria and should be Category 2.

The Appellants claim that the Defendant's case requires highly specialised knowledge of several matters including the mass insurance market, personal injury claims and regulatory requirements. I have considered this and have read the Appellant's Submissions and the Preliminary Case Summary. The two limbs of this Defendant's defence are straight forward: Although some specialised knowledge may be required in preparing the Defendant's case such knowledge is not, in my view, beyond that required of Solicitors and Counsel who regularly undertake fraud work. I would not regard the required knowledge as being highly specialised. This criterion is not met.

The Appellants also claim that their Client's case requires legal, accountancy and investigative skills to be brought together. The Appellants have failed to set out their full submissions on this criterion in their Appeals Representation Form. They say that from their past experience of appeals it has generally been recognised that cases of fraud of this weight and complexity always involve legal accountancy and investigative skills. This is a paper heavy case but I do not consider it to be a particularly difficult complex fraud. I have considered the submissions made on 17.08.11 and 09.09.11. I am not satisfied that the Appellants have shown that the

preparation of the Defendant's case is multi disciplinary and that all the required skills can be provided in house or that any outside expertise will compliment their own expertise. I agree with the Contract Manager's view that the Appellants have not fully addressed the requirements of this criterion.

No criteria in Block A are met.

I can find no reason to refer this Appeal to the full Appeals Committee

Appeal by solicitors – considered from the papers by single adjudicator – 28th October 2011

LSC decision upheld

Category & reading time

This appeal pertains to two decisions a) the category classification assigned and b) preparation allowances for litigator and counsel to read and schedule exhibits and statements.

(a) The Contract Manager classified this matter as a Category 3 Fraud case; the appellants are seeking a rating of Category 2.

(b) The Contract Manager authorised the following preparation allowances:
Litigators: 30 seconds per page reading and 1 min per page scheduling for exhibits
Counsel: 30 seconds per page to consider exhibits
2 min per page to consider witness statements
2 min per page to consider Comment interviews
1 min per page to consider "No Comment" interviews
The appellant are seeking:
Litigators: 1 min per page to consider exhibits and 1 min per page scheduling
Counsel: 2 min per page to consider served exhibits
3 min per page to consider witness statements
2 min per page to consider all interviews

This is an appeal against a decision by the Contract Manager of the Very High Cost Case Unit of the Legal Services Commission.

Under the provisions of the Contract the Legal Representatives of the Defendant in this case have sought to appeal to us and ask that we reconsider the initial ruling.

In considering this appeal we are able to dismiss the appeal, allow the appeal in part or allow it in full.

We have had the opportunity to consider the detailed written submissions from both the Appellants and the Legal Service Commission who respond.

Further, legal representatives have addressed us for both the Appellant and the Commission.

We are required to provide full written reasons and we direct that this ruling should be taken as those reasons.

In this case the issues relate to the categorisation of the case and a refusal as the appellants would have it to allow an appropriate allocation of time for reading, analysing, cross referencing and scheduling the exhibits served in this case.

Disputed Category.

The Case is currently a Category 3 case and the Appellants argue that it should be in fact be a category 2 case.

The Commission were of the opinion that Block B was not satisfied.

The Appellants at the time of the hearing sought to advice the Committee that they would now not pursue the Block A criteria in so far as International dimension and National publicity and wide spread public concern.

They maintain that the other criteria in Block A are made out.

We note that the case took some 29 days and all defendants with the exception of this defendant were convicted. She was acquitted.

We note that this defendant faces a single charge and she was not indicted with an allegation conspiracy.

The appellants produced late evidence that quantified the total fraud at the value of £2.5million

The points for a reconsideration of the categorisation of this case were helpfully set out in detail of the 31st March 2011.

Having had the opportunity to consider all the representations on this point we find that we were not satisfied that this case in fact does meet the full requirement under Block B. Accordingly we are not required to go further and consider Block A.

In coming to this decision we were of the view the charges faced by **this** defendant was not for a fraud where the loss exceeded £2m.

This defendant was not charged with conspiracy within the principal offence. We have to look at the defendant's case in so far as where it places that defendant within the main body of the offending.

This was, in our view, a discrete aspect of a much larger large fraud.

The losses that relate to this defendant are much smaller than the larger fraud.

This appeal therefore refused.

Disputed Hours.

We note that currently reading time of statements is set at the rate of 2 minutes a page for used statements, 30 seconds a page for exhibits, 2 minutes a page for comment interviews and 1 minute a page for no comment interviews.

In short the Appellants simply seek to argue that this is insufficient time.

The Appellant's representative helpfully explained to the Committee that he was instructed that his client no longer wished to pursue the appeal on certain aspects of the time allocation appeal.

He explained that all that was left to be considered was that the Appellants sought to say that they needed 1minute a page for the exhibits and a 1 minute a page to schedule the exhibits.

At this Committees invitation the parties consulted together further and agreed the time at 45 secs a page to peruse exhibits and 35 secs a page to schedule.

This part of the appeal was then withdrawn.

Appeal by solicitors & counsel – 26th October 2011

Category – LSC decision upheld; Reading time – appeal withdrawn

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Category & grade of fee earner

1.It is accepted by both parties that one criteria i.e. Criteria 4 from Block A had been met and it was submitted by the Appellant that two other criteria were also met. Dealing with these in turn

(a) The defendant's case requires highly specialised knowledge

The Appellant relies on the in-house conveyancing skill provided by colleagues from their sister firm as Grade B fee earners in this matter.

I agree that this criterion is met but would refer both parties to the Litigator standards criteria in the 2010 VHCC Guidance.

Given that this criterion is met there is no need to give further consideration to the submissions made by the Appellant with regards to the other criteria of national publicity and widespread public concern.

Appeal allowed that this is a Category 2 case.

Turning to the second limb of this Appeal the appropriate level of Litigator to be attached to a particular fee earner. I agree with the observation made by the contract manager that for the LSC to review applications for Grade B status from fee earners with experience in the police is not on its own sufficient for the LSC to make an exception to the 10 year requirement. There was nothing in the representations made by the Appellant to persuade me otherwise.

Appeal by solicitors – considered from the papers by single adjudicator – 3rd November 2011

Category – LSC decision overturned; Grade of fee earner – LSC decision upheld

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Pre-contract assessment

The appellant had claimed for reading the case summary, the client's comments and the witness statements at a rate of 3 minutes per page and the exhibits at 1 minute per page. The appellant also claimed 2 hours for preparing a note in relation to the return of brief. The contract manager has allowed 2 minutes per page for the case summary, client comments and statements, 45 seconds per page for the exhibits and has disallowed the time preparing the note.

The hours for preparation of the note regarding the return of instructions are felt to be reasonable in all the circumstances, as this was a valid use of time and does progress the case in so far as it assists the commission and incoming counsel. 2 hours allowed.

As to the remaining hours appealed, we are not persuaded that this case was sufficiently complex or extraordinary to merit the claimed 3 minutes per page which represents a substantial uplift on the hours and the rates subsequently claimed in the case. However, we see some merit in the argument that the appellant was acting as sole counsel for a

substantial time in what was clearly a two counsel case. Accordingly we allow an additional 10 hours to reflect this.

Appeal by counsel – 23 November 2011

LSC decision upheld in part

- **Preparation**

On 28 September 2011 the appellants requested 24 hours for client attendances and 11 hours for post-attendance work, for stage 2.

The Appellants and the contract manager discussed the issue over a number of emails.

On 30 September 2011 the contract manager advised that she would not agree to any more hours for these two tasks in stage 2. She did say, however, that she can "agree a single block of time that can straddle this stage and the next but will not be extended further."

This amounted to 40 additional hours for client attendances and 20 additional hours for post-attendance work, but no more.

We currently have 8 hours remaining for client attendances and 3 hours for post-attendance work.' In the appellants' supplementary submissions the following passage appears:

'At present, we are 21 hours over the allowance for client attendance and 7 hours over the allowance for post-attendance preparation. We would not have gone over this threshold unless it was necessary for our client's defence.'

I understand that the defendant pleaded guilty on the second day of the trial.

The Contract Manager's email of 30 September 2011 appears below in black, while the single adjudicator's comments appear in red

Your e-mail of yesterday fails to recognise that it isn't simply a case of you requesting more time and the LSC agreeing to this on the basis that you can provide attendance notes. My decision not to agree the additional 66 hours requested was not made because I didn't believe you were taking the time with the client or that you would be able to use the time if I were willing to fund it. I am think that the allowance I have given is reasonable taking into account the nature of the case, the amount of material served, the time given on other cases and the time used in previous stages.

I agree with the assertion that a decision should be based on the nature of the case, the amount of material served, the time given on other cases and the time used in previous stages.

The time given on other cases is however a poor indicator of the time needed by any individual defendant as it does not take account of; his role in the case, whether he is running a proactive defence and the extent to which he is prepared to be engaged in the preparation of his defence. This involves an exercise of professional judgement on the part of the solicitor in charge of the case.

I have read the submissions made by the appellant and more importantly assessed the quality of the defence instructions taken and the nature of the material upon which instructions have been taken.

I am satisfied that the instructions taken in this matter have been properly undertaken and that they appear to be properly directed towards dealing with the salient issues.

In the absence of anything to indicate that instructions were being taken on irrelevant matters or in a disorganised or inefficient manner I find it impossible to conclude that the time asked for was unreasonable.

The VHCC system cannot operate on the basis that there is a relationship between how many hours your client wants to spend with you and how much funding is provided as a result. The VHCC system has to work on a basis that there is a sensible and reasonable assessment of what time is actually required and funding allocated accordingly.

I agree but having regard to the complexity of the case the principle of equality of arms and the matters referred to above I am satisfied that the time requested was reasonable.

In this case I think 120 hours attendance and 50 hours spent drafting instructions / proof in a single 12 week stage is extremely reasonable.
Experience of working on many, many VHCCs informs me that 60 hours per stage is generally considered reasonable and providers are able to work within this to take the instructions they need. In this case I have doubled my benchmark allowance because so much material was served in one stage, I had reviewed your attendance notes and proof and because of the proximity to trial. I am not willing to extend this further.

I understand the concerns that have properly been raised by the contract manager but in the absence of anything to suggest that the time spent with the client has in any way been unproductive, inefficient or unnecessary to refuse the hours or substitute a different assessment of what was needed would simply be an arbitrary decision on my part and not based on any proper benchmark.

I am not willing to agree for hours allocated to conference with counsel and client to be reallocated to client attendance. The two tasks are different.
The hours for conference with counsel and client are a reasonable allocation for time for your client to spend with his counsel and not just for instruction taking. To allocate the time to instruction taking is to devalue the point of having separate time for counsel conferences.

I agree that this would have been inappropriate.

I am willing to agree some time for the next stage and it would be very petty to make you wait to start using that allocation until next Friday when the stage ends so what I propose to do is to agree a single block of time that can straddle this stage and the next but will not be extended further.

I will agree 8 hours per week between now and 7th November which is when trial is now listed to start. This is a block of 40 hours across the next 5 weeks. I will agree 20 hours for the proof. Whatever remains after next week will be carried forward into stage 4 but no further time will be agreed.

I am unsure how this affects the amount of hours the appellants went over the stage 2 allowances i.e. 21 hours of attendance and 7 hours preparation. My intention is that the full amount claimed in stage 2 should be allowed.

Appeal by solicitors – considered from the papers by single adjudicator – 2nd

December 2011

LSC decision overturned

Category & reading time

LSC's decision – to categories the case as cat 3 and allow 45 secs/page for reading

exhibits. The Appellants request cat 2 and 1 min/page

In reaching these decisions I have had regard to the documentation supplied with the appeal as well as the DCS and Prosecution Case Summary which were provided at my request.

1 CASE CATEGORISATION

DECISION: REFUSED

I take the view that based on the facts that I can take into account; there is no evidence that there is a significant international element for this Defendant.

REASONS

I have been asked to consider whether there is a significant international dimension in the case of this Defendant.

At its highest, the appeal is put on the basis that there are a number of contingent possibilities, namely that:

The Crown will adduce evidence of the Defendant's foreign trading;

If the Swiss proceedings or the evidence of B in those proceedings reveals a controlling influence by the defendant over the overseas companies within the relevant chain, then this could lead to a cut-throat which the Defendant may initiate as part of a positive defence to show that he may well have been duped.

Under 4.18 of the VHCC Specification Category Criteria: assessment of category of the case is to be based on information of what you and the Prosecution can confirm as current fact and not what might happen at some time in the future.

Applying 4.18 with regard to:-

a) no decision can be made until the Crown have adduced the evidence spoken of;

b) the Swiss proceedings do not involve the Defendants in this case but do involve B who controlled some of the companies linked to the chain. We do not know what proceedings Mr B faces; when they will be heard and whether and to what extent the companies in the relevant chains will even feature. Mr B was not charged in the Southwark Crown Court proceedings and there is no indication that he was interviewed or his presence sought. Numerous possibilities as to what may or may not arise in the Swiss proceedings are put forward, however, the significance of the Swiss proceedings to the Defendant remains contingent not only on what arises but then on what the Defendant "may" do as a result.

Under 4.18, as a decision on case category can only be based on what can be confirmed as a current fact. Based on information received and the submissions provided (assuming they can be confirmed by "you and the Prosecution") the current facts are:-

1. the primary position of the Crown in this case is that it is a fraud committed in UK;
2. that the company is question was part of a chain selling on Carbon Credits in much the same way as in MTIC cases, MTIC cases must by definition have an international element, this does not automatically make it significant for all Defendants;
3. that the defendant is the controlling mind;
4. B, who is linked to the case by companies in the chain, has pending proceedings in Switzerland;
5. B's Swiss case may or may not make reference to elements of the factual matrix of the Defendant's proceedings before Southwark Crown Court;
6. B's Swiss lawyers may or may not be willing to explain how the Swiss authorities are putting their case;

7. B is said not to be linked to the Defendant but may or may not be linked to or implicate the defendant and depending on what B says may or may not impact on the Defendant's case but if so even then the Defendant may or may not run a cut-throat defence.

That the Defendant will wish to read summaries or transcripts of the Swiss proceedings or speak to the Swiss lawyers of B, is at this stage preliminary and investigatory; it does not mean that this Defendant has a significant international dimension to his case at this time. A different interpretation may or may not be possible at another time, dependant on what at the time are the confirmed current facts.

Finally, the reference to the Crown investigation at paragraph 2 in the document entitled Note to LSC re: Case Category dated 31 August 2011, has been discounted as being insignificant as is apparent from the papers provided.

2 READING/SCHEDULING TIME OF EXHIBITS

DECISION: GRANTED

REASONS

I agree with the Contract Manager that the information supplied by the Appellant is persuasive but differ in finding that it does warrant a finding that the reading time should be increased to I minute and not 45 seconds per page. The fact that 30 seconds per page has been allowed for ancillary work should not be confused with the task of reading and scheduling the material, the two are entirely separate.

Appeal by solicitors – considered from the papers by single adjudicator – 25th November 2011

Category – LSC decision upheld; Reading time– LSC decision overturned

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- **Category**

The Committee allowed the appeal.

This is a category 2 case for the following reasons:

Two Block A criteria apply for the following reasons:

(a) The defendant's case is likely to give rise to national publicity and widespread public concern:

The Appellant produced a lever ach file of media articles from the national press (including the Sunday Times and Daily Mirror) and the internet (including the BBC). The Daily Mirror article reported (albeit at page 25 of the paper) upon the case post arrest but prior to the first appearance at the Magistrates Court, naming the Defendant. Reporting restrictions currently apply. The Prosecution have supplied the Defence with a DVD containing media reports.

The case involves a newsworthy FBI undercover "sting" operation infiltrating a criminal website, "Darkmarket", to entrap cyber criminals, involved in worldwide banking and credit card fraud (NB: Abuse of Process arguments are being considered by the Defence in terms of entrapment, which if pursued will be the first time such arguments have been advanced in this country in a "Darkmarket" case). The FBI agent running the undercover operation allowed the illegal trade in credit cards to continue, putting the public at financial risk. Identity fraud of this type is likely to be reported by the national newspapers and to be of widespread public concern.

(b) The defendant's case requires highly specialised knowledge:

The Appellant has firm Not Guilty instructions, the matter will proceed to trial, expected to begin in September 2012 .

The Defence to be advanced is that the Defendant accidentally went onto the "Darkmarket" website by mistakenly opening a spam e-mail. Further, the Defendant's computer was "hacked" into, with someone else posing as the Defendant on the website.

This defence involves the Defendant – the main and first defendant (of four defendants) on the indictment , including Count 1 Conspiracy to Defraud over a 3 ½ year period) – instructing two experts to examine the following issues (a) computer expert in relation to hacking, examining the ability to access the website and its security protocols and (b) "virtual currency" expert to examine the financial trail of virtual currency from a Russian "Web Money Zone" bartering system (cited at para.62 of the Prosecution Supplementary Information document dated 10th November 2010).

Accordingly 2 criteria from Block A apply.

The Case Manager accepts that 2 Block B criteria apply.

Appeal by solicitors – 7th December 2011

LSC decision overturned

- **Disbursement**

Contract Manager's original decision:

Forensic Accountant Expert Report (2nd phase) costs sought – 40 hours additional time (at a rate of £180 per hour, total £7,200) sought in relation to the actual drafting of the final expert Report

Procedural background

8.10.2010 : 363.5 hours estimate provided by the Forensic Accountants to prepare report (1st phase work) in relation to Confiscation proceedings. Estimate rejected by LSC.

22.9.10 : VHCC Committee Appeal hearing in relation to refusal adjourned to allow time for accountants to obtain more information.

24.9.10 : Amended estimate provided and funding agreed (1st phase).

19.11.10 Additional funding of £11,400 requested by Defence for expert report

4.2.11 Cost estimate for 2nd phase accountancy expert report work submitted.

9.2.11 Second VHCC Committee Appeal hearing allowed costs of 1st phase work of £11,400 (see VHCC decision dated 9th February 2011)

23.3.11 LSC allow 60 hours basket of time for 2nd phase work, from a Defence request of 180 hours.

20.4.11 the Accountants sought an additional 39.8 hours for 2nd phase work.

27.4.11 LSC grant an additional (a) 120 hours basket of time for 2nd phase work (giving a total of 180 hours for 2nd phase) (b) 13.8 hours for reviewing bank statements. Refusing 28 hours time for drafting final expert report.

17.6.11 the Accountants sought an additional 40 hours (total of £7200) (2nd phase work) to draft the final expert report. LSC refuse that request, which is the subject of this appeal.

20.6.11 Final expert report served upon the Court.

The Accountants have received payment for 327 hours of work undertaken.

Appeal rejected

The Committee rejected the appeal for the following reasons:

1. **The Appeal was out of time.**

   Part 4 Appeals of the Very High Cost Criminal Cases Arrangements 2004 provides at paragraph 4.5:

   "Any appeal **must** be lodged with the CCU within 14 days of receipt of the original decision ".

   The original decision by the Case Manager to refuse additional time to draft the expert report was communicated in clear terms by e-mail from the Case Manager to Defence Solicitors on 11th March 2011. The 14 day appeal time limit was specifically referred to by the Case Manager in the said e-mail.

   The refusal decision was again reiterated by the Case Manager in an e-mail to Defence Solicitors on 22nd March 2011, the forensic accountant's were CC'ed into that e-mail.

   On 14th April 2011 the Case Manager sent a third e-mail to Defence Solicitors again stating the refusal for further time for drafting the expert report and the 14 day time limit for appealing that refusal.

   On 27th April 2011 the Case Manager sent a fourth e-mail to Defence Solicitors which again refused the additional time sought.

   The Defence Solicitors did not lodge an Appeal within 14 days of the original decision – whether that be from 11th, 22nd March, 14th nor 27th April 2011.

2. **Work was undertaken without prior approval.**

   In candid terms the expert Accountants state at paragraphs 2.25 and 2.28, page 7 of their written Appeal submissions, state:

   "2.25 Despite not receiving funding to do so, we prepared an expert report which was served on 21 June 2011"

   "2.28 .....In hindsight it may have been more appropriate (and in accordance with procedure) to stop work and launch an Appeal at this point (21 April 2011)".

   There is no provision to retrospectively grant payment for work undertaken without prior agreement.

Appeal by solicitors – 7th December 2011

LSC decision upheld

- **Category**

LSC agreed cat 3; Appellants request cat 2

This case revolves around practices relating to the payment and acceptance of referral fees in the context of providing “after the event” insurance for claimants in personal injury litigation. The Crown allege that although in some circumstances such payments may be legitimate, those made in this case lacked transparency and were plainly dishonest and fraudulent. Furthermore they resulted from an agreement between the .Appellant and his co-defendant, both of whom played a central role in the alleged conspiracy to defraud. In his defence the Appellant denies dishonesty in respect of the payment of referral fees, preying in aid the fact, anticipated by the prosecution in their case summary, that they were paid in compliance with standard industry practice.

In reaching my decision to allow this appeal I have read (i) the case summary, (ii) the category assessment sheet, (iii) the Appellant’s submissions on appeal and (iv) the contract manager’s response.

I am of the view that:

(i) practices relating to referral fees within the industry is an area which is both complex, contentious and highly specialised and knowledge thereof goes beyond what would normally be expected of practitioners dealing in large fraud cases.

(ii) skill and expertise in this area is required since it goes to the heart of the issue in this case, namely whether or not the Appellant was acting dishonestly. That issue is bound to be measured partly by the extent to which the Appellant’s conduct complied with his own industry’s practices and regulations, as well as those of the legal profession (as per his co-defendant).

(iii) knowledge of this specialised field will enable the Appellant’s legal team to assess his conduct objectively in the light of that knowledge, and to advise appropriately and

(iv) based on the information provided in the category information sheet (particularly with regard to junior counsel), the defence legal team are in fact able to provide in house relevant knowledge which goes to the "legal heart of the defendant's case" .

Accordingly I am of the view, having taken into account the VHCC guidance at paras. 4.17 – 4.20, on the particular facts of this case and having regard to the pivotal role played by the Appellant in the alleged conspiracy and his involvement in the ATE industry, that HSK is satisfied.

Appeal by solicitors – considered from the papers by single adjudicator – 9th December 2011

LSC decision overturned

- **Category**

LSC agreed cat 3; Appellants request cat 2

The contract manager has categorised this case as Category 3, in that she does not accept that the criterion has been met, in that the defendant's case does not meet any of the Block A criterion. I have read extensive submissions from both parties. I have also considered the Prosecution Case Summary. The Appellant needs to satisfy that two are met to make this a category 2 case in that I am told that the Block B criteria are satisfied. I say this as the body of the contract manager's reasons for her decision differs from the Items in Dispute section which indicates that the defendant's case requires legal, accountancy and investigative skills to be brought together and no other criterion is met, I have assumed that everything is in dispute from Block A.

The Defendant is charged with one count of Conspiracy to Cheat the Public Revenue and one count of transferring criminal property over a period of some 11 months. The case concerns the trading in Carbon Credits as a result of the Kyoto Agreement and the use of that scheme by the defendants to undertake what has been described by the Prosecution as an MTIC or "Carousel" Fraud. The Defendants are alleged to have defrauded the Revenue out of £38m.

Dealing with the National Publicity criterion first, the Respondent submits that the publicity should be nationwide and should be wider spread than just the arrest of the defendants. In addition the "widespread public concern" should be demonstrated as the guidance indicates that it was necessary to show that the publicity was "triggered by issues of far reaching and significant concern, such as that which might trigger editorial debate".

Block A states as follows:

"The defendants' case is likely to give rise to:

(a) national publicity; and

(b) widespread public concern."

I take the view that the strict reliance on the guidance has set the bar too high. I have to assess what is likely to occur, in that many cases receive very little press coverage until the start of the trial and in some cases at the conclusion. I have to look at the subject-matter of the Indictment and form a view in many cases of what is likely to happen, sometimes there will be evidence in the form of the reporting of the

arrests, sometimes there may be a press embargo on reporting that means such evidence is not available at the time of the decision. In this case, I have read a number of different articles from major national newspapers reporting not only the fact of the arrests and the nature of the fraud but also what the Revenue subsequently did about it.

In this case, I take the view that this is a multi-million pound fraud that deals with a topic that would be of interest to a wide range of people as indicated by the publications who reported the arrest. The use by fraudsters of a scheme that was designed to "save the planet" is a subject that I have no doubt that there will be the subject of extensive press coverage.

5. Dealing with the highly specialised knowledge criterion. The subject matter of the Indictment is novel, particularly when one looks at the fact that this whole topic comes out of the Kyoto Agreement. The Contract Manager suggests that this is a typical MTIC fraud as evidenced by the passages in the Case Summary in that there are missing traders and the Carbon Credits were incidental to the fraud. The Appellant submits that this is in reality a Carbon Credits fraud which involves the manipulation of the EU Emissions Trade Scheme and as such requires specialist knowledge of how the system works, for example they point to the fact that each state operates its own registry and the trades were completed via exchanges. It is submitted this is different from the run of the mill MTIC fraud which simply involves two businesses selling a product such as a computer chip or a mobile phone where invoices are exchanged and paid. The Prosecution Case Summary devotes a significant portion to the operation of the Carbon Credits scheme with the Registry system. With respect to the Respondent's argument, I agree with the Appellant, this case can be best described as an "MTIC plus". The fact that this is the first prosecution of this kind underlines the fact that there is research required by the teams that goes beyond that of the MTIC cases and the way the system operates would require knowledge that would not be "within the stock in trade of a criminal fraud lawyer". The Respondent points to the guidance at paragraphs 4.17-4.20, in particular the fact that the defence would have to show that the knowledge is required in her case. This defendant is charged with the same conspiracy as all the other defendants and it is suggested that this defendant was involved in the trading of the credits, the Appellant would have to be in the same position as the other defendants charged in the same way, I have not seen anything that indicates this knowledge is not required in this defendant's case. I have read the case summary which indicates that this defendant ran two companies independently of her husband, the third defendant. Her companies were involved in 121 trades, a significant amount.

6. As a result of my findings in relation to the two criterion considered, this case should fall into Category 2 and I do not therefore have to consider the other criterion.

Appeal by solicitors – considered from the papers by single adjudicator – 19th December 2011

LSC decision overturned

- **Reading time**

The appellants have requested 1mpp to consider the 34070 pages of Exhibits contained in NAE 2-5 , this amounts to 569.9 hours . The LSC have proposed a rate of 45 seconds per page which amounts to 427 hrs

This is an appeal against a decision by the Contract Manager of the Very High Cost Case Unit of the Legal Services Commission.

Under the provisions of the Contract the Legal Representatives of the Defendant in this case have sought to appeal to us and ask that we reconsider that initial ruling.

In considering this appeal we are able to dismiss the appeal, allow the appeal in part or allow in full.

We have had the opportunity to consider the detailed written submissions from both the Appellants and the Legal Service Commission who respond.

Further, legal representatives have addressed us for both the Appellant and the Commission.

We are required to provide full written reasons and we direct that this ruling should be taken as those reasons.

This is an appeal against a certain allowance of time by the Commission.

In this case the Appellants seek to argue that they should be allowed 1 minute a page to consider some 34070 pages of used exhibits . On the behalf of the Commission they argue that only 45 seconds a page should be paid.

From the outset we should state that the parties were content that further discussions should take place but upon instructions and by agreement it was felt that the appeal should proceed today.

We have considered this request and considered the specific written representations and in particular the previous decision of this Appellate Committee in January of this year.

Whilst we are not bound by that decision we do find this of assistance.

We are of the opinion that this request is reasonable in all the circumstances and that there is in this case, justification for the request for 1 minute a page.

As a matter of principal we feel that it must be right that the rate of remuneration be capable of change throughout the life of the case if the nature and content of an item justifies such a change.

Further we are of the view that the Commission should be able to require samples of all the material to assess the rates at all stages of the case.

However, we are told that the continuing disclosure program is such that we are told that the case against this Defendant is now much more significant.

We see nothing to warrant the reduction of the rate from that originally allowed.

To that end this appeal is allowed.

Appeal by solicitors – 14th December 2011

LSC decision overturned

- **Return of brief**

This is an appeal against a decision by the Contract Manager of the Very High Cost Case Unit of the Legal Services Commission.

Under the provisions of the Contract the Legal Representative of the Defendant in this case has sought to appeal to us and ask that we reconsider that initial ruling.

In considering this appeal we are able to dismiss the appeal, allow the appeal in part or allow in full.

We have had the opportunity to consider the detailed written submissions from both the Appellants and the Legal Service Commission who respond.

Further, we have received oral representations from both the Appellant and the Commission.

We are required to provide full written reasons and we direct that this ruling should be taken as those reasons.

This appeal concerns the nonpayment of a non VHCC panel advocate's pre contract work on a VHCC case.

We are told by the Commission that it is the Contract Managers view that the brief to counsel in this matter had been returned on an ' unreasonable basis ' and as such the Commission have declined to pay for all the Pre Contract work but as a concession have agreed to pay for certain court attendances.

The Appellant argues, however that he should be entitled to payment in full for the work that he has carried out.

In dispute is a total of 49.75 hours of work this being as mentioned "Pre contract work" for junior alone.

The Commission have agreed, as mentioned above, to pay the hearing and travel time.

We have considered all the factors in this case and we are deeply concerned that due to a series of circumstances that were not of his making the Appellant has been prejudiced .We feel that he acted correctly and that his claim for costs is a very proper application to make.

We are unanimous in our finding.

We allow this appeal in full.

Appeal by counsel – 14th December 2011

LSC decision overturned

- **Category**

I have considered this matter in great depth and I have been assisted by all the appeal documentation sent to me, sample exhibits and the prosecution summary.

I deal with all the items in the Block A categories below. My finding is that each of the Block A categories are fulfilled in this case.

1. **Likely to give rise to national publicity and likely to cause widespread public concern.**

This case has already received national publicity as mentioned in the representations from the Appellant. It is therefore probable that when the case is concluded there will be further national publicity. These types of cases are a matter of widespread public concern. Attacks on the tax system, particularly in the light of recent publicity given when HMRC make agreements with the companies, are of considerable public interest and high value VAT frauds must, in my view, give rise to widespread public concern.

2. **This case requires highly specialised knowledge.** I have seen the case summary and seen what the defendant has put forward in his written statement. To succeed in his defence it seems that he will have to put forward that he was not suspicious of the alleged fraudulent activity which was being undertaken around him. That being the case the defence must have a full understanding of how the limited business area in which he traded, which involved an international element, worked and one could not properly represent a defendant in a case of this nature without brining to the defence investigations a highly specialised knowledge of how the business worked and how this industry operates.

3. **The defendant's case involves a significant international dimension.** This case is more, in my assessment of the prosecution case, than simply a straight forward MTIC where there is bound to be movement of monies between jurisdictions. There is a significant issue which the defendant needs to answer as to the choice of instructions and jurisdictions shared between the alleged conspirators and how this makes their case distinguished from more main stream suppliers in the trade chains. The nature of the international dimension alleged is therefore twofold in that the prosecution is saying:-

   (a) The financial activities of the defendant's company is fraudulent

   (b) Specifically the way in which institutions and jurisdictions were used establishes the fraud

   In a straight forward MTIC fraud one might just be talking about straight forward imports. It might not matter which EU country imports were coming from. What would be significant is how goods which were imported would be dealt with in the UK and what happens to VAT when it is collected. In my considered view this case is not straight forward and in that sense and does involve a significant international dimension. However, in any event, I would struggle to see how any MTIC or carousel fraud does not involve a significant international dimension.

4. **The defendant's case requires legal accountancy and investigative skills to be brought together.** I do not see how this case could properly be defended

without the instructions of a forensic accountant. In order to instruct a forensic accountant defence solicitors will have to investigate the whole background to this case. How they will do this will not be entirely straight forward and will require a great deal of skill and such investigations clearly, in my view, would be essential to the preparation of a proper accountancy report. Once the accountancy and investigative work has been done then this will have to be considered in great detail by defence solicitors and counsel who will have to have a full understanding of the accountancy issues and consider all its legal relevance together with the accountancy report. Whilst I do not know what will be the final and expanded nature of the defence, I cannot see that any defence can be presented in this case on a non-dishonesty or non-involvement basis without all these skills being brought together.

I am grateful to both the contract manager and the solicitors for the way in which these arguments have been presented to me in a robust but succinct form.

Appeal by solicitors – considered from the papers by single adjudicator – 6th January 2012
LSC decision overturned

Category & reading time

The Contract Manager assessed this case as a Category 3 Fraud on the basis that the relevant Block B criteria were met, but that only one of the Block A criteria was met. The Appellants disagree and consider that this matter should be assessed as a Category 2 Fraud.

The Contract Manager allowed 30 seconds per page for 13,561 pages of exhibits that the Appellants consider to be of considerable complexity or detail. The Appellants seek an allowance of 1 minute per page for this material.

The contract manager refused an uplift of 15 seconds per page for solicitors and counsel for 51,972 pages services on the E-Bible disk. The Appellants seek the uplift of 15 seconds per page due to difficulty in accessing the material in its current format.
This is an appeal brought pursuant to section 6 of the 2010 VHCC Specification (for organisations).

2. I received the appeal papers on the 9th January 2012. On the 10th January 2012 I received by email the following documents; -

Appellant's 'response to LSC addendum response dated 4th January 2012'.

'second addendum response from the LSC' dated 10th January 2012.

copy transcript of HH Judge Leonard QC's remarks dated 31st October 2011.

I have discretion whether to consider these additional documents because they were received after the appeal bundles had been despatched to me. Since both parties supplied submissions I decided that I would consider them, in the interests of fairness to both parties.
I have been greatly assisted by all of the written submissions.

3. The Appellant appeals against 3 decisions.

24/11/2011 decisions;

(i) to refuse to allow 1 minute per page for reading specific specified exhibit pages (30 seconds per page allowed), and
(ii) to refuse an uplift of 15 seconds per exhibit page to reflect difficulties in accessing the documents on the prosecution DVD (known as the 'E-bible').

29/11/2011 decision;

To refuse to categorise the case as a category 2 fraud.

4. Background

The defendant is one of seven defendants charged with a serious VAT fraud, allegedly committed by the dishonest manipulation of the European Union Emissions Trade Scheme. This type of fraud is known as a carbon credits fraud; the indictment period alleges a seven month period in 2009, and involves £38 million. It is impractical and unnecessary to detail the discrete allegations against the defendant, save to record that the style of fraud follows that seen in MTIC frauds. There are interlocking companies both in the UK and abroad and foreign banks. I note the prosecution allegation that the defendant was involved with buffer companies in two trading chains and a missing trader. I note in particular that the NAE dated 29th November 2011 makes the defendant's business interests and activities in India part of the Prosecution case, and includes a lengthy forensic accountancy report. The Appellant's appeal document, under the heading *'additional submissions based on recently served 3rd NAE'* details international enquiries made by the prosecution, allegedly tying the defendant into a company in India. The defendant denies that he has any involvement with this company at all.

The case has been served on an 'E-bible' disc, with a supplementary transactions disc, 'Brookfield 0037'. These discs have been sent to me and I have viewed some of the files on each disc. The E-Bible did not have an excel index, so I took a random dip sample of some exhibits.

5. Findings

Case categorisation

It is agreed that the 'legal, investigative and accountancy' skills criterion is met.
I do not accept the Appellant's arguments about national publicity and widespread public concern.

I do not find that this case requires highly specialised knowledge. I accept that careful and detailed analyses of the businesses, banking evidence and trade fluctuations are necessary. But I do not find that this is 'highly' specialised, as opposed to specialised.

I do find that the case now has a significant international dimension. I would not have made this finding but for the 3rd NAE, served after the Respondent's decision on categorisation. I note the Respondent's response that this evidence 'cannot be accepted (by him) at the date of the response…' but I have to make a decision on the papers before me, and the trial is due to start in the near future. This new material puts into an evidential form an assertion made (but then unsupported by served evidence) in the prosecution case summary; it is significant and it alters the legal landscape as far as this defendant in concerned, and I accept the Appellant's submissions thereon.

Thus I find that this case meets 2 criteria from Block A and is therefore a category 2 VHCC, with effect from the 2nd December 2011.

1 minute per page

I agree in principle with the Appellant's submissions. I have opened and briefly examined the disc Brookfield 0037; the spreadsheets thereon are easily accessible and easy to search. They represent the source material, and since the accuracy of the spreadsheets can be checked by searching a representative sample I find that 30 seconds per page is adequate. Thus the 4333 Brookfield exhibit pages are excluded and I allow 1 minute per page for the balance of 9228 exhibit pages.

15 second per page uplift

I had no difficulty opening the documents on the E-bible. The search facility I accept is clumsy, and there are no hyperlinks from the witness statements. Personally I did not encounter any particular difficulty with the disc. There is a mixture of complexity of some documents and irrelevance or simplicity of others. I do not, however, reject the Appellant's concerns about electronic management of the exhibits. The Respondent has suggested a cost efficient way of resolving problems of access to exhibit pages by authorising photocopies of them. He has emphasised that the Appellants didn't initially present their

appeal on the basis that 30 seconds per page was inadequate. I accept his submissions on this point. Thus, on the basis that photocopying all of the E-Bible exhibits will be authorised, I do not allow any uplift over the 30 seconds per page.

Appeal by solicitors & counsel – considered from the papers by single adjudicator – 23rd January 2012
LSC decision upheld in part

Reading time

This appeal relates to the perusal and scheduling of 474,356 pages of used exhibits, served in electronic form. The appellant seeks 1 minute per page to consider and schedule this evidence, a total request of 7, 906 hours. The LSC has authorised a total of 2,500 hours, an average of roughly 15 seconds per page to consider the material and an additional basket of around 500 hours to schedule where necessary.

This is an Appeal against the decision by the Contract Manager in his determination of a time allocation of 2500 hours to peruse and schedule the case against the defendant. The Appellants seek 1 minute per page being 30 seconds for reading and 30 seconds for scheduling.

2. There are 474,356 pages in this case served on 26 CD's now placed onto a hard drive. This is the best estimate of the volume of material that we can be given and we adjudicate on this basis. On the basis of the appeal presently advanced by the appellants this would produce 7,906 hours. This is an extremely high figure and on the basis of a 40 hour working week would be 197.65 weeks or 4.1 working years. Even at 50 hours per working week it would produce a figure of 158.1 weeks or 3.9 working years. The defence presently inform us they have 8 people working full time on the case in addition to two Counsel including a Queen's Counsel.
3. The issue is whether this time is justified in principle and will effectively and actively assist the Defendant.
4. It is argued that there is a presumption that the figure of 30 seconds per page can be regarded as a minimum figure. We are not asked to adjudicate upon this point and do not do so. This is a contention advanced in support of the appellant's claim.

Even accepting for the present purposes that this is correct, such a proposition must be viewed against additional factors:-

The nature of the material and its relevance to the defendants case ;
The volume of the material ;
The global time allocated.

5. Whilst the endeavour so far has been heavy in its consumption of hours it has been minimal in our judgment in effective product which will advance the case of the defendant, indeed it is not contended that it will necessarily advance his case merely that it will provide a working document for the trial. Although described as a "schedule" the samples of the documentation before us and shown to us in the course of this Appeal are more in the nature of an index.

6. The indexing of a case is the responsibility of the Crown. Whilst we have been told that the Crown may be invited to agree this index, if ever it is complete, no steps have been taken so far to seek the agreement of the Crown nor has there been any attempt to secure such agreement. It is unlikely in our view that the Crown would agree to the defence indexing the case or would agree that such an index was, without more, accurate. The Crown would inevitably prepare their own index rendering the proposed "schedule" or index at best a duplicate and at worst unnecessary. Not even a draft has been sent to the prosecution. This case is due for trial in less than 3 months. Even with 8 people engaged there is not the slightest prospect of this time being used and in any event we are not satisfied that the product of the endeavour will meaningfully assist or advance the case of the defendant

7. Clearly it is open to the Contract Manager to entertain further applications for time should Counsel advise or suggest that a particularly relevant or dense section of the case should be further analysed. This would be a matter for him to determine upon the merits and we express no view upon this one way or another.

8. We must have regard to the global time allocated to the defence team and by this we mean the team as a whole including Counsel. On this basis we feel the time allocation to the team as a whole is not unreasonable. It is worthy of note that Counsel do not join in this appeal.

9. We are therefore not persuaded that the additional time sought is necessary to the defendant's case neither that his defence would be compromised or in any way adversely affected by adhering the Contract Manager's decision.

10. Accordingly this Appeal is dismissed.

Appeal by solicitors – 18th January 2012

LSC decision upheld

- **Preparation**

The appellants request 1245 hours to consider unused material which the prosecution have served upon a hard drive and 400 hours has been allowed by the contract manager.

This appeal is concerned with a dispute over time allowed for one task in relation to unused material served by the prosecution. The material concerns 550,000 pages of computer material. The Appellants ask for 1245 hours for the team to consider the material, the Contract Manager agrees to 400 hours in line with a directive from the SMT.

We have read submissions from both parties and heard in the hearing today from leading counsel and the contract manager. We have not been shown examples of the material concerned in this appeal but there is agreement on both sides as to the nature of the material and its importance to the case.

The case concerns a company which sold fraudulent documentation. The defendant ran a printing company which produced in particular, driving licences. The trial date in this case is the 10th April 2012 and this must be considered as a matter of some urgency especially as the Trial Judge requires admissions to be made concerning this material.

The Appellant was allowed 2250 hours across the team to consider the 450,000 pages in the Used Material; this equates to a surprisingly small figure of 6 seconds a page. Both sides agree that the unused material is more difficult to read than the used material and the time requested by the Appellant amounts to approximately 7 secs per page.

The committee take the view, having considered the matter in full that insufficient time has been allowed for the material required to be considered in this task. The committee take the view that 1245 hours requested should be allowed for this task.

Appeal by solicitors – 1st February 2012

LSC decision overturned

- **Category**

We heard an appeal made by leading counsel on behalf of the solicitors and both counsel in relation to categorisation. In short the Appellant submitted that their case should be a category 2 case (rather than category 3) by virtue of meeting at least one (out of a possible three) further criteria in Block A. The CCU had agreed that the 'skills' criterion had been met as well as the relevant Block B criteria.

We were of the view, having heard the submissions of both sides, that the defendant's case contained within it a significant international dimension. This was so as his defence relied in considerable part upon his having been to, inter alia, Portugal, France, South Africa and other countries it was said, by him at trial, for and on behalf of the missing defendant. Amongst other things in Portugal he set up a company; in France he was actually arrested with platinum.

As we have reached this conclusion the appeal must be allowed and the case awarded a category 2 status. We have considered when this categorisation should take effect from. Having seen the relevant submissions at the time we are of the view that it should begin at the start of the first stage after the email in April. This case will begin as a category 2 from 21st May 2011.

With the greatest deference to the arguments put forward in support of and against the other criteria we do not consider it necessary or appropriate to come to any decided view. We are however grateful to both leading counsel and the contract manager for the helpful way in which they expressed their respective positions.

We add one further observation: in our view if an Appellant relies upon a particular fact or circumstance in support of criterion A and the CCU considers that fact or circumstance in fact supports criterion B the Appellant is not estopped from relying on it at appeal in relation to criterion A. In our view the relevant provision of the governing documents prohibits an Appellant from relying on one factor circumstance in relation to two or more criteria.

Appeal by solicitors & counsel – 8th February 2012

LSC decision overturned

- **Disbursement & reading time**

This is an appeal in two parts:

The Contract Manager did not agree funding for the instruction of a VAT expert. The appellants are seeking funding of £14,960.00 in order to do this.

The Contract Manager allowed 4mpp to consider the Crown's master schedules. The appellants seek a further 30sec per entry in order to cross reference the schedules against the exhibits. The Contract Manager refused this request on the basis that sufficient time had been allocated for this within the 4mpp.

We considered this appeal on the papers. The appeal was divided into two parts.

In relation to the instruction of the expert to assist the defence team with issues of disclosure we considered that the request was premature. In our view on the facts of this case and taking account of all the information in front of us we felt that until the CPIA process had been fully engaged and a s8 application made and adjudicated upon, his input was not reasonably required.

However we explicitly do not rule out the ability of the defence team at that point to re-request if they feel it appropriate the expert's input from the CCU. At this point therefore this part of the appeal is dismissed.

In relation to the checking of the schedule by a grade C fee earner for the purposes of its use by the jury as an agreed document we note that the court has ordered this document to be agreed (if it is capable of agreement) and that the CCU has allowed 4 minutes per page for its consideration generally.

However having considered samples of this document we do not believe that such a detailed schedule can be reasonably considered and checked in 4 minutes per page. We are of the view that the time requested for a grade C fee earner to check it for accuracy in the circumstances we have outlined is reasonable.

To that extent only this part of the appeal is allowed

Appeal by solicitors– 8th February 2012

LSC decision upheld in part

- **Category**

The Adjudicator agrees with the comments and reasoning of the Legal Services Commission and therefore the decision by the LSC of Category of Case is upheld. The case remains Category 2.

Reasons:

This is an appeal concerning Categorisation of this case from Category 2 to Category 1 as the appellants submit that the defendants' case gives rise to national publicity and widespread concern.

National Publicity

The appellants have submitted numerous articles in support of their representations (contained within 2 lever arch files). The articles consist of articles published in the United States of America, internet articles, blogs and numerous other articles published in the United Kingdom. It is noted that the articles submitted in support of the appeal submissions are dated in 2010 and 2011, the last being dated 1.8.11 on the Newsley Online website (which does not meet the criteria of national publicity in the Adjudicators opinion). The adjudicator also acknowledges the article appearing in The Lawyer dated 2nd January 2012.
Upon careful analysis of these publications the Adjudicator agrees with the Legal Services Commission. The articles do not demonstrate national publicity within the United Kingdom. A vast number of the publications relied upon are clearly within the realms of specialist and business arenas and a substantial number of articles are published within the United States and on specialist websites.

There is insufficient evidence to satisfy the adjudicator that the defendants' case has given rise to national publicity in the United Kingdom.

Widespread Public Concern

There is insufficient evidence that there is interest in this case amongst the general lay public and consequently there is very little; if any evidence of "widespread public concern". The Adjudicator therefore rejects the submissions of the Appellants concerning this limb of the criteria.
In reaching this decision the adjudicator has again noted the content of the articles submitted and the dates of those articles.

Appeal by solicitors – considered from the papers by single adjudicator – 16th February 2012

LSC decision upheld

- **Category & reading time**

This is an appeal in two parts:

The Contract Manager assessed this case as being a Category 3 fraud. The appellant seeks to have it re-categorised as a Category 2 Fraud.

The Contract Manager has authorised the rate of 30 seconds per page for the consideration of the exhibits and 30 seconds pp for the completion of all ancillary work

(1 minute per page in total). The appellant seeks the rate of 45 seconds per page for the consideration of the exhibits and 1 minute per page for the completion of all ancillary work (1.75 minutes per page in total). At the time that the appellant appealed, the Contract Manager had authorised a block of 1522.7 hours in total for 91,363 pages whilst the appellant seeks 2664.7 hours.

The Appeal relates to the decision of the Contract Manager not to categorise the case as a Category 2 fraud and secondly in relation to solicitors' time for consideration of exhibits and ancillary work in relation thereto. The case was determined as a Category 3 by the Legal Services Commission. The Legal Services Commission concede that 2 criteria from Block B have been met and also 1 criteria from Block A, namely that the Defendant's case requires legal accountancy and investigative skills to be brought together.

We have had to consider whether the Appellants have satisfied us that at least one of the first three criteria in Block A have been met.

Having been provided with details of the Defendant's case, we do not think that it is likely to give rise to national publicity and widespread public concern.

We have been told that the Defendant's case is complex. It is clear that the legal team have considerable expertise in fraud cases and we do think that this Defendants case requires highly specialised knowledge having regard to her role in this unusual scheme.

Although there is an international dimension in this fraud, we do not consider that the Defendant's case involves a significant international dimension.

We find that 2 criteria from Block A are met. The appeal in relation to category is therefore allowed.

We find that the overall preparation time allowed is reasonable bearing in mind the proximity of the trial . This part of the appeal fails.

We have not been asked to address the issue of additional / unused material that has recently been served in respect of which we understand negotiations are ongoing.

Appeal by solicitors & counsel – 15th February 2012

LSC decision upheld in part

- **Disbursement**

The appeal relates to the contract manager's refusal to agree for the instruction of a trading strategies expert to consider and report on the client's trading strategies. The request for the new work totals £8,800.

This was an appeal on papers provided. No oral representations were made by the Appellants nor by the LSC.

In short the appeal concerned the further instruction and commissioning of an expert report. One report had already been authored by the expert in question, however, the Appellants were of the view that further work needed to be undertaken. The LSC had refused such funding.

Having considered all the material provided to the Committee, we were of the view that the appeal failed. We therefore dismiss the appeal.

The Committee were of the view that the original instructions to the expert were deficient, in that they did not specifically detail the specific areas to be analysed.

Furthermore, if all areas to be explored by the expert were implicit, the Committee were concerned that the situation was not remedied by a simple telephone call. After all the original report had cost an enormous amount of money – public money.

The Committee agree with the contract manager's refusal to provide further public funds.

The decision is unanimous.

Appeal by solicitors – 11th April 2012

LSC decision upheld

- **Preparation**

The Contract Manager authorised an allowance of 30spp for ancillary work, that is to say scheduling, dramatis personae, chronologies etc, for all served material. The appellant subsequently requested in 4 separate tasks a further 300hrs, submitting that these further tasks are distinct from the ancillary work already authorised. The Contract Manager refused this request on the basis that the tasks already fall within the allowance given for ancillary work.

I have had the opportunity of reading the papers in this case, including the additional representations made by the Appellants and the Legal Services Commission Contract Manager.

I was assisted by the detailed email from the Appellant firm on the 16th February, 2012. It is worth observing at the outset that the extent of the case is significant. In effect, as I understand the arguments, the Commission are saying that any additional work to be carried out by the Appellant's should be contained within the holding rate of 30 seconds per page that was granted at the outset and for that reason no further allowance should be made.

This case has now expanded into a far larger case than was first thought and the current page count is 71,448 pages, broken down as to 4,364 pages of witnesses statements, 66, 030 pages of exhibits and 1,054 of interview transcripts. The Commission's view is that any further scheduling should be covered by 30 seconds per page of the evidence served and as the Appellant's had not appealed this at the outset they should not be allowed any further for carrying this work out. I take the view that the Commission's approach to this

is unrealistic. It is clear that there have been factors that have now intervened which could not have been known to the Appellant's at the time. For example, the programme provided by the Prosecution was in short, not fit for purpose. Several of the exhibits were poor quality scans and several items were not identified. Furthermore, perhaps not surprisingly, the Prosecution had failed to properly spell some of the Companies names which again would have corrupted any search facility. I am therefore satisfied that the work that is proposed by the Appellant is both necessary and could not have been contemplated when the initial 30 seconds per page was allocated. It would seem reasonable to allow the request for a total of £250 in relation to disbursements to be authorised for obtaining the necessary Companies House and Land Registry information if this has not already been granted. I would allow a further 100 hours of work in relation to Task 46, with a meaningful up date to the Commission after 50 hours of work has been carried out. I would again allow 100 hours under Task 48, with a review and meaningful up-date being provided after 50 hours. So far as Task 49 and Task 50 are concerned, I would allow the 50 hours for each of those two tasks which are sought by the Appellant. It would seem to me that the work that is being proposed to be carried out is work that a client of moderate means, privately funding his or her own defence would consider appropriate to afford a proper defence. I would agree with the Appellants proposed division of work that 90% of the work should be carried out by Grade C with a 10% input from Grade A or B.

Appeal by solicitors – considered from the papers by single adjudicator – 23rd April 2012

LSC decision overturned

- **Category**

I have considered the appeal in this case and on the papers provided to me and on the written representations I am not minded to allow this appeal. However, I am of the view that there are a number of issues that this appeal raises that have wider implications than this case alone and I would wish to hear representations from the parties concerned.

To this end I do not make a determination on the appeal but I refer it to the Appeals Committee for their determination and I would invite the parties to make oral representations to the Committee. I would ask that if further documents are to be relied upon or if there are to be skeleton arguments in this case then they are served in good time but in any event within 14 days from the listed date of the hearing.

Appeal by solicitors – considered from the papers by single adjudicator – 17th May 2012

Adjourned – matter referred to full committee

- **Category & reading time**

The Contract Manager assessed this matter as a Category 3 Fraud, accepting only one of the Category A criterion, Legal, Accountancy and Investigative Skills, as being met. The appellants seek to have this matter reassessed as a Category 2 Fraud, relying on Highly Specialised Knowledge and Significant International Dimension.

The Contract Manager has allowed 30sec/pg for the consideration of exhibits for both counsel and solicitors. The counsel appellants seek 1min/pg for this task. The solicitor appellants also seek 1min/pg (with leave to make requests for further time regarding specific tranches of the material) or 1.5min/pg to consider and schedule.

Additional documents submitted at the Appeal:

Newly received prosecution skeleton in response to defence submissions on the obtaining of evidence from Nokia was raised by the appellants during the appeal and provided to the LSC and Committee at the end of the appeal.

Categorisation

Postponed to date to be fixed, timetable for service of documents and response agreed.

Consideration of exhibits

We were not persuaded by the defence submissions that the LSC approach was wrong. The task lists demonstrate the work already undertaken on the exhibits by the solicitors and junior counsel and we do not think that the cut-throat element of the case relied upon justifies any departure from the rate; it is agreed by the LSC that if further specific tasks become necessary relating to these exhibits then further requests may be made.

Appeal by solicitors & counsel – 23rd May 2012

LSC decision upheld in part

- **Work disallowed on audit**

This appeal relates to the disallowance on audit of all attendances, and pre-attendance preparation, on the client for stages three and four of the contract. This disallowance amounts to a total of 200 hours for attendances on the client and 42.5 hours for pre-attendance preparation.

These hours had been agreed in advance, however, they have been disallowed on audit by the current Contract Manager due to insufficient evidence being provided of the work carried out.

In short the appeal concerned the disallowance on audit of, inter alia, all attendances and expenses of the Appellants for stages 3 and 4.

It would seem that other work was submitted in a similar fashion and was paid. Accordingly the Appellants submitted these stages (3 and 4) and expected payment.

The LSC argued that the bills in dispute were not submitted in a satisfactory fashion. Furthermore they submit that previous audits (undertaken by a different manager) were not rigorous enough.

We are of the view that the Appellants were entitled to believe that they were submitting their bills in a suitable fashion. Furthermore there is no evidence whatsoever that the work was not undertaken.

In the circumstances we allow the appeal in full.

The decision is unanimous.

Appeal by solicitors & counsel – 6th June 2012

LSC decision overturned

- **Disbursement**

The appeal relates to the Contract Manager's refusal to pay the cancellation costs of the expert's holiday in order to give evidence at the trial.

This was an appeal on papers provided. No oral representations were made by the Appellants nor by the LSC.

In short the appeal concerned the expenses of the expert returning from a long holiday to give evidence at the trial.

Firstly we are of the view that if the Court, and all other parties are informed of the situation, alternative arrangements can be made to accommodate the expert.

Furthermore we would agree with the LSC's written submissions, vis-à-vis that this "expense" is remunerated from central funds – see Panel Contract Annex 19, Part C 1.19.

In the circumstances this panel has no jurisdiction to hear this appeal. Accordingly we dismiss the appeal

The decision is unanimous.

Appeal by solicitors – 6th June 2012

LSC decision upheld

- **Reading time**

The appeal relates to the rates allowed to read 90,639 pages of exhibits served by the prosecution as NAE 8 and 9. The Appellants have requested 1500 hours to be divided between B grade solicitors and led junior counsel. The LSC has approved 250 hours to be

divided between B grade solicitors and led junior counsel. Sols and counsel have already had 50 hours each agreed to start work, therefore the LSC's agreement represents a further 150 hours to be divided between the team.

This appeal concerns the service of some 90,639 pages of "used" evidence. We, the Panel, now understand that this number of pages is new evidence and is not duplicated elsewhere.

We received a written appeal from the Appellants and a written response from the LSC. Further we heard oral submissions from both parties.

We are of the view that the appeal ought to be allowed in full.

Whilst we are all aware of the tremendous burden on public funds, and the need for the LSC to be more circumspect in their largess, we are of the view that the interests of justice are served in allowing the appeal.

In the circumstances, it is our decision that the said material ought to be viewed as follows:-

1. Perusal of the 90,639 pages at 45spp (Grade B or Led Junior);

2. Scheduling of the *relevant* pages at 30spp (Grade B or Led Junior).

With regard to item (2) "Scheduling" we are the view that this must not be an exercise for the sake of it. The Appellants' must properly review the requisite material, explain its' impact and establish its relevance before embarking upon the exercise.

Finally, whilst understanding the importance that the Appellants' are fully conversant with the material, we hope that, in the usual spirit, endeavours can be made to agree evidence at the trial stage, thereby reducing the burden on the taxpayer.

The decision is unanimous.

Appeal by solicitors – 13th June 2012

LSC decision overturned

- **Preparation**

In this appeal the issue between the parties concerns a period of 5 hours spent by the defendants solicitors engaged in "electronic negotiations" with the contract manager. These negotiations were in addition to the 1 hour granted for negotiation of the tasks within the stage plan.

I have read and considered in detail the written submissions of the parties, including the additional submissions. Despite the arguments on both sides raising matters of principle and the construction to be placed upon the 2010 VHCC Specification and the intention of Parliament; this ruling is not a ruling on principle but merely upon the facts of this case. It is not to be construed otherwise or regarded as a "policy" decision or precedent.

The additional 5 hours is essentially taken up in the 33 e mails set out and described in the
further submission of the LSC dated 4 May 2012.The tasks in stage 2 were relatively simple and straightforward. They cannot be regarded as unusual. The period granted and

agreed in the task ought to have been sufficient to resolve these matters. The further e mails do not relate to new or unusual tasks not within the original negotiation.

The e mails are at best additional administrative work and enquiries. They relate to topics that ought to have been dealt with within the allocated time or are purely administrative work.

The appeal is dismissed.

Appeal by solicitors – heard from the papers by single adjudicator - 16th June 2012

LSC decision upheld

- **Various**

Categorisation of case. The Contract Manager submits that the appropriate classification is category 3. The Appellant deems this to be a category 2 case.

Disallowance of hours in stage 0. Please note that following the submission of further information an additional 73 hours has been paid in addition to the initial allowance of 102.24 hours.

A reduction in the hours undertaken to prepare core bundles, from 35 hours to an allowance of 14 hours at standard rates i.e., 2 hours per lever arch file.

Disallowance of photocopying disbursement for the printing into hard copy of material served electronically.

Additional documents submitted at the Appeal:

Further submissions on the categorisation of the case (this aspect of the appeal has been adjourned)

This is an appeal against a certain decision by the Contract Manager of the Very High Case Costs Unit of the Legal Services Commission.

In this case we have been provided with representations in writing from both the Appellants and the Respondents. We have also had the benefit of considering oral representations from both parties.

We are requested to make a decision on the items that are in dispute and to rule as to whether to dismiss the appeal, allow it in whole or allow it in part.

This ruling should be regarded as our full reasons for our decision.

In this case we are asked to consider the following matters:

1. Categorisation
2. Disallowance of time in stage 0 (in 2 parts)
3. Allowance of time for the preparation of bundles.
4. Disallowance of photocopying

We find as follows:

1. The appellants have sought to place before us some 2 hours before the commencement of this appeal a series of 25 submissions that they say support their argument for the re-categorisation of this case.

1.1 We are deeply concerned at the very late service of these submissions as we feel that the Respondents have not been allowed proper time to even consider a proper response. We therefore are not willing to deal with this aspect of the appeal and we adjourn the question of re-categorisation to a later date. Whilst this committee is happy to deal with the mater in the future we release this aspect of the appeal to another Committee to deal with if necessary.

2. The Appellant told us that as far as his aspect of this part of the appeal he does not seek to pursue his claim and therefore we make no ruling on this point.

   We are of the view that there has indeed been duplication. Whilst that is unfortunate and we do not apportion any blame- we are not of a mind to allow the total payment claimed.

   We are conscious that all members of the appellant firm are indeed members of the same firm. We are told that one partner worked on the case as solicitor and solicitor advocate and due to pressure of work had to "return the brief " to another member of his firm. This work was undertaken whilst the case was not contracted. We do not think that the time claimed for the reread by another member of the same firm is fully justified but we are willing to allow some time. There is some analogy to be drawn with a leaving fee earner

   The appellants were unable to provide a breakdown of how the hours they say have been worked undertaken. We feel that an allowance of 80 hours is a reasonable amount to be paid on the basis of all submissions made to us in writing and orally. Accordingly this aspect of the appeal is allowed in part.

3. We are mindful of the work that is necessary in the logistical preparation of such cases and we feel that the allowance of 2 hours per level arch file is adequate. Accordingly this aspect of the appeal is dismissed.

4. We have a degree of sympathy to the photocopying costs but there should in our view have been an application for prior authority to the LSC for these costs to be met. We are anxious that the copying exercise was in effect a mere exercise in obtaining the page count. Possibly here there has been a misunderstanding between preparation and pagination. Accordingly this aspect of the appeal is dismissed.

Appeal by solicitors –- 27th June 2012

LSC decision upheld in part

- **Preparation**

Task 80 (stage 3 task list) – the Contract Manager has agreed a total of 250 hours for the Appellants to peruse 25,038 pages of unused material, based on a rate of 30 seconds per

page and an additional 41.35 hours to produce a schedule of this material for counsel. The Appellants seek 1.5 minutes per page.

Additional documents submitted at the Appeal: Yes

Schedule titled “Clydach Police Station – Material received from disclosure requests – sifted for relevancy”.

This is an appeal against a certain decision by the Contract Manager of the Very High Case Costs Unit of the Legal Services Commission.

In this case we have been provided with representations in writing from both the Appellants and the Respondents. We have also had the benefit of considering oral representations from both parties.

We are requested to make a decision on the items that are in dispute and to rule as to whether to dismiss the appeal, allow it in whole or allow it in part.

This ruling should be regarded as our full reasons for our decision.

In this case the appeal is based on the following:

Disallowance of time

We find as follows:

1. The Contract manager has allowed a total of 250 hours to peruse 25038 pages of unused material based on the rate of 30 seconds a page.

2. Additional time has also been given for a significant scoping exercise in this case. The LSC have indicated that if there are discrete tasks that come to light as a result of this exercise then consideration will be given to allowing further tasks, subject to the usual justification.

   No submissions were made as to any justification for the time purported to be required to undertake the consideration of the material and the preparation of a schedule.

3. The Appellant seek 1.5 minutes a page. Effectively a further minute a page than that allowed by the commission for unused perusal.

4. This case predates the CPIA. This case is about 11 years old since date of charge.

5. We are told as to the concern as to certain activities of the South Wales Police and especially with regard to disclosure and the lack thereof. Reference was made in the course of the appeal to the ‘South Wales Three’ murder trial and the rate allowed in that case. That in itself does not set a bench mark in this or any other case.

6. We have considered the first draft schedule by the defence. We disagree with the suggestion that this schedule would stop duplication of work.

7. There is a real concern as to the enormity of the task as to the review of this unused material.

8. We are aware that there is no dispute as to the actual number of pages of material- the dispute is that of the actual time allowed for considering and scheduling each page.

9. There has been a 'scoping' exercise carried out by the Defence. It is the examination of the already considered material (during the scoping exercise) that forms the basis of this appeal.

10. The case is unusual in many ways not least of which is the huge quantity of documents.

11. We have considered with great care the issues as presented to us in both written terms and orally at the hearing. We are aware of the duties and tasks required to prepare for such a trial. We are also aware of the level of competence required on a solicitor to peruse unused material in such a case. It is our view that the degree of diligence required of a competent solicitor is not affected by the history of the case. It is accepted that the material is voluminous but in our view the time allocated is more than reasonable.

    Accordingly this appeal is dismissed

Appeal by solicitors & counsel –- 27th June 2012

LSC decision upheld

- **Category**

I have considered all documentation provided to me in respect of this Appeal.

I note that the Contract Manager accepts that this case meets one of the Block A Criterion and two of the Block B Criterion. The matter to be considered in this Appeal is whether this case meets one more of the Block A Criterion in order to be reclassified as a Category 2 case.

The two criteria the Appellant maintains are applicable to this case are that the defendant's case requires highly specialised knowledge and/or that the defendant's case involves a significant international dimensional.

1) The defendant's case requires highly specialised knowledge.

Guidance on this criterion has been published at paragraphs 4.17 to 20 of the 2010 VHCC Guidance issued by the CCU. The Guidance inter-alia states that, "The defence team would need to show that a case meeting this criterion involved an area of skill and expertise outside the usual scope of a criminal fraud practitioner's experience……" and "The defence team would need to show both that the defendant's case required this skill and expertise, and that they were able to provide it in house"

The Appellant raises seven individual arguments in support of their claim. I will deal with them individually if so requested but for the purposes of this decision I take the view that none of the issues raised persuade me that the defendant's case requires highly specialised knowledge.

Paragraph 6) of the Prosecution Case Summary states, "While the case involves a substantial number of financial transactions over a number of years, the allegation is in reality quite straightforward". I am of the view that this is supported by the detail provided in the body of the Case Summary.

Money-laundering cases involving money service bureaux are not uncommon and that fact of itself does not indicate that a defendant's case requires highly specialised knowledge. Similar considerations apply to the various related issues of for example, compliance, due diligence and regulation. There is no detail provided by the Appellant as to why the defendant's case requires highly specialised knowledge in respect of the use of the FEDS system, the involvement of Interchange or 500 Euro notes.

It is likely that the Appellant may well possess specialised knowledge in certain areas which will be of assistance to them in the preparation of this case. However, having considered the Prosecution Case Summary and the arguments put forward by the Appellant I do not believe that the defendant's case is such as to require highly specialised knowledge beyond that which would be expected of any practitioner dealing with large fraud cases.

2) The defendant's case involves a significant international dimensional.

Guidance on this criterion has been published at paragraphs 4.21 to 4.24 of the 2010 VHCC guidance issued by the CCU. The Guidance inter-alia states, "For the international dimensional to be deemed, "significant", the defence team would have to demonstrate it had a direct effect on their understanding the case and substantially affected case preparation"

The Appellant raises five individual arguments in support of their claim. I will deal with them individually if so requested but for the purposes of this decision I take the view that none of the issues raised persuade me that the international aspects of this case, which undoubtedly exist, will substantially affect case preparation.

From the information before me I see no evidence to support the contention that from a factual dimensional the Appellant has shown that key elements of the offence were perpetrated abroad and that in analysing these, the defence team would require an understanding of the workings of systems or institutions different from those in the UK. There appears to be no suggestion of a legal dimensional in the Applicants argument.

Appeal by solicitors – considered from the papers by single adjudicator – 12th July 2012

LSC decision upheld

- **Reading time**

This appeal relates to the Contract Manager's decision to grant 300 hours at Grade B to consider the papers served within the 3rd Notice of Additional Evidence. An allowance of 1 minute 30 seconds per page to read and schedule relevant exhibits and 30 seconds per page to read and schedule exhibits which are not relevant was previously allowed.

This is an appeal against a decision of the Legal Services Commisison to allow 300 hours at Grade B rates to consider 79,150 pages of evidence served by the prosecution in a Notice of Additional Evidence which we refer to as "NAE 3".

An allowance of 1 minute 30 seconds per page to read and schedule relevant exhibits and 30 seconds per page to read and schedule exhibits which are not relevant was previously allowed.

We were assisted in this appeal by greatly by the attendance of the Appellant who had a very detailed knowledge of the case and the issues involved.

There was a preliminary issue on which we were asked to rule which was whether the Legal Services Commission, who had not responded in time to the representations of the Appellant, should be allowed to respond orally at the hearing on any matter. We deal with this very briefly. We did ask various questions of the Legal Services Commission representatives in order to assist us. The Legal Services Commission stance was clearly made out in the bundle of papers provided to us and in the chain of e-mails between the parties. The Appellant agreed that questions we asked the Legal Services Commission at the hearing to assist could be answered by them and he had no objection to the matters raised. We are grateful therefore to both sides that common sense prevailed.

The appeal was presented on the basis that previous time had been allowed for reading and scheduling and that none of the directions in 4.31 of the 2010 VHCC Guidance would be necessary to lower the reading allowance per page, applied.

The Legal Services Commission, by an e-mail of the 2nd May, "agreed" 300 hours at Grade B as a "global assessment" of total hours required to read this new material and stated, inter alia, that the majority of the material was not directly relevant to the defendant.

We find this an arbitrary and unreasonable allowance. These exhibits are served evidence in a 16 defendant, very high value "MTIC" fraud. There is a conspiracy involving all 16 and to suggest that a defence team could selectively review the evidence is, we find, an unsustainable approach in this type of criminal litigation. We need say little more in this respect than that the oral representations of the Appellant were entirely accepted in this case and his written representations were persuasive.

We can moreover, keep this decision concise, because it is clear that none of the exceptions in 4.31 applies.

For a lower rate per page to apply than had previously been allowed one or more of the following factors must apply:-

1. "There is a relatively small proportion of evidence relevant, or likely to be relevant, to a particular defendant's case". We have already touched on this. In a multi handed conspiracy allegation with a multi million pound value then a Notice of Additional Evidence of this type is relevant to all defendants. We noted that the test is not "highly relevant" but, even if it were, it is clear from the submissions and representations put before us that in a

case where a defendant is actively defending the charge, and putting forward a potential "cut throat defence" that his legal representatives have to be fully apprised of all served evidence.

2." Evidence served later in the case does not significantly add to or change issues raised by evidence served". This is a significant volume of further evidence and not merely the type of evidence which might be said to fill the gaps or establish a chain of evidence or something of that nature.

3. "There is repetition of evidence" – there is no suggestion of this.

4. "The nature and complexity or otherwise of the material, or significant portions of the material, such that the Contract Manager may reasonably expect that the fee earner can read and absorb its contents at a faster rate". We find that this cannot be the case bearing in mind the nature of the evidence and the submissions we have heard.

5. "It is not conclusive that the prosecution seek to rely on evidence as part of their case against the defendant (for example where the whole of a computer hard drive is listed as an exhibit, but the prosecution have isolated and served separately that portion of it which they see as relevant)". This exception clearly does not apply. This is evidence capable and intended to be part of the case against all defendants.

6. "The Contract Manager" may reasonably expect that a defence team is in a position to deal with matters more swiftly and efficiently given their increased familiarity with the case". We did consider this as a possible exception but the Legal Services Commission were not arguing this and, in any event, the way in which the evidence was described to us made it clear that this is notice of evidence contains new evidence on new issues and is not such where one could reasonably suggest that a defence team could deal with the reading and scheduling more quickly.

7. "The Contract Manager may reasonably expect that a particular defendant ……..instructions, the nature of their defence, may significantly assist the team in focusing on relevant tranches of evidence". We accept that there may be limited cases where this exception applies, but this case is not one of them. The defendant is putting forward an active defence which contains a significant element of cut throat. Therefore the defendant's legal team has to be fully apprised, as we have mentioned elsewhere, as to the nature of the evidence.

8. "The time to read evidence exceeds the time available from the moment of request to the expected conclusion of proceedings". There is no suggestion of this.

Therefore the Legal Services Commission cannot properly reduce the time allowed for reading in this case.

We would add that it is not possible in our view to make an assessment in a case of this nature and volume that these exhibits are not relevant or can be distinguished in relevance or time needed to read them, from exhibits served earlier.

We have all read the fourth draft of the case summary which runs to 171 pages. The prosecution has concluded that "each of the defendants played a controlling role in relation to the various companies involved in the conspiracy to cheat the Revenue. Each of the defendants have their own parts of play in the (sic) ensuring that the purpose of the conspiracy was met and that fraudulent VAT reclaims were submitted with appropriate apparently genuine paperwork to back those reclaims up."

9. "Each of the defendant's companies held accounts through which the proceeds of the VAT reclaims were passed in order remove (sic) those proceeds from the jurisdiction".

This is not a case therefore, and of course we have read the remainder of the lengthy prosecution case summary, where you could say that any of the defendants have a peripheral role in the offence and where one could properly say that exhibits are not relevant.

In these circumstances the appeal is allowed on the basis that the Appellant may expend 30 seconds per page for reading these exhibits and 30 seconds per page for scheduling them. This is assessed on the basis that whilst we have concluded that all exhibits have to be read and may be of relevance and significance, it is impossible to know whether they are directly relevant or indirectly relevant until they have all been assessed, and indeed both parties to the appeal conceded this. Therefore our allowance is an average of the two rates allowed by the single adjudicator.

This is to be allowed at Grade A rates. Bearing in mind that the time is appropriate there is, and has been no reason put forward, as to why the grade should be lowered. This is a substantial very serious fraud allegation against the defendant where the Legal Services Commission previously agreed that Grade A fee earners may read the papers and be remunerated as Grade A fee earners. There is nothing presented to us which suggests that this should change.

Appeal by solicitors –- 18th July 2012

LSC decision overturned

- **Category & preparation**

  The Contract Manager agreed a rate of 30 seconds per page to schedule the served evidence; this is to date limited to all witness statements, interviews and 84,464 pages of exhibits. The appellant requests an increase to 1 minute per page for all documentation, which equates to 1522.9 hours at Grade B.

  The Contract Manager submits that the appropriate classification is category 3. The Appellant deems this to be a category 2 case.

The Appellant has appealed against two decisions of the Legal Services Commission Contract Manager. This appeal was decided by us on the papers submitted by both parties without any oral representations.

Appeal 1 categorisation.
The Appellants submit that this case should be categorised under category 2. For this appeal to succeed they need to show there are two criteria satisfied from "Block A" in the Complex Crime Client Assessment sheet and at least two a's and b's from Block B. A copy of the assessment sheet is attached for the sake of clarity.

The representations on Block B are incontrovertible and fully accepted therefore.

In Block A there is no doubt that the case involves a significant international dimension.

The Appellant argues that the defendant's case requires legal, accountancy and investigative skills to be brought together. However no accountancy expert has been instructed and there has been no application for prior authority to instruct such an expert. It may be that the case <u>will</u> require all three skills to be brought together but that is not the test. The test is expressed as "the defendant's case requires…" and, by definition, until accountancy skills are utilised a case cannot require accountancy skills to be brought together with investigative and legal skills. This part of the appeal therefore fails.

2.This is an appeal against time allowed for scheduling the witness statements and exhibits.

The Appellants state that 30 seconds per page, which has been allowed for scheduling, is not reasonable based on the fact that the first 70 pages of witness statements has taken them 2.2 hours to schedule. At 30 seconds per page that would amount to only 35 minutes of time. However 70 pages out of more than 84,000 pages served is simply not a representative sample. In short we agree entirely with the contract manager's response.

This part of the appeal therefore also fails and is demonstrably premature.

LSC decision upheld

- **Reading time**

The appeal relates to the Contract Manager's decision to allow 300 hours for the defence team at Grade B rates for reading a Notice of Additional Evidence containing 79,151 pages. The appeal also relates to time allowed for counsel to read the exhibits. The time of 300 hours includes solicitors and both counsel.

This is an appeal by the Appellant Solicitors against the decision of the Legal Services Comission to allow 300 hours for the defence team at Grade B rates for reading a Notice of Additional Evidence containing 79,151 pages.

The appeal is set out fully, but concisely, in the Appellant's written submissions at pages 1 to 7 of the bundle presented to us. The Contract Manager's reasons in support of the decision are set out, clearly and concisely, in his response at pages 8 to 12.

The appeal also relates to time allowed for counsel to read the exhibits and we believe there is a defence team allowance, including counsel. Of course that would not be at Grade B rates but the rates appropriate to counsel, it is clear that the Contract Manager had in mind a time of 300 hours to include solicitors and both counsel.

We deal first with the Grade B rate which the Legal Services Contract Manager suggests. This decision is straight forward to us. Grade A rates had previously applied to this task in relation to evidence previously served. There is no reason to depart from the earlier decision. Indeed we asked the Contract Manager if the decision to allow hours at Grade B was a mistake based on the fact that he may have thought that Grade B rates previously applied. He said it was not a mistake but his justification for Grade B did not begin to address why the work had previously been allowed at Grade A and was now being allowed at Grade B. There was some suggestion that the new evidence may be of a less complex nature but we do not accept that and our reasonings in relation to the time to be allowed, which followed, expand on that issue.

So far as reasonable times for reading the material is concerned the Legal Services Commission would have to demonstrate reasons to lower the allowance under paragraph 4.31 of the 2010 VHCC Case Guidance. It was agreed by the Contract Manager that paragraph 4.31 is where the appropriate test is contained. In our judgment none of those reasons applies.

1. “There is a relatively small proportion of evidence relevant, or likely to be relevant, to a particular defendant’s case”. We have already touched on this. In a multi handed conspiracy allegation with a multi million pound value then a Notice of Additional Evidence of this type is relevant to all defendants. We noted that the test is not “highly relevant” but, even if it were, it is clear from the submissions and representations put before us that in a case where a defendant is actively defending the charge, and putting forward a potential “cut throat defence” that his legal representatives have to be fully apprised of all served evidence.

2.” Evidence served later in the case does not significantly add to or change issues raised by evidence served”. This is a significant volume of further evidence and not merely the type of evidence which might be said to fill the gaps or establish a chain of evidence or something of that nature.

3. “There is repetition of evidence” – there is no suggestion of this.

4. “The nature and complexity or otherwise of the material, or significant portions of the material, such that the Contract Manager may reasonably expect that the fee earner can read and absorb its contents at a faster rate”. We find that this cannot be the case bearing in mind the nature of the evidence and the submissions we have heard.

5. “It is not conclusive that the prosecution seek to rely on evidence as part of their case against the defendant (for example where the whole of a computer hard drive is listed as an exhibit, but the prosecution have isolated and served separately that portion of it which they see as relevant)”. This exception clearly does not apply. This is evidence capable and intended to be part of the case against all defendants. The Appellant was particularly persuasive on this point.

6. “The Contract Manager” may reasonably expect that a defence team is in a position to deal with matters more swiftly and efficiently given their increased familiarity with the case”. We did consider this as a possible exception but the Legal Services Commission were not arguing this and, in any event, the way in which the evidence was described to us made it clear that this notice of evidence contains new evidence on new issues and is not such where one could reasonably suggest that a defence team could deal with the reading and scheduling more quickly.

7. “The Contract Manager may reasonably expect that a particular defendant ……..instructions, the nature of their defence, may significantly assist the team in focusing on relevant tranches of evidence”. We accept that there may be limited cases where this exception applies, but this case is not one of them. The defendant is putting

forward an active defence which contains a significant element of cut throat as, it seems, are other defendants,. Therefore the defendant's legal team have to be fully apprised, as we have mentioned elsewhere, concerning the nature of the evidence.

8. "The time to read evidence exceeds the time available from the moment of request to the expected conclusion of proceedings". There is no suggestion of this.

In house counsel from the Appellant firm appeared and made representations. We asked him what he regarded as the overall relevance of the new material served and he stated, inter alia, that there were significant accounting records showing lifestyle of co-defendant. He explained that this is a cut throat defence. He was at particular pains to state that his client was putting forward a positive defence. This is not a case where a defendant is, and we quote him, saying that he "heard no evil, saw no evil and did no evil". He is stating that he is not guilty and that his defence encompasses a strong cutthroat element and a positive case that he was not involved in any criminality. Such a case in such a large scale operation, where there is a conspiracy with all the defendants, inevitably requires a full and detailed knowledge by the defence team of all the evidence served. Mr Hickey stated that in fact it would be negligent not to peruse the evidence in the same detail as previous evidence had been perused.

His oral representations and the written representations are accepted. We find the allowance of 300 hours by the Legal Services Commission to be arbitrary. The Legal Services Commission did not satisfactorily explain to us that 300 hours was suggested as a "starter time" to read the papers. The Contract Manager did say that for 300 hours it would have been "very likely, that further time would be allowed but that contrasts with the text of his e-mail of Thursday the 3rd May which states "this allowance is not based on any specific rate per page, but is instead a global assessment of the total hours deemed reasonable for this batch of exhibit".

In any event we unequivocally reject the suggestion, based on our reading of the prosecution case summary, the submission we have heard and the written submissions, that a defence team could in a case of this nature, have to come to any decision or conclusion that certain sections of the evidence are relevant and that certain sections are not.

We therefore allow this appeal in full with the appropriate times for the defence team as follows:-

1. 30 seconds per page to read this material.
2. 30 seconds per page to schedule the material.

That is for solicitors at Grade A rates.

3. 30 seconds per page for leading junior to read the material.

4. 30 seconds per page for led junior to read the material.

The Contract Manager asked us if we would consider, in our decision, making comments which might assist both parties how to deal with a further 20,000 pages of exhibits (i.e. in relation to reading and schedule times) which have subsequently been served. Whilst we could bring our own views and expertise to this issue we have taken the view that it is outside our remit. The defence team must make their representations as to reading and scheduling time in the normal way and the Legal Services Commission must deal with those submissions having proper regard to the Regulations.

Appeal by solicitors - 18th July 2012

LSC decision overturned

- **Category**

The appellant deems this to be a category 2 case; the Contract Manager submits that the appropriate classification is category 3.

This was a hearing on the 18th July 2012 to consider submissions on category. We were assisted by the written submissions from both sides, supplemented orally during the hearing. The defence sought to demonstrate that there 'significant international dimension' that would lead to a category uplift from 3 to 2.

The defendant has been charged with cheating the public revenue and 1 count of using or transferring criminal property. It is sufficient to say that this is a multi-million pound MTIC fraud.

The defence case is that the dealing in this case was all legitimate, and the Appellant told us that 'if there was a wider fraud the defendant was unaware of it.' It seemed to us that this is very much a confess and avoid defence.

We accept the LSC submissions that records from the First Curacao International Bank ('FCIB') do not add the adjective 'significant' to the international elements in this case. We do not find that the Nokia evidence, although of course from abroad, assists in uplifting the category because it is discloses essentially a problem (if that is the right description) in their record keeping and data recording at the relevant time; issues arising from it go either to abuse of process or credibility.

Some prosecution evidence or disclosure relating to company material has been received by the defence. We were not told what it was; the defence have had about 100 pages since March/April and 'need to look at it'. However, despite this we were told that the defence team has a full set of instructions; it is a proper inference that the defendant must have provided instructions, and if material has been unread for 3 months we conclude that the defendant hasn't mentioned it either as a concern or a benefit to him.

We were told that the defence have had no cause to make enquiries abroad, 'yet'. The Appellant said that they 'need to make foreign enquiries', but we were not given any evidence based information that enabled us to gauge the extent of how the international

element is significant; the high point was the need to 'look at deals with EU companies' affecting their client. In isolation we did not find any foreign element to be significant, and when we aggregated the factors we still felt that on the information before us there was insufficient material, so far as this defendant is concerned, to merit a recategorisation.

In conclusion, we were not persuaded on the oral or written representations made that the guidance criteria in paragraphs 4.21, 4.22, 4.23 were made out. Notwithstanding that the case has international elements, the Committee did not feel that the case pertaining to this defendant had a "significant" international element. The appeal therefore fails.

Appeal by solicitors - 18th July 2012

LSC decision upheld

- **Category**

The contract manager has assessed the case as a category 3, accepting only one criterion – Legal, Accountancy and Investigative Skills – is met. The appellants submit that sufficient criteria are met to justify a category 2 and rely also on Highly Specialised knowledge and Significant International Dimension.

This was a restored hearing on the 18th July 2012 to consider submissions on category. We were assisted by the written submissions from both sides, supplemented orally during the hearing. The defence abandoned 'highly specialised knowledge' and focussed on the 'significant international dimension'.

The defendant has been charged with cheating the public revenue and 3 counts of using or transferring criminal property. It is sufficient to say that this is a multi-million pound MTIC fraud.

We found that the defence case requires a pro-active approach. In his initial interviews the defendant put forward the international aspects of his defence. It involves positive assertions advanced, and the defence will have to try and construct an evidential foundation therefor.

There are issues to be explored relating to due diligence enquiries in three foreign jurisdictions – Madrid, Dubai and Eire - given the defendant's case that all sales were legitimate business transactions. The defendant does not accept that the insurance position set out in the material obtained from Israel (a fourth jurisdiction) is accurate and alleges 'deviousness' between the Israelis and Norwich Union Insurance Company.

We noted the position with the evidential attack to be made on the former defendant P, and the current defendant W. Although the case against P has been stayed, the defence case will involve investigations into the activities of P's companies and his inspection reports for goods that had come from or were destined for abroad. P banked with the First Curacao International Bank ('FCIB'), and his records will need to be checked. The defence also plan to attack W in evidence by seeking to demonstrate that he was involved in international trade before this defendant was innocently involved; they will thus construct their own case against him.

By itself we did not regard the cut-throat element as persuasive, and we agreed with the LSC representations that the FCIB material did not add a 'significant' element to the foreign dimension. It is standard evidence that ought to be easily assimilated by VHCC practitioners. We were not persuaded that the evidential problems caused by the 'Nokia evidence' in isolation gave rise to a 'significant' foreign element, and similarly defence concerns about Dutch and French material did not seem to us determinative.

However, we were satisfied that when all matters raised were aggregated, the international dimension in this case, and we stress this is as it affects this defendant, can

properly be regarded as significant, and thus we allow the appeal by increasing this case to a category 2 level. The guidance criteria in paragraphs 4.21, 4.22, 4.23 were made out.

Appeal by solicitors - 18th July 2012

LSC decision overturned

- **Reading time**

Reading time: Following the change of counsel the Contract Manager agreed 69.1 hours for reading core documents for each counsel whereas the Appellants request 118 hours for each counsel.

This is an appeal by Counsel in the above matter against the number of hours allowed by the LSC for reading the core documents in forthcoming POCA proceedings. The Appellant asked for 118 hours for each Counsel whereas the LSC allowed 69.1 hours.

In considering this appeal the Committee were informed by the Appellant that change of Counsel to conduct the POCA proceedings was at the insistence of the lay Client. The LSC are under a duty to avoid funding duplication of work which self-evidently would arise with a change of Counsel.

However in a case of this nature and where the majority of evidence was served as long ago as 2009 a re-reading of core documents is justified irrespective of any change of Counsel given the additional considerations attendant upon conducting POCA proceedings.

Here we are advised that the Prosecution and the defence are even in conflict over agreeing core issues such as the schedules determining the Clients benefit figure.

In the light of the above we are persuaded that whether original or replacement Counsel had the conduct of the POCA proceedings an extensive re-read of the core material is required. However Counsels schedule detailing the documents to be re-read contains some duplication of material and this is reflected in our decision to allow 95 hours to each Counsel to consider the material which is the subject matter of this appeal.

Appeal by counsel – 22nd August 2012

LSC decision upheld in part

- **Pre-contract assessment**

Time to complete Legal Aid application refused
Refusal to allow time for attendance notes
Allowance of 15 seconds per photograph
Refusal to allow skim read of evidence as well as subsequent detailed read

The Adjudicator has carefully considered the merits or otherwise of each individual item in dispute.

The findings of the Adjudicator are as follows:-

1. Refusal to allow time to apply for Legal Aid. In all the Adjudicators years of experience he has never been granted time to apply for Legal Aid. The only exception to this blanket refusal is in Central Funds cases which are not governed by Legal Aid regulations. The Adjudicator agrees fully with the Contract Manager that this is an administrative task. In any event an experienced practitioner should complete forms 14 and 15 in no more than half an hour and that a well taught Clerk should be able to master this administrative task. The Adjudicator therefore disallows the appeal in respect of this item.

2. Preparation of attendance notes. The Adjudicator agrees with the Contract Managers view and decision that short attendance notes which merely state that something has been done is administrative and not payable. The Adjudicator has spent a considerable amount of time considering all the attendance notes submitted. Whilst most notes are a mere confirmation that something has been done in fairness some of the lengthier notes amount in the view of the Adjudicator to summarising and scheduling but only a small proportion. Most notes claim only a nominal 6 or 12 minutes allowance. Accordingly in respect of this item the Adjudicator is prepared to allow a total of 4 hours on this occasion to reflect those detailed summaries of work carried out.

   May the Adjudicator respectfully suggest that this item of dispute would have been avoided by closer liaison with the Contract Manager prior to commencement of the relevant Stage?

3. Perusal of photograph exhibits. It is customary in VHCC cases to allow less time to peruse photographs than documentary exhibits, depending of course on the content of the images. Whereas 6974 photographs have been served the Adjudicator has been sent a disc containing 146 photographs. If the Adjudicator is to overturn the decision of the Contract Manager a greater sample of photographs will have to be forwarded and quite candidly the Adjudicator would have to see more complex images than empty drinks bottles and tables. At present the Adjudicator rejects the appeal in respect of this disputed item.

4. Skim read of evidence during Stage 0 and the request for a second read to be allowed at full reading rates. The Adjudicator has read in detail the representations of both sides and he takes into account his own vast experience of VHCC cases in the course of which it has become quite clear that the duplication of reading evidence, however justified , it is not allowable on a VHCC case. The Adjudicator sees no reason whatsoever to overturn the decision of the Contract Manager and accordingly the appeal in respect of this disputed item is disallowed.

Appeal by solicitors – 30th August 2012

LSC decision upheld in part

- **Disbursement**

Not to allow costs of £1,152 (8 hours at Partner rates of £144 per hour) for a forensic accountant to provide an opinion normal banking practices for a person managing a property portfolio and normal practices in respect of cash transactions for someone from the Asian community.

The defendant's trial is due to be fixed to commence in 2013. She faces two counts on an indictment namely count eight acquiring criminal property and count nine concealing criminal property. The case against her is effectively one of money-laundering in that it is alleged that money is laundered through the bank account of this defendant. It is also alleged that she built up a large property portfolio that was inconsistent with her declared income.

The defence will have to maintain that she did not know or suspect that the money coming from her husband was the proceeds of criminal conduct as the prosecution allege. The defendant maintains that her husband repaid her money from various bank loans that she had given him over the years and in addition he would pay her for her school children's fees. Those debts or fees represented monies going through her account in cash which she believed were legitimately earned in the course of his business and all other money at the relevant time was derived from salary, rental income and money leant to her by family and friends.

I have read the defence advice to instruct a forensic accountant prepared by the advocate dated 15th May 2012, the case summary, the representations made to the Contract Manager by the appellant and response from the Contract Manager together with the supporting documentation. The examples provided within the curriculum vitae of the accountant are wholly different schemes from the alleged criminal conduct alleged here.

The appellant has chosen to request a forensic accountant to provide an opinion on normal banking practices for a person managing a property portfolio and normal practices in respect of cash transactions for someone from an Asian community. The appeal is prior to the outcome of the reconciliation exercise for which instruction of a forensic accountant has been agreed. I believe that the applicant is entitled to make such an application however I reject the application and dismiss the appeal.

In establishing the defence case the defendant will have to maintain that she did not know or suspect the monies coming from our husband were the proceeds of criminal conduct if in fact they were and clearly needs to concentrate on establishing those items identified in the advocate's advice on page 3 paragraph 7 eight and nine.
I dismiss the appeal in that it is unreasonable to expect a forensic accountant to provide such general advice so far as it could assist with this Defendant's individual case. I agree with the reasoning provided by the CCU.

Appeal by solicitors – 2nd September 2012

LSC decision upheld

- **Preparation**

The appeal covers two stages. The first part relates to work being completed in the current stage, stage 6, which runs from 6 August 2012 to 16 September 2012. The second part relates to the pre-contract stage which ran from 9 February 2010 to 6 January 2011.

DECISIONS

Stage 0 Tasks

1. Payment of half of the scheduling paid at Grade C Standard Rate.

The committee's decision is that all scheduling be paid at Full Grade C Rate.

2. Consideration of 300 pages reduced from 4 hours to 2.5 hours.

The committee's decision is that the 4 hours be paid.

3. Preparation of brief reduced from 6.5 hours to 4 hours.

The committee's decision is that 6.5 hours be paid.

BRIEF REASONS:

All Stage 0 Tasks will be carried out without advance approval. In the circumstances work is done without any commercial certainty on the part of the solicitor / counsel. In assessing the reasonableness of the hours claimed for such work it is important that the assessment of what work was reasonable is not over informed by hindsight; a point raised by the CM as well as the appellant.

In relation to No.1 above the CM accepted that all the scheduling related to legal and not administrative work. That work having been done by the appellant we saw no reason to pay anything other than full grade C rate. In relation to No's 2 and 3, which involved a difference of 1.5 and 2.5 hours, we took the view that the time claimed was reasonable and should be paid.

Current Stage Tasks

It was clear to the committee that there was considerable common ground between the appellant and the CM. The size of the claims in Task 45b and Task 64 presented an opportunity for a compromise agreement and following the suggestion of Julie Stanhope time was given for discussion between the parties. An agreement followed and hence we make no decisions on these tasks.

Appeal by solicitors – 18th September 2012

LSC decision overturned

- **Pre-contract assessment**

To allow the Appellant's pre-contract consideration of 4139 pages of served prosecution evidence at a rate of 30 seconds per page (a total of 34.50 hours).

To allow the Appellant a total of two hours for the drafting of an Advice for Two Counsel.

Grounds of Appeal

1. By a timely appeal dated 4 July 2012 the Appellant counsel challenges two decisions of his Contract Manager dated 18 June 2012.

a. To apply a rate of 30 seconds per page to 4139 pages of served prosecution exhibits which were considered at the pre contract stage by the Appellant; and

b. To allow a total of 2 hours for an original Advice for two Counsel dated 23 September 2010 and no time for an addendum application for Junior Counsel dated 15 February 2012. Both of which were prepared by the Appellant.

2. Whilst considering my decision I have reviewed:

a. The Appellants VHCC Appeal Representations Form dated 4 July 2012 containing the written submissions the Appellant makes.

b. The Contract Manager's VHCC Appeals Response Form dated 19 July 2012 containing the Legal Services Commission's submissions opposing the Appeal.

c. Some documentation which I have assumed to be examples of served Prosecution exhibits in this case which are numbered in the bottom right hand page corner as page 207 – 227 inclusive; page 233-266 (forensic Report dated 4 October 2010); and page 267-299 inclusive.

d. A 7 page application for Junior Counsel prepared by the appellant dated 23 September 2010.

e. A 3 page Addendum Application for Junior Counsel prepared by the appellant dated 15 February 2012.

f. A Crown case summary (Regina –v- K and others) prepared by prosecuting counsel dated 29 March 2012 which is 100 paragraphs in length.

g. VHCC Appeal Panel Arrangements 2010.

3. a. I note that the Appellant has made no representations on the need for an oral hearing before a committee in relation to this appeal. Nevertheless I have, in accordance with Regulation 16.4 VHCC Appeal Panel Arrangements 2010, considered whether it is in the interests of justice to refer this appeal to a committee.

b. I do not consider this appeal is exceptionally complex or significant or that any other relevant interests of justice features arise from this appeal. It is therefore appropriate for this appeal to be decided by a Single Adjudicator.

4. The Appellants submissions are succinct in support of his appeal. He contends that the Legal Services commission should remunerate him for the approximately 99.5 hours he spent considering the 4139 pages of exhibits and the 3.25 hours he spent drafting an initial advice and later addendum for two Counsel. I note that the imposition of a 30 second formula for exhibit consideration and a 2 hours total allowance by the Legal Services Commission for advices on two Counsel would result in over 65 hours of time spent by the Appellant pre-contract being disallowed.

5. I have considered the Contract Manager's submission which I summarise as follows:

i) Exhibits

a) The payment rate to the Appellant for his pre contact exhibits consideration should be in this case the 30 second per page norm as expected in the 2010 VHCC Guidance.

b) This allowance of 30 seconds per exhibits page has been applied and accepted by

this defence team after the contract was signed.

c) The pre-contact exhibits consideration by the Appellant equates to nearly 1.5 minutes per page and no detailed substantive argument as to why the material took this length of time to consider is put forward by the Appellant to the LSC.

d) The exhibit material in this case is typical of cases of this type of fraud which generally attract the 30 seconds per page starting point norm adopted by the LSC.

ii) APPEAL ADVICES

a) The drafting of Advice for two Counsel are routine in VHCC cases.

b) "Two hours is the generally expected norm by the LSC for such an Advice".

c) QC'S were granted for all Defence Teams in this case.

CONCLUSION

1) Exhibits Consideration

a) I, like the Contract Manager in this case, am not persuaded by the Appellants written arguments that the complexity of the material requires a higher remunerated allowance of other than 30 seconds per page for the 4139 pages of exhibits that the Appellant considered pre-contract.

b) I note that the Contract Manager has, in fact, allowed a total of 2 minutes per page for the Forensic Report which I presume to be pages 233-266 of the example exhibits referred to above.

c) I also note paragraph 6 of the Prosecution case summary dated 29 March 2012 referred to above, which states "while the case involves a substantial number of financial transactions over a number of years, the allegation is in reality quite straightforward".

d) I therefore dismiss this part of the Appellants appeal.

2) Advice(s) on two Counsel

a) I am not persuaded that more than 2 hours should be allowed by the LSC for the drafting of the Application for Junior Counsel document which I have seen as dated 23 September 2010.

b) I am persuaded that some remuneration allowance should be allowed by the LSC for the addendum Application for Junior Counsel, which I have seen as dated 15 February 2012 (and referred to as dated 16 February 2012 within the VHCC Appeals Representations of the Appellant).

I believe that a 30 minute remunerated allowance should be paid to the appellant by the
LSC for this work.

c) To the extent only of subparagraph 2b above, I allow this part of the Appellants appeal.

Appeal by counsel – 26th September 2012

LSC decision upheld in part

- **Preparation**

For convenience I shall use the same format and lay out as used by the appellant in the original document.

1 <u>Items/ tasks which were not agreed but which were deferred until audit</u>:
(I would wish to comment that this is a highly precarious way in which to proceed with a VHCC contract, it undermines the whole purpose of VHCC arrangements and is always likely to lead to problems. It introduces an ex post facto element of taxation which should be avoided at all costs!)

1.1 Tasks 16-18 of Stage 2

- It seems to be agreed that this is USED evidence and that the tasks were for BOTH perusal AND scheduling of Financial evidence.
- It also seems to be agreed that whatever has been paid HAS been at Grade A rates.
- The issue to be resolved therefore is how much per page is appropriate.

I take into account all of the representations made on both sides.
Inevitably with a high volume of material time allowed has to be averaged to cover irrelevant, relevant AND highly relevant material. It has to be a broad-brush. It cannot be precise and detailed otherwise solicitors would end up spending a disproportionate amount of time justifying to the LSC the approach taken , in comparison to the time taken in conducting the work itself.

Clearly digital evidence is far more convenient to convey, transfer, hold and store compared to paper evidence. But it is hard to understand how an approach is taken that allows such a discrepancy of time allowed between dealing with hard-copy evidence in comparison to disc/ hard-drive evidence.
Experience tends to indicate the opposite that is that unless analytical search and sifting computer software is used (and there is no suggestion of it here) it can be considerably more time-consuming to handle, (that *is peruse and schedule)* digital evidence rather than paper evidence. The process involves time lags in electronic retrieval and scrolling back and forth which is more time consuming than the mere physical turning of a page and scanning with one's eyes.

However where there is clearly a quantity of irrelevant evidence an approach of less than the conventional approach of 1 min per page for paper exhibits is appropriate. **<u>I cannot see how less that 30 seconds per page would be realistic or fair or allow adequate remuneration and to that extent I allow the appeal</u>**

1.2 <u>Perusal and scheduling of hard drive evidence</u>
The LSC raise what is a preliminary point, that a telephone conversation with the appellant (not evidenced by an attendance note so far as I can see) indicated that the

task was completed within the time initially allowed . The Appellant says that there must be some misunderstanding and that if such a conversation took place it was not about Task 31.

Where there is doubt or apparent doubt or possible misunderstanding I give the benefit of doubt to the Appellant and **agree to consider the appeal on its merits** .

Then there are a number of other preliminary issues to be stated and resolved

1 It seems agreed now that this task is referring to UNUSED evidence .

2 It seems that an **initial** allowance was asked for(*) and made for 150 hours of grade B and 10 hours of Grade A.. I note that 15 sec's per page is cited was asked for but the rate of 5 sec.s per page was allowed.

*NB I do not have before me a copy of the original task list as submitted by the Appellant for consideration by the CM. If it is relevant to resolve this issue I shall need to be shown a copy.

3 If 2. Above is correct, then surprisingly no further time seems to have been asked for/agreed. Is it agreed by both sides that no further time was asked for?

I have seen, at page 25, of the appeal bundle the task list (which appears to be either the submitted "claim version" or the "audit version" of the task). A specific number of hours requested/ agreed for this task of 10 hours Grade A and 150 hours Grade B.is cited I contrast that with the task below , where for Grade B the entry is "TBC", which I take to be " To Be Confirmed".

I therefore remain uncertain as to whether the 10 hours and 150 hours were what was originally asked for by the Appellant (unlikl;ey I agree) when initially submitting the stage task list , or merely this is what the CM allowed when considering the task list.

Clearly the Appellant knew that the page rate of 5 sec per page was lower than the 15 secs per page asked for.

It is relevant because if the Appellant was unhappy with either the rate or the actual hours allowed it seem to me that the Appellant should have appealed at that time and NOT have :

1. Left the issue at large until audit,

2. Continued the work beyond the time allowed, without asking for more time,

All of this however is inconsistent with this item falling into the category of :

"Items/ tasks which were not agreed but which were deferred until audit". It may be when this task list was submitted then this task also had "TBC" alongside the task.

At this time, subject to any answers to the points I raise, I minded to adjudicate that the Appellant's failure to resolve either the rate or the number of hours as allowed causes this element of the appeal to fail due to failure to either appeal or ask for more time. I emphasise that this is provisional upon there being any further representations.

2. Tasks agree which were disallowed on an ex post facto basis

2.1 Tasks 23 and 32

These have been resolved between the parties and I do not have to consider the appeals

2.2 Tasks 20& 30

Whilst obviously powers must exist for a Contract Manager to take action to deal with irregularity, fraud or gross misrepresentation by a solicitor prior to the task being agreed, in my view it would be rare and exceptional for an agreement on tasks and grade of fee-earner such between contract manager and solicitor to be ignored. It undermines the whole concept of the VHCC system.

Further it is a dangerous to always equate work "product" in terms of number of pages and/or content of a document produced by a solicitor's office with hours spent undertaking the task, responsibility held in conducting the task by the relevant fee-earner and the overall benefit to the case preparation of the senior fee-earner conducting such tasks . (I remind myself that for much larger number of hours, for much more nebulously worded tasks both leading and junior counsel are rarely asked for any work " product" and merely produce a "log of hours " claimed.)

It is hard to see in this case how ignoring the original agreement justifies the hours allowed to be slashed by 60% and grade reduced from the effective case manager in the solicitors office to a mere clerk level.

It seems to me that both these items should be allowed as appealed

I am grateful for the additional representations and whilst not wishing to prolong the remarks about leaving tasks "open-ended" let me make clear that my remarks in my first adjudication about doing so was not intended as a criticism of one party or the other to the arrangement, but more a strong caution to both sides .. or indeed a criticism of both . It is well understood that preliminarily it may be necessary to start a task with an open ended arrangement until the size or nature of work has been assessed and a definite number of hours then agreed / appealed against, to allow a time-rate to be unresolved and to go all the way to audit seems fool-hardy on both sides and inevitably increase the risks of appeals such as this one .

Since there does not appear to be any dispute that it was allowed to run in this way and no set hours were agreed , then ignored by the appellant, the stance I take is to decide what is reasonable for the task involved .

For reasons stated in the earlier adjudication , electronic material is more often that not harder/slower to access and peruse/sift that written material . Amongst other things the time taken for electronic retrieval once the item has been selected can easily take the all of the 5 seconds/pp the Contract Manager proposed ; also it is not possible to "flick-and glance", at the nature of a number of similar documents , in the way it is possible to do with hard copies. The Solicitor's duty to his client involves being able to say that every page has been looked at. Even on a swings and roundabouts basis 5 Seconds /pp is unrealistic.

I understand that 100,000 pages were accessed not 300,000.
I consider 15 seconds per page is reasonable. This would give a figure greater than the amount claimed by the Appellant

For these reasons I allow the figure as claimed by the appellant in respect of task 31

Appeal by solicitors – 11th October 2012

LSC decision upheld in part

- **Reading time**

Contract Manager's original decision:

To allow 10 hours at A or B grade to sift 4,671 pp of unused material. The Appellants are requesting 1 min/page to review the material in full

I have considered the papers provided by the appellant solicitors, and those papers provided by the Legal Services Commission.

My decision is that the appellant should be allowed to consider the unused material on the basis of 30 seconds a page at B Grade.

My reasons are as follows:

I am persuaded that in this case the unused material is potentially very important to the appellant's client's case. In their response to the contract manager's initial decision para 1 they argued that the S &Co material is more important than other unused material as it is potentially directly relevant as to whether the property, the subject matter of the charge, is in fact criminal property. In their client's case they feel that if they can establish that the sums, the subject matter of the charge, are not criminal property then the Crown's case will fail.

In the circumstances of this case ''a sift of material'' would not be appropriate, as the 5 seconds per page suggested would not in my opinion be sufficient time for an appropriate fee earner to make a judgement as to relevance.

In this particular case, and because the appellants are relying upon establishing innocent provenance of the monies under dispute, it is important that the general flow of monies through the target organisation is considered – hence my reasoning that they should be allowed 30 seconds a page to consider relevance

Appeal by solicitors – 16th October 2012

LSC decision upheld in part

- **Travel**

The Appellants say that the defendant is impecunious and does not have the means to travel to Manchester to enable the Appellants to take instructions. They therefore wish to attend him at his home.

I have seen the family's statement of income and expenditure and note that they are able to run a car and pay a golf club subscription. I also note that at the end of October the defendant will be able to withdraw £250 per week from his restrained funds. It would be unreasonable in these circumstances for the Appellants'' travel time and mileage to be publicly funded.

Appeal by solicitors – 18th October 2012

LSC decision upheld

- **Preparation**

I have had the opportunity of reading submissions in this case.

It is always difficult to determine with precision the amount of time required to prepare for a retrial and even more so when additional defendants are on the indictment. Different tactical considerations are required.

What is apparent in this case is that all of the material has been considered previously and presumably scheduled. That must be an appropriate starting point. A complete reread cannot in those circumstances be justified.

One also has to bear in mind the defence team have to work together.

The 80 hours proposed by the contract manager for the witness statements, interviews telephone evidence index to financial and unused appears eminently reasonable. That is 2 weeks work for both counsel and solicitor.

Quite correctly the defence team have identified specific financial exhibits that now have greater significance in the second trial and they will have to be considered in a new light. One however cannot justify a complete re read. I understand that there are 25500 relevant pages. It appears that 150 hours was authorised for this and was accepted by those instructed. That to me appears to be reasonable especially as it has been accepted by those instructed in an email dated 3rd may 2012. In total that permits junior counsel and solicitor just under 4 weeks worth of work. I anticipate that counsel will have also sought time for trial preparation though I am not asked to reach a determination in relation to that but such a request would be reasonable. This will be in addition to a basket of hours during the trial.

The total period of time therefore authorised to consider the material in light of the retrial is 155 hours for solicitor and 155 hours for junior counsel.

Appeal by solicitors & junior counsel – 19th October 2012

LSC decision upheld in part

- **Reading time**

The appeal relates to the adequacy of the time allowed by the CM to consider material copied to the appellant by the police. The material amounts to a large number of files variously referred to as conveyancing files, mortgage applications and property transactions, worked upon by the defendant in his professional capacity. This material whilst not amounting to used or unused material is of significant importance to the defence as it is said to contain evidence consistent with innocence.

The time allowed by the CM is 15 seconds per page amounting to a block of 365 hours at Grade A. The appellant argues that this time allowance is inadequate and hence an unreasonable amount of time to consider the material.

THE DECISION

The appeal is dismissed.

REASONS

1. The defendant must be familiar with the contents of the files and able to assist with the consideration of the same; they are his files. The highlighting of factors that are inconsistent with fraud or point towards honesty must be a relatively straightforward task for him to flag-up. It is only common sense that, in circumstances where the files are his files, the defendant himself should assist. This is particularly so when he is a solicitor with far more experience of property transactions than the criminal defence team representing him.

2. It is too simplistic to look at the rate per page, the more important figure is the block of hours. There will always be elements of the file that can be almost ignored and the cumulative saving on time can be significant. When the work ahead is very similar to work that has already been done, over a significant number of hours by a Grade A solicitor, the task of recognising the good and bad points in the file will become more efficient.

3. The work is being funded at the very top rate of Grade A solicitor. The expertise and experience inherent in that status supports my opinion that the time allowance is reasonable. This is especially so when the equivalent two months of solid work on the material is being funded.

4. Whilst there are hints that some or all of the material under consideration may become used material, it does not have that status at the moment. The CM has indicated that the allowance will change if the material becomes used or even unused material.

5. The defence have been granted funding for an expert to consider a sample of the material under consideration; 22 files selected by the appellant and the defence expert.

Appeal by solicitors – 23rd October 2012

LSC decision upheld

- **Category**

The Adjudicator has had the benefit of a substantial amount of documentation in this matter to include all the documents listed on the attached Index together with further representations from the Appellant contained in an e-mail of the 24th September 2012 timed at 14.21 hrs.

This is an appeal in relation to case categorisation.

The Appellant asserts that the case of [redacted] should be a category 2 case.

There is no dispute between the parties that the relevant Block B criteria are met.

It is further accepted by the Commission that the fourth criteria of Annex C, Block A, sub paragraph 4 are met namely that the defendant's case requires legal, accountancy and investigative skills to be brought together.

The contention between the parties is as to whether Annex C, Block A, paragraphs 1 and 2 are satisfied.

The Adjudicator has not been supplied with the relevant media articles that go to Paragraph 1 but that is an issue that can be put to one side for the purposes of this adjudication.

The representations received, in the opinion of the Adjudicator, quite properly focused almost in their entirety on whether the defendant's case requires highly specialised knowledge.

The Contract Manager has contended that there is significance in the fact that the defendant Mr. [redacted] "is at the bottom of the Indictment".

The Adjudicator considered this to be an over simplified approach to the case, particularly since the Crown contend that [redacted] was a Director of a company which was the largest contractor paying into the fraud subject of the charge. See paragraph 301 of the Prosecution Case Summary of the 1st June 2012.

In addition, the Appellants drew to the attention of the Adjudicator the statement of the Prosecution witness [redacted] and a copy of HMRC Construction Industry Scheme – Guide for Contractors and Sub Contractors in Form CIS340 which is a document running in excess of 85 pages.

Aside from the submissions of the Contract Manager in relation to [redacted]'s place on the indictment, it would appear there is an acceptance by the Contract Manager of the necessity for the Appellant's to understand the legitimacy of the CIS scheme and the Adjudicator took the view that such CIS Prosecutions are significant and complex prosecutions which have the potential to set themselves aside from "main stream" fraud cases. The Adjudicator felt that the Appellants were able to satisfy him that they have satisfied paragraphs 4.17, 4.19 and 4.20 of the VHCC Guidance of the 19th October 2010.

It was not felt that the argument that those listed above [redacted] on the indictment not having been categorised as a Category 2 case, was a compelling argument as the Adjudicator noted, with some concern, that the defendant [redacted] and his co-accused, the defendant [redacted] had originally both been represented by Messrs. [redacted] and, at that stage, the case against both had been categorised as Category 2.

It would appear from the Appellants representations on the Case Category Assessment sheet that that remains the case in respect of the solicitors representing [redacted] and in respect of retained Counsel. It occurred to the Adjudicator therefore that there was an element of perversity in now seeking to "down grade" this categorisation albeit this was not an issue that was wholly determinative in respect of this appeal.

It follows since the appeal is allowed in respect of the defendant's case requiring highly specialised knowledge, it is not necessary for the Adjudicator to reach a decision in relation to the issue of publicity.

LSC decision overturned

- **Reading time & travel**

Contract Manager's original decision:

1. **Perusal, scheduling and consideration of 12,570 pages of exhibits (now apparently 52,334 pages following the service of additional evidence since the date of the original decision)** – the contract manager has allowed 30 secs per page for consideration of the material and a further 30 secs per page for any ancillary work (schedules, chronologies, dramatis personae etc..). This amounts to total of 209.5 hours. The appellant is seeking an allowance of 1 min per page for consideration of the evidence and a further 1 min per page for the ancillary work. This totalled 419 hours. It should be added that a compromise proposal of 45 secs per page for consideration and 45 secs per page for the ancillary work was similarly rejected by the contract manager.

2. **Travel to attend on the client** – the appellant has requested authorisation for funding to attend on the client at her home in France. This has been refused by the contract manager.

The adjudicator has carefully considered the competing submissions made by the appellant and the contract manager. The appropriate basis for the assessment of a reasonable allocation of time to assess the evidence in any case must be the nature of the material and the particular role of the played by the defendant in that case. It is unhelpful to apply any standard rate as each case is different and must be judged on its peculiar facts.

Having reviewed the specimen evidence, the case summary and the example of the scheduling carried out by the appellant the adjudicator is persuaded that 30 secs per page for consideration of the material and further 30 secs per page for ancillary work is inadequate. However, given the more peripheral role played by the defendant represented by the appellant an allocation of 1 min per page for consideration and a further 1 min per page for ancillary work would not be justifiable.

A fairer allocation would have been 45 secs per page for consideration of the evidence and a further 45 secs per page for ancillary work. To that extent the appeal is allowed

2 - The adjudicator has considered carefully the representations by both parties on this issue. Whilst the adjudicator has immense sympathy with the difficulties faced by the appellant he is not persuaded that sufficient evidence has been supplied that all reasonable efforts have or can be made by the defendant to attend upon her solicitors in person. That aspect of the appeal is therefore refused.

Appeal by solicitors – 26th October 2012

LSC decision upheld in part

- **Distant travel**

The defendant was the senior partner in a very large solicitors firm based in Leeds which subsequently went into administration. It is not unreasonable to assume that both these events would give rise to comment in the wider Leeds legal community and further that

past employees of this firm had been employed within that legal community. The appellant was instructed in September 2011 some 10 months before the CCU decided to contract the case. The trial is due to take place at Southwark Crown Court.

The Contract Manager has invoked the distant travel rule and states

" I am unable to agree that it would be impossible or impracticable for the client to instruct a Solicitor from the Leeds area"

The Appellants argue that the 2010 VHCC specification for organisations 5.38 states "in exceptional circumstances we may allow travel time and expenses to be paid outside of the VHCC Distant Travel Rule" and that this is such a case based on

a) They have had significant involvement with the client in the current proceedings.
b) There is no other suitable, more local practitioner available.

I note that insofar as trial preparation is concerned it must be assumed that this client is on bail as there is no indication to the contrary that he is in custody and therefore I can only assume that he is able to travel to his instructing solicitors office for the purpose of providing instructions and any travel therefore incurred by the appellants in the preparation of this case one can only assume will be minimal.. If the defendant is unable or unwilling to travel to his instructing solicitor's office then that is a separate issue outside the scope of this appeal. I do however agree with both arguments advanced by the appellant that in principle the distant travel rule should not apply in this case as exceptionally

A) They clearly had significant prior involvement in this case.
B) The risk of prejudice, perceived or actual, given the history of the defendant's firm is real and substantial and it would not be reasonable or practicable to expect this defendant to mitigate this risk by making detailed inquiry of firms in Leeds as to their knowledge,, employment of past employees or indeed direct or indirect involvement as either victim or solicitor for parties subject to this fraud.
C) Given that the trial is due to take place in Southwark Crown Court were the defendant to follow the suggestion of the Contract Manager and employ a firm in Leeds then any such firm would have to make a similar application to the current appellant as the maximum travel of 2 hours would clearly be exceeded in travelling to

a London Court. As a matter of fact the train travel time from Manchester to London is marginally less that the train travel time from Leeds to London!

Appeal by solicitors – 27th November 2012

LSC decision overturned

- **Category – backdating**

The Appeal

1. This is an appeal by the Appellant's solicitors against the refusal of the Complex Crime Unit (CCU) to backdate the categorization of the case as a category 2 to the 9th March 2012 (the date the Appellant solicitors received the Representation Order) rather than 15th August 2012 (the date the representations were received).

2. I apologise for the length of this adjudication but it is important for both sides to see how the decision has been reached and there is a lot of relevant material to detail.

3. In summary the case for the Appellant appears to be that it says that it was unwittingly misled by the CCU into thinking that no categorisation had been awarded to the case at all rather than being told that prior to the transfer of the Representation Order that it had been given a category 3 listing. Had the Appellant known that a category had already been given then immediate representations would have been made to elevate it to a category 2. Their case must be that fact that they were told on 4th April 2012 that no category had been agreed and failed to put in submissions until 15th August 2012 or request a delay in submissions are, in the circumstances of this case, neither here nor there because of the miscommunication.

4. The case for the CCU appears to be that whatever the merits of the submissions in relation to category 2 (which have been acknowledged by the increase in category subsequently) the formal request for re-categorisation was not received until 15th August 2012 despite a number of prompts for submissions to be made and therefore that must be the date from which the revised category status applies. Whether or not the

Appellant thought that no category had been applied to the case the onus was on the Appellant to request a (re) categorisation. Until the date that it took that step no increase in categorisation could be awarded. All VHCCs are deemed category 4 unless and until allocated otherwise.

5. I have been provided with:

    a. Appellant's Appeal document (together with the important attachments – email correspondence with QC, Stage 1 Email, and category form)

    b. The CCU's response (together with attachment of emails)

    c. The Appellant's Reply Document

    d. The CCU's response to that detailed document via a single line:

    "My position remains that the category applies when the information was received by the CCU and in this matter the reps were received late and as such the later date applies as per my representations."

VHCC Scheme

6. This case is being conducted under what has become known as the '2010 scheme'. The relevance of that is that this case (and this appeal) are governed by the 2010 VHCC Specification (the Specification) informed by the 2010 VHCC Guidance (the Guidance) which is specifically referred to in the Specification.

7. I shall return to the relevant terms of these documents below.

The Categorisation History

8. I have considered all the material put before me. None of the chronology in itself appears to be disputed.

9. The relevant history therefore seems to be as follows:

a. 18th September 2011 – Mr. A arrested

b. 26th September 2011 – Mr. Aappears before Westminster Magistrates' Court

c. 9th March 2011 – Representation Order transferred to the Appellant's Solicitors from the original firm

d. *23rd March 2012* – application to extend A's CTLs; email from junior counsel to contract manager:

"Could you please let me know what category this case is?"

e. *4th April 2012* – email from contract manager to junior counsel:

"I understand that the case category has not been agreed"

f. 14th May 2012 – email from Appellant's Solicitors:

"Please find attached a signed copy of the 2010 VHCC Contract (for organizations) for Signature … We have not received the Templates and Category assessment sheet yet however I am sure we can discuss these when we speak in due course"

g. 15th May 2012 – email from contract manager to Appellant's Solicitors:

"I will see what the situation is about the templates and category. I will resend if they have not reached you yet"

h. *17th May 2012* – email from contract manager to Appellant's Solicitors; inter alia:

*"**Category of Case***

Please complete the VHCC category assessment sheet. Please refer to the 2010 VHCC Specification 4.16-4.22 when completing the form …

Stage 1

Stage 1 will generally run for 12 weeks from the date the Contract for Signature is signed, although this can be discussed further as necessary.

Please submit your task list for stage **1** using the form attached.

i. *24th May 2012* – email from contract manager to Appellant's Solicitors:

"I was wondering when the Task List might be forthcoming as I have agreed Counsel's Stage **1** but have *not seen anything* from you since sending you the material/forms *on* this or *Category Reps*. Please let me know when I might be able to review a Task List or Category Reps …"

j. 22nd June 2012 – Stage 1 Task list emailed to the Contract Manager by the Appellant's Solicitors

k. *27th June 2012* – response received from the Contract Manager in relation to stage 1 task list; inter alia:

*"5. **This Stage** ends on the 20 of July. I would expect to see a new Task List for Stage 2 prior to this time" …*

***Stage 1: 19-04-2012 – 20-07-2012**"*

l. 15th August 2012 – Formal category representations provided on the template.

m. 24th August 2012 – email from leading counsel to contract manager, inter alia:

"On a different topic, in view of conflicting information I am receiving,

can you confirm that this case is currently being treated by LSC as a Category 2 case presumably on the basis that it satisfies:

1. all 4 criteria from Block A, and
2. 2 x Block B criteria."

n. *5th September 2012* the following lengthy email exchange:

i. Email from contract manager to leading counsel (at 11:57); inter alia:

"The Case is currently listed as a Category 3. No further reps have been put forward by the firm".

ii. Email from leading counsel to contract manager:

"May I enquire how it comes about that the case is currently being treated as a Category 3? Who decided that? Or is it some kind of default position which applies until such time as the Litigator asks to have the Category correctly assigned?"

iii. Email from contract manager to leading counsel (at 13:03):

*"**This contract is a Category 3 which is uplifted from a Category 4 due to the facts of the Case**. The prior firm did not make any reps on Category and once the transfer took place to the new firm, neither did they. So the Category 3 remained. They are aware of it*. If the firm now wishes to put forward reps for future stages they may do so as Category can be raised at any point in the case. However it may not be retrospective as they have the time and chance to do so and did not until the point they do so if they do so. Of course reps made be put forward and may not be granted by obviously reps have to be put forward first in any event and here they have not been. Hope that explains things".

iv. Email from leading counsel to contract manager (at 13:54), inter alia:

"That is very helpful … but you haven't said <u>who</u> decided (and on <u>what grounds</u>) that this case should be Category 4 (pre-uplift) in the first place?"

v. At this point there was an email from Appellant's Solicitors agent to contract manager (at 14:17):

"I have just spoken to the Solicitors and they were wondering whether you could give a rough indication as to when they will

receive a response in respect of the stage 1 task list.

I have also heard from counsel there is some confusion in respect of the category. *At the outside of the case it was discussed amongst the team that all defendants were on a cat 2 and that whilst this was easily evidenced by the paperwork and facts surrounding the case I understand it was not necessarily communicated directly to you. If that is in fact the case could I please ask that whilst our submission in respect of a cat 1 were made fairly recently we were under the impression that there was no objection to the case being categorized as a cat 2 in the meantime and therefore all work done prior to the representations be considered at cat 2 rates. We accept that a call stating this position should have been made but perhaps was not and it would now seem that one way or another it was wrongly assumed that this had been agreed given the nature of the case and lack of ambiguity when it came to satisfying the relevant criteria …"*

vi. As far as I can see there was no direct reply to this but leading counsel, after further less relevant exchanges, emailed the contract manager (at 17:40) inter alia:

"So, going back to my earlier question, *who decided (as per your previous email) that this was "a category 4 case uplifted to Category 3 based on the facts of the case" and on what grounds?"*

vii. The contract manager replied to leading counsel (time unknown):

"As stated earlier it's in the contract under Category criteria. It's a matter of fact."

o. *6th September 2012* the following email exchange:

i. Email reply regarding categorization from contract manager to Appellant's solicitors (at 13:04):

"The case uplifted from a category 3 as per the terms of the contract there is automatic uplift to category 2.

This category will be backdated to 15th August as this was the point that your first category submissions were received by the CCU. Category 2 will attach to any claims made after this date."

ii. Email from leading counsel to contract manager (at 14:37):

"Whoever it was who decided (as per your previous email to me) that this was a Category 4 case uplifted to Category 3 would at that stage have known –
(1) that the offence charged carried life imprisonment
(2) that this case was likely to attract national interest, and
(3) that this case is primarily founded on allegations of terrorism.
It therefore has always satisfied 3 of the criteria in Block A since the date the media throng turned up for the first court hearing.
It was also known at that early stage that over 10,000 pages of documentation was served in the first trance of material – a fact which satisfied 1 of the necessary criteria of Block B.
Having satisfied the necessary Block A and Block B criteria, the case is nominally graded in Category 3 but then is automatically uplifted to Category 2 because "it is primarily founded on allegations of terrorism".
The case has therefore always been a Category 2 case from the outset.
That is why I have been asking in my recent emails for the grounds previously considered by the LSC to support the initial Category 4 classification. The answer is relevant to what follows.
At present I do not understand why my instructing solicitors, my junior and myself should be denied payment at the correct rate under the correct Category from the beginning of our involvement in the case just because the case was put in the wrong category in the first place.
As for my personal position, may I point out again that there is no reference to this case being treated by the LSC as Category 3 either in the VHCC contract I signed or in any emails or other documentation I have received from the LSC. Nor has it been mentioned in any of our email exchanges dealing with my task list and other issues. Had I been informed earlier, I would have clarified the categorization before working almost exclusively for the last 3 months on the case.
I would therefore invite you to review the decision to backdate only to the 15th August. I was first involved in this case on 3rd May 2012."

iii. The contract manager responded to leading counsel (at 16:37):

"I am unable to review this decision as it was carried out in compliance with the provisions of the 2010 contract".

iv. Leading counsel finished with a final email to the contract manager (at 19:26):

"I note that you have avoided answering my questions about the basis of the original incorrect decision to place this in Category 3 (uplifted from Category 4). You have also not explained why I was never informed that this case was initially deemed by the LSC to be Category 4. Perhaps I am naïve but shouldn't there be frankness in respect of the facts underlying the

issue in dispute?"

p. *7th September 2012* on the following day the contract manager wrote:

"As this appears to be going to Appeal best to leave the issues for review by the Appeal Adjudicator".

10. The words *in italics* are those I consider to be the most important in determining this appeal.

Framework for determining categorisation

11. The following parts of the 2010 Specification appear to me to be relevant (my emphasis in *italics*):

Category criteria

4.16 Where you have not done so already, the VHCC Supervisor must fully complete the VHCC Category Assessment Sheet, which is available on the LSC Website. *We will not consider category representations in any other format*.

4.17 The VHCC Supervisor is unable to use representations in support of one category criterion as specified in Paragraph **4.22**, to support a second category criterion when completing the VHCC Category Assessment Sheet.

4.18 We will assess the category of the Case on information that you and the prosecution can confirm as current fact, and not what might happen at some time in the future.

4.19 We may assign different categories to co-defendants on the same indictment as your Client, who are represented by another organisation.

4.20 *Both parties may review the category at any time and make a request for re-categorisation using the VHCC Category Assessment Sheet*.

4.21 If amending the category is agreed, the date on which the re-categorisation applies is the date on which the request for a re-categorisation was made.

4.22 We will assess the category of the Case against the criteria set out below:

…

Non-fraud VHCC

Category 1: Terrorism cases uplifted from category 2.
Category 2: For cases not involving drugs, all 4 criteria from Block A are met and 2 a's from Block B; or for serious drugs

cases, 3 criteria from Block A and 2 a's from Block B.

Category 3: 3 criteria from Block A are met and at least 1 a or b from Block B.

Category 4: All other VHCCs.

If the case is primarily founded on allegations of terrorism, apply an uplift of one category.

Block A

1. **Pursuant to statute, the case must be a class 1 or 2 offence.**

2. **The maximum sentence for the offence is imprisonment for life or over 30 years, per statute.**

3. **The case is likely to attract national interest.**

4. **Either:**

   (a) Where the offence is of a violent or sexual nature, there must be multiple victims; or

   (b) if the offence is of a violent or sexual nature and there is only a sole victim, there must be something significant about the crime; or

   (c) if the case involves drugs, their total value is estimated by the prosecuting authority to exceed £10m; or

   (d) the case in which the main offence with which the defendant is charged, whether at common law or under any statutory enactment, is primarily founded on allegations of terrorism as defined in the Terrorism Act 2000.

Block B

1. **The volume of prosecution documentation, which consists of:**

   - **witness statements**
   - **exhibits**
   - **interview transcripts**
   - **pre-interview disclosure/advance information**
   - **Notices of Further Evidence ("NFEs")**

   exceeds:

   (a) 10,000 pages

   (b) 5,000 pages

   Unused material will not be considered for the purposes of this criterion, nor will evidence which has yet to be served.

2. **The total costs of representing the defendant(s) are likely to exceed:**

   (a) £400,000

   (b) £200,000

12. The 2010 VHCC Guidance includes the following relevant material (with the most relevant parts to my mind in *italics*):

Category of case

4.12 *The following guidance applies to Paragraphs 4.16 to 4.21 of both Specifications (and additionally 4.22 of the Specification (for organisations))*.

4.13 **General** – in the case of each criterion, the defence team must show that the necessary factors are applicable to the case which their particular defendant has to meet and/or features of the defence that he or she will be putting forward. . In a multi-handed case, it would be insufficient to argue that any criterion applied to the case against a co-defendant, and therefore to the case in general.

4.14 Where the issue of category has been settled, either through negotiation with the Contract Manager or following an Appeal, category will only be reviewed where there has been a material change in the case against the provider's defendant.

4.15 Subject to paragraph 4.13 above, the defence team may request a review of category at any time. The Contract Manager may review category at the start of every stage.

<u>Determination</u>

13. This case is highly unsatisfactory from both sides.

14. It would have been very straightforward on the 4th April 2012 when the contract manager indicated that no category had been agreed for the Appellants to either put in representations then or to request a period of delay. This is irrespective of any transfer of representation order or previous involvement of a different firm. It is a reasonable inference from the reply that categorization had not been determined and the Appellant could not (and no doubt would not) have taken the risk of relying on any representations from the previous firm that might have existed. At the very least it would be expected that further probing as to the position would have occurred. The content of the email from the Appellant's agent is proof positive of this. But it didn't. In any ordinary case a request for a delay in representations would have been granted immediately or

on the back of further discussion as to the position between the Appellants (or counsel) and the contract manager which would have started the clock ticking from that point and any final category would have been backdated. The CCU is in my view entirely right in its assessment in the generality of cases. Normally this will be determinative.

15. However that is not this case.

16. It is highly unfortunate that the CCU was able to say that 'I understand that no case category has been agreed' on 4th April 2012 when it was apparent by the contract manager's own acceptance on 5th September 2012 that:

*"**This contract is a Category 3 which is uplifted from a Category 4 due to the facts of the Case**. The prior firm did not make any reps on Category and once the transfer took place to the new firm, neither did they. So the Category 3 remained. They are aware of it*.

17. It is plain from that reply on 5th September 2012 that a decision was made prior to the transfer of the Representation Order to categorise the case as a category 4 case uplifted to category 3 without any representations from the previous firm. There is no other interpretation of the phrase 'so the category 3 remained'. There is no evidence to support the suggestion that the current firm was 'aware of it' (beyond what is contained in the Specification).

18. In fact the reply on 4th April 2012 and the chains of emails that followed which I have set out above suggest the contrary; the Appellants were manifestly not aware of a formal decision to categorise the case having been taken previously. Even if it was 'automatically' considered a category 3 uplifted from category 4 that ought to have at some point been communicated with the fact that the previous firm who had a Representation Order for it seems somewhere between five to six months hadn't made any representations at all.

19. If the contract manager was not the person who took that formal decision (or process the automatic one) or was not aware of it on 4th April 2012 then as soon as she became aware of it she should have communicated that. There was another opportunity on 17th May 2012 and again on 27th June 2012. I make no observations, because they don't advance the decision, as to whether leading counsel is correct to state that, in effect, the contract manager was avoiding answering his questions.

20. In my view had junior counsel's question of 23rd March 2012 been fully answered that the case was a category 4 uplifted to category 3 then it is inconceivable that anything other than immediate representations that the case was at least a category 2 would have been made.

21. I turn to the Specification. It seems to me that the proper interpretation is as follows:

    a. The CCU will assess the categorization of a case against the criteria that are set out. That much is clear from paragraph 4.22.

    b. The CCU will use information provided by the defence and the prosecution as confirmed fact to make the relevant assessments. That much is clear from 4.18.

    c. The CCU <u>does not</u> have to wait for representations from a provider before making a decision. Ordinarily out of fairness it will but it does not, in my view, need too. It would of course if it took this decision inform a provider what had occurred. Additionally there is no warrant for the proposition that the case must, in such a situation, be assigned to the lowest criteria. That might be the likely outcome due to a dearth of information but it is not mandated by the Specification in my view. It is only as is clear from the criteria that if a case is not a category 1-3, 'all other VHCCs' are. The CCU could approach the prosecutor and find out the answers to at least three of the four Block A criteria (and it is highly likely that in cases like this one the prosecution will be able to provide information on publicity) and at least number 1 of Block B. What 4.16 is saying is that unless the

appropriate template is completed the CCU cannot consider provider representations. It is that which 4.13 of the Guidance in my view is aimed at (that section of the Guidance making it clear that the paragraphs apply to 4.16-4.22 [for organizations] of the Specification as a whole). That is a wholly different concept to considering the category.

d. Both the CCU and the provider may re-consider the categorization. That of course presupposes that the provider is aware that a categorization has occurred in the first instance in order to request a re-categorisation. The provider may do so at any time – again provided the proper formalities are complied with – the contract manager may do so at the start of a stage. That is clear from 4.15 of the Guidance.

22. There are three possibilities for the disposal of this case.

23. I could dismiss the appeal in entirety. The Appellant's whatever the rights and wrongs of the information provided or not provided would have simply needed to familiarize themselves with the Specification to know that if they believed it was a category 2 case all they had to do was fill in the simple form and say so or at least simply ask for time to make that submission good. They chose to wait until the 15th August 2012 to do that despite repeated prompting that this was required. It is clear from the Specification that cases which are not allocated a higher category are deemed a category 4.

24. I could allow the appeal in whole. The CCU – and I still don't know who – made a decision prior to the 9th March 2012 to categorise this as a category 3 uplifted from category 4; presumably because no representations had been received from the old firm and in the absence of information. By the 9th March 2012 – if it had ever been right – that decision was in my view objectively wrong measured against the criteria. However that would in effect be determining an appeal on an issue that isn't actually before me which really ought to have been taken by the previous firm.

25. I am going to allow the appeal in part.

26. The difficulty is deciding when it would be appropriate to backdate the category too. In my view the Appellant's failings irrespective of the original decision and the CCU's miscommunication nearly, but not quite, cancel each other out. The decision falls in favour – just – of the Appellant. It my view the appropriate date is the **17th May 2012** when the CCU provided its formal introduction to a second provider and requested representations. What should have been requested were any submissions for a 're-categorisation'; there already was a category. That allows for the CCU too have properly invested itself with the knowledge of the previous decision (if it wasn't the contract manager who made it) and communicated it on this very important information email. It also however takes into account that had the Appellant been better versed in what they ought to have done then they could have as early as the 23rd March 2012 or 4th April 2012 started the clock ticking for backdating to category 2 in due course.

27. This is a decision on the very unusual facts of this case. Providers would be well advised whatever they do or do not know to ensure when they are instructed in a case that is a VHCC to make representations on category or run the real risk of delaying their appropriate categorization.

28. The CCU must ensure however that any decisions to categorise are communicated to providers and, in cases where there is a change in Representation Order, to tell the new provider without delay that the category decision had been made previously and any request must be for a re-categorisation.

Appeal by solicitors - 30th November 2012

LSC decision upheld in part

- **Category**

I have read the materials supplied and the issues are straightforward. The submissions have been clearly set out and I cannot see any need for further oral representations at this stage.

Overall, I am not at all persuaded that any of the three disputed criteria are met, and I agree with the contract manager's assessment that this case 'sits comfortably in Category 3'.

There are issues facing the defence team which concern the development of interesting aspects of their client's defence case, and the defence of bad character applications which may be made, but in my view these are issues which a highly experienced and accredited defence team should be expected to be able to comfortably deal with as part of the VHCC process.

Specifically, I do not find that the matters set out in support of 'highly specialised knowledge' satisfy that criterion. The reference to 'highly' is critical here, and the matters put forward simply do not satisfy that. Furthermore, the nature of Mr [redacted]'s position concerning the civil proceedings surrounding [redacted] does not particularly assist this appeal; he apparently believed that someone else was dealing with the issues arising.

As far as 'significant international dimension' is concerned, again the key word here is 'significant'. The matters raised in support of this criterion do not satisfy it at all. They are matters in my view which 'VHCC lawyers' are expected to 'take in their stride'.

Finally, the 'skills' criterion requires the three elements to be .."required and interrelated, and can be provided in house" (para 4.25, 2010 VHCC Guidance). This is currently in my view not met. Even if matters raised by the appellants were taken from the earlier criteria and deployed against this one, I take the view that the appellants still fall just short of satisfying this criterion at this stage. Such a course would have the additional consequence of weakening the appellants' case in relation to those other criteria.

Appeal by solicitors – 4th December 2012

LSC decision upheld

- **Preparation**

Agreed 5 hours at B and 10 hours at C standard for the purpose of locating the relevant documents for the Forensic Accountant and a block of 20 hours to reread any documents identified from the substantive proceedings that are relevant to the POCA proceedings.

Time is requested to fillet the relevant and necessary material from the vast case materials and to provide the same to the instructed forensic accountant. This is the confiscation stage of the proceedings; the appellant solicitor's represented the defendant during his trial. A considerable amount of time, in excess of 1700 hours was funded during that stage of the case. Funding for approximately 180 hours has been granted to the forensic accountant. Notwithstanding the lapse of over a year since conviction and this request, the appellant has the benefit of schedules prepared during the trial and the prosecution exhibit list. In addition both the appellant and the defendant have an in-depth knowledge of the case materials. The appellant has requested 100 hours at grade B to carry out the task. The contract manager has offered 5 hours at grade B to carry out an initial sift of the materials plus 10 hours at grade C standard to withdraw and present that material to the accountant. There is also 20 hours available at grade B to refresh the appellant's memory of key documents such as case summary and prosecution opening (see email from the contract manager to the appellant of 18th May 2012). The appellant made clear during the appeal that he had no need to use hours on the areas suggested by the contract manager and would prefer to use that time in the filleting exercise.

Committee Decision:

Allow a total of 30 hours at grade B to carry out the task of sifting, filleting, reviewing and presenting the relevant and necessary material to the forensic accountant.

Appeal by solicitors – 31 October 2012

LSC decision upheld in part

- **Preparation**

Task 15

The defendant's trial ended in conviction and he was sentenced on 22nd August 2011. Appellant solicitors took over conduct of the case at the confiscation stage in June 2012. The prosecution section 16 statement of 16th March 2012 identified a benefit figure of £26 million. Available assets of approximately £600,000 have been identified but significantly the prosecution claim that hidden assets exist. If the prosecution succeed with the hidden assets proposition the defendant may have a default sentence in excess of the substantive sentence of 5 years; that would run consecutively.

The appellant solicitors have instructions that undermine the benefit figure and the existence of hidden assets. The instructions concern the lack of control the defendant had over the vast sums of money produced within the conspiracy. In order to fully exploit the point the solicitors have to interrogate case materials that they have not yet considered; they were not the trial solicitors. It is inevitable that when a court allows a transfer of representation there will be a need for the new legal team to read material that the former team had already considered. The extent to which the case materials have to be reviewed and the amount of time necessary is something that often creates disagreement. In this case however we only have to decide whether an additional block of 100 hours is reasonable, making a total to date of 150 hours.

We take the view that an additional 100 hours at grade A is reasonable and we allow the appeal. We make no decision, either way, on any time in excess of the 100 hours we have had to decide upon.

Task 28

This is a request for 80 hours of additional work. Due to the fact that we were not provided with the papers relating to this issue we were unable to make a decision. The parties were however assisted by our ruling that "control" is a relevant and live issue in this case.

Appeal by solicitors – 31 October 2012

LSC decision upheld in part

- **Category**

The character and complexity of the case against the defendant had changed during the progression of the case. In addition to this the cases of co-defendants had been re-categorised as category two through appeals. On these grounds re-categorisation of the case from three to two had to be considered by the appeals panel.

Appeal panel found that due the development of the case; Category Two is the accurate categorisation of the case.

Appeal by solicitors – 10 October 2012

LSC decision overturned

- **Reading time**

The committee found that the provided time allowance of 2 minutes per page was ample for the consideration of s.16 statement and 30 seconds for appendices. The committee was provided with s.16 statement and appendices. On assessment, the committee found them to be detailed and specific. In addition, these documents would have been previously read for trial and therefore a level of understanding and familiarity should exist. Due the detail of the documents, the time consuming exercising of cross referencing would not have been necessary.

Accordingly appeal was disallowed.

Appeal by solicitors – 10 October 2012

LSC decision upheld

- **Reading time**

The allowance for consideration of exhibits appears reasonable in all the circumstances. The solicitors have been given an allowance for scheduling which counsel will consider as appropriate in their trial preparation which is not in issue here

Appeal by counsel – 9 December 2012

LSC decision upheld

- Pre-contract

Appeal by solicitors – 10 October 2012

LSC decision upheld

ADJUDICATOR'S DECISION

I uphold the decision of the CCU and therefore reject the appeal for the following reasons:-

1. I have been fully apprised of the number of witness statements and exhibits read by the Appellants. After reading them they then went through them with the defendant.

2. I have seen the work product following the Appellants taking of instructions.

3. On pages 1 to 899 of the exhibits the defendant simply states that he cannot make any comment.

4. On pages 900 to 940 he hardly makes any comments.

5. On the record of taped interviews he hardly makes any comments at all.

6. On going through various logs which have been served, the defendant has hardly any comment.

7. The defendant makes hardly any comments, either, on the prosecution witness statements on which the appellants have taken instructions.

8. In going through the statements in the first instance and spending over 37 hours I would fully have expected the appellants to assess which areas of work on which they wished to take instructions.

9. Bearing in mind that the defendant has hardly any comments on any of the papers it seems entirely unreasonable to spend 68.78 hrs going through these papers and taking instructions. I am not actually sure what the appellants are claiming they have done. They seem to suggest that they have read through all the papers to the appellant and explained all their contents to him. I cannot dispute that they have done this but they are not saying he is illiterate. If they are showing him records of taped interview, exhibits, witness statements etc on which his instructions are that he has no knowledge, then it is entirely unreasonable to claim for such lengthy attendances.

10. If the appellants wish to go through witness statements, exhibits and logs on which the defendant cannot give any meaningful instructions and take over 68 hours doing this then that is their prerogative but it is not reasonable to claim for this. The defendant could read the papers himself. What the solicitors seem to say is that they read the papers and then read them more slowly to the defendant, who then had no comment on most of them.

11. The appellants are claiming payment from public funds for adopting an unreasonable, and it would seem unnecessary, approach to this work.

12. By way of comment, and I do not seek to disturb the decision of the case manager, I feel that an allowance for this task of 30 hours from public funds is very generous.

Appeal by solicitors – 18 December 2012

LSC decision upheld

- **Assessment**

Just one item is in dispute. The disallowance, on audit, of agreed scheduling time. 30 seconds per page was agreed to schedule 35,780 pages of exhibits. Initially no time was allowed but following further representations 30 seconds per page was paid in respect of 10,528 pages but nothing for the remaining 24,242 pages.

It is therefore the disallowance of any (agreed) scheduling time for these 24,242 pages - a total of 202 hours - that is the subject of this appeal.

The appellant asserts that the issues are as follows;

'The reasons can be put quite succinctly. These hours were agreed in advance with the Contract Manager; they were necessarily and reasonably carried out; and evidence of the work was provided.

The VHCC system is not based on ex post facto decision making. The whole purpose of the scheme is to agree what work is reasonable in advance. This gives certainty to both the provider of the service and the paying authority. The premise is very simple. Agree what is reasonable and pay for that work. In this case it was agreed that it was reasonable to schedule the exhibits, the exhibits were scheduled and therefore should be paid in full.'

'**The CCU in its response asserts that:**

'However again, the CCU would re-iterate that it is the reasonableness of the work done that is disputed in this case.'

The relevant test

section 5.9 of the 2010 Specification (for organisations) *"We will, by way of Assessment determine whether the work included in your Claim was actually and reasonably done and for Stages other than Pre-Contract, whether it was within the hours agreed and specified in a Task List."*

Decision
Applying the test I consider that 2/3rds of the original allowance of 30 seconds per page for 35,780 pages should be allowed namely for 23615 pages. The allowance already paid for 10,528 pages is deducted from this leaving a balance of 30 seconds per page for 13087 pages.

The appellants referred to a recent appeal decision (which they accept is not binding but would argue is persuasive) where the appeal adjudicator commented:

> *"this is a highly precarious way in which to proceed with a VHCC contract, it undermines the whole purpose of VHCC arrangements and is always likely to lead to problems. It introduces an ex post facto element of taxation which should be avoided at all costs !"* (the adjudicator's emphasis (!) not ours)

A careful examination of section 5.9 of the contract reveals that there is a two stage process which inevitably involves an element of ex post facto determination. Stage 1

"We will, by way of Assessment determine whether the work included in your Claim was actually and reasonably done"

The words actually and reasonably done clearly envisages some ex post facto assessment

The remainder of the section indicates that the next step is;

and for Stages other than Pre-Contract, whether it was within the hours agreed and specified in a Task List."

There appears to be no dispute that the work was within the hours agreed in a specified task list.
There is no dispute that the work was actually done. The question is whether it was 'reasonably done'.
The word 'reasonably' clearly indicates that an objective test is to be applied.
When applying this objective test I have had regard to all of the representations made by both parties and have examined with care the examples provided to me.
I have also considered with care the fact that the work was actually done and agreed in advance. Where work is agreed in a task list and claimed within the agreed hours I consider that the CCU has to demonstrate to a high standard that the work was not 'reasonably done'.
To assess whether the work product produced satisfies this 'reasonableness test' I have had regard to all of the representations and have had particular regard to the following issues:
a. The extent to which the schedules demonstrate significant input from the fee earner which advances the defence case.
b. The extent to which the schedules appear to be simply a mechanical or administrative task.
c. The remarks from counsel.
d. The IT issues raised by both parties.

In arriving at my decision I took the view that the work product clearly demonstrates a significantly greater degree of administrative work than was envisaged when the task was agreed and a significantly lower level of substantive fee earner input than was envisaged. In the circumstances I find that a fair assessment of the work reasonably undertaken would equate to 2/3rds of the original overall hours agreed for the task.

Appeal by solicitors – 24 December 2012

LSC decision upheld in part

- **Category**

Decision

The LSC decision as to Case Category is upheld.

Reasons

This decision is made on the basis of written representations made by the appellant and the Contract Manager concerning the category of case and on the basis that;

1. All parties agree that “Block B” criteria is met and
2. That the only criteria in issue for Block A are (a) Significant International Dimension and (b)Legal, Accountancy and Investigative Skills.

Significant International Dimension

The movement of monies, the involvement of FCIB (the details of Letherby’s reports are noted) and the VAT (MTIC) carousel nature of this case are not in themselves sufficient to merit a significant international dimension as such issues are now well known and legal representatives involved in such cases should be well versed in such legal issues that arises from those factors. The “defendants case” must involve a significant international dimension. The appellant has not demonstrated satisfactorily how the defendant’s case involves the required significant international dimension for instance; concerning the movement of monies, the involvement of FCIB and the MTIC carousel nature of this case. The fact that the defendant signed the loan agreement as explained is not sufficient to meet this criteria. The contract manager’s email dated 28.9.12 is noted as are the other enclosures in the Appeal bundle. The parties are referred to 2010 VHCC Guidance document. It is also noted that one aspect of the defence is non participation and lack of knowledge (para 3 (c) page 22 of the appellant’s written representations dated 20.11.12. The defence have not in my view demonstrated how a significant international dimension has a direct affect on their understanding of the case and substantially affects case preparation.

Legal, Accountancy and Investigative Skills

Since two criteria from Block A must be met I do not find it necessary to make any finding in respect of the second criteria as the first of the only two criteria in issue is not met.

Accordingly the LSC decision as to Case Category is upheld.

Appeal by counsel – 28 December 2012

LSC decision upheld

- **Reading time**

The CCU considers that 40 hours (a week’s work) at A grade provides a sufficient and reasonable amount of time in which to identify the material within the 19,669 pages that are relevant to Mrs Coleman’s individual case, noting that one defence team in the conspiracy to defraud trial is sifting the disclosure at 15 seconds per page

This is an appeal as to the rate allowed for perusal of unused material totalling approximately 20,000 pages. Payment was requested at the rate of ½ minute per page totalling 163.9 hours whereas the LSC felt the task could be completed within 40 hours.

The Committee found the appellants' request reasonable and proportionate and that therefore allowed the appeal in full

Appeal by solicitors – 19 December 2012

LSC decision overturned

- **Preparation**

Some items in the appellants appeal submissions have been agreed with the Contract Manager. The outstanding items are:

Stage 9- Paragraphs 1 and 7
Stage 10- Paragraphs 1, 3, 4, 5 (save for para 7 (xi) which has been paid), 6, 7 (save para 7 (xi)

The items of preparation work as detailed in the Appellant's appeal submissions have not been prior agreed by the Contract Manager, also there is one hearing which has not been paid as the court record indicates that the court was not sitting on this day.

The Contract Manager has no authority to pay for work that was not agreed in advance. All counsel acting under the terms of a VHCC contract are obliged to plan each stage of work and seek authority for it in advance of it being undertaken. In situations where a task cannot be foreseen and ad hoc authority is needed, counsel has an obligation to seek that authority in advance of the work being undertaken.

The Contract Manager does not accept that it is reasonable for anyone working under a VHCC contract to breach the terms of the contract in this regard, even if a case is particularly large/complex. It is also not accepted that tasks/times that may have been agreed in previous stages are automatically agreed in subsequent stages without prior authority being required. If at the time of negotiation, an allowance is not acceptable or the basis for an agreement unclear or disputed, the matter ought to be either fully resolved or taken to appeal. The Contract Manager believes that it is unreasonable to raise matters in dispute when the work is being billed for.

Committee decided upon an adjournment until 23 January 2013 A preliminary point was taken by the Panel as to whether in the absence of a properly submitted Task List they had any jurisdiction to hear the Appeal.

Both parties are to return written representations by 16.01.2013. These are to include:
- Brief chronology of events re the Stages to which the disputed items relate to.
- Confirmation of what constitutes a task list
- What rules/guidelines were applied
- Any evidence demonstrating agreement of task list/work

Appeal by counsel - 19 December 2012

Appeal adjourned to 23 January 2013

- **Preparation**

The Contract Manager refused to pay for the work undertaken by Leading Counsel in respect of the confiscation proceedings (except for court attendances, 5 hours' conference

time agreed via the Instructing Solicitors and reasonable travel associated with the court attendances and agreed conference/s), on the basis that there is no evidence in the case file of this work being agreed in advance.

The total claim for the work on confiscation amounts to 95.85 hours for preparation (including conferences), 6 half days and 1 full day at court, 26.34 hours travel time and £202.50 for travel disbursements.

Counsel believes that this work was agreed verbally but is unable to provide the name of the Contract Manager he has spoken to, and/or dates when these verbal agreements may have taken place.

As this is clearly insufficient evidence to demonstrate that the work has been agreed in advance, the Contract Manager has no option but to refuse payment for this work, in line with the VHCC contract.

Committee decided upon an adjournment until 23 January 2013 A preliminary point was taken by the Panel as to whether in the absence of a properly submitted Task List they had any jurisdiction to hear the Appeal.

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- Confirmation of what constitutes a task list
- What rules/guidelines were applied
- Any evidence demonstrating agreement of task list/work

Appeal by counsel - 19 December 2012

Appeal adjourned to 23 January 2013

- **Reading time**

The appellant solicitors act for a solicitor charged with corruption. He is a defendant in a second trial, which follows the main trial - a boiler room fraud. The main defendant is R. I have read the case summary, indictment, and appellant's and respondent's notices. The prosecution allege that R conspired with this defendant to add verisimilitude to his share fraud, and paid him a private and dishonest commission. This defendant is not charged with the share fraud.

The appellant claims that the rate of 30 seconds per page is inadequate for proper consideration of the exhibits, and in a detailed notice claims that this rate is insufficient because of difficulties with pagination and the complexity of some of the documents.

The respondent's case is summarised in the CM's response - *I have also been supplied a copy of Counsels schedules identifying which statements and exhibits are of relevance to your client and upon inspection of these schedules my view has been reinforced. Therefore having considered the exhibits disc in some detail, Counsels schedules and in accordance with rule 4.31 of the 2010 guidance I can authorise a rate of 30 seconds pp for the consideration of the 48,385 pages of exhibits which I believe is reasonable in light of the charge your client currently faces.*

I have not been sent counsel's advice or copies of any of the documents or the defendant's defence statement, but it is clear that counsel has isolated and advised upon the relevant material. This must lead to a focussed approach, and given the breadth of R's alleged involvement with many other individuals and companies it is a reasonable inference that a large number of exhibits are not relevant to this defendant's defence. It is also a proper inference that if the appellant's defence was cut-throat this factor would

have been relied upon in the appeal notice. I note that the CM has also allowed the rate of 30 seconds pp for the completion of all ancillary work for the production of any 'analysis document' such as schedules, chronologies, dramatis personae. This is currently limited to reviewable tranches of 100 hours up to a maximum of 433 hours; this, in my view, is an eminently sensible and commendable approach by both parties.

I have to reach a decision on the material currently supplied. Previous appeal decisions have been cited to me, and relevant sections of the Contract Guidance. Decisions are fact specific and do not establish general points of principle. 'Guidance' is simply that and not a set of immutable rules.
In my judgement the current rate, when allied with the above ancillary work is adequate for preparation on the facts of this particular case.

Appeal by solicitors – 2 January 2013

LSC decision upheld

- **Category**

The contract manager has categorised this case as Category 3, in that he does not accept that the criterion has been met, in that the defendant's case does not meet any of the Block A criterion other than the defendant's case requires legal, accountancy and investigative skills to be brought together.

I have read the submissions from both parties. I have also considered the Prosecution Case Summary. The appellant is appealing 2 criteria from Block A:

a. The defendant's case requires highly specialised knowledge ("HSK").
b. The defendant's case involves a significant international dimension ("SID").

The appellant does not seek to argue that there is likely to be national publicity or widespread public concern but believes the other two criteria are met. Only one of those two needs to be met in order for this to be a Category 2 Fraud.

The Defendant is charged with one count of Corruption pursuant to section 1(1) of the Corruption Act 1906 in that it is the Prosecution case as per the case summary that:

"*Between October 2003 and December 2004 the defendant received a total of $898,406 in 'commission'. This equate to between 4% and 5% of the amount that passed through the firm's escrow account as a consequence of share sales following the firm's approval of financial promotions made by a number of overseas entities..*
It is the prosecution's case that the payment by R and the receipt by the defendant of a personal commission in this way constitute the offence of corruption..
It is clear that the purpose of the 'kick back' was to induce him to sell the scheme to his partners and to ensure the firm's continuing participation in it, notwithstanding the fact that it was labour intensive with comparatively low financial rewards for the firm"

As a general point, it is important to note the 2010 guidance, which provides at paragraph 4.13 as follows:
"***General*** *– in the case of each criterion, the defence team must show that the necessary factors are applicable to their defendant's case. In a multi-handed case, it would be insufficient to argue that any criterion applied to the case against a co-defendant, and therefore to the case in general."*

I have read a significant amount in the appellant's submissions about the nature of the case and how the criteria apply to his case:

In relation to HSK:

"*In summary, the highly specialised skills that we need in order to properly represent our client can be grouped together as follows:*

- *Non-legal professional regulations*
- *Tax regimes and legislation*
- *Foreign financial markets and their regulations.*

In relation to SID:

- *The fraud took place abroad*
- *Funds were transmitted to offshore accounts*
- *Evidence has been served from abroad*
- *Enquiries for this defendant will have to be made outside of the jurisdiction; for example in Spain and the USA*
- *We will have to examine the workings of a number of overseas companies*
- *Most, if not all of the money trails– both UK and European - involved in this alleged fraud operated offshore bank accounts including the notorious FCIB. In relation to the foreign evidence the witness list attached (banking tab) shows that we have to deal with evidence from a number of international banks.*

Whilst all of these form part of the subject matter of the case in general, I am not persuaded without more evidence on the vast majority that they relate to the particular defendant represented by the appellant. In relation to the FSA/SRA Investigations, I am not persuaded that this requires any specialist knowledge to deal with. The case in relation to their defendant is in a nutshell for him to explain how he came by the payments suggested to have been made, if they were made to him, and why he received those payments legitimately. It cannot form any part of his case to acknowledge or deal with the workings of the fraud far from it but simply to explain his actions in light of the evidence. As a result, I do not accept that the two criteria are met.

Appeal by solicitors – 7 January 2013

LSC decision upheld

- **Category & preparation**

This was an appeal on two issues

A) Classification the appellant submitting that it was a category 2 and not 3 case.
B) Determination and redetermination of the Stage 2 claim for Task 11.

Preliminary Points.

As the 2010 contract was signed by the appellant the 2010 VHCC guidance would be followed by the Appeals Committee in considering these appeals.
Although there had been a previous appeal by the appellants as to the categorisation of this case it was accepted by the Committee that Paragraph 4.14 of the 2010 VHCC Guidance had been met as there had been material changes in the case against the provider's defendant and therefore a further appeal on this point would be allowed.

1. Category.

Two heads under Block A are required to be satisfied to enable this case to be considered a category 2 case, the heads under block B already having been satisfied. During the course of this appeal the LSC accepted that the defendant's case required legal, accountancy and investigative skills to be brought together. After hearing further

submissions the Committee determined that the defendant's case involved a significant international dimension and that therefore the appropriate benchmark had been met and this case should be reclassified as a category 2 case.

2. Task 11
The Committee after hearing oral representations and having sight of the Stage 2 Task List allowed this appeal. We noted there was a minor discrepancy in the hours sought on the papers submitted for consideration prior to the hearing and trust this is a minor issue which can be resolved between the parties.

Appeal by solicitors & counsel – 9 January 2013

LSC decision overturned

- **Category**

This is an appeal by the Appellant firm against a decision by the Case Manager to categorize this case as a Category 3 Fraud, as against the application for a Category 1 Fraud.

The Criteria are well known to both parties and do not need reciting here.

I have read all of the documents referred Appellant's appeal form (though the "Case Category Assessment sheets" are undated) and the 3 documents in The Commission's Response Form

It seems to me that in dispute are each of the 4 criteria in Block A, and the 3rd criteria in Block B.

All of the appeal documents from the Appellant address Block A but nothing in respect of Block B at all. To that extent it seem to me that the Appellant has no prospect of success in hoping for a category 1 case since all 4 paragraph a)'s in Block B are required for such an assessment

However given my assessment in respect of the representations on Block A, as set out below, at this stage the lacuna does not prevent me from giving a judgment. It may be that either agreement or further representation from either side re Block B may follow.

Of the accompanying documents I note :

1. Draft indictment with a covering letter from CPS dated 03.10.12 shows one count of an overarching conspiracy by 7 defendants containing 3 limbs, which themselves are particularized.

2. An undated Summary of Evidence,(*SoE*) , intended to give a broad guide to the evidence , clearly represents only part of the Prosecution case and refers to other documents including a Defendant's hierarchy . Clearly it is not an "Opening Note".

Page 1 , para2 of *SoE* the defendant is the last of the defendants mentioned and is described as an office manager , supervising staff. All other defts, with the exception of Amee Wilkinson, have senior roles and are either partners , directors or owners of the relevant companies / businesses.

The remainder of the *SoE* is largely silent as to the Defendant's position until the summary of roles and the summary of arrests and interviews.

3 The Prosecution Note re Applications to Extend Representation Orders describes this Defendant as the Office Manager, as being aware of the nature of the fraud and as having

played a key practical role in it. She was particularly heavily involved in the buy and lease back part of the fraud..

I turn to the Case Category Assessment itself and the relevant criteria.

Block A

In respect of Block A the contract manager rejects all 4 of the criteria as applying in this case.

I shall deal with each in turn:

1. The Defendant's case is likely to give rise to National Publicity and Widespread Public Concern
I am satisfied that this criterion is met.

It is a future condition/ criterion sand in the general climate of restriction of pre-trial publicity can rarely be evidenced by detailed **past** press coverage. I have no doubt the scale and length of the alleged frauds will attract publicity at the "right time". It has undoubtedly touched the lives of a large number of residents in the relevant region of the country. Given the current financial climate and the opprobrium with which financial institutions are now held there is every likelihood of national publicity.

Further given the more undesirable aspects of the alleged business model of Lehman Bros , and its adoption and targeting in the North East Region of this country I have no doubt that there will be widespread public concern.in the whole of that region.

2. The Defendant's Case requires Highly Specialized Knowledge
I accept the Appellant's distinction between a Criminal Fraud Practitioner's expertise and the expertise of a VHCC Practitioner

This criteria, however, requires the appellant to indicate what the specialize knowledge is that is required in **this Defendant's case**, and demonstrate that the legal team **has** that specialized knowledge.(as opposed to **acquiring** during the course of case .)

This in itself will require an indication of the general nature of the Defendant's defence or a DCS, the latter of which is quite understandably absent at this stage. In the absence of a general indication of the nature of the defence the only indication available is the defendant's reaction to questioning under caution, (see SoE) This appears to be " lack of knowledge of what was going on", ie " confess and avoid".

I emphasize that as instructions flow from the Defendant this situation may change and it should be open to the appellant to make representations accordingly, but at **this stage** it is not possible to assess whether **these solicitors**, representing **this defendant** require the highly specialized knowledge, even though it may obviously be needed for other defendants higher up the hierarchy.

The Appeal accordingly fails this criterion

3. The Defendant's Case has Significant International Dimension
The appellant's entry on the expanded Case Category assessment Sheet and the letter dated 16.11.12 assists me most with this criteria.

Unless I am mistaken (or the situation has now changed) **This defendant** is involved in **one** overseas property (I rely on SoE). Other Defendants appear to be hugely more involved with overseas matters.

However I do not see anything of the other "invested / dissipated assets abroad", as being attributable to **this Defendant.**

The remainder of the Appellant's representations relate to the care to be presented, no doubt, by defendants higher up the hierarchy.

If the situation changes, no doubt the appellant will re-apply for assessment.

The Appeal accordingly fails this criterion.

4. The Defendant's Case Requires Legal Accountancy and Investigative Skills to be brought together.
In my view this criterion is satisfied

There is significant skill in handling, collating and investigating the quantity and nature of documentation involved here.

It is obvious that several experts are likely to be instructed in a number of different areas of expertise. The instructions will have to be carefully prepared and the reports skilfully collated and used.

Decision:
I find therefore that 2 criteria from Block A are met. Subject to agreement on the criteria for Block B being satisfied I would; assess this case as a Category 2 Fraud and allow the appeal to that extent.

Addendum

Since preparing the judgment above I have been sent a copy of an email , 16.01.13, sent by Contract manager to Appellant confirming that they accept that the costs in this case are likely to exceed £500k. This completes all 4 criteria within Block B to allow this case to be categorized and a a Category 2 Fraud

Appeal by solicitors & counsel – 17 January 2013

LSC decision upheld in part

- **Distant travel**

The solicitors had conduct of the matters concerning the defendant for 10 months prior to the matter being contracted and had undertaken significant work during this time. After the representation order was granted proceedings for the disqualification of the defendant as a director were instituted. There is a clear connection between both proceedings and are referred to in the solicitors representations as being "crossover". The precise submissions need not be set out in full.

In consequence of the pre contract work done, the existing relationship with the client and the minimization of the travel time expended the appeal should be allowed.
It is worthy of note that the solicitors have kept travel time to a minimum, the fares are off peak and travel time has been kept to a minimum.

The appeal is allowed.

Appeal by solicitors – 23 January 2013

LSC decision overturned

- **Preparation**

The Contract Manager refused to pay for the work undertaken by Leading Counsel in respect of the confiscation proceedings (except for court attendances, 5 hours' conference time agreed via the Instructing Solicitors and reasonable travel associated with the court attendances and agreed conference/s), on the basis that there is no evidence in the case file of this work being agreed in advance.
The total claim for the work on confiscation amounts to 95.85 hours for preparation (including conferences), 6 half days and 1 full day at court, 26.34 hours travel time and £202.50 for travel disbursements.

Counsel believes that this work was agreed verbally but is unable to provide the name of the Contract Manager he has spoken to, and/or dates when these verbal agreements may have taken place.

As this is clearly insufficient evidence to demonstrate that the work has been agreed in advance, the Contract Manager has no option but to refuse payment for this work, in line with the VHCC contract.

Annex 14 to the October 2005 Regulations sets out the jurisdiction under which this Appeals Committee operates for these appeals. Clause 2 details the right to appeal to this Committee. 2.1(a) specifies you have a right of appeal to the Committee under the contract on the following issues only

A) Individual tasks disputed on the submitted Task List.

Here there were no submitted Task Lists although throughout each stage tasks were submitted and agreed on an ad hoc basis. The Committee's view is we have no jurisdiction to hear this appeal or comment on the conduct of the parties in the management of these cases. It is a matter for them how they resolve the issues of their making.

Appeal by counsel – 23 January 2013

Committee rule they have no jurisdiction to hear the appeal

- **Preparation**

Some items in the appellants appeal submissions have been agreed with the Contract Manager. The outstanding items are:

Stage 9- Paragraphs 1 and 7
Stage 10- Paragraphs 1, 3, 4, 5 (save for para 7 (xi) which has been paid), 6, 7 (save para 7 (xi)

The items of preparation work as detailed in the Appellant's appeal submissions have not been prior agreed by the Contract Manager, also there is one hearing which has not been paid as the court record indicates that the court was not sitting on this day.

The Contract Manager has no authority to pay for work that was not agreed in advance. All counsel acting under the terms of a VHCC contract are obliged to plan each stage of work and seek authority for it in advance of it being undertaken. In situations where a task cannot be foreseen and ad hoc authority is needed, counsel has an obligation to seek that authority in advance of the work being undertaken. The Contract Manager does not accept that it is reasonable for anyone working under a VHCC contract to breach the terms of the contract in this regard, even if a case is particularly large/complex. It is also not accepted that tasks/times that may have been agreed in previous stages are automatically

agreed in subsequent stages without prior authority being required. If at the time of negotiation, an allowance is not acceptable or the basis for an agreement unclear or disputed, the matter ought to be either fully resolved or taken to appeal. The Contract Manager believes that it is unreasonable to raise matters in dispute when the work is being billed for.

Annex 14 to the October 2005 Regulations sets out the jurisdiction under which this Appeals Committee operates for these appeals. Clause 2 details the right to appeal to this Committee. 2.1(a) specifies you have a right of appeal to the Committee under the contract on the following issues only
A) Individual tasks disputed on the submitted Task List.

Here there were no submitted Task Lists although throughout each stage tasks were submitted and agreed on an ad hoc basis. The Committee's view is we have no jurisdiction to hear this appeal or comment on the conduct of the parties in the management of these cases. It is a matter for them how they resolve the issues of their making.

Appeal by counsel – 23 January 2013

Committee rule they have no jurisdiction to hear the appeal

- **Reading & scheduling time**

Contract Manager's original decision:

1. Allowed 30 secs per page for exhibits for Solicitors, Queens Counsel and Junior Counsel (totalling 245.25 hours) (as against a request on the part of all three for two minutes per page each totalling 981 hours).
2. Allowed 30 secs per page for Ancillary work (summaries, schedules, chronologies, dramatis or any other analysis document) on exhibit s for Solicitors (as against a request for 1 minute per page totalling 490 hours)

Appeal allowed to the following extent:

1. Solicitors, QC and Junior Counsel allowed 1 minute per page to read the exhibits. This amounts to **490.53 hours each for Solicitor, QC and Junior Counsel**. Minus any hours already undertaken at pre-contract (stage 0)(solicitors having read 16,238 pages of exhibits at that stage).

2. Solicitors, QC and Junior Counsel allowed an additional 1 minute (Solicitor) and 30 seconds per page (Counsel) to analyse and carry out ancillary work on the exhibits. This amounts to an **additional 490.53 for Solicitor, 245.25 hours each for the QC and Junior Counsel**

Reasons:

This appeal is confined to the time granted for in relation to reading and ancillary work on exhibits.

(note: there is a separate appeal in relation to categorisation, which this decision does not relate to).

1. Reading of exhibits by Solicitor, QC and Counsel

The allocated time by the Case Manager is insufficient to prepare and represent the Defendant for the following reasons:

(1) The Prosecution allegations are complex ("buy and rent back" and "assigned contract" schemes to manipulate the taxation system as evasion) serious (£250 million fraud involving approx. 2000 properties) and over a long period (2003-2008);
(2) The particular defendant being represented by the appellants plays a majority evidential role in the Prosecution case. She is a Conspirator who is alleged to be involved in both parts both of the Conspiracy both as an organiser and nominee featuring as a director of both the property company and the company used to obtain the mortgages, FSA authorised person (being directly or vicariously liable for any untruths on paper applications) and nominee property holder. Heavily involved;
(3) She is to advance a defence that (a) the businesses that she was involved were legitimate and honest, with lawful applications being made (there are issues re the assigned contract scheme and alleged systematic property overvaluations) (b) there is a cut-throat defence with two co-defendants (who seek to blame her) (c) she is a scapegoat to spare the blushes of the banks who were engaged in irresponsible no money down lending scheme. Legitimate trading with cut-throat defence;
(4) A thorough consideration of the conveyancing exhibits is important as the legality of the "assigned contracts" gifted deposits is in issue;
(5) The appellants have identified extensive relevant exhibits (in the Exhibits part of their written submissions) including : Excel spread sheet detaining transactions from the NEPB account, conveyancing documentation, banking information (relating to NHL 3 main lenders), "buy and rent" scheme, applications (by NHL), lifestyle, business plans, accountants documents, banking data and documentation (re NEPB and NHL)

In increasing the time for the task to read the exhibits I have doubled the initial grant by the Case manager to reflect the complexity of the case facing the defendant and the Defence to be advanced. As I have not seen the relevant exhibits (but had them helpfully listed) I have adopted a "swings and roundabout" approach to the time allowance of 1 min per page.

In addition to the time noted above for tie reading the exhibits, there should be time for the defence team to (a) analyse the exhibits by the Solicitors, QC and Junior Counsel and (b) ancillary work undertaken (including schedules to be prepared by the solicitors and counsel to read the same product). I address such time in 2. below.

2. Analysing the exhibits by Solicitor, QC and Counsel

On my understanding, from the paper application, that the Solicitor is to undertake the scheduling the following increased times should be allowed:

Solicitors allowed an additional 1 minute per exhibit page to analyse and carry out ancillary work on the exhibits, to that of merely reading, (such as preparation of summaries, schedules, chronologies, dramatis or any other analysis document). This amounts to an additional 490.53 hours for the Solicitor (to be allocated by category of fee earner by agreement with Case manager).

Queens Counsel and Junior Counsel allowed an additional 30 secs per exhibit page to analyse and carry out ancillary work on the exhibits (including reading the product of solicitors ancillary work). This amounts to an additional 245.25 hours each for the

Queens Counsel and Junior Counsel.

The appeal is allowed in part to the following extent:

Total additional hours granted:
Solicitor : 981.06 hours
Queens Counsel: 735.78 hours
Junior Counsel: 735.78 hours

Appeal by solicitors & counsel – 27 January 2013

LSC decision upheld in part

- **Category & reading time**

This is an appeal against a decision of the Legal Services Commission as to the categorisation of this case.

The Appellants are of the view, in general, that due to the size complexity and importance of the case the case should be allocated Category 1 status.

I have been supplied with written representations from both the Appellants and the Respondents together with supporting documents.

I have considered all of these.

I am aware that the Appellants in this case act for a defendant who is placed first on the indictment and who is accused of an allegation of mortgage fraud. The suggestion is that this is likely to be the biggest mortgage fraud to be tried in the English Courts so far as the fraud amounts to in excess of £250,000,000.

He is one of a number of defendants in this case and the appellants, quite rightly, state that the factors that they seek to rely upon are remarkable to their defendant's case alone. They do not make comment as to the case categorisation for the other defendants.

However, I am of the view that the issues raised in the initial submissions on case category drafted by the QC and dated 18th October 2012 and indeed in the response by the Case Manager dated 24th October 2012 are such that there is bound to be consideration by the other co-defendants as to their standing in this contract that I am of the view that the question of should be dealt with by the full Appeals Committee.

2. I am also asked to consider a separate appeal following the refusal of the Contract manager to consider the appellants request in the same case to claim an amount of time of 1.5 minutes a page to read the exhibits for BOTH instructing solicitors and counsel. This being beyond the 30 seconds per page that has been allowed.

Again I have considered all the written representations for and against the proposition. In this case I am willing to make a ruling however I am of the view that to do so would not be in the best interests of the case or the parties as whilst the arguments are clearly and forcefully made out in the papers there are aspects that I would wish to seek clarity upon.

As the first matteris to be reviewed by a full Appeals Committee I refer this appeal to that committee for final ruling and permit both the Appellants and the Respondents the opportunity to expand upon their written submissions should they so wish.

As I have knowledge of this case and indeed both appeals I am content to sit on the Appeals Committee when that committee is convened to sit.

Appeal by solicitors & counsel – 29 January 2013

Referred to full committee by single adjudicator

- **Disbursement**

I have considered all of the papers supplied to me in this case.

This appeal relates to funding for a forensic accountant.

My decision is as follows:-

1. I accept the submissions made on behalf of the LSC in relation to the reduction of hours for the assistant from 28 – 20 and from the Manager 4 – 2. However, I do not accept the LSC's submissions in relation to the preparation of the report and the expert fees. In the circumstances I allow up to 35 hours for the expert to prepare his report.

My reasons are as follows:-

1. The expert is responsible for his report to the Court and to present the same to the Court;
2. The expert has already undertaken work to assist the defence at no further cost to the LSC;
3. The expert's firm is a well-known firm of experts and clearly each case is dealt with on its own merits and this case, in my view, would require this amount of time for a full report to be prepared.

Appeal by solicitors – 29 January 2013

LSC decision upheld in part

- **Disallowed hours**

This is an Appeal against the CCU decision to disallow a claim of 281 hours and to reduce that claim to 70 hours.

It is accepted that the time agreed for the task in issue was 286.5 hours and that the Appellants claimed 281 hours. The Unit disallowed the claim on the basis that the time claimed did "not constitute a reasonable end product".

The Committee considered the representations by the Appellant and the Unit carefully and noted that some of the work had been undertaken by a Grade A fee earner at Grade B rates and that the hours in dispute had been agreed. The Committee unanimously agreed that in the circumstances the Appellants claim of 281 hours ought to be upheld. Accordingly, the Appeal is allowed.

Appeal by solicitors – 30 January 2013

LSC decision overturned

- **Preparation**

AN APPEAL TO A VHCC APPEALS COMMITTEE IN THE CASE OF R v [redacted]

CASE ID: [redacted]

CONTRACT NO: [redacted]

DECISION OF ADJUDICATOR

1. This is an appeal by [redacted]

2. [redacted]

3. [redacted] has been charged with conspiracy to evade income tax, contrary to Section 1(1) of the Criminal Law Act 1977 and conspiracy to evade Value Added Tax, contrary to Section 1(1) of the Criminal Law Act 1977. He is 13th on the indictment.

4. This appeal is made under paragraphs 6.4(a) and (c) of the 2010 VHCC contract specification for organisations or self-employed advocates.

5. The Adjudicator notes that the trial of this matter is due to commence in April 2013 and is conscious therefore that a decision on this appeal at this stage (rather than allowing the matter to go before the Committee) is likely to assist the parties and serve the administration of justice in the case of the individual defendant, [redacted]

6. The first item in dispute is the consideration of probe recording evidence. It would appear from the representations made by the Appellant in a summary document

served in support of the notice of appeal dated 19 December 2012, that a dispute over the video probe evidence also falls to be considered within this appeal and as the Respondent has commented on that point of appeal, it will be included in this decision.

Evidence and Submissions

7. By letter dated 6 October 2011 the Crown Prosecution Service served upon the Appellant a schedule of non-sensitive unused material as part of phase 1 of the disclosure process and confirmed that certain items within the schedule (including for the purposes of this appeal items number 392 and 394) had been identified as material that might reasonably be considered capable of undermining the case for the prosecution or of assisting the case for the accused.

8. A request was made by the Appellant (by email dated 6 December 2012) for permission to review the relevant unused material on the following bases:

> "1. A grade C basic fee earner checks the transcripts against the audio to confirm they are correct;
>
> 2. A grade A/B fee earner then considers the amended transcripts, particularly highlighting the areas which need to be listened too [sic];
>
> 3. A grade A/B fee earner then watches the video probe (if available for the relevant time) and the stills; before

4. A grade A/B fee earner listens to the short periods identified at stage 2 of the process."

9. [redacted] on behalf of the LSC replied by email dated 17 December 2012 in which he stated, inter alia:

> "It is therefore my decision that you should be highlighting from the transcripts those sections which are of relevance to your client or given your client's instructions are going to prove contentious and important to the client's defence. Once such sections are highlighted then time can be negotiated for you to listen to the specific sections of the unused audio/video for accuracy and to put those specific conversations into context".

10. Also in the same email, [redacted] stated that the material in question had not been served as the material had been considered by the disclosure officer not to undermine the prosecution's case or assist the defence's case. Although a point has been taken by the Appellant in relation to those comments, they appear to the Adjudicator to amount to no more than an immaterial misunderstanding – conceded by [redacted] in the LSC's response to the appeal dated 7 January 2013 – and therefore of no relevance for the purposes of this appeal.

11. As regards the material to which this appeal relates, it is apparent from the Crown's Case Summary dated 4 May 2012 (which runs to some 236 pages) that the covert audio and video probe evidence forms an important part of the prosecution case. In relation to the Defendant [redacted] the prosecution expressly rely upon the audio probe materials (see paragraphs 1346-1350 of the Case Summary). The Case Summary

does not appear to make reference to the use of video evidence viz a viz the Defendant [redacted]

12. In its response to the Appeal dated 7 January 2013, the LSC state that "In general terms it is appropriate to distinguish between unused material and evidence upon which the prosecution rely, as is established practice in VHCC negotiations." The reply also states (in response to the Appellant's assertion that the material in question is or may be relevant to the individual defendant's case) that "There should always be an expectation that unused material carries with it some capability of assisting the defence or undermining the prosecution, and there is nothing to mark out this particular tranche of material as out of the ordinary."

13. In the reply to the Appeal the LSC has confirmed that the Case Manager has agreed that the 975 pages of audio transcripts can be considered and relevant sections identified by the Appellant. Those sections can then be listed to so to put those conversations into context, and check their accuracy. The Appellant has rejected that proposal and relies upon the approach that has been adopted by the Case Manager in relation to the used probe material – i.e. time allowed at grade C fee earner rate to listen to the audio probe material and verify the accuracy of the transcripts. The Appellant says that this process of analysis identified sections of the transcripts for the served material which are inaccurate. The Appellant goes on to say that if there are inaccuracies in the transcripts in the served material then there is no reason to suggest that the transcripts of the unused probe audio material are any more reliable. Whilst that argument may be superficially attractive, it does not in itself advance the Appellant's case.

14. For the purposes of this appeal, the Adjudicator must consider the following:

(a) Is the evidence in question relevant to the Defendant's case?

(b) If the answer to (a) above is "Yes", then how should the evidence be reviewed, by whom and how much time should be allowed for that process?

Decision

15. 15.1 For the purposes of this appeal, the Adjudicator accepts that the unused material contained in items 392 and 394 which were served under the CPS's letter to the Appellant dated 6 October 2011 is potentially relevant to the case of the Defendant [redacted] in that it may contain information which is capable of undermining the case for the prosecution or of assisting the case for the defence.

15.2 (i) In considering how the evidence should be reviewed, it is the decision of the Adjudicator that it is not necessary for the Appellant to check the accuracy of the audio transcripts by comparing them to the audio recordings. That is not necessary for the proper preparation of the Defendant's case. The extent of the relevance of the audio probe material to the Defendant's case can be adequately assessed by a suitably qualified member of the Appellant's team reviewing the un-amended transcripts in the first instance. The Respondent's proposal that the Appellant's team (grade A or B fee earner) should read the un-amended transcript (975 pages) at 2 minutes per page is, in the opinion of the Adjudicator, a reasonable and proportionate proposal. The Appellant's team can then identify the sections of relevance in the transcripts and those items should then (subject to prior approval of

the Case Manager) be compared to the audio recordings and any inconsistencies or queries arising should be duly noted.

(ii) With regard to the video material, it is the decision of the Adjudicator that it would not be proportionate for the Appellant to view all the video probe material in order to establish its relevance. The Appellant should seek to agree a period of time with the Case Manager to review the video probe logs in order to establish any items of relevance. The Respondent has proposed a time allowance of 2 minutes per page (60 pages) for this purpose. The Adjudicator regards that as a reasonable proposal and should be applied to a grade A or B fee earner.

16. For the reasons set out above, this appeal is refused but a compromise position is proposed.

Appeal by solicitors – 6 February 2013

LSC decision upheld

- **Category**

A. <u>Introduction</u>

1. On 29 November 2012 the appellants appear to have received notification of the Complex Crime Unit case manager's decision to categorise this contract as a category 3 fraud case.

2. A VHCC appeals representations form dated 13 December 2012 seems to have been emailed to the Complex Crime Unit on that date and the parties appear to have agreed to an extension of time until 16 January 2013 for the Complex Crime Unit to lodge a written response.

3. No issue appears to arise on the papers in relation to any appeal time limit and I note that the VHCC Appeals response form is dated 16 January 2013 and apparently signed by the case manager. Within this document it is made clear that the item in dispute is:

   "The category of the case. The case manager has assessed the case as a category 3 fraud. The appellants are pursuing a category 1 fraud".

B. <u>Papers considered by the Single Adjudicator</u>

1. For the avoidance of any doubt in considering my decisions as Single Adjudicator I have reviewed the following material:

- Indictment – Newcastle Crown Court – no case number – listing 7 defendants

- Summary of evidence – "Prepared by the investigators….intended to give the defendants an indication of the nature of the evidence, in broad terms". This summary is undated and unsigned. It is also unpaginated but I calculate that it contains 38 pages.

- A 17 page document entitled "Re: Operation B further statement of case" dated 21 July 2011 prepared by the prosecution.

- VHCC Appeals Representations form dated 13 December 2012.

- Category Representations prepared by the appellants dated 22 December 2012.

- VHCC Appeals Response form dated 16 January 2013.

I also requested the Complex Crime Unit to provide me with and indeed was sent:

- The Press articles referred to within the aforementioned category representations dated 22 December 2012.

- The press article referred to within the aforementioned VHCC Appeals Response form dated 16 January 2013.

- Very High Cost (Crime) Cases (VHCC) Guidance 2010 Issue 2 – 3 October 2011.

- Very High Cost (Crime) Cases Arrangements 2010 (version 3).

- VHCC Appeals Panel Arrangements 2010 – 30 July 2010.

C. Oral Hearing/Single Adjudicator Decision

1. I note that the appellant has not made any detailed or specific representations on the need for an oral hearing before a committee in relation to this appeal. Nevertheless I have, in accordance with Regulation 16.4 VHCC Appeal Panel Arrangements 2010 considered whether it is in the interest of justice to refer this appeal to a committee.

2. I do not consider this appeal is exceptionally complex or significant or that any other relevant interests of justice features arise from this appeal.

3. Accordingly I therefore believe that it is appropriate for this appeal to be decided by myself as a Single Adjudicator.

D. The relevant Submissions I have been asked to consider as Single Adjudicator

1. Introduction – VHCC Fraud Block Criteria/VHCC Guidance 2010

   I am asked to decide on whether the appellant has satisfied me that this VHCC contract case fulfils the Block A and Block B VHCC Fraud Criteria laid down within Annex D – VHCC Category Criteria Very High Cost (Crime) Cases Arrangements 2010 (version 3).

   Annex D – VHCC Category Criteria states:

Annex D – VHCC Category Criteria

VHCC Fraud

Category 1 : all 4 criteria from Block A are met, and all 4 (a)s from Block B.

Category 2: 2 criteria from Block A are met and at least 2 (a)s or (b)s from Block B.

Category 3: All other fraud VHCCs.

Category 4: Non-fraud VHCCs only.

Block A

1. The defendant's case is likely to give rise to:

    a) National publicity; and
    b) Widespread public concern

2. The defendant's case requires highly specialised knowledge;

3. The defendant's case involved a significant international dimension;

4. The defendant's case requires legal, accountancy and investigative skills to be brought together.

Block B

1. The value of the fraud as described in the Indictment and/or the Prosecution case statement/summary exceeds:

    a) £10million.
    b) £2million.

2. The volume of Prosecution documentation, which consists of:

- Witness statements
- Exhibits
- Interview transcripts
- Pre-interview disclosure/advance information
- Notices of Further Evidence ("NFE's") exceeds:

    a) 30,000 pages
    b) 10,000 pages

    Unused material will not be considered for the purposes of this criteria, nor will evidence which has yet to be served.

3. The total costs of representing the defendant(s) are likely to exceed:

    a) £500,000
    b) £250,000

4. The length of the trial is estimated at:

    a) Over 60 days

In addition to the wording of Annex D VHCC Fraud Category Criteria I am also satisfied that it is appropriate for me as a Single Adjudicator to take into account in my deliberations the contents of 2010 VHCC Guidance Issue 2, 3 October 2011.

I note that paragraph 1.3 of 2010 VHCC Guidance states inter alia:

"This VHCC guidance relates to the 2010 VHCC scheme and provides guidance for specific sections of the documents listed above with the exception of the standard terms 2010".

One of the documents listed in paragraph 1.2.1 of 2010 VHCC Guidance is VHCC Arrangements 2010 (amended) which is shown in footnote no.1 as being Very High Cost (Crime) Cases Arrangements 2010 – version 3 – 3 October 2011.

Accordingly I have considered in detail paragraphs 4.12-4.25, 2010 VHCC Guidance which, for ease of reference I set out fully below.

Category of Case

4.12 The following applies to paragraphs 4.16 to 4.21 both specifications (and additionally 4.22 of the specification (for organisations)).

4.13 General – in the case of each criteria, the defence team must show that the necessary factors are applicable to the case which their particular defendant has to meet and/or features of the defence that he or she will be putting forward. In a multi-handed case, it would be insufficient to argue that any criteria applied to the case against a co-defendant and therefore to the case in general.

4.14 Where the issue of category has been settled, either through negotiation with the contract manager or following an appeal, category will only be reviewed where there has been a material change in the case against the provider's defendant.

4.15 Subject to paragraph 4.13 above, the defence team may request a review of the category at any time. The contract manager may review category at the start of every stage.

Fraud Cases – Block A

The defendant's case is likely to give rise to national publicity and widespread public concern.

4.16 In order to satisfy this criterion, it is necessary for a case to satisfy both limbs of this test:

a) National publicity; and
b) Widespread public concern :-

a) For a case to satisfy "National publicity" the LSC would expect to see evidence that the case had triggered nationwide publicity. It would be likely that broadcast, print and electronic media would all show interest in such a case. Coverage by a single publication or broadcast programme, or by local media alone, would be insufficient.

Although standard reporting restrictions might render coverage sporadic in some cases, the LSC would expect to see evidence that there was sustained interest in the case at all stages of its life. It is

recognised that a case of potentially high interest may receive little or no publicity because of blanket reporting restrictions. In cases like these, the LSC would take into account the type of publicity likely to be generated were those restrictions lifted, and the reasons for imposing them in the first instance.

b) For a case to satisfy "Widespread public concern" it would be necessary to show that the publicity was triggered by issues of far-reaching and significant concern, such as that which might trigger editorial debate. It would be insufficient to show that such concern was held only by a specific interest group or groups.

The LSC would expect to see evidence that these issues were directly related to the case and intrinsic to its substance, rather than peripheral to it or incidental.

The defendant's case requires highly specialised knowledge.

4.17 To satisfy this criterion, the LSC would expect that, as a pre-requisite, practitioners must demonstrate a certain level of skill and expertise in dealing with large fraud cases, cases involving serious financial impropriety and complex financial transactions.

4.18 They would be expected to be familiar, or equipped to deal, with most matters frequently prosecuted by the Serious Fraud Office, Revenue & Customs Prosecution Office, Crown Prosecution Service, or any prosecution agency into which any of the above have been incorporated, or are likely to be incorporated.

4.19 The defence team would need to show that a case meeting this criterion involved an area of skill and expertise outside the usual scope of a criminal fraud practitioners expertise taking into account the expectations of skill and experience raised in paragraphs 4.17 and 4.18 above.

4.20 The defence team would need to show both that the defendant's case required this skill and expertise and that they were able to provide it in-house. It would be expected that any putative highly specialised knowledge would go to the legal heart of the defendant's case, and would be of a significant level of complexity. Where experts are instructed to address highly specialised issues, the LSC would expect to see evidence that the outside expertise compliments expertise within the firm, rather than obviating the need for it.

The defendant's case involves a significant international dimension.

4.21 To satisfy this criterion, the defence team would need to show that a particular aspect of their case preparation involved a non-UK element of either fact or law, or both. For the international dimension to be deemed "significant", the defence team would have to demonstrate it had a direct effect on their understanding of the case, and substantially affected case preparation.

4.22 With regard to a legal dimension, the need to understand the workings of non-UK jurisdictions, substantial liaison with lawyers abroad or foreign authorities, or the need to understand and assess parallel or linked proceedings in foreign jurisdictions, would be persuasive factors.

4.23 For a factual dimension, the defence team would need to show that key elements of the offence were perpetrated abroad and that in analysing these

the defence team would require understanding of the workings of systems or institutions different from those in the UK.

4.24 Incidental details would be insufficient to meet this criteria, such as:

- The defendant is a foreign national
- There are foreign witnesses
- Goods or money have been received from, or deposited, outside the UK
- Commissions Rogatoires

The defendant's case requires legal, accountancy and investigative skills to be brought together.

4.25 To satisfy this criterion the defence team must show that the preparation of the defendant's case is multi-disciplinary, and that all three skills are required and inter-related, and can be provided in-house. Where outside experts, such as forensic accountants, are instructed, the Legal Services Commission would expect to see evidence that the outside expertise complimented expertise within the firm, rather than obviating the need for it.

2. <u>The Nature of the case against the defendant</u>

It is clear to me that the defendant faces allegations of conspiracy to defraud and that the nature of the fraud "was both serious and complex within the meaning of the Attorney General's Guidelines on plea discussions and cases of serious or complex fraud" (paragraph 2 re: Operation B – further statement of case).

The detail of the precise allegations that she and her co-defendants have to answer are helpfully set out inter alia in great detail within the following documentation:

1. Summary of Evidence
2. Re: Operation B – further statement of case
3. Category representations –
   a) Prosecution's view of the defendant's role
   b) The case as against her and her significance
   c) VHCC appeals representations form – background to VHCC case.

I am left in no doubt that this is a very high value and in parts, complicated fraud "arising out of the operation of two businesses involved in the acquisition and rental of residential properties.

It is also clear to me that the Indictment which the defendants face, follows a protracted and detailed investigation by a number of different agencies (including the police and financial services agency).

I am also considerably assisted by the attempts of the Crown to "set out, in summary form, the hierarchy between the proposed defendants and to identify the principal matters which bear upon the assessment of seriousness in the case of each of them" (paragraph 3 re: Operation B further statement of case).

I note that the hierarchy of defendants alleged by the Crown follows the same order of defendants on the Indictment, placing the defendant at "number 4" of the seven defendants in this case.

I also note and appreciate that this "hierarchy order" was at 21 July 2011 and was "a provisional view" of the Prosecution and that the Crown's continued case investigating and evidence gathering could lead to a change of Prosecution view in this context.

However, it is clear that the Crown place the defendant's husband, as "the driving force behind the fraud and that he bears principal responsibility for it" (paragraph 5 of re: Operation B further statement of case). The Crown also say "He is undoubtedly the main defendant….the organiser and planner of and prime mover in the fraud and closely associated with all aspects of it" (paragraph 6 of re: Operation B further statement of case). The Prosecution continue in paragraph 6 and also state "his culpability is, by some margin, the greatest of those named above".

I particularly note that the Crown allege in paragraph 9, p.4 of re: Operation B further statement of case that this defendant "was a director of one company and heavily involved in the operation of the other. She was one of the persons approved by the F.S.A. at the first company. Whilst her practical involvement in the mechanics of the fraud was less than that of the other defendants, she was figurehead for the companies and the fraud could not have been perpetrated without her participation".

The summary of evidence "prepared by the investigators" provides me with a helpful "indication of the nature of the evidence" in this case "in broad terms" and the aforementioned re: Operation B further statement of case sets out some aggravating and mitigating case and individual factors.

I have also noted and considered the appellant's submissions which again helpfully set out what they consider to be the case "significant features" in summary form. (VHCC Appeals Representations form and Appellant Category Representations – particularly within the paragraphs entitled "The case as against the defendant and her significance").

E. <u>The Block A VHCC Category Criteria</u>

a) It is agreed that the first Block A VHCC fraud criteria states:

The defendant's case is likely to give rise to:
i) National publicity; and
ii) Widespread public concern

b) I have indicated earlier that I believe that I am entitled to take the relevant parts of 2010 VHCC guidance into account when I decide whether this first criteria has been satisfied by the appellants.

c) The appellants (within their category representations) set out paragraphs 4.16 a) and b) in full (as I have done above). I have carefully considered the criteria and this 2010 VHCC guidance in the context of the documentation now before me.

d) As I indicated earlier, I requested to see and indeed did consider the relevant press and other media coverage of the case that is referred to in the papers.

e) It is common ground that the case "has to satisfy both limbs" of the criteria namely:

a) National publicity; and
b) Widespread public concern

f) <u>National Publicity</u>

I have carefully considered the appellant's submissions in relation to the national publicity limb of the criteria which I very broadly summarise as follows:

- The two companies generated business through "a successful national advertising campaign".

- It does not appear to be in dispute that this advertising campaign cost significant sums of money (£226,478.52 paid to GMG Radio North East is mentioned in the appellant's submissions).

- I also accept that a number of people and individuals will have been directly affected by the actions of the Indicted defendants and this defendant herself.

- Again it does not appear to be in dispute that "the lay client has and continues to be contacted by members of the press and has had to be advised to refrain from making comment". However, I am unable to see from the papers before me whether this has been a daily, regular or sporadic occurrence.

- The appellants helpfully draw my attention to specific articles and sections of articles in their submissions to support their arguments that the case has affected "the lives of a number of individuals and provokes much strong feeling" and that "this case is ripe for debate and criticism of both the banks and the conduct of the defendant and her husband".

- I have also specifically noted the submissions that "the interest in this matter has continued over a number of years and is expected to get more intense as the case progresses through the Courts and the lending models deployed by Banks are exposed". I have noted the Daily Mail reference to the apparent link of the case to the collapse of Lehman Brothers Bank.

- I am also told by the appellants in their submissions that "no further details about the case can be published until the trial begins in 2014". I have also specifically considered the one additional reporting article drawn to my attention by the case manager following the Court appearance of the defendants on 4 January 2013.

g) The Legal Services Commission submit (again in broad terms) that:

- Of the press examples provided most are north east publications or specialist press and are "not national press"; "of the two (national) articles provided from the Daily Mail and Mirror, both relate to a single date, as does the BBC entry around the period of the arrest".

- For the criterion to be met "it would be expected for there to be repeated comment in the press not just of the time of the arrest" and "that the press coverage would have continued up to the current day"

- The Legal Services Commission further submit that as Single Adjudicator, I should not consider "the publicity surrounding various banks which do not form part of the case" against this defendant.

- The Legal Services Commission further submit that I, as Single Adjudicator, should take account of what publicity has actually happened up until now in relation to the defendant's case to assess what I think is likely to happen in the future. The appellants submit that "the correct application of the test, because it especially refers to the future", is to predict what publicity the defendant's case will generate at trial". The appellants further submit that their submissions demonstrate that there is a likelihood that this defendant's case is likely to give rise to national publicity and that the criteria does not require them to demonstrate a certainty.

<u>Widespread Public Concern</u>

h) I have noted the appellants' detailed submissions to the effect that some part of the defendant's defence case is that the two companies were legitimate businesses and operated lawfully and that the bank's incorrectly assert that they were unaware of what the above mentioned entities were doing. Further, the appellants in their submissions give details of a business which apparently operated an identical business model to one company "and yet was held as a paragon of entrepreneurship".

i) I have also noted that the appellants say that the defence (presumably at trial) "will have no option but to expose the widespread and irresponsible lending that the bank's were engaged in" and that this "will re-ignite public concern. It may further damage the recovery of the housing market" and that "there will inevitably be editorial and political debate". As a result they further contend that despite the crash beginning in 2008, there has not been a set piece criminal prosecution such as this until now".

j) I am told by the appellants that they believe that "the prosecution of this defendant will be the catharsis to the pent-up media and public frustration that the rich have got away with it" and that "the trial when underway will be a major media event" and "the media barrage she and we will face cannot be underestimated". Accordingly the appellants conclude that "that which has been published thus far is nothing compared to what will be published at trial".

k) I am finally asked by the appellants to apply what they say is the correct application of the test, namely to predict "what publicity the defendant's case will generate at trial". The appellants suggest that any press reports up to now are not determinative but in any event "intense local reporting will snowball into nationwide media event at trial".

l) The Legal Services Commission point out to me that the Financial Services Authority apparently found in 2009 that the defendant and others were not running a legitimate business; that this finding was in the public domain and that this finding did not generate national publicity and/or widespread public concern.

m) Finally in the context of the submissions and counter-submissions in relation to this Block A VHCC fraud criteria, the Legal Services Commission provide me with an example of a case which satisfied the "national publicity" criteria. The LSC also indicated that if further supporting evidence is (and by inference I presume, becomes) available then the case manager "will be happy to review it".

n) <u>My adjudication on the national publicity and widespread public concern criteria</u>

   i) I have to conclude, for the appellants' submissions to succeed in this appeal, that both limbs of this criteria have been satisfied.

   ii) After a careful and detailed review of the material and submissions before me (including the media reports I have requested from the LSC) I have finally concluded that I am not satisfied that this defendant's case is likely to give rise to sufficient national publicity and widespread public concern that would enable me to conclude that both limbs of this Block A VHCC fraud criteria have been satisfied.

   iii) In reaching this decision I have considered the guidance which is available at paragraphs 4.16 of 2010 VHCC Guidance.

   iv) By way of further explanation, I concluded that whilst this is an extremely high value fraud prosecution involving a considerable number of individual people who have been affected by the fraud, it is by no means unique in the current economic climate. Very substantial mortgage fraud and other

conspiracy to defraud cases have regularly been and indeed are likely to be prosecuted before this particular case reaches its trial phase. This, in my opinion, makes it less likely that this particular case will give rise to the level of national publicity and widespread public concern which I believe is required to satisfy this particular criterion.

v) On a local and probably regional level, I have concluded that this case has and is likely to give rise to publicity and that it has provoked a degree of local and perhaps regional public concern. I am not, however, satisfied that the two companies are national household names, notwithstanding their apparent extensive nationwide advertising campaign.

vi) I am also not persuaded that this case is likely to give rise to the level of national publicity which I believe is required to satisfy the first limb of this particular criterion (national publicity).

vii) Further, whilst I have concluded that this case has some newsworthy features, some of which have been helpfully pointed out to me by the appellants in some of the bullet points within their VHCC representations form and which are likely to concern some members of the public, I have however concluded that they are not sufficient so as to give rise to a sufficient amount of widespread public concern that I believe the second limb of the criteria (widespread public concern) requires me to be satisfied on.

F.

Accordingly as all Block A (and Block B) criteria have to be fulfilled to qualify for a category 1 contract classification, the appellants' appeal for a category 1 classification for this contract must therefore fail.

G.

I note that within the VHCC Appeals Representations form of the appellants dated 13 December 2012, the appellants state under the items in dispute paragraph that they appealing "the category assigned to the VHCC". I have taken this to mean that I should therefore go on to consider the other Block A (and Block B) criteria submissions particularly as the papers seem to indicate that this case has been classified by the LSC case manager as a category 3 case.

H. <u>The defendant's case requires highly specialised knowledge – Block A Criteria</u>

a) Again I have carefully considered the wording of this criteria and the relevant 2010 VHCC Guidance paragraphs at para.4.17-4.20 which I have set out in full above and which I note the appellants have also fully set out in their category representations document.

b) I agree with the case manager that the appellants have helpfully set out their defence team relevant experience. It is, on any view, a very impressive set of curriculum vitae.

c) I particularly considered the paragraph 4.19 Guidance which indicated to me that for a defendant's case to satisfy this criterion it needed to involve "an area of skill and expertise outside the usual scope of a criminal fraud practitioner's expertise". The Guidance then helpfully sets out the level of skill and expertise that "the LSC

would expect…as a pre-requisite" in para.4.17and 4.18. Finally, para.4.20 provides further clarification in Guidance about this particular criteria.

d) I have carefully considered the appellants' detailed and helpful submissions entitled "Skill and Expertise required outside the usual scope of a Criminal Fraud Practitioner's Expertise".

e) I have also again reviewed the investigator's summary of evidence and the Prosecution further statement of case dated 21 July 2011 which sets out inter alia the basic structure of the fraud. I again note that the Crown indicate that "her practical involvement in the mechanics of the fraud was less than that of other defendants". However, in the next sentence the Prosecution state "She was the figurehead for the companies and the fraud could not have been perpetrated without her participation". The defendant was also one of the persons approved by the FSA at one company and it is alleged that false mortgage applications were knowingly submitted in her name.

f) I note that mention is made by the Prosecution at p.7 of further statement of case of directly linked civil proceedings to this criminal case. Mention of civil litigation proceedings appears in a number of the press articles.

g) I also note the way in which the investigators put their direct case against the defendant and the matters she put forward in her defence in the one interview under caution on 11 June 2009 when she did not exercise her right of silence.

h) I have particularly noted the appellants' submissions in relation to "taxation – stamp duty, capital gains tax and inheritance tax" within their category representations. I accept that as a result of her directorship; FSA registration and "figure-head" position in the relevant companies her credibility and specific and/or implied knowledge of what was actually taking place within the detailed mechanics of the alleged diverse fraudulent activity is crucial for the defence case. I believe a full and detailed understanding of all the fraudulent methods alleged by the Crown will be essential to the proper defence of this client.

i) I am therefore persuaded, notwithstanding the helpful written counter-submissions of the Legal Services Commission, that there is a considerable degree of skill and expertise required in the following case areas:

- Taxation – stamp duty, capital gains and inheritance tax
- Property valuation and surveyors codes of conduct
- Banking regulations
- Law of real property and equity
- Overlap between civil and criminal law and Conveyancing law and practice

j) I am satisfied that this skill and expertise is significantly complex and that it does "go to the legal heart of the defendant's case" (para. 4.20 2010 VHCC Guidance).

k) Finally I am also satisfied that the totality of this skill and expertise is outside "the usual scope of a criminal fraud practitioners experience" (para. 4.20) and that the defence team "were able to provide it in-house" (para. 4.20).

My conclusion – highly specialised knowledge criterion

I therefore conclude that the appellants have satisfied me of the Block A criteria that "the defendant's case requires highly specialised knowledge".

I. <u>The defendant's case involves a significant international dimension – Block A criteria</u>

a) Again, I have considered the relevant 2010 VHCC guidance at para. 4.21-4.24 set out above and set out fully within the appellants' written category submissions.

b) I have reviewed the "Lehman Brothers" appellant submissions which are helpfully detailed and are some 3 pages in length (within the appellants' written category representations).

c) I note from these submissions that Lehman Brothers were the parent company of SPNL. SPNL apparently processed 1,788 mortgage applications which had been packaged by the defendant's company. Approximately 60% of the case relates to SPNL and Grace Purdie was the sole shareholder in this company. If I understand the appellants' submissions correctly then "in this country the couple dealt with over 10 different lending institutions. However, it is SPNL that was the main one".

d) I am told by the appellants that Lehman senior managers were involved in a May 2006 decision to terminate the SPNL relationship with this company and that in June 2006 SPNL contacted the FSA about their and Lehman Brothers' concerns regarding the company. I also note the Prosecution exhibit (exhibit 3321) is a Lehman Brothers' presentation of concerns.

e) I have further carefully considered the appellants' lengthy submissions leading to their conclusion that "our own preliminary and cursory research demonstrates that the international parallel litigation will be essential to preparation and presentation of the defendant's case". Additionally I note the appellants' contention that "it will be central to our case to demonstrate that the defendant is the scapegoat for the fallen giant of banking" (by this I take it to be Lehman Brothers being the fallen giant). Further, I am told by the appellants that the Prosecution "are portraying the banks rather than the sellers as the victim of fraud" and that the defence propose to argue "there is no operative deception" in this case.

f) The appellants further submit in support of their arguments in relation to this "international" case criteria that the defendant and her husband were involved in extensive international tourism which went beyond "mere tourism". I am also told by the appellants that there was "international transfer of large sums from one company to the USA" and that there were USA property purchases by "the couple" "as well as investing in businesses abroad". No other details of these matters are provided by the appellants although I have additionally noted that "in 2008 her (presumably the defendant's) property portfolio was transferred to a limited company which "the prosecution contend was incorporated in Spain". Again, if I understand the appellants' submissions correctly, there is also a "cut-throat" suggestion by a co-defendant that "the same activities were being carried out in Spain".

g) The appellants submit to me in initial conclusion that "there are real and substantial international elements to this case which permeate our defence on a legal and factual level. It will be a core part of our preparation and presentation. It is in no sense peripheral".

h) To summarise, hopefully accurately, the LSC counter-submit on this criteria:

- "The relevant test issue for this criterion to be met is significance in this defendant's case".

- This was a fraud operated within the UK via UK based lenders governed by the FSA who are the UK based financial regulator.

- It was the FSA who fully supported the suspicions of the lender in relation to 5 mortgages submitted by the defendant via her company.

- That in relation to the "Lehman Brothers" submissions:

  a) No defendant has yet been charged in relation to the bank in this case
  b) It is SPNL (not Lehman) who are named in the Prosecution case summary
  c) That "unfortunately as the applications for international disclosure have not yet been made I am unable to consider them until they become a current fact". Further as no applications for international disclosure have yet been made the case manager cannot say whether such applications would be authorised by the LSC".

- Actual or potential property purchases abroad in this case are not sufficient to satisfy this criteria.

- The key elements of the alleged fraud were perpetrated in the North East of England; the financial entities were based in the UK and regulated by UK Financial Services Authority with the relevant money transfers originating within UK based bank accounts and the relevant witnesses being based within the UK.

i) <u>My conclusions in relation to this criteria</u>

a) I again consider that I can and should take into account the relevant paragraphs 4.21-4.24 of 2010 VHCC Guidance to assist me in my deliberations as to whether I believe the "defendant's case involves a significant international dimension".

b) Whilst I have concluded that there are international aspects to the defendant's case I am not persuaded on an individual aspect or totality basis that such international aspects particular to this defendant's case are significant enough to satisfy me that this criteria has been fulfilled.

c) Further, I have concluded that it has not been demonstrated to me by the appellants' submissions and the material now before me that any factual or legal international dimension which I have identified to this defendant's case is significant enough to substantially affect case preparation and that it had a direct effect on the appellant defence teams understanding of the case.

d) Accordingly I have decided that this third Block A VHCC fraud criteria has not been satisfied by the appellant.

J. <u>The fourth and final Block A VHCC Fraud Criteria – the Defendant's case requires legal, accountancy and investigative skills to be brought together</u>

a) I have considered this criteria in conjunction with the guidance at para.4.25 2010 VHCC Guidance (which is again set out above and set out within the appellants' written category submissions).

b) I have carefully considered the very helpful and detailed "non-exhaustive list of headings" submitted by the appellants in support of their contention that this fourth criterion has been satisfied.

c) I am particularly mindful of the appellants' submissions on the "legal headings" as follows:

i. False representations/operative deception submissions.

ii. Third party disclosure issues (particularly within the civil courts and involving surveyors)
iii. Interview admissibility (although I have previously noted that the defendant only answered questions in one interview)
iv. Abuse of process considerations

d) I am greatly assisted by the "accountancy" points put forward by the appellants in their written category representations and also by their detailed "investigative" submissions.

e) I also note that the LSC case manager appears to concede in her written counter submissions on the third Block A criteria that "dealing with cut-throat would be regarded as being a legal skill acceptable under the LAIS criterion".

f) I am satisfied by the detailed appellant written submissions and my case knowledge gleaned from the case papers before me that this defendant's case requires legal accountancy and investigative skills to be brought together. I am also satisfied that these three skills can be provided in-house by the appellants and that any forensic accountancy instruction in the future by the appellants would complement their expertise and not obviate the need for it.

g) I am finally satisfied that the extent and quality of the submissions argued by the appellants in support of this fourth criteria are such to persuade me in favour of their submissions without having to consider in great detail as to whether there has been any duplication of appellant argument within the other three Block A categories.

h) Accordingly I find in favour of the appellant in relation to the fourth Block A VHCC Fraud Criteria.

K. Block B Submissions

The appellants contend that "all of the (a) criteria in Block B are amply satisfied". I can see no counter-submissions on this subject from the LSC on the papers before me.

Accordingly I observe in relation to Block B submissions as follows:

i) The value of the fraud is indeed stated at p.6 of the Prosecution further statement of case at "over £250million dishonestly obtained from three lenders".

ii) I am told by the appellants that initial disclosure runs to some 35,000 pages. I presume that this page count is "prosecution documentation" as defined in the 2010 arrangements.

iii) Given the size of this case coupled with the initial disclosure page count and trial time estimate and my presumption that QC and Junior legal aid certificate extension has been granted in this case then I consider it very likely that the total costs of representing this defendant will indeed exceed at least £250,000.

iv) I do not know from the papers whether the Court has been notified of the over 60 days trial time estimate.

L. Single Adjudicator appeal decisions

For clarification purposes I would finally say as follows:

a) The appellant has not satisfied me that a category 1 (all four criteria from Block A are met and all four (a)s from Block B) VHCC Fraud classification should be

assigned to this case contract. In that respect the appellants' appeal fails for a category 1 contract classification.

b) However, I am satisfied that two criteria from Block A are met and at least two (a)s or (b)s from Block B are almost certainly satisfied (subject only to final clarification and confirmation by the LSC case manager in relation to my Block B observations in para.K above.

c) In that event, I believe that the correct classification for this case contract is a Category 2 Fraud classification (and not a Category 3 Fraud classification as apparently assessed and re-confirmed by the case manager).

Appeal by solicitors & counsel – 4 February 2013

LSC decision upheld in part

- **Reading time**

The Adjudicator [redacted] has been asked to consider an Appeal in the above matter relating to the time allowed to consider various Exhibits in this case. The items in dispute relate to part of tranche 1 of the Exhibits consisting of 24,873 of Exhibits. On these Exhibits 5959 consists of Lists of IMEI numbers scanned by [redacted] on behalf of [redacted]

Pages 8200 – 12989 consist of an Expert Report prepared by the Crown into duplication of IMEI numbers. 1 minute per page has been sought by those representing [redacted] in order to consider these documents with a view to identifying duplication of such numbers. 30 seconds a page has been offered for this Task.

There is dispute over Task 3F Deal Packs for which 1.5 minutes has been claimed to consider those packs that form the basis of the Fraud in this case, 30 seconds has been offered.

Finally A3 and A4 Schedules needed to be considered and 5 minutes per page has been requested for A3 Schedules and 2.5 minutes per page has been requested to consider A4 Schedules.

The Adjudicator has had the opportunity and has taken considerable time perusing samples of all types of Exhibits that are the subject of this Appeal. It is readily accepted by the Contract Manager that the Defendant [redacted] was responsible for brokering 66% of the deals,

attended the majority of the V.A.T. meetings with HMRC and had a considerable knowledge of the case. She accepts that more of the material may be likely to be relevant to the case against the Defendant than she had originally considered. She states "I can appreciate that this is not a straightforward case where the client is 5th out of 6 on the Indictment". She acknowledges that the Client's instructions are that the trades he was involved in were genuine and that this Appeal relates to the need to consider the evidence with a view to this but she states that she must consider the types of documents which have been served and that she feels that the balance between the less complex/more complex material is not such that she is justified in increasing the agreed rate beyond 30 seconds per page. She states also "in the absence of any unusual/complicating factors it would be expected that an experienced VHCC firm would be able to deal with this material in the rates agreed".

In all cases of this nature there are many documents which do not require as much as 30 seconds to peruse and the Adjudicator disagrees with the Appellant's Solicitors comments that there are no documents which would require or indeed justify consideration of less than 30 seconds per page. The Adjudicator appreciates that the Solicitors for Mr [redacted] do not go along with the swings and roundabouts theory put forward by the Contract Manager but being an experienced Fraud Case Practitioner the Adjudicator does feel that this theory can arise in some cases and indeed might well arise in this case. The Adjudicator appreciates that some of the Exhibits that are the subject of this Appeal do require more time to consider than that which has been allowed.

I turn therefore first of all to the documents in respect of which a minute per page was sought and 30 seconds allowed, namely the list of IMEI numbers and the Expert Report. The Adjudicator has spent a

considerable period of time looking at the IMEI List which is in numerical order. The Adjudicator has taken into consideration the representations made by Mr [redacted]'s Solicitors and note their explanation as to the incredibly time consuming task that they say is necessary to satisfactorily consider these lists including the need to copy and paste the numbers to a new document. It is the Adjudicator's view that much as this laborious task is necessary, the request for 1 minute per page is excessive but that 45 seconds more than suffices as far as consideration of the IMEI numbers is concerned. However the Adjudicator agrees with the Contract Manager that perusal of [redacted]'s Report (Task D Pages 8,200 – 12,989) warrants at this stage 30 seconds per page.

The Adjudicator has spent a vast amount of time considering the Deal Packs (Task 3F) which are contained in document 5. It is noted that the Crown has only provided a "full deal pack" for 31 of 121 deals. It is also appreciated that the Adjudicator has not had the opportunity of perusing all the deal packs served upon the Defence. It is conceded that the deal packs are documents which contain a considerable amount of material and appreciate that the Defence Team needs to identify and illustrate from the documentation the items referred to by them including fluctuation of price evidence of trading patterns, payments and costs agreed by [redacted], timings of payment, use of fake companies and where he has contact with such companies. It is noted that a rate of 1.5 minutes per page was sought and that 30 seconds was allowed. It is the Adjudicator's decision that having regard to those small proportions of Deal Packs with which the Adjudicator has been provided that a rate of 1 minute per page adequately reflects the task facing those representing [redacted]

The Adjudicator turns finally to the Schedules that have been provided. These consist of A3 Schedules in respect of which 5 minutes per page has been sought and a larger number of A4 Schedules in respect of which 2.5 minutes per page was sought, the Contract Manager has allowed 3 minutes per page for the A3 Schedules and 1.5 minutes per page for the A4 Schedules. The Adjudicator has had the opportunity of perusing a representative sample of these Schedules and appreciates that these contain a considerable amount of information on each page. However it is felt by the Adjudicator that the amount of time sought is somewhat on the high side but that a slight increase is justified over and above that time allowed by the Contract Manager. Accordingly in respect of the A3 Schedules it is view of the Adjudicator that 3.5 minutes per page ought to be allowed and that for A4 Schedules a rate of 2 minutes per page is appropriate.

The Adjudicator would point out finally that if and when the remaining Deal Packs are served and indeed if any further evidence is served the Contract Manager will of course no doubt be contacted immediately in order to seek further time.

Appeal by solicitors – 10 February 2013

LSC decision upheld in part

- **Category**

Issues:

1. The Appellant argues that the contracted case should be categorized as a Category 2 Fraud. The Respondent has categorized the case as a Category 3 Fraud. This is the single issue subject of appeal.

2. In order to be categorized as a Category 2 Fraud, the Appellant must satisfy at least two Block A criteria and two a's or b's from Block B. The Respondent has accepted that all the Block B criteria are met. The issue is whether at least two Block A are satisfied. The Respondent accepts that the Appellant satisfies one criterion, namely (4). "*That the defendant's case requires legal, accountancy and investigative skills to be brought together".*

3. The areas of dispute focus upon whether at least one more of the remaining three (3) Block A criteria are met. The Appellant argues that two of the remaining Block A criteria are met. They accept that *(1) national publicity and widespread public concern is not met*. The Respondent does not accept that either of the two remaining criteria are satisfied.

The scheme and criteria applied

4. The case is being conducted under the 2010 scheme. The appeal is subject to the 2010 VHCC specification informed by the 2010 guidance, which is specifically referred to in the 2010 scheme. The principles to be applied to this appeal are therefore derived from the scheme and guidance.

Material considered

5. I have been provided with the following documents:-

   (a) Case statement of 5th July 2012;
   (b) Original appeal submissions dated 6th December 2012 (mailed 7th December 2012);
   (c) Undated case category assessment sheet;
   (d) Respondent's response of 21st December 2012;
   (e) Appellant's appeal addendum (undated);
   (f) Respondent's appeal response addendum (undated).

The four Block A criteria
(1) "The defendants case is likely to give rise to National publicity and widespread public concern"

6. There is no dispute that the criteria are not met.

(2) "*Highly specialised knowledge*"

7. The Appellant argues that they need to understand Insolvency law and the practice and procedure of an Insolvency practitioner, which is outside the ordinary remit of an ordinary VHCC case. To meet this criteria, the Appellant must satisfy the elements of the 2010 Guidance at 4.17-4.20. The appellant is specifically required to identify the skill and expertise needed and to show that they were able to provide it in house (4.20). The Respondent maintains that the points identified by the Appellant have already been taken account of in agreeing, as they do, Criteria (4) is made out. They also argue that the specialist skill is not properly identified and the Appellant has not explained how this will further the Appellant's case.

8. I accept the argument advanced by the Appellant in its appeal submissions and addendum that there is a distinction to be drawn between an Accountant and an Insolvency practitioner. Given that I have accepted that distinction, I do not accept the Respondent's argument that there has been a cross over of the points between A (4) – accepted by the Respondent as met and A (2). However, as presently argued in the various documents I have, I do not agree that the Appellant has yet evidenced the criteria at 4.20 set out below:-

"The defence team would need to show both that the defendant's case required this skill and expertise, and that they were able to provide it in house. It would be expected that any putative highly specialized knowledge would go to the legal heart of the defendants case, and would be of a significant level of complexity….."

9. The appellant has not demonstrated thus far that the need identified was necessary as going to the heart of the defendants case and that it could be provided in house. Since no expert has been instructed or asked for within the papers I have seen, there is no suggestion that it has been necessary to instruct an outside Insolvency expert to complement in-house expertise. It is also not clear to what level of complexity those issues go. It may reach the "sufficient" level of complexity level but at present that has not been sufficiently demonstrated.

10. The appeal documents merely assert the need for a Licensed Insolvency practitioner. It is said that such a person would be required to understand Insolvency law and practice without properly explaining to what purpose. Moreover, there is no explanation as to how the expertise would be provided, as 4.20 of the guidance requires. Although some of the evidence features on the Isle of Man and it is said that the Appellant needs to understand the myriad laws and regulations involved in Insolvency law, they have not explained why or to what end. Although in the category assessment form there is discussion as to the content of the "Courtman report", there is no analysis of the expertise necessary to deal with his evidence. The mere fact there are alleged to be breaches of particular duties and apparent conflicts of interest asserted, without identifying what is in dispute and how it will be dealt with in accordance with the guidance, the Respondent's assertion that the criteria is not met is fair.

11. In my view, therefore, the Respondent's are correct in their interpretation that this category is not made out. However, this ground may well be made out in future on the provision of further material to support the point. It will obviously have to

identify how the criteria is met by reference to the guidance. If an expert is to be instructed then the ability to argue the point will be made stronger.

(3) The defendants case involves a significant international dimension"

12. In the case category assessment sheet, the Appellant sets out in detail why it is that they say that this aspect is met. This detail adds further to the original submissions made in the 6th December appeal document. In particular, the Appellant relies on the fact that a key aspect of the fraud alleged was perpetuated abroad and involved places such as the Isle of Man, Cyprus, Seychelles and Mauritius.

13. The Appellant has also set out clearly under each "Country" the elements of the case/evidence that touch on those jurisdictions. The Respondent's argue that the Isle of Man is not considered International and in any event the fraud was operated from the UK. The Cyprus dealings did not actually take place and were not in themselves "significant". The same applies to the other Countries identified.

14. By the 2010 Guidance paragraph 4.21-4.24, the Appellant has a number of hurdles to satisfy this criteria. The defence team must show a particular aspect of their case preparation involved a non-UK element of fact, law or both. To be *significant* it has to be demonstrated that it had a "*direct effect on their understanding of the case and substantially affected case progression".* I look to the guidance at paragraph 4.22-23. Here, the defence would need to show that the key elements of the offence were perpetuated abroad and that in analyzing these the defence team would require understanding of the workings of systems or institutions different from those in the UK. The need to understand overseas legal systems and liaison with overseas lawyers is an important factor when considering this aspect.

15. Looking at the detailed arguments set out by the Appellant, I am just persuaded that the Isle of Man would count as "international" for the purposes of the appeal. The geographical closeness is irrelevant in my view. There are separate legal systems in place. However, the true test here is "significant" not just "International". The Appellant needs to satisfy this element by identifying "key" elements of the offence being perpetuated abroad and that the defence need to understand the workings or systems in place in those countries, being different from the UK.

16. I have read the case summary. I have also considered the Appellant's arguments on this point and the Respondent's response. In my judgment, although there is plainly an "International" dimension, it is not "*significant"* in the sense that the guidance contemplates. Allowing for the idea that the Isle of Man is International, the key elements of the fraud were perpetuated in the UK. Although Cyprus and Mauritius etc have a part to play in the overall scheme, that is common in frauds of this type. I can find nothing in the case summary or the arguments that allows support for the submission that the defendant's case involves a significant International dimension in the sense required. Although the Appellant argues that it is necessary to carry out research abroad and to understand the legal regimes in all these places, there is no explanation as to why this is necessary in this particular case. In my view that is fatal to this appeal.

17. I therefore accept the Respondent's arguments on this point in part. While I do not accept the argument that the Isle of Man does not count as "International" for the purposes of the scheme, the Appellant has not evidenced the "significant" aspect of International dimension as required.

Conclusions

18. On present information, I refuse the appeal. However, it may be that the Appellant can support the argument on 4 (2)- highly specialized knowledge in future by reference to the points set out above.

Appeal by solicitors – 12 February 2013

LSC decision upheld

- **Preparation**

I have been asked to consider the appeal of [redacted] in relation to the following issues:-

- The amount of time to be allowed in listening to and scheduling probe transcripts in a case where the defendant is charged under Section 5 of the Terrorism Act 2006.

The background to this case is that the defendant is within the lowest 5% of the population in respect of his intellectual capabilities. He also suffers from a speech impediment, namely a heavy lisp, making it difficult to understand what he is saying and, as a point of observation, one notes that he has been registered for Special Educational Needs. He is also registered blind due to a congenital condition leaving him with very weak vision. There can be no doubt that this defendant is therefore very challenged in the aspects referred to above and it must, therefore, follow that the element of assistance that his Solicitors can expect from him, is likely to be very limited.

The matter in issue concerns the listening to the probe evidence. The appellants contend that they require a total of 4 minutes per minute to listen to the probe evidence. This contention is based on the fact that they have to listen to the probe tapes time and time again to establish what is being said. In a case such as this, such evidence is crucial. It cannot be taken out of context and should not be where the guilt or innocence of the accused is relying on what is said in these conversations. From the transcripts which I have seen, clearly there are issues as to what conversations are attributed to each of the five defendants. There are also issues, it seems to me, that one has to establish whether some of these conversations took place in the hearing of this defendant or not. One also has to be clear what is being said, and who is agreeing to what.

Given that background I consider it wholly appropriate that the appellants should be allowed 3 minutes per minute to listen to these tapes, to be clear as to what is said, the context in which it is being said, and to endeavour to establish whether or not this defendant is present. I note from reading the observations thus far on the transcripts, that there are numerous references to indistinct conversations. Indeed, for instance, within file number 22.02 there are no less than 26 references to indistinct elements of the conversation within a period of 34 minutes 30 seconds. I would therefore allow the appellants 3 minutes per minute to listen to these tapes given the background set out above. I would also allow 1.5 minutes per minute to read and schedule the transcripts. I consider this to be a reasonable figure to allow in the circumstances of this case.

In conclusion therefore, I allow 3 minutes per minute for listening to the tape and 1.5 minutes per minute to review and schedule the material.

One final observation is that I note that the Contract Manager, in part, disputes the level of Mr [redacted]'s disability. It is worth observing that having read the reports the Psychiatrist, Dr [redacted], refers to the fact that he had to repeat and rephrase questions for Mr [redacted] to understand, and that Mr [redacted] was "softly spoken". It is also worth observing that Dr [redacted] states that having listened to his contributions to conversations in the transcript he

notes that those contributions are sparse and Mr [redacted] is often repeating other peoples comments, or, agreeing with their propositions rather than initiating or developing ideas himself. It therefore seems to me that these transcripts are crucial. He describes Mr [redacted] as being limited in his intellectual ability and being susceptible to being an easily led person. It is also worth observing that Dr [redacted] states "in my view he uses techniques commonly seen in people with intellectual impairment to convey a sense of having understood, when in fact he does not".

It therefore seems to me that detailed and thorough listening of these probe transcripts is without doubt crucial to this defendant's case.

Appeal by solicitors – 8 February 2013

LSC decision overturned

- **Preparation**

Contract Manager's original decision:
Task 105 : 80 hours granted, 120 hours sought by Appellant

Task 108: 26 hours granted, 67.6 hours sought by Appellant

Tasks 109-112 inclusive : 50 hours granted, 99.8 hours sought by Appellant.

Committee Decision:

Tasks 105 and 108 appeals allowed in full. During oral submissions by the Appellant (explaining in fuller detail the nature of the two tasks) the Case Manager considered the additional submissions and conceded the appeal on the two tasks. **120 and 67.6 hours granted for the tasks respectively**.

Tasks 109-112 appeal allowed in full. A total of **99.8 hours granted** for the four tasks.

Committee Reasons:

Tasks 105 and 108 appeal conceded by Case manager (see above)

Tasks 109-112 inclusive: the time requested of 99.8 hours is both reasonable and proportionate to the tasks. The 43 page annotated Defence spreadsheet produced as part of the product of these tasks is an essential means of Defence preparation for trial purposes, which, inter alia, will be used to consider and the making of appropriate section 10 CJA Admissions. 37.8 hours have so far been used to produce 30% of the tasks. The Defence are considering ledgers (from Hertzberg $ ledgers) and company bank accounts to produce a Defence schedule.commenting upon the SFO Banking analysis of Landmark Trade Services Limited (27 page schedule).

Appeal by solicitors – 13 February 2013

LSC decision overturned

- **Disbursement**

Contract Manager's original decision:
LSC decision not to allow £19,542.50 in respect of points 2 and 3 of a quote dated 30.10.12 relating to spreadsheets and analysis of Forensic Accountant

work

This is an Appeal against the LSC decision not to allow £19,542.50 in respec points 2 and 3 of a quote dated 30.10.12 relating to spreadsheets and analysi Forensic Accountant work.

The Applicant in oral submissions clarified the sums sought by reducing the cl (and item in dispute) to £15,000 excluding VAT; on the basis of work already undertaken.

Having considered written and oral representations of all parties the Appeals Committee is of the view that the work sought is necessary and the Appeal is allowed in respect of the revised sum of £15,000.00 excluding VAT.

Appeal by solicitors – 13 February 2013

LSC decision overturned

- **Category & reading time**

I have read all the documents provided by the LSC and the Appellants.

The appeal is two fold: The categorisation of the case, the case is presently categorised as a "Category 3".Secondly, the task of reading the many exhibits has been allowed at a rate of 30 seconds a page,the amount routinely allowed by the LSC CCU.

As regards the categorisation of the case I would conclude that the case should receive a "2" categorisation. In the case of the rate presently allowed for reading the exhibits, I cannot find a sufficiently strong argument on the papers I have considered to allow a greater payment.

Categorisation: The appellants believe that all criteria in the Categorisation part of the guidance have been met. Having read their documents I find that it has not been established on those documents that the case involves the bringing together of legal accountancy and investigative skills above those expected to be the preserve of "Fraud Specialist"

However,the Appellants have demonstrated that the case has a significant international dimension and has and will attract substantial publicity.
It is accepted that the less subtle requirements of Part B of the criteria have been met Since two aspects of Part A have been established it follows that this case should be re categorised to "2"

Turning to the second aspect of the appeal - the appellants haven't provided sufficient information to determine why the normal amount allowed should not be followed. It would have been better to explain with reference to the documents why they might need greater scrutiny. Alternatively, a class of document could have been highlighted and specific points made to substantiate the claim.

It follows that if it could have been demonstrated or the position changes a different decision could or might be made.

I allow the appeal in part

Appeal by solicitors – 13 February 2013

LSC decision upheld in part

- **Disbursement**

QC task	expert time	rate £144 p/h	manager time	at £108 p/h	accountant time	at £80 p/h	total time	total cost
1	5	720	70	7560	140	11200	215	19480
2	1	144	7.5	810	7.5	600	16	1554
3	1	144	7.5	810	7.5	600	16	1554
4	1	144	7.5	810	7.5	600	16	1554
5	5	720	22.5	2430	30	2400	57.5	5550
7	5	720	22.5	2430	0	0	27.5	3150
8	5	720	22.5	2430	0	0	27.5	3150
9	1	144	35	3780	70	5600	106	9524
10	1	144	22.5	2430	37.5	3000	61	5574
	25	3600	217.5	23490	300	24000	542.5	51090

junior task	expert time	rate £144 p/h	manager time	at £108 p/h	accountant time	at £80 p/h	total hours	total cost
1	0	0	7.5	810	7.5	600	15	1410
2	2	288	17.5	1890	35	2800	54.5	4978
3	2	288	17.5	1890	35	2800	54.5	4978
4	0	0	5	540	10	800	15	1340
5	1	144	20	2160	30	2400	51	4704
6	1	144	10	1080	20	1600	31	2824
	6	864	77.5	8370	137.5	11000	221	20234

task	expert time	rate £144 p/h	manager time	at £108 p/h	accountant time	at £80 p/h	total hours	total cost
report draft	15	2160	70	7560	0	0	85	9720
con with counsel	15	2160	15	1620	0	0	30	3780
final report	7.5	1080	30	3240	0	0	37.5	4320
	37.5	5400	115	12420	0	0	152.5	17820

The above schedule represents the appellant's request for Tasks as advised by Leading and Junior Counsel. The time and the rate to complete the Tasks represent the request of Grant Thornton Chartered Accountants in their capacity as an expert forensic accountant. In their letter of 25th July 2012 they attach a schedule of the work they consider is necessary. The request is for 542 hours (£51,090.00) to complete Tasks 1-10. A further 221 hours (£20,234.00) to complete Junior Counsel's Tasks plus 152 hours (£17,820.00) to compile the associated Report.
The Contract Manager has offered 120 hours (£12,960.00) to complete Tasks 1-10. 35 hours (£3780.00) to complete Junior Counsel's Tasks plus 20 hours (£2880.00) to compile

the associated Report. The Contract Manager has confirmed that the times offered are global figures for each area requested and it is for the appellant to decide how best to divide the time within the particular area they are dealing with.

Decision
Appeal Dismissed

I agree with the Contract Managers reasoning. A large amount of the time requested was to be used to carry out work that was well within the competence of the appellant solicitor or counsel. A large amount of the time requested was to be used to carry out tasks that had little to do with forensic accounting. In addition the overall time requested was excessive.

Full Reasons for Dismissing Appeal relating to Junior Counsel Tasks 1 – 6

junior task	expert time	rate £144 p/h	manager time	at £108 p/h	accountant time	at £80 p/h	total hours	total cost
1	0	0	7.5	810	7.5	600	15	1410
2	2	288	17.5	1890	35	2800	54.5	4978
3	2	288	17.5	1890	35	2800	54.5	4978
4	0	0	5	540	10	800	15	1340
5	1	144	20	2160	30	2400	51	4704
6	1	144	10	1080	20	1600	31	2824
	6	864	77.5	8370	137.5	11000	221	20234

Task 1

Hours requested: 15
Cost: £1410.00

This involves identifying the value of the Dowry at a particular point in time. This is a task that should be resolved in less than 30 minutes.

Task 2

Hours requested 54 ½
Cost: £4978.00

The request is to identify the trail of monies from the Dowry through the property chain to the present. The advice states “The forensic accountant should be provided with all documentation that those who instruct me have in relation to the dowry and properties both in the UK and overseas …”. The advice gives no indication of the number of properties involved or the documentation available. Notwithstanding that lack of information the forensic accountants request 54 ½ hours work. On the information available the Task can be completed within the block of 35 hours offered by the contract manager.

Task 3

Hours requested 54 ½
Cost: £4978.00

Whilst the request refers to the bank accounts of the defendant and his wife, it is the prosecution case that the defendant had no bank account. The Prosecution Case Summary refers to unexplained cash deposits and transfers in excess of £120,000.00, in the name of the defendant's wife, over the course of the indictment. It is of note that the appellant's client "the defendant" is not charged with an offence relating this money. Even putting aside that fact and accepting that it is some part of the defence case for the defendant's client, the hours requested are excessive. The prosecution indicate in the Case Summary that detailed schedules relating to the said money will be served on the defence.

The request for the forensic accountant to "comment on the cash flow" appears to engage no forensic accounting skills. It is for the appellant's client to give instructions on funds that are passing through the accounts he controls. In particular the defendant will be in the best position to deal with the schedules referred to above.

Task 4

Hours requested 15
Cost: £1340.00

There is also a request for the forensic accountant to "provide an audit trail for income and expenditure between accounts". Even giving due respect to Junior Counsel and his in-depth knowledge of the case, there appears to be no reason why this task should be carried out; the issue is where the money came from and how was it generated.

Task 5
Hours requested: 51
Cost: £4704.00

In addition to his employment at the foreign exchange bureau, the defendant has an interest in 3 other income generating business. The restaurant generates £1200 per month income. The supermarket generates £1200 per month. No information is given about the income generated by P Marketing and Distribution; the defendant will be able to provide that information.

The request by Junior Counsel is that the forensic accountant analyse the income and expenditure from each. The issue for the defence is where the money paid into his wife's accounts came from. It will be important to his case to establish that the said businesses were able to generate the income he claims to have received. If the payments were by cheque or bank transfer then there will be an audit trail. If the payments were in cash then the credibility of that claim can be established within the block of 35 hours offered for the Junior Counsel Tasks.

Task 6
Hours requested: 31
Cost: £2824.00

In the context of the defendant's non- forex bureau business interests, Junior Counsel requests the forensic accountant provide an audit trail for income and expenditure between accounts. To the extent that this task produces any benefit for the defendant, there is ample time available in the block of 35 hours offered to the appellant.

Full Reasons for Dismissing Appeal relating to Experts involvement

Task	expert time	rate £144 p/h	manager time	at £108 p/h	accountant time	at £80 p/h	total hours	total cost

report draft	15	2160	70	7560	0	0	85	9720
con with counsel	15	2160	15	1620	0	0	30	3780
final report	7.5	1080	30	3240	0	0	37.5	4320
	37.5	5400	115	12420	0	0	152.5	17820

The Tasks
Hours requested: 152½
Cost: £17,820.00

The request relates to the draft and final report and conference with counsel. The contract manager has offered 20 hours for the" experts" involvement in the case. Of the 15 Tasks requested there are many that will involve very little report writing. Looking at the 15 Tasks and the pulling together of the information involved in writing up the Expert Forensic Accountant Report, it should take no more than an average 1 hour per task. The 20 hours offered by the contract manager provides ample time for the involvement of the "expert" in this case.

Full Reasons for Dismissing Appeal relating to Queen's Counsel Tasks 1 - 10

Task 1

Hours requested: 215
Cost: £19,480.00

Richards Schedule 0001 is the product of an analysis by the prosecution of the Wright 133 material. Wright 133 is the product of the mirror imaging of the bureau's hard drives. Richards Schedule 0001 amounts to a number of Excel schedules dealing with the volume of currency passing through the bureau. Whilst I have been unable to examine Wright 133 (it was presented to me in an inaccessible format and neither counsel nor solicitor for the defence was able to accommodate my short notice request to view the same in chambers or at their office). Notwithstanding that slight drawback I am still able to come to the obvious conclusion that RS 0001 was constructed by selecting the relevant information from Wright 133.

The proposed work to be conducted by the forensic accountants is summarised in the schedule attached to the Grant Thornton letter of 25th July 2012.

Task 1: Double check the Richards Schedule 0001 and create our own version using all available information.

It will be necessary, for the efficient progress of the trial, for the defence to agree with the accuracy of RS 0001. In assessing how much should be spent upon the Task it would be unreasonable to expect public funds to be used in the face of every indication pointing towards the schedules being accurate. It is therefore reasonable that a block of hours from the 120 offered by the contract manager be used to sample test RS 0001 against Wright 133. If after 20 hours analysis the schedule was found to be accurate then it would be unreasonable to press on with that Task. This is particularly so in view of the fact that the Task will be conducted by an experienced forensic accountant. It would be wrong to lose sight of the mechanism of the Task under consideration, it amounts to the simple checking of the accuracy of the added up transactions. It involves no interpretation of the data and could easily be carried out by a Grade C fee earner. If in the analysis it is discovered that there does exist a basis for claiming that the schedules are inaccurate then the appellant must immediately inform the contract manager and request funds for a more detailed analysis.

The advice of the QC goes on to request that in carrying out the "… double check of Richards Schedule 0001 …" the forensic accountant should consider material in addition to that which appears within Wright 133. The justification for this is that the QC believes that a selective approach has been adopted in the creation of RS 0001. Notwithstanding the suggestion that the prosecution has been "selective" there appears to be no objective evidence presented to support that conclusion. Before public expense is used to check out this theory there would need to be some basis for the conclusion. No sample analysis has been carried out to support the belief and the application amounts to a request to spend a very large amount of public funds without any proper basis. In addition it is unclear what is to be achieved by producing a defence version of "… all available information"; the defence case is that he was a mere employee and the volume of 500 euro transactions were not out of kilter with the norm. Notwithstanding that uncertainty about the purpose and benefit I am guided by the opinion of the QC and hence suggest that the defence use some of the 125 hours allowed by the contract manager to present a case for this part of the Task.

The QC's preamble to his remaining Tasks appears in paragraph 9 of his advice. This is a general analysis of the type of allegations that may arise in Bureau De Change money laundering cases. It is not suggested in any part of the advice that the actual prosecution case faced by the appellant's client involves the type of general allegations he has referred to.

Task 2
Hours requested: 16
Cost: £1554.00

The QC advises that "… the forensic accountant must be in a position to describe and illustrate to the jury … the full extent of the digital records kept by the bureau …".

Task 3
Hours requested: 16
Cost: £1554.00

The QC advises that "… the forensic accountant must be in a position to describe and illustrate to the jury … the full extent of the hardcopy records kept by the bureau …".

Task 4

Hours requested: 16
Cost: £1554.00

The QC advises that "… the forensic accountant should compare and contrast the bureau's digital and hardcopy records …"

Tasks 2, 3 and 4 add up to 48 hours work at a cost of £4662.00. This is in the context of the appellant's having received a considerable amount of time to look at the very material they now seek the forensic accountant to go over and select material supportive of a professionally run Bureau De Change. The job of presenting the supportive material is well within the grasp of a Grade B solicitor. Once collected, it will then be for the forensic accountant to consider its impact on the issue. There is ample time available within the block of 120 hours for the forensic accounting element of the exercise.

Task 5

Hours requested: 57 ½
Cost: £5550.00

At paragraph 14 of the advice of the QC he refers to the need to consider prosecution statements and exhibits relating to the currency wholesalers dealings with the bureau. The purpose of the Task is to put the expert in a position to comment upon the accuracy of the recording of the transactions by the bureau. There appears to be no suggestion that the recording of the wholesale transactions by the bureau was in any way deficient. In any event the Task simply cannot involve such a large amount of work as 57 ½ hours. There will be a settled position as to the amount of trade the wholesale traders did with the bureau. That settled position needs to be compared with the position reflected in the bureau's records. There is ample time available within the block of 120 hours for the forensic accounting element of the exercise.

Task 7

Hours requested: 27 ½
Cost: £3150.00

The Task is broken down into Companies Acts compliance, The forex bureau's relationship with their accountant and the identification of all documents which support the case that the defendant did not deal with the accountant and was not the owner of the bureau. I repeat that the defendant's case is that he was an employee with limited involvement in the bureau. It appears to be the prosecution case that whilst the defendant was the de facto owner of the bureau he distanced himself from any evidence of that ownership. The Task proposed appears to be an excessive use of public funds to cover an area that can be dealt with far more efficiently. Companies Act compliance should be a relatively swift exercise and the issue of contact with the accountant should start with a witness statement from the accountant. The analysis of material to prove a negative – that there is no documentary evidence of the defendant dealing with the accountant – amounts to a potential waste of resources in circumstances where there is no suggestion from the prosecution that such documentation exists. The same applies to evidence of ownership of the bureau. To the extent that it is reasonable to spend time on the proposed Task, there is ample available time in the 120 hours block to efficiently address the Task.

Task 8

Hours requested: 27 ½
Cost: £3150.00

This Task relates to the record keeping requirements on the bureau arising out of the Money laundering Regulations and whether its system complies with the same. The requirements will be the "standard requirements" and it should take less than an hour to list them. The issue of whether the bureau's documented system complies with the same will be a matter of comparing the two. The time requested is excessive and there is ample available time in the 120 hours block to efficiently address the Task.

Task 9

Hours requested: 106
Cost: £9524.00

At paragraph 17 of the advice of the QC he refers to the need to create a schedule of the forex bureau trade in 500 euro notes on a weekly / monthly basis. This will then be compared with the yet to be served prosecution schedule of comparable Bureau De Changes.

In a case that centres on an allegation of an unusually high volume of 500 euro notes being traded it is surprising that no prosecution data presently exists on that point. In addition it is unlikely that the prosecution would serve schedules of comparable Bureau De Change trades without providing the trade data for the bureau. It would therefore be unreasonable to press on with this Task until the defence have requested the same from

the prosecution. Once the information is received there is ample time available in the 120 hours block to do a reasonable sample of the data. If mistakes are found then it would be reasonable to carry out a more in depth analysis of the data.

Task 10

Hours requested: 61
Cost: £5574.00

At paragraph 18 of the advice of the QC he refers to the need to cross-reference the visits by named criminals with the volume to 500 euro notes being traded.
The Prosecution Case Summary refers to:

O – 11 dates
I – 1 date
T and F – 1 date

The checking of the 500 euro note trades on 13 days and then comparing the results with other days is not a Task worthy of 61 hours work. There is ample available time in the 120 hours block to efficiently address the Task.

Appeal by solicitors & counsel – 18 February 2013

LSC decision upheld

- **Category**

This is an Appeal concerning the Categorisation of Case, the Appellants seeking a change from Category 3 to Category 2. Having considered the written and oral representations of all parties the Appeals Committee is of the view that the case Category for both defendants is Category 2.

The re-Categorisation arises from a request of the Appellants to review the original categorisation; in the case of M the request for a review was made on 8th November 2011 and in the case of B, the request was made on 9th July 2012.

The Appeals Committee finds the request for review was properly made and allowed by the Contract Manager in email correspondence. Accordingly; the Appeals Committee finds that the re-categorisations operate from the date the request to review the category was made.

The re-Categorisation operates from 8th November 2011 in respect of both defendants

Appeal by counsel – 13 February 2013

LSC decision overturned

- **Travel**

Contract Manager's original decision:

Not to allow the Appellant's reasonable travel expenses and time for a solicitor from their office in Birkenhead to attend the client at her home address in North Wales. The request is made as the client's husband suffers severe dementia and the client is the main carer.

The defendant is one of 12 defendants charged in connection with a large scale mortgage fraud in the North Wales area. The Prosecution allege the gross loss on the 116

transaction they focus on to be £15,598,897. The PCMH took place on the 14th October 2011.

The original request to allow them to travel to attend their client at her home address was made on the 2nd November 2012 and thereafter the appeal was lodged on the 27th December 2012. The correspondence is silent as to how instructions had to date been obtained from the client or indeed what arrangements had been made for the care of her spouse when her attendance at Court was required. Equally the correspondence from the solicitor is silent as to whether the eminently sensible course suggested by the Contract Manager to apply to the Court to vary the restraint order to allow access to some of the client' funds to supplement the state care for her spouse had been pursued and if so with what result.

Appendix 1 to the General Criminal Bills Assessment Manual Paragraph 11 makes clear that it is generally reasonable to expect the client to attend the solicitor's office to provide instructions. Exceptions are noted but these would appear to relate solely either due to considerations dictated by the case or specific to the client's medical situation. It is silent as to when the request is based on the position of a third party however distressing or tragic.

In the circumstances therefore this appeal is refused

Appeal by solicitors – 24 February 2013

LSC decision upheld

- **Preparation**

The essence of this appeal is accurately summed up in the extract below from the appellants Further Response dated 21st February 2013.

'The Case Manager has made a decision based on the volume of material involved, the length of time between the instruction of the Appellant and the commencement of trial and the familiarity of the remainder of the defence team with this same material and concluded that an allowance of 495 hours to focus on the material most pertinent to the preparation of the defendant's case is reasonable.'

The appellant argues that he should be allowed the same hours as those given to other defence teams. He points to the fact that there were sufficient days available to him to utilise these hours and that as leading counsel it is essential that he personally reviews the material.

The respondent argues that his allowance should be viewed in the light of the fact that his team have had many hours to review the material and that consequently he should be able to take a more focused approach relying upon the work undertaken by other members of his team to guide his preparation. As a consequence of this he would not need as many hours as the other teams.

It seems to me that as a matter of principle the whole of the hours requested should be allowed for the following reasons:

1. The doctrine of equality of arms applies between both the prosecution and co-defendants and allowing less hours to this team potentially offends against that principle.
2. Leading counsel has a duty to read and consider all of the material. He cannot take at face value the information supplied by either his instructing solicitors or junior as he is the person who ultimately bears responsibility for strategic decisions.

3. The Criminal Procedure Rules place an ever increasing burden on counsel to actively assist in the case management of all cases and they are particularly valuable in the trial of complex frauds. Reading the core material with care is therefore essential to the smooth running of this process.
4. Complex fraud trials rely upon the willingness of counsel to agree facts and schedules to be placed before the jury. The time for undertaking this process comes in part from the allowance made to consider the core material.
5. Leading counsel could read the core material and decide that strategic decision made by the rest of the team should be changed and the material considered in a different light.
6. It seems to me that the decision to allow hours and the auditing process to decide whether those hours have been undertaken are two separate issues that should not be conflated.
7. In other words the hours should be allowed in principle but:
8.
    a. That does not mean that counsel necessarily has to use all of those hours.
    b. Counsel may find that the time needed to be actually used is less because of the assistance he derives from the work already done by other members of the team.
    c. Counsel may also find that he cannot actually use all of the hours because of the lateness of his instructions and the lack of time available

9. These are all matters that should be reviewed during the auditing process.
10. I note the representations made in relation the application for two counsel but am not persuaded that they should affect my decision. The purpose behind those representations was principally to deal with the Recorder of Leeds judgement regarding the criteria for allowing two counsel. The same criteria applied to all of the other teams and they were granted more hours than this appellant.

Appeal by counsel – 24 February 2013

LSC decision overturned

- **Disbursement**

Contract Manager's original decision:

1. Authorisation of hourly rate of expert @£144ph when £240 ph sought
2. Authorisation of 23 hours and 4 hours travel and disbs for the selected expert when 71.2 hours and 4 hours travel and disbs sought.

Adjudicator's Decision:

1. I conclude that an hourly rate of £240 is appropriate
2. I conclude that 59.6 hours and 4 hours travel and disbs is appropriate.

This is an appeal brought by one firm but it is noted that this is a joint instruction of an expert.

It is self-evident that the instruction of this expert is crucial to the defence.
The areas outlined to be within the ambit of the report are relevant and in my view necessary.

Significant enquiries have been made to locate an appropriate expert. Such an expert has been identified and he has agreed to reduce his rate for the provision of this report. The other potential expert was at a fairly similar rate. I understand the preference for the selected expert.

Whilst one is conscious of the public purse one also has to ensure that a defendant's case is appropriately presented and accordingly the market rate has to be paid. Having concluded that the market rate is applicable I therefore have to turn to the hours sought.

Whilst strong representations are made that 8 minutes a page are required for the consideration of the initial material I cannot accept that. I note that the contract manager has concluded that in excess of 3 minutes is acceptable and accordingly I authorise 4minutes per page making 3.6 hours rather than the 7.2 sought.

In relation to the drafting of the report 24 hours are sought. Bearing in mind the significant research that I authorise below I am aware that this will be a significant document; however I do not believe that it is appropriate for 3 days to be required for this. I authorise 16 hours noting that 2 hours have been allowed for the notes reference the conference which in essence will be the areas of potential amendment. There is no issue in relation to the case conference and the case conference notes and I do not change that authorisation.

As indicated above the research and preparation on specific issues is significant. I have already indicated that I believe those to be relevant and necessary. I am not surprised as to the time sought and I authorise it in full, anticipating that it can be undertaken in such a way as reduces the drafting time of the report.
The travel sought is authorised and I do not change that authorisation.

Accordingly the appeal is partially allowed.

Appeal by solicitors– 28 February 2013

LSC decision upheld in part

- **Disbursement**

Contract Manager's original decision:

To refuse funding for the Appellant to travel to India and Sri Lanka to make defence enquiries, take statements, and obtain documents.

1. I have read in full all the documents supplied, as set out in the list at the end of the VHCC Appeals Representations form dated the 12th February 2013, and also the further documents referred to at the end of the CCU's document dated the 26th February 2013. The only documents I have not seen are the "quotations from suitably qualified agents" referred to within the body of the 12th February 2013 form, but not listed within the "documents attached" section. However, I do not believe that the absence of those quotations affect in any way my decision to refuse this appeal.

2. I am not at all persuaded by the Appellant's representations.

3. I agree wholeheartedly with both the reasons for refusing the initial request as set out in [redacted]'s e-mail dated the 20th December 2012, and her detailed reasons set out in the CCU document dated the 26th February 2013.

4. I do not propose to repeat those reasons in this document, but confirm that I adopt all of them.

5. In addition, and I hope by way of assistance, I set out below some further observations in this particular case.

   i) This appeal and indeed the original request would have had much more weight and prospects of success if the whole process had been started much sooner than it was. I find it surprising to say the least that such an important part of the defendant's case has not been explored and progressed many months ago, rather than being left until the last minute.

   ii) In my view other avenues should have been explored before this application was made, for example:

      a) Clear instructions and information from the defendant about specifics for example the potential witnesses, the lawyers, notaries, geographical areas to be targeted.

      b) What efforts have been made by the defendant's wife in terms of instructing her team, and assisting the defendant with information, telephone and e-mail contact details of the relevant persons, and so on?

      c) Internet and e-mail enquiries of the relevant persons, lawyers, notaries, Land Registries, and so on.

      d) The availability of local agents in India and Sri Lanka and the extent to which they could realistically assist (as opposed to simply quotations of cost).

6. At that stage, and depending upon the outcome of all the above enquiries, the Appellant could have presented a cogent argument if necessary, that the only viable option at that stage was to personally travel to one or both countries to conduct enquiries etc.

7. There should then have been available a detailed itinerary with clear evidence of actual cost of flights and accommodation, and travel abroad together with interpreters etc. This should also include a daily list of proposed appointments with, or visits to, relevant witnesses, lawyers, notaries and appropriate Land Registries.

8. In my view, providing a bundle of pages and pages of cost of flights and accommodation without any of the specific details referred to above, is unhelpful. In order to consider a request for funding for travel abroad, a detailed itinerary must be provided at least showing the maximum cost of travel and accommodation over, say, a 2 week period. There is a complete absence of detail in this case.

9. One further problem which has not been addressed by the Appellant is how any material (whether it be witness statements, records from lawyers, official records from Land Registries etc) would be deployed in support of the defendant's case. Realistically the Crown would not simply accept such materials at face value, therefore how would such material be adduced in evidence?

10. The task of obtaining any of the evidence must have appeared extremely difficult to the Appellant at an early stage in this case. In my view, the instruction of lawyers local to the relevant areas in both countries would have been by far the most appropriate, cost effective, and potentially lucrative way of preparing this part of the defendant's case.

11. For all of the above reasons, including those already set out by the Contract Manager, I refuse this appeal.

Appeal by solicitors– 7 March 2013

LSC decision upheld

- **Reading time**

<u>The Case</u>

1. I have been provided with:
    - VHCC Appeals Representation Form – NAE 2 [Appellant]
    - Cat 2 Reps [Appellant]
    - Emails [Appellant]
    - Appeal Response – Phase Final [CCU]
    - LIV_ appeal 2 Appendix 1 [CCU]
2. I was also provided with:
    - Further representation On Exhibits Appeal [Appellant]
    - Enclosures 1 – 3 [Appellant]
    - Emails 12.12.11; 14.2.12; 10.8.12 and 19.2.13 [Appellant]
    - Addendum Response 2nd Draft [CCU]
    - LIV_ Addendum 1 [CCU]
3. I have read all the documents with some care and I am grateful for the detail of the submissions and clarity of response.

4. This is a Constriction Industry Scheme fraud where it is said fictitious sub-contractors / off book labour was used by the conspiracy to retain what should have been paid as NI contributions, income tax and VAT for themselves. This defendant is on any view an integral part of the allegation. The case itself is a large and complicated affair as the detailed Category Representations – which were accepted by the CCU – recite. Indeed it is not disputed by the CCU and was re-affirmed in the Contract Manager's email of 19th December 2012.

5. The question however is whether or not the Contract Manager acted reasonably in allowing 45 seconds per page for the consideration of 22,191 pages of exhibits served by way of an NAE. It is important to record:
    - The contract manager had previously permitted counsel 1 minute per page to consider the exhibits and
    - When allowing 45 seconds per page for counsel for this NAE the contract manger continued to allow the solicitors to maintain the 1 minute 30 seconds for considering / scheduling the exhibits.

Contract Manager's Decision & Reasons

6. The contract manager considered the appellant's original request to maintain 1 minute per page for this NAE and refused it.
7. The contract manager relies on paragraph 4.31 of the VHCC Guidance 2010 that outlines the factors that may [my emphasis] lead the CCU to reduce the allowance given for the consideration of exhibits.
8. In particular he relies upon point 4 for both junior and leading counsel (albeit for slightly different reasons) which reads:

    "The nature and complexity or otherwise of the material, or significant portions of the material, is such that the Contract Manager may reasonably expect that a fee earner can read and absorb its contents at a faster rate".

9. The Contract Manager undertook a ‘dip sampling’ exercise of Evans 006 and found of the 6.5% of items sampled in total that 97% were invoices. Of those 70% were straightforward single page invoices. The other 30% contained a back up time sheet (22%) or were more complex (8%). Examples of these categories were provided as an Appendix to his reasons.
10. In response to the Appellant’s further submissions the Contract Manager further dip sampled Evans 004. Similar findings to those contained within Evans 006 were made.
11. In recognition of the mixed nature of the complexity of the exhibits the Contract Manager did not reduce the allowance to 30 seconds, but to 45 seconds. He also took account of the scheduling work of the solicitors; the results of which will be provided to counsel for their use in trial preparation and at trial, work which counsel will be permitted to consider in due course as a separate paid task.
12. The Contract Manager points out that after the allowance of 1 minute per page for the served case, further NAEs have been considered individually and one has attracted a further 1 minute per page; another 45 seconds. Although there is some dispute as to the Appellant’s stance over that which attracted 45 seconds per page there was no appeal.

Counsel’s Appeal & Reasons

13. The Appellants have filed lengthy submissions with a number of attachments. I will be forgiven for not reciting the entirety of the detail although, as I have said, I have considered everything said and provided. Their case is, as I understand it, to be able to be summarised as follows.
14. The Appellants remind me that the fraud is a large and complicated affair and that their client is a central defendant. This much was recognised by the Honorary Recorder of Birmingham when he extended the representation order to cover Queen’s Counsel with junior counsel and the CCU in email correspondence.

15. They rightly point out that the served case attracted an allowance of 1 minute per page for both counsel and for solicitors 1 minute 30 seconds to include scheduling (at 1 minute to read and 30 seconds to schedule respectively).
16. There is a complaint that the Contract Manager should not have invoked paragraph 4.31 of the VHCC Guidance as:
    - "These cannot apply as if they did they would apply for both counsel and solicitors. As the rate for the solicitors has been maintained, the decision to reduce the rate for counsel is both illogical and perverse".
17. The Appellants point out that the reduction to 45 seconds for a previous NAE was done in spite of strong complaint by the Appellants and therefore the response of the contract manager in relation to the request that has led to this appeal - 'This was the rate I agreed for counsel for the last NAE' [28.11.12] – is again illogical.
18. In a document entitled 'Further Representation on Exhibits Appeal' of some 22 pages in length accompanied by some detailed enclosures the Appellants re-press their case. Much of the original submission is repeated together with large parts of the category document as well as a disquisition into the make up of a previous Notice of Additional Evidence. Grateful as I am for this material it is clear that the complexity of the case overall is not in doubt; nor the role alleged against the defendant; nor that previous material has justified the higher allowances.
19. The Appellants attach examples of what is said to be complex data. There is no dispute as far as I can see to the contract manager's assertion otherwise as to the make up and nature of the NAE [p3 @ point 7].
20. They argue:

    "The documents subject of this appeal requires very close analysis and requires money trails to be followed through. It is not how much data is necessarily on the page, it is what the effect of the data has on the defendant that is the core issue. The contract manager has failed to recognise this and has failed to look at the case therefore of this individual defendant".
21. In short it is said that there is nothing in the NAE subject to the appeal justifying a departure from 1 minute per page.

Discussion

22. Once the allowance for the exhibits is determined it sets the level for further allowances in relation to additional evidence unless there are reasons for departing from it.
23. Without deciding whether they are exhaustive reasons for lowering an allowance, such reasons are found in paragraph 4.31 of the VHCC Guidance.
24. The central question here is whether or not it was reasonable for the contract manager to conclude that point 4 of paragraph 4.31 was applicable, that is whether or not the nature of the material, or significant portions of it, might reasonably lead the contract manager to conclude that someone can read and absorb its contents faster than previous material. References to previous decisions on different NAEs assist neither party.
25. It is in my view somewhat of a red herring that the solicitor's rate has remained undisturbed. The Contract Manager is perfectly reasonably able to conclude that the twin tasks of reading and scheduling require 1 minute and 30 seconds however that is broken down.
26. Further there is no warrant upon a reading of the fourth point in paragraph 4.31 for suggesting that its application must be to all fee earners in a defence team, including counsel; or none. Whilst, without deciding the issue, that may apply to other points within the paragraph where the reasoning is 'team wide' [with use of the phrases 'defence team' or 'team'] in the fourth point the phrase 'fee earner' rather than team is used. That suggests to me that a contract manager is able to distinguish between team members where it is appropriate to do so within point 4.
27. I entirely accept what is said about the complexity and size of this case and the position of this defendant. I also accept that what is required to read and considered upon the written page depends on content and relevance.
28. I further entirely accept that with the NAE under appeal there are complex documents that would, on their face and without more, justify 1 minute per page.

However the contract manager has demonstrated, and it is not sought to be suggested otherwise, that the bulk of the evidence is the sort of material that 30 seconds per page would be an appropriate allowance for.

Decision

29. However I must in all the circumstances refuse the appeal. The allowance of 45 seconds overall for this NAE is reasonable. It takes into account that there are a number of complex exhibits that require more than the standard amount of time of 30 seconds, but, on a swings and roundabouts basis, concludes that there are many many documents within the NAE that maybe considered within less.
30. As things stand, in a case where there is a lot of 'standard' invoice type exhibits, the contract manager is entitled to pray in aid the existence of the schedules being produced by solicitors for the use of counsel in due course and the promise of time to counsel for their consideration. The more complex and more detailed the exhibits however the less use a contract manager is able to make of the existence of schedules given counsel's duties in relation to familiarity of the papers.
31. This decision relates only to this NAE. Any future material will of course, if the contract manager proposes departure from 1 minute per page, need to be re-assessed in line with paragraph 4.31 of the VHCC Guidance.

Appeal by counsel – 10 March 2013

LSC decision upheld

- **Preparation**

1. This appeal arises because the appellant has exceeded the original agreed allocation of time for the task in question. The contract manager originally agreed to 60 hours for the appellant to attend upon his client and obtain instructions on the prosecution evidence. The appellant has claimed 175.40 hours for completing this task. Essentially this consisted of three elements, namely:

(a) Taking instructions on the prosecution statements and exhibits

(b) Taking a Proof of Evidence

(c) Taking detailed instructions on the case summary

2. Ordinarily there is no right of appeal where a contractor exceeds the allocated time for a task without receiving prior authority to do so (save in certain exceptional circumstances that are not relevant to this appeal). In the usual course of events that would be the end of it and the appellant would have no locus. However, in this particular case it is conceded by the Commission that due to the rather inconclusive way in which the parties corresponded in relation to this task the appellant should be afforded the right of appeal. Indeed this was apparently confirmed to the appellant by the contract manager in an e mail dated 31.5.12.
3. I am therefore asked to reach one of three possible conclusions:

(a) Should the appeal be allowed in full?

(b) Should the appeal be dismissed?

(c) Should the appeal be allowed in part?

4. Initially it was not possible for me to make any informed judgement in this case as both the proof of evidence and the detailed attendance notes underpinning the task had been almost completely redacted. I would merely observe that for future reference it is simply unreasonable to expect the adjudicator to make an assessment of the reasonableness of work completed if they are not provided with sufficiently detailed information. The adjudicator, like the Commission, is subject to a duty of confidentiality to the appellant and there really is no need to redact detailed attendant notes submitted for audit. It is somewhat mystifying that the contract manager appears to have agreed to an audit on this basis and thus I make no criticism of the appellant in that regard. Fortunately common sense has prevailed and detailed notes have been supplied to enable a proper informed decision to be made.
5. I have considered the attendance notes supplied in their three component parts as listed above.

(a) Taking instructions on the prosecution evidence – according to my calculations this element accounted for 112.4 hours of the 175.4 claimed by the appellant. I have considered the attendant notes supplied very carefully. In my judgement the amount of time claimed appears to be excessive considering the fact that in many instances the defendant had little or no comment to make on the material under review. Where he did comment it was often of a cursory nature. I also note that in some instances the material consisted of bank statements for accounts that the defendant had no knowledge of. There is also a degree of repetition in the comments on certain statements and exhibits. The generic wording adopted by the appellant of "read out loud and referred to all relevant exhibits" seems to me to add nothing as it is was would happen in the vast majority of cases. Taken in the round and by reference to volume and nature of the material under review I would reduce the amount claimed from 112.4 to 37 hours.

(b) Taking Proof of Evidence – although there is a degree of overlap with (a) above given the length of the proof and the level of detail included I consider that the time claimed for this element of the task to be reasonable – 38 hours allowed

(c) Taking detailed comments on the case summary – this is a detailed and comprehensive document. I consider the time taken for this element of the task to be reasonable – 25 hours allowed.

Appeal by solicitors – 10 March 2013

LSC decision upheld in part

- **Reading time**

The item in dispute is 44,481 pages of disclosure served at the end of December 2012.

The Appellant is requesting a total of 370.6 hours at A grade to review the 44,481 pages at 30 seconds per page.

The Case Manager has allowed a block of 150 hours at A grade (with further time to be considered depending on the relevancy of the material to the defendant's individual case).

This is an appeal against the further amount of hours allowed by the contract manager to peruse the unused material in this matter.

There has already been one appeal on this issue held on the 19-12-2012 when on this identical point payment at the rate of ½ a minute a page was allowed in respect of the initial 19,669 pages served.

This appeal relates to the appropriate rate to be allowed for the balance of this material now served and which brings the total to 44,481 pages.

No distinction is drawn between the content of the two tranches of material served save for the date on which the material is served by the Prosecution.

This Panel therefore feels we are bound by the decision of the previous Panel with whom we in any event agree and therefore this appeal is allowed.

Appeal by solicitors – 20 March 2013

LSC decision overturned

- **Disbursement**

This is an appeal by cousel. against the decision of the case manager to refuse to allow Live Note in place of a Noting Brief for a period of one week when Counsel could not be present at the trial due to other work commitments.

It is noted that Counsel's absence was due to no fault of his own, and, further he made every effort to keep all parties informed. An identical situation arose during the course of the first trial which eventually collapsed, hence this retrial.

In the first trial Live Note was allowed when Counsel was absent.

The difference in expenditure is so minimal between the two options that given the accuracy and ease of use provided by Live Note it clearly is the most sensible option. The Appeal is therefore allowed, subject to as Counsel indicated in his appeal that for the duration that Live Note is employed he will make no claim for perusal of the same.

Appeal by counsel – 20 March 2013

LSC decision overturned

- **Preparation**

The appellant appeals from the contract manager's ('CM') decision of 1st March 2013. I have considered the email thread, appeal representations, the indictment and the 'roles' note appended thereto drafted by prosecuting counsel.

The defendant is charged with a conspiracy to launder proceeds of crime on behalf other organised crime groups between 1/1/08 and 18/5/11. He is alleged to be a conduit for the transfer of about £400,000. The Prosecution have produced a memory stick exhibit described as *'like a case management system'*; it was used to process instructions to send customers' money to recipients abroad. The system contains 271,700 transactions and exceeds 815,000 pages of material. The solicitors have identified 14,796 transactions affecting their client each of them covering *'at least'* 3 pages of material.

It is common ground that the solicitors need to examine the records relevant to their client. They seek 1 minute per transaction, which breaks down to about 20 seconds per page as a discrete task *'to consider and schedule exhibit Turner D. KSF.net Search System'.* The contract manager ('CM') is prepared to agree a block of 100 hours '*to consider the transactions to identify whether any of the payee/beneficiaries alleged to be involved in the illegitimate transactions appear in the legitimate transactions.'* A sample of the

exhibits has been supplied. The CM has viewed the sample, as have I, and considers that many transactions can speedily be eliminated because the names thereon are not involved in any illegitimate transactions. His response emphasises that the 100 hour block does not preclude further negotiations once this time is exhausted, and suggests that financial prudency and efficiency is best achieved *'by agreeing incremental blocks of hours and reviewing progress and product before agreeing further hours'.*

A suggestion has been made in correspondence that the appellant solicitors should revert to the CM after 50 hours work, so he will be in a better position to consider the scale of the task and *'re-evaluate'* the position. The applicant however is '*confident'* that the full 246 hours claimed will be needed.

Decision
The appellant's contentions mayor may not be correct, but an informed assessment of the extent of the task can better be made when some of the work has been undertaken. At that time there will be greater clarity about the task, and I find that the CM approach is reasonable and proper one. A fee paying client of moderate means would, in my judgment, regard the CM approach as reasonable, prudent and proportionate to the task in hand. Thus I do not allow the appellant's appeal, which I view as premature.

Appeal by solicitors – 27 March 2013

LSC decision upheld

- **Preparation**

The Appellants have appealed against the refusal of a request for 150 hours to complete a "business analysis task" on 8,282 pages of served evidence.

I have been assisted in this appeal by the lengthy appeal documentation provided by the Appellants including emails between them and the contract manager

The Appellants have explained in great detail, in documentation running to 241 pages which includes their detailed representations and copies of emails, what this task entails, why it is necessary and why they need extra time.

Having had the position explained to me in such detail, I do not seek to rehearse the facts relating to the case, the specific allegations against the Defendant, and the need to perform the task. In refusing this entirely unjustified appeal, what I do say is that time for scheduling and analysing the relevant 8,282 pages of financial exhibits was included in the overall time allowed for analysing and scheduling the exhibits by the contact manager. The Appellants in their Appeal documentation make great play of their expertise in dealing with these types of cases. They seek to suggest that the original case summary was poor and this is a common tactic of Prosecutors.

Nonetheless they were allowed 33.3 percent cent more than is commonly allowed by the LAA, for analysing and scheduling the exhibits.

I have asked through the LAA, but I understand it is not has not been provided by the Appellants, for the full schedule details of time spent in analysing the exhibits in question. I doubt, however, that this would have assisted me greatly. What I have seen is an extract of one schedule as evidence of what was completed in the initial time allowed by the appellants. This does not look to me as though it is actually an analysis of the documentation. It just looks like a list.

If that is the work product, then however long it may have taken the solicitors, it would not have been reasonable to spend 1.5 minutes a page.

All that seems to have been done is that a Prosecution list of exhibits has been re-listed with, as the LAA response points out, additional columns for the dates and client's comments and some more detail of the exhibits. That being the case, it is my firm opinion, and decision, that any further scheduling as described by the Appellants should properly be undertaken within the time previously allowed.

I agree fully and entirely with the response from the Legal Aid Agency and indeed am puzzled as to why the Appellants felt it necessary or reasonable to produce a schedule of exhibits which does not seem to analyse them and, from what I have seen, is little more than a list of what has been served upon them.

The Appellants however, seem to contend that they only need more time for the purpose of undertaking a newly identified task. If this does take 150 hours then, bearing in mind what they have evidenced as analysis and scheduling so far does not demonstrate a reasonable use of the full hours granted for scheduling and analysis, the 150 hours sought should form part of the more than 1000 hours allowed.

Appeal by solicitors – 5 April 2013

LAA decision upheld

- **Reading time**

The contract manager has authorised a reading rate of 30 seconds per page for 66,722 pages equating to a block of 556.02 hours at Grade B. The appellant claims that they should be allowed 1.5 mins per page for those exhibits.

I have read the submissions from both parties. I have reviewed the exhibits provided by the respondent and the advice of counsel. I have also had the opportunity of considering the email correspondence between the parties.

The Defendant is charged with two counts of Fraudulent Trading in relation to two companies. Although, the defendant is not involved in all aspects of the case, I accept that to some degree the main defendant's actions with other companies and other defendants are relevant to the defence to be advanced by this defendant. It would appear that the Prosecution have separated the exhibits into two categories – those directly relevant to the case against this defendant and 'other' exhibits. The appellant initially requested a rate of 1 minute 30 seconds per page to consider the exhibits directly

relevant to this defendant and 30 seconds per page for the other material. This was increased to a request of 1 minute 30 seconds per page for all of the material prior to the initial contract meeting. At the time of the initial contract meeting on 27 November 2012, 29,596 pages of material had been identified as directly relevant to this defendant and 16,736 pages fell into the 'other' category. I am not told of the breakdown in relation to the further tranche of exhibits.

The contract manager in her decision sent by email on 5th February 2013 stated:

"I appreciate that some of the exhibits provided do contain a lot of information but the majority of the material provided appears to be Land Registry and Companies House material which is very repetitive in nature. The allowance of 30spp to consider and 30spp for ancillary work is designed to generate a block of time to work with on a swings and roundabouts basis – it is obvious that some of the documentation provided, particularly the financial reports, will take longer than this but there are several documents I have seen within the material provided which contain minimal information or are form templates and will likely take much less than the agreed time to deal with."

This view, in my experience, can in some circumstances be a reasonable way of looking at the situation. However, in this case, there is some clear separation of the exhibits and I have seen the way counsel wishes to approach the case and as a result, I have taken the view that the right way to do justice to the parties would be to allow the appellant 850 hours to consider the material. This would allow the extra time required to deal with the defendant-specific exhibits whilst marking the fact that there is a great deal of the material that will take significantly less time.

Appeal by solicitors – 8 April 2013

LAA decision upheld in part

- **Category**

In February this year I was presented with an appeal against a decision to refuse a category 2 Fraud assessment. The appellants argued for that categorization and submitted a detailed series of arguments. I refused the appeal. I am now asked to revisit that decision on the provision of further submissions on both sides. The focus of the appeal is whether the appellant's can now satisfy the criteria of Highly specialized knowledge requirements of Block A. The parties agree that all the Block B criteria are met and that one of the Block A is met (Number 4).

As with the earlier appeal, the case is being conducted under the 2010 scheme. The appeal is subject to the 2010 VHCC specification informed by the 2010 guidance, which is specifically referred to in the 2010 scheme. The principles to be applied to this appeal are therefore derived from the scheme and guidance.

I have been provided with the following materials:-

(i) My original decision;
(ii) Appellant's submissions of 27th March 2013:
(iii) The CCU Contract manager's undated response to the submissions.

(2) "*Highly specialised knowledge*"

The Appellant continues to maintain that they need to understand Insolvency law and the practice and procedure of an Insolvency practitioner, which is outside the ordinary remit of an ordinary VHCC case. To meet this criteria, the Appellant must satisfy the elements of the 2010 Guidance at 4.17-4.20. The appellant is specifically required to identify the skill and expertise needed and to show that they were able to provide it in house (4.20).

In my earlier adjudication, I set out the guidance that had to be met, as follows:-

> *"The defence team would need to show both that the defendant's case required this skill and expertise, and that they were able to provide it in house. It would be expected that any putative highly specialized knowledge would go to the legal heart of the defendants case, and would be of a significant level of complexity….."*

The appellant has therefore focused on that guidance when setting out its renewed submissions. The issues identified are now said to be Conflict (para.14), Ethical considerations of acting (Para.18), and the extent of disclosure duties and obligations (Para.19) obligations of Insolvency Practitioners to the Secretary of State (Para.25) and the dealing with stock by liquidators (Para.33). It is said that an analysis of those issues requires an understanding of the professional rules of Insolvency Practitioners, the relevant requirements of Company law, Directors and a consideration of the Company Directors Disqualification Act 1986 (See Para.29). These arguments fully articulate the points at issue by reference to my earlier decision and the 2010 guidance.

While some of these issues are evidential and not likely to turn on the opinion of experts in the final analysis, there are matters identified which fall outside that area. The appellant now contends that the multitude of issues are such that they have provided a written advice to obtain the assistance of an expert on the issues set out at 39(b) of their argument. Those matters identified are said to go to issues that are central to the defendant's case and the practice of an Insolvency Practitioner. They are highly specialized and are of a significant level of complexity (in accordance with the requirements of the guidance set out above).

The appellant has also now set out how the expert evidence will link in and complement in house expertise. It is plain that the lawyers involved in this case already have significant expertise in Company law cases and that an expert would complement that expertise.

While the contract manager has rightly commented in their response that the defence to the allegations is, in part, directed towards deficiencies in their practice (understaffing etc), I do not accept the suggestion at Para. 2 and 3 of the response that the appellant has not fully argued to what end the Insolvency Practitioner evidence and expertise goes. It is now clear from the submissions that the purpose of an expert is to consider the highly specialist matters identified at Para. 39(b). The appellant has specifically identified how the matters go to the heart of the defence case (Para.5) and how the expertise will complement in house expertise (Para.40). I would observe that the guidance requires the *appellant* to set out how the criteria are met. That is not always apparent from a consideration of a defendant's interview or even a defence case statement. The obligation is met where, as here, the *argument* sets out the matters in issue.

I would also add that the fact that an expert has not *yet* reported is somewhat academic if, as here, I am persuaded that the appellant has satisfied the guidance with the submissions it has advanced. The advice (which I have not seen) will presumably advise in favour of instructing an expert to consider the matters identified by the appellant in its argument. Given the scale of the Crown's expert report and its significance to the case, I am not surprised such an expert is thought necessary. It may be that the defence expert will disagree with the extent of the duties and interpretation of them by the Crown's expert. If so, that will significantly undermine the assertions of the Crown. The defence team will have to have evidence to make that point.

Conclusion

I am now satisfied that the appellant has demonstrated *(2) Highly specialized knowledge (Para.4.17-4.20)*. Given that the CCU agree that all Block B are met and that at least one other Block A is met, the Category 2 criteria is now satisfied. However, I agree with the CCU interpretation at their response paragraphs 5-6 that the category applies from the date of further submission (which seems to be 3rd April 2013). The obligation to satisfy the guidance is on the appellant. They have now satisfied the requirements.

Appeal by solicitors & counsel – 18 April 2013

LAA decision overturned

- **Preparation**

The case Manager refused a request for 70 hours at Grade C to cross reference material on the basis that the time for such cross referencing is incorporated into the perusal rate and should be undertaken within the block of hours already authorised for all ancillary work.

The Adjudicator finds that the Case Managers reasons to be compelling and contrary to the Appellants assertions, that the Appellant was fully aware of the nature of the time

agreed from the outset by reference to the initial contract meeting on 30th November 2012 and by reference to an email dated 4th December 2012 from the Case Manager to the Appellant, specifically Task 27 “Ancillary Work”.

The Adjudicator recognises the Contract Managers decision that the work is necessary as indicated by the Appellants but he Appellants state that “further time allowance must be allocated for cross referencing”. It is not accepted on the written submissions provided that such cross referencing work is a “new Task” as the Appellant have not satisfactorily explained why the work is a "new task" in the context of the hours agreed and accepted for ancillary work. The contract Manager has specially allowed substantial time (of 300 hours) for ancillary work and such work as sought come within the ambit of this work. The Appeal is accordingly refused.

Appeal by solicitors – 22 April 2013

LAA decision upheld

- **Disbursement**

The LAA do not seek to argue that the work done by the forensic accountant was not necessary or that it did not provide assistance to the court. However, there is no provision in the Panel contract for the payment of unauthorised work, save in the following exceptional circumstances, which the LAA argues do not apply:

(a) If the work arises out of the service of further papers in a category of documentation for which a rate has already been agreed. As the item in dispute is work conducted by a forensic accountant, this criterion does not apply

(b) If the work falls within an agreed item on a task list AND is within 10% tolerance of the hours agreed for that item AND is necessary AND all genuine efforts have been made to contact the LAA to gain authority. This work does not form part of an agreed task list item, and no attempts were made to contact the LAA to gain prior authority following the contract manager’s queries to the Appellants on 19th April 2012.

(c) If the work arises as an emergency task which needs to be done by the next working day and was only identified after office hours. The work in dispute is some £17,000 worth of forensic accountancy, and the LAA does not believe that this sum would translate into emergency work which had to be completed overnight

(d) If the work is done by an advocate in the course of trial, which does not apply here as the appellant is a forensic accountant.

While the LAA has every sympathy with Mr de Nahlik’s difficult personal circumstances during the time in question, there is again no provision in the Panel Contract for allowing unauthorised work to be paid for in such a situation.

Strictly speaking, work undertaken without prior authority and subsequently not paid for cannot be appealed. However, due to the unusual circumstances the LAA have agreed that the matter should go to a committee.

This is an appeal against a certain decision by the Contract Manager of the Very High Case Costs Unit of the Legal Aid Agency.

In this case we have been provided with representations in writing from both the Appellants and the Respondents. We have also had the benefit of considering oral representations from both parties.

We are requested to make a decision on the items that are in dispute and to rule as to whether to dismiss the appeal, allow it in whole or allow it in part.
This ruling should be regarded as our full reasons for our decision.

In this case the appeal is based on the following:

Disallowance of fee claimed for a forensic accountants report prepared by an expert on the basis that prior authority for the same had not been obtained by his instructing solicitors.

We find as follows:

1. To date the LAA has authorized a total of £30,866.20 against a claim from the forensic accountant of 47,616.32 leaving a balance in dispute of £16,750.12. All these figures are inclusive of VAT.

2. There was a hearing in March 2012 at which the presiding Judge indicated a financial report would be helpful in assisting with determination of these confiscation proceedings with an anticipated hearing in May 2012.

3. A quote for the work to be undertaken dated the 11th April 2012 was submitted by the accountant. The Case manager did not agree the quote and instead in an e-mail dated the 19th April 2012 raised a number of queries with regards to the same.

4. Sadly at this time the accountant's mother became terminally ill and he notified his instructing solicitors of the self evident difficulties this created in complying with the existing case time table. The solicitors duly notified the presiding Judge and the Case Manager and the anticipated hearing was adjourned.

5. The solicitors however singularly failed to answer any of the queries raised in the e-mail of the 19th April although at the hearing they acknowledged that they could have answered some if not all of the points raised; they did not endeavour to seek assistance from others in the firm in answering the queries and most tellingly when a further Task List was submitted failed to make any mention of this outstanding claim for an experts report. To quote the solicitor who attended "Hands up, I took my eye off the ball" in failing to obtain prior authority for this disbursement.

6. The report was in existence by the 18th June 2012 as was made clear by correspondence received by the Case Manager from Counsel for the defence. The solicitors unaware of the Case Managers knowledge of the position sought to submit a further estimate from the accountant incorporating both work done to date and also further work required on the 22nd June 2012.

7. If the above is correct then it adds a further worrying dimension to the conduct of the solicitor in this matter.

8. There was no prior authority obtained for the disputed work undertaken. There was no argument advanced by the appellant to rebut paragraph 1.5 Annex 8 of the 2010 VHCC Guidelines.
Appeal by solicitors – 17 April 2013

LAA decision upheld

- **Grade of fee earner**

The Adjudicator had the benefit of written representations from the Appellant dated

25th April 2013, Contract Manager's response dated the 8th May 2013, the Prosecution Case Summary together with the CV of the fee earner in question, GT

The Appellant's have sought to argue that she should be classified as a Grade B fee earner pursuant to paragraph 3.14 of the 2010 VHCC Contract Specification.

The Appellant's make the perfectly proper concession that GT does not fall within the criteria set out at sub paragraph (a) or (b) of the aforementioned Regulations but rely simply on paragraph (c) to establish GT's status as a Grade B fee earner.

Regulation 3.14 (c) states that a litigator should:

> *"Have substantial knowledge and experience of criminal defence work. This work would be expected to include 10 years of experience of criminal defence case work and experience of serious and complex criminal cases".*

There are thus two limbs to the criteria that would need to be satisfied and the Arbitrator deals with them in reverse order.

Such a fee earner would need "experience of serious and complex criminal cases". It was noted that GT had been with the Appellant firm of Solicitors from February 2010 until the present.

In the Appeal there is helpfully listed some 5 cases which would suggest she has been involved in a diverse range of proceedings of the type envisaged by the Regulations. However, it was not necessary for the Adjudicator to consider this secondary limb in view of the finding below.

The other limb of the qualifying criteria is that such a litigator should "have substantial knowledge and experience of criminal defence work. This work would be expected to include 10 years experience of criminal defence case work".

The fee earner, GT, has an enviable and distinguished CV, however her experience of dealing with criminal defence work within this jurisdiction is limited to the period from February 2010 until the present.

It is clear from the CV and the representations that she was involved as a senior and meaningful level as part of the High Commissioners Office to the Presidency of the Republic of Columbia dealing with matters primarily, if not exclusively, at the behest of the State. There was nothing to suggest within the Representations that there was any level of involvement in her actually defending individuals prosecuted by the State, rather the reverse.

It is therefore regrettable in the face of such a CV that the Adjudicator felt that it was impossible for the appellants to bring GT within the qualifying criteria of handling "criminal defence work"

It is therefore for the reasons set out above that this appeal must fail.

Appeal by solicitors – 10 May 2013

LAA decision upheld

- **Reading & scheduling time**

This is an appeal against the decision of the contract manager as to the time allowable for the reading and scheduling by Solicitors of the exhibits served and relied upon by the

Crown and the time allowed for reading by Counsel, both QC and Junior Counsel, in the case.

The Appellant is appealing the time allowed by the Case Manager for the consideration of 32,174 pages of conveyancing exhibits (out of the total of 53,048 pages served for exhibits up to NAE 9).

The Case Manager has allowed the solicitors 1 minute per page to consider and schedule the 32,174 pages and 30 seconds per page for both counsel to consider the 32,174 pages.

The Appellant is requesting for the solicitors 1.5 minutes per page to consider and schedule the 32,174 pages and for both counsel 1 minute per page to consider the 32,174 pages.

I have had the benefit of reading all representations both from the appellant and the respondent submitted to me.

The solicitor allowance in relation to previously served exhibits in the case was 1.5 minutes per page, which was expressed as 1 min read and 30 secs scheduling time.

The issue here is that Defence Counsel will say that have not been given sufficient time to read all of the relied upon exhibits served as NAE.

I am firmly of the belief that any material relating to this issue is clearly relevant to the defendant's individual case and needs to be carefully reviewed.

I note the further representations made and the responses given by the Legal Aid Agency

Having considered all the relevant paperwork I am satisfied that the allowance given to the solicitors of 1 minute a page is sufficient and adequate, however I am also of the view that trial counsel must be permitted to consider the information fully and to that end I feel that Junior Counsel should also be permitted to review the information at 1 minute a page.

The efforts of Junior Counsel will then be passed to leading counsel in the usual way. In my view it is not necessary for both counsel to have reading time of 1 minute a page.

It is always open for Leading Counsel to return to the Contract manager and request a further review of the time allowed once his junior has carried out his review.

To that end this appeal is allowed in part.

Appeal by solicitors – 16 May 2013

LAA decision upheld

- **Reading time**

In this matter the adjudicator has before him an appeal submitted by counsel following refusal by the Case Manager to increase the time allowed to consider the exhibits served in this matter from 30 seconds per page. The appellant seeks 1 minute per page.

The adjudicator has had the opportunity of carefully considering the representations of both sides and has also had sight of a considerable sample of exhibits, in particular those between pages 700-799 and pages 1700-1799. Clearly the latter 100 page tranche takes longer to consider than pages 700-799 which are capable of being read and digested speedily.

There is no doubt that this is a large mortgage fraud involving 8 Defendants charged on an indictment containing 26 counts of which this defendant faces 7 counts (all of Conspiracy to Defraud). The organiser was said to be the Defendant and close friend of his. The Defendant is fourth out of eight Defendants named on the indictment and only faces seven counts. The Contract Manager argues (as many of her colleagues seem to nowadays) "there is likely to be a significant proportion of material which is of little or no relevance to the Defendant".

That is an argument that the adjudicator himself has faced in similar cases on a number of occasions. That argument places a burden upon the appellant in such cases to prove that all the evidence is sufficiently relevant to justify full and careful consideration. The total number of exhibits in this matter amount to 6719 pages for which 111.98 hours were requested. As only 200 pages or thereabouts are placed before the adjudicator it is not easy for him to appreciate fully the relevance or otherwise of the exhibits as a whole.

It is noted however that instructing solicitors have only been allowed 30 seconds per page but it would appear that the door is open for them to apply for further time in order to prepare schedules / chronologies, etc.

For the purpose of this appeal the adjudicator, relying on his many years of experience in such cases, does not consider alleged lack of relevance of parts of the evidence to be a factor that affects his judgement in any way. He believes that all evidence must be considered. If it is not vital points could be missed hence jeopardising the possibility of the Defendant having the benefit of a fair Trial.

This adjudication is accordingly delivered on the basis of all documents being relevant to the Defendant, particularly in the light of the appellant's representations (especially the existence of a cut throat defence and also the alleged duping of the Defendant to the extent of alleged forged signatures). Having said that, and applying the all too commonly used expression of "swings and roundabouts", the adjudicator refers to the 200 pages of exhibits selected by the appellants as being appropriate sample documents. The first hundred pages were capable of being read and digested in well under 30 seconds per page. They consisted of short emails and other standard documents, for example, mortgage offers containing the usual legal conditions (see pages 773-780).

Even the so called more complex exhibits may have contained lengthier documentation but they are once again standard forms such as risk reports and loan agreements which although detailed are in effect standard documents which do not justify painstaking scrutiny. Accordingly even though the adjudicator rejects the notion that some parts of the evidence are less relevant than others to this Defendant, having regard to the samples chosen by the appellants it is felt by the adjudicator that these exhibits do not justify a rate of 1 minute per page to consider them. Indeed the finding of the adjudicator is that the Contract Manager was accurate in her assessment of 30 seconds per page as the appropriate rate which the exhibits in this case should be considered. Accordingly the appeal is dismissed.

Appeal by counsel – 17 May 2013

LAA decision upheld

- **Reading time**

Contract Manager's original decision: 30 secs per page for exhibits

Adjudicator's Decision: Allow appeal at 45 secs per page

The Contract Manager's thinking appears inconsistent.

The solicitors and counsel came to the case late, at a time at which other defence teams had already been allowed at 1 minute per page for exhibits. Each defence team must be treated on its individual merits, and this team was. It settled on 45 seconds per page when the Contract Manager conceded that the original offer of 30 secs per page was too low. (."Our client is a bit more involved than was originally asserted")

In respect of the current subject matter, which appears to be new evidence "familiarity with the case "as a whole is not a reason for less time care and attention to detail by the defence team.
Further the CM refers to "review" (as maybe the case for unused material)but it is tellingly for " perusal and analysis"

Inconsistency seems to be compounded by apparently allowing 45 secs per page for material served after the subject matter of this appeal.

Appeal by solicitors – 20 May 2013

LAA decision overturned

- **Category (backdating)**

The case has been agreed as a Category 2 case from 26th February 2013 when the initial request for re-categorisation was received. The Appellant believes that this is unfair and that Category 2 status should be backdated to 29th August 2012 when the nature of the case changed.

S. 421 of the VHCC specifications are clear. However I accept that the date of the notification was on the 7th February 2013 when notice was given. Therefore category 2 status should be from the 7th February 2013.

Appeal by solicitors – 29 May 2013

LAA decision upheld in part

- **Category & reading time**

Contract Manager's original decision:

Case categorised as Category 3 Fraud case. The Appellant considers that the case should be categorised as a category 1 fraud case.

Case Manager determined to allow 30 seconds per page for the solicitors and both counsel to consider the exhibits and an additional 30 seconds per page for the solicitors to schedule the exhibits.

Appeal as to Category:

We were initially asked to rule on an appeal that the case had been considered by the LAA as falling in to Category 3 of case categories. At the outset of the appeal hearing we were told was no longer the situation as the view of the LAA had changed and, following review, the case was now placed at category 2.
The Appellants, however, still sought to peruse their appeal to ask us as to consider a further review of category from 2 to 1.

Having considered the representations as to the outstanding matters in Blocks A of the contract criteria we are not satisfied that these criteria are met and in our view the case is correctly allocated as a Category 2 case and to this end this appeal is disallowed.

Appeal as to time:

We are asked to consider further allocation of time in the preparation of this case. We have had regard to the work already carried out and indeed the work required to be carried out.

We are satisfied that as to the need for this matter to be fully and carefully prepared especially with the unique standing of Mr. Purdie in the case.

We direct that the following time allowance should be allocated:

1. Leading Counsel: 1.5 minutes per page to consider the exhibits.

2. Junior Counsel: 1.5 minutes per page to consider the exhibits.

3. Solicitor: 1 minute per page to consider the exhibit at a grade A fee earner lever and 1 minute a page to schedule the exhibits at a grade to be allocated by the LAA Contract manager.

Accordingly this appeal is allowed in part.

We do state that this appeal is considered on the case of this defendant alone and his special position as first defendant. It should not be considered in any way as effecting the positions of others in this case and our rulings are not to be seen in any way as setting a precedent as to the time allowance of the co-defendants or the category of their cases.

Appeal by solicitors & counsel – 29 May 2013

LAA decision upheld in part

- **Preparation**

ISSUE

The dispute between the parties relates to the request for an additional task of creating a chronology of exhibits at a rate of 30 seconds per page. The appellant has already received consent for 30 seconds per page of exhibits for the scheduling of the same plus 30 seconds per page for the reading / perusal of the same. Each of these three tasks amounts, as things presently stand, to 1760 hours of work. The Contract Manager's position is that in this case the scheduling and chronology is one task to which the reading / perusal of the material is added; making a total of approximately 3500 hours for the litigator work on the exhibits.

DECISION

I have had the benefit of looking at samples of the proposed scheduling in one document and chronology in another document. It is absolutely clear to me that the information necessary for both can be merged into one. In its simplest form an extra column containing the relevant date would allow for a Microsoft Excel filter or sort facility to meet the needs of the defence team. Any additional information relating to the chronology element of the task can be accommodated well within the very large amount of hours that have already been allowed.

APPEAL DISMISSED

Appeal by solicitors – 12th June 2013

LAA decision upheld

- **Disbursement**

Contract Manager's original decision:

Contract manager agreed the translation of two discs. The request to translate further discs was refused.

Appeal adjourned until 31st July 2013.

Committee Reasons:

This is an appeal against a certain decision by the Contract Manager of the Very High Case Costs Unit of the Legal Aid Agency.

In this case we have been provided with representations in writing from both the Appellants and the Respondents. We have also had the benefit of considering oral representations from both parties.

We are requested to make a decision on the items that are in dispute and to rule as to whether to dismiss the appeal, allow it in whole or allow it in part.

This ruling should be regarded as our full reasons for our decision.
In this case the appeal is based on the following:

1. Disallowance of expert to transcribe tapes of probe evidence
We find as follows:

The Committee were considerably assisted by the oral representations made by the QC and the intelligent and measured response of the LAA to the same which resulted in this appeal being adjourned to the 31st July when the same is reserved to this Appeal Panel on the following basis

A. That by agreement between the parties 11 tapes out of those which form the subject matter of the original quote (some 22 tapes in all) are to be transcribed at the hourly rate and time sought by the expert in his original quote.

B. In the interim the solicitors will endeavour to ascertain if possible from the prosecution which portions of probe evidence they propose to rely on and further try and progress their argument as to the admissibility of this evidence.

C. Any decision as to the funding of the expert in relation to the remaining probe tapes is deferred, unless the parties reach agreement on this point to the 31st July 2013.

Accordingly this appeal is adjourned to the 31st July 2013.

Appeal by solicitors & counsel – 12th June 2013

Appeal adjourned

- **Disbursement**

This is an appeal against a certain decision by the Contract Manager of the Very High Case Costs Unit of the Legal Aid Agency [LAA]

In this case we have had the benefit representations in writing from both the Appellants and the Respondents. We are asked to consider the case on those

representations.

We are requested to make a decision on the items that are in dispute and to rule as to whether to dismiss the appeals, allow them in whole or allow them in part. This ruling should be regarded as out full reasons for our decision.

Appeal as to allowance of a disbursement:

We are asked to rule on an appeal that a certain disbursement [the payment of legal fees in two countries out of the jurisdiction] should be permitted.

We are told that this appeal follows on with the continuance of a case which concluded in a conviction before the Crown Court. The conviction was itself, followed by confiscation proceedings, in which a final ruling determined a sum and a period of imprisonment in default.

We understand that the appellant in this case has now instructed his solicitors to lodge and subsequently argue for a Certificate of Inadequacy. In short the Court will be asked to rule that the defendant should be permitted not to pay all or part of the outstanding sum ordered to be paid by the Crown Court.

We are told that this application has not yet been lodged.

We are conscious that the issues of the appellants finances have already be litigated – indeed on at least two previous occasions.

From what we can see the issues that are proposed to be raised in the Certificate of Inadequacy application were not mentioned either at the trial or at the confiscation hearing.

Whilst we are satisfied that funding should be made available in a limited degree to enable the defendant to apply to the High Court we are also aware that an application for full legal aid and assistance can be made to that court.

We are not satisfied that where an application has not yet been actually made for a certificate of inadequacy public funds should be expended on an exercise that the defendant now seeks to undertake at this point in time.

It would always be open to him on the grant of legal aid by another court to seek to apply for prior authority at that stage or indeed to undertake the cost of the work and then seek to justify that decision and the work upon taxation, however challenging that task may well be.

We are not satisfied as to the necessity of the use of public funds in this way and to that end this appeal is disallowed.

Appeal by solicitors – 12th June 2013

LAA decision upheld

- **Reading time**

The appellant requested a total of 320.60 hours to consider 9,619 pages of served prosecution evidence (exhibits) at the rate of 1 minute per page and to complete all other ancillary work relating to these 9,619 pages of exhibits at the further rate of 1 minute per page. The contract manager has allowed 160.30 hours for this task based on 30 seconds per page for each exhibit and a further 30 seconds per page for the completion of all ancillary work relating to these 9,619 pages of exhibits.

A. Introduction

1. It appears to be common ground between the parties to this appeal that the decision of the contract/case manager that is being appealed was originally made on 24 April 2013.

2. No issue appears to arise on the papers before me in relation to any appeal time limit and I note that the Legal Aid Agency on 7 May 2013 agreed to an extension of time until 15 May 2013 for the appellant to lodge their VHCC Appeals Representations Form and that the appellant complied with this new time limit.

3. I further note that the VHCC Appeals Response Form completed by [redacted] was emailed to the appellant and the appeals manager on 30 May 2013.

4. I note that the appellant has not made any detailed or specific representations on the need for an oral hearing before a full VHCC Appeal Panels Committee in relation to this particular appeal. Nevertheless I have, in accordance with Regulation 16.4 VHCC Appeals Panel Arrangements 2010, considered whether it is in the interests of justice to refer this appeal to a full committee.

5. I do not consider it necessary to refer this appeal to a full committee. I do not consider this appeal is exceptionally complex or significant or that any other relevant interests of justice features arise from this appeal. Accordingly I therefore believe that it is appropriate for this appeal to be decided by myself as single Adjudicator.

B. Papers considered by the Single Adjudicator

1. For the avoidance of any doubt I indicate that in considering this appeal as a single Adjudicator I have seen and reviewed the following material:

   - The 2 count Indictment
   - The 57 page Case Summary
   - VHCC Appeals Representations form dated 15 May 2013
   - VHCC Appeals Response form
   - Email case manager to appellant dated 24 April 2013

2. I also asked the CCU appeals manager to provide me with the exhibits discs themselves.

3. I also referred myself to:

   - 2010 VHCC Guidance
   - VHCC Appeals Panel Arrangements 2010
   - VHCC (Crime) Cases Arrangements 2010 – Version 3 – 3 October 2011

C. The Appellant's and Respondent's Submissions

1. It seems to me to be common ground between the parties that the exhibits which concern this appeal total 9,619 pages and they are contained on the two discs which are helpfully itemised in detail by the case manager in his email to the appellant dated 24 April 2013.

2. I note the appellant's submissions in point 11 of their VHCC Appeals Representations form about the apparent indexing and potential cross-referencing problems with regard to the exhibit electronic discs. I, as single Adjudicator, have also had the opportunity of reviewing the exhibit discs.

   I also understand from the case manager's VHCC Appeals Response form: "that a USB pen drive has been served containing the served material, properly paginated and indexed".

3. Again it appears to be common ground between the appeal parties that the appellant's client faces Count 1 only on the Indictment and that the client is placed last in order of the 11 defendants alleged to be part of a conspiracy to commit fraud by false representation within Count 1 on the Indictment.

4. The role of the appellant's client in this conspiracy is helpfully set out in detail within the prosecution 57 page case summary and also more specifically from page 48 through to the conclusion of this particular case summary document.

5. I note the appellant's specific submissions about the undoubted need for all this exhibited material to be properly reviewed by them, particularly as a number of the defendants in Count 1 have apparently utilised false identities in their dealings with the general public. However, I do note that the prosecution have endeavoured to assist the defence to locate key tranches of directly relevant evidence against their client in a number of different ways within the 57 page case summary. I particularly have regard to para 42 of this case summary and the evidence of the Crown strategic analyst in this regard.

6. I agree with the case manager when he submits that whilst the appellant should not solely rely upon these exhibit locations provided by the prosecution it does provide the appellant, in my judgment, with a reasonable starting point for a detailed review of the served exhibits material.

7. I have reviewed the manner in which the case manager has come to the conclusion that he reached and the conclusion that I, in my judgment, agree with.

   The case manager reviewed all the relevant material provided to him in advance of the 10.10.13 stage and task list 1 meeting at the appellant's office. I note that this was a face to face meeting and that the appellants had the opportunity to make detailed representations to the case manager about the exhibits which, I can see from the papers, they in fact did. I also note that the case manager took the time to open the electronic discs and provide a detailed explanation in writing to the appellants which confirmed his earlier initial decision as to the appropriate rate he would allow for consideration of and ancillary work relating to the 9,619 pages of exhibits.

8. I have particularly taken into account in reaching my decision:

   a) para 4.30 of the 2010 VHCC Guidance which states inter alia:

      "Where the prosecution serve tranches of evidence at the outset of the case it will be expected that the contract manager will apply the following rates for reading and consideration according to the nature of the evidence.....exhibits – 30 seconds per page".

      And:

b) para 4.40 of the 2010 VHCC Guidance which states inter alia:

"Where the defence team can show that there is particular benefit to the preparation of the defence to create schedules of evidence or other documents that may assist the case preparation (e.g. chronologies, dramatis personae) the contract manager may allow time for this. Requests for time will be assessed on a case by case basis".

9. I note and agree with the decision of the case manager to allow ancillary work in relation to these exhibits. I find that the allowance of 30 seconds per page for each of the 9,619 pages of exhibits for ancillary work is a very reasonable decision, in my judgment, particularly as I understand the case manager has also allowed 1 minute per page for the scheduling of 408 pages of witness statements and 1 minute per page for 616 pages of comment interviews.

10. I also note the further very reasonable future approach of the case manager when he states that:

"If the appellant wishes to identify and clarify why specific tranches of exhibits require additional time, the case manager will give consideration to any reasonable request for the same".

D. Conclusion

For the reasons set out above, I agree with the case manager's properly considered and reasonable belief that 30 seconds per page to consider and 30 seconds per page for the completion of all ancillary work is a reasonable block of hours for the appellant to progress their client's case with regard to the 9,619 pages of exhibits recently served in electronic format.

Accordingly I dismiss the appellant's appeal.

Appeal by solicitors – 17th June 2013

LAA decision upheld

- **Preparation**

Contract Manager's original decision:

To not allow all tasks sought on task list for stage 5 but rather allowing a basket of hours for attendance on client and counsel throughout the stage on the basis that defence team were in essence trial ready for 4/3/13 .The trial however has been adjourned until January 2014

This is an appeal in relation to a refusal by the contract manager to allow the following tasks:

1. attendance on client 50hrs
2. attendance on either one counsel or both counsel with client 15 hrs
3. attendance (liaising) on either one counsel or both counsel- 15hrs-whether client present or not

and further tasks relating to the instruction of agents abroad ,the service of new material both by way of NAE and unused, jury bundle skeleton arguments and attendance at court.

The contract manager contends that "reasonable and sufficient preparation time has been agreed at this stage ,and that small baskets of time is a reasonable approach in light of the trial being put off until January 2014,with the exception of the forensic accountancy work and a selected few necessary and reasonable items of work yet to be carried out."

The defence team contend that they “at no stage indicated to the Court or the contract manager that we were trial ready.” I have had sight of the useful document entitled “defence update to the Court”.

It is self-evident that expert evidence is being sought ,both by way of a currency expert and a forensic accountant ;together with enquiries abroad ,which the defence need to undertake in accordance with what I presume has been a determination made elsewhere by use of agents rather than attendance themselves abroad.

I accept that the defence were not trial ready.

I also accept that a significant amount of work has already been undertaken on behalf of this defendant. I have had sight of the task lists for stages 1-4 in addition to the task list that is the subject of this appeal. I understand that only stage 1 has been audited. It is clear that up to the commencement of stage 5 some 398.5 hours have been sought in relation to attendance upon the client (disregarding 75.4 hours claimed but not paid in stage 1 and utilising 40 hours of the 84 hours sought for the consideration of and taking of instructions on the schedule @task 21 stage 4 and 55.5 hours of the consideration and taking of instructions on 6656 photographs at task 17 stage 3) . That is in excess of 10 working weeks. In addition a significant number of hours have been sought for attendance upon Counsel both leading and junior (317.5 hrs). Additional time has also been sought in previous stages for the dictation of the proof of evidence (75 hrs). I have seen the proof of evidence which only runs to 40 pages .There has been a delay in the provision of this judgment to await sight of that.

I am therefore in agreement with the contract manager that only an additional 20 hours should be permitted in this stage for attendance upon the client and likewise 20 hrs for conferences with counsel. In light of the time already sought(and it appears authorised) that is more than sufficient to deal with the issues that are likely to stage arise in this stage. There are many months until trial and additional material may be served upon which the client will have to provide instructions; however in light of the time already spent with the client it is anticipated that significant instructions have already been obtained.

The nature of VHCC contracts is such that when evidence, unused, jury bundles etc are served specific authorisation is required to be sought for each item of work. That should not change simply because a trial has been adjourned. It is apparent that the Crown are continuing to serve material, as is frequently the case, beyond the anticipated trial date. Whilst a basket of hours serves a useful purpose once a trial has commenced it is not appropriate in these circumstances for it to be utilised when material continues to be served.

In light of the ongoing preparation for trial tasks 6,7 and 8 are reasonable.

Tasks 9 and 10 are in my view excessive and should total together no more than 10 hours.

Task 11 authorised.

Task 12 n/a

Task 13 is in my view excessive and should be no more than 5 hours.

Task 14-28 authorised as sought

Task 29 authorised at 30spp

Task 30 authorised

LAA decision upheld in part

- **Reading time**

The Case Manager allowed 100 hours at B grade preparatory rates and 50 hours at B grade standard rates to sift the 88,828 pages in order to identify the relevant material to be reviewed by the Appellant solicitor and both counsel

1. This appeal concerns the appropriate allocation of time for the initial sifting of 88,828 pages of material served by the prosecution as part of its primary disclosure responsibility. The purpose of the sift being to determine relevance of the material pending a more detailed review.
2. There has been much correspondence between the parties over the appropriate approach to be adopted to this task. I have read all the relevant material provided to me and also sampled a disc containing examples of the material to be sifted. It seems to me that the issues have been fairly crystallized in the most recent representations from both parties. I have no intention of rehearsing the history in detail. Suffice to say there has been a degree of give and take on both sides but in essence there remains significant distance between them over the appropriate time to be devoted to the task.
3. If I may summarise my understanding of the current position as distilled from the available documentation it would be as follows:

(a) The defendant is pivotal in a major mortgage fraud which has been accorded category 2 status under the VHCC regulations.

(b) The prosecution have applied agreed search terms to material obtained from digital media seized as part of the police investigation. In this way they have sought the distil a huge volume of data to a sub-set that they believe is likely to be of relevance to this defendant. Thus we have ended up with the 88,828 pages of primary disclosure.

(c) The appellants understandably wish to review this material in order to isolate documents and information that will assist the preparation of their defence and/or undermine the prosecution case.

(d) The LAA contract manager insists that given the sheer volume of material an initial sift is conducted to isolate material that is clearly relevant and, more particularly, material that is manifestly not relevant. This approach has become common in VHCC's where a large volume of data has been produced in this manner. It clearly represents a logical approach and operates as a sensible break on the incurrence of unjustifiable expense.

(e) Against understandable concerns over unfocused and potentially expensive sifting one has to balance the totally understandable concern of the appellants that they have the opportunity to carry out an effective sift where they can be confident that all potentially relevant material has been captured,

(f) Achieving a satisfactory consensus between the parties is not a precise science. One has to factor in one's own experience of such an exercise, the peculiar features of the case and the specific defendant. It is also fair to say that the manner in which the data has been served is unhelpful and does create extra work for the appellants. They certainly should not be penalised for the technical inadequacies of the Crown.

(g) I do not accept the contract manager's argument that one can in some way artificially compartmentalise certain aspects of the accessing of the material from actually considering its nature and content. The appellants have to deal with the material in the manner that the prosecution choose to serve it.

(h) In such cases one has to bear in mind that there is a tension between allowing too much time for what is essentially a preliminary sift for relevance and allocating so little time that the sift becomes merely cursory and results in more material being prioritised for review out of an excess of caution than would otherwise be necessary or appropriate.

4. Having weighed up all the balancing factors and considered the sample material provided I am satisfied that the time requested of 20 seconds per page for a Grade B solicitor to conduct the initial sift of this material is reasonable in the circumstances of this case. I therefore allow the appeal.

- **Disbursement**

Case Manager's original decision:

The costs incurred in clerking the trial have been allowed as a disbursement (at the hourly rate charged by the clerk) rather than a profit cost as claimed (a difference of £3.50 per hour).

The LAA asserts that the clerk was instructed as an outside agent and therefore falls to be treated as a disbursement.

This is an appeal against a certain decision by the Contract Manager of the Very High Case Costs Unit of the Legal Aid Agency [LAA] formally the Legal Services Commission [LSC].

In this case we have had the benefit of representations both orally and in writing from both the Appellants and the Respondents. We are asked to consider the case on those representations.

We are requested to make a decision on the items that are in dispute and to rule as to whether to dismiss the appeals, allow them in whole or allow them in part.

This ruling should be regarded as our full reasons for our decision.

We find as follows:

Appeal as to allowance of a disbursement:

We are asked to rule on an appeal that a certain disbursement [the payment of an independent law clerk] that was paid by the agency as a disbursement should be permitted to be claimed not as a disbursement but as part of the profit costs of the contracted solicitors.

We are told that this appeal follows on from the submission of a bill in which the appellants claimed the costs of an independent law clerk and those costs were paid as a disbursement by the authority.

We understand that the appellant in this case now seeks to argue that the correct method of dealing with this would have been to allow the payment at the agreed rate for an employee of the firm and not as an agent.

The Committee noted that the presence of a grade C fee earner at the trial was agreed by the commission to enable the backing of counsel at the trial.

There was a concern by the Committee that it was accepted by the contract manager that the issue of clerking the trial should have been resolved prior to the start of the trial and that for this omission the Case Manager took some responsibility.

The Committee found it remarkably refreshing that both parties approached this appeal on what seemed to the Committee on the basis that assistance was sought.

Indeed it was noted by the Committee that the professionalism and honesty of the Appellant ironically operated in this instance to their detriment.

The Appellants confirmed that the costs of the attending agent were claimed as part of the bill but they were actually paid as a disbursement.

The appellants invited the Committee to interpret the current guidance to the effect that the current rules may be wrong and that at no time did they ever believe that they were instructing an 'agent' and were of the belief that the cost would be a part of the profit claim.

Indeed they went further to suggest that had they thought that had there been an issue then they would not have asked that she should bill in her own name.

The Agency confirmed that had, at the negotiation of the stage, they been aware that the clerk was to be part of the fee earning team then she would have been allowed and paid as a fee earner.

We are not persuaded that the guidance can be interpreted in the way suggested to us by the appellant.

We note particularly that the Appellant were good enough to concede that through oversight the stage plan was incorrectly completed as to those staff members who would be a part of the stage.

Regrettably we are of the view that the instruction of this agent was simply that and was indeed a simple disbursement of their firm. Such disbursement we are told was paid in full.

To this end this appeal is disallowed.

Appeal by solicitors – 31st July 2013

LAA decision upheld

- **Category**

This is an appeal against categorisation; the case manager being of the view that this is a category 3 case whereas the appellant submits it is a category 2 case. There is no dispute that the Block B criteria are met and that also one criteria from Black A i.e. legal, accountancy and investigative skills to be brought together has also been met. The case managers original decision was that neither of the following criteria from Block A were met

A. The defendant's case involved a significant international dimension.

B. The defendant's case required highly specialised skill.

Adjudicator's Decision:

To uphold the decision of the contract manager that this is a Category 3 case

Reasons:

This case turns upon the operation of a MSB which the prosecution assert was used to launder the proceeds of crime by facilitating the remittance of such funds abroad with the dishonest knowledge and assistance of the above defendant who from 2008 had a 25% share in the company. The DCS details his role within the company and at paragraph 15 makes clear his prime responsibility is in respect of compliance although at paragraph 11 it states that at no point was he the MLRO but is silent as to who did fulfil that role within the company.

It would appear that a major element of the business was the facilitating of transfers of money abroad on behalf of other companies or organisations. The defence assert for a

variety of reasons that the relationship between such third parties and the MSB does not fall within the definition of an agency for the purpose of money laundering legislation or current guidance provided to MSBs by HMRC.

The trial is due to commence on the 02-09-2013

Turning to the specific criteria

A. The defendant's case involves a highly significant international dimension.

The Concise Oxford English dictionary definition of significant is

" noteworthy, of considerable moment or effect or importance, not insignificant or negligible"

The MSB transferred funds via a clearing house based in Pakistan although the financial analysis is stored in the MSB's server. Money transfers were made to Pakistan among a number of other countries.

The contract manager correctly identified that the interrogation of the flow of money and investigating the same fell under the head of the legal, investigative criteria which had already been met and would therefore preclude it from being used again under this criteria.

The appellant then sought to broaden his argument under this limb by indicating that there was a need to investigate the dispersal of these funds at their end destination which was often in a country where the banking system was governed by Sharia law. There was no detail provided in the course of the appellant's submissions as to how the operation of Sharia Law would impact on these inquiries nor any specifics as to what inquiries needed to be made abroad. Indeed the case manager himself noted that were such detailed submissions made then they would carry more weight under this criteria and went so far as to indicate that were they to be made he would be prepared to reconsider his decision under this criteria. We agree with the case manager that at present this criteria is not met.

B. The defendant's case required highly specialised knowledge.

The appellant's argument here centres on the interpretation of what constitutes an agent for the purposes of the money laundering provisions. Nowhere does he indicate how he possesses such highly specialised knowledge, above and beyond that which solicitors engaged in VHCC work would normally be expected to possess and how the same informs his case preparation merely that a difficult point is to be argued. We wholly agree with the case managers view that whether the organisations dealing with the MSB were agents or independent contractors does not involve a significant level of complexity nor is that level met simply because there may be legal argument on this point. We therefore agree with the case manager that this criteria is not met.

Appeal by solicitors – 2nd August 2013

LAA decision upheld

- **Reading time**

Contract Manager's original decision:

As per the VHCC Appeal Response dated the 18th April, 2013. The item in dispute is the time provided for reading exhibits. The contract manager has allowed reading time at 30 seconds per page. There are some 66,722 pages of exhibits at the date of this appeal. The Appellant is requesting one minute per page to consider exhibits

Adjudicator's Decision:

My decision is to uphold the Contract Manager decision to allow 30 seconds per page for 66,722 exhibits. This is subject to the proviso as indicated by the CM that a higher allowance may be provided for specific and limited tranches of material involving greater complexity and relevance.

I have considered the following documents that have been supplied to me

1. The VHCC Appeals Representation Form completed by [redacted] and dated the 3rd April, 2013.
2. An Advice on Evidence accompanying that form by [redacted] dated the 13th February, 2013.
3. Counsel's log.

4. Sample exhibits 4640, 4641, 4642, 4643, 4644, 4647, 4649, 4655.
5. The VHCC Appeals Response Form dated the 18th April, 2013.
6. "Further Submissions in the VHCC Appeal" a document presumably drafted by the appellant.

I have also requested and considered the following:

1. The Indictment.
2. The exhibits list.
3. The case summary.

The item in dispute in this matter is the allowance made by the Contract Manager of 30 seconds per page to consider the exhibits. The Appellant seeks to argue that that allowance is insufficient and one minute per page should be allowed. It is noted that the Solicitors instructing the Appellant have agreed 30 seconds per page. The page count of the exhibits of this not insubstantial matter at this present time amounts of 66,722 pages. This equates on the basis of 30 seconds per page to some 556 hours.

The Defendant represented by the Appellant in this matter appears at number 5 on the Indictment. I note that he is the estranged husband of the first Defendant, [redacted]. The case involves a "long firm fraud" in the Midlands area involving a number of companies and the use aliases.

In cases of a substantial nature, it is appropriate in my view that an allowance of 30 seconds per page is provided for the consideration of exhibits. The principal of "swings and roundabouts" will clearly apply in multi-defendant cases. Not all of the exhibits relate to the Appellant's Defendant. I note from the Indictment that the Appellant's Defendant is on the Indictment in relation to Counts 3, 4 5, 12, 13 and 14. The Case Summary provides some guidance in relation to the exhibits and documents that may specifically be of relevance. I note that there are various paragraphs which refer to the involvement of the either [redacted] or alternatively companies which he is said to be involved with in particular [redacted]

Although the original exhibits were served un-paginated I note from the Appellant's advice that a paginated bundle in an electronic format has been provided. I have sympathy with the appellant in relation to the service of the prosecution case although I understand that it is now in a paginated form and can be considered using various searching mechanisms.

With reference to the potential of a cut throat defence, I do believe that this is something that is dealt with regularly by experienced Counsel on cases of this nature. The Advice also refers to issues regarding forged documents or documents bearing forged signatures which will require the Defence to prepare schedules of disputed documentation. Clearly the Defendant will be in a position to provide instructions thereto and further time undoubtedly granted for that specific purpose.

I have also read the further submissions of the Appellant and as indicated

above note that his position is not just to simply read the documents but to prepare them for trial. I take the view that the allowance provided allows sufficient and reasonable time for that preparation to take place. However, in any event the Case Manager has indicated that she would consider a request for a higher amount of time in relation to "specific and limited tranches of material". In my view, if there are specific areas of the exhibits which require further consideration then this concession by the Contract Manager should be prevailed upon. It is clear that some of the exhibits that relate to the allegations faced by the Defendant alone namely Count 12 to 14 may require further consideration.

Accordingly in conclusion although I have great sympathy for the appellant, the time granted for the consideration of the exhibits of 30 seconds per page in this sort of case is in my view reasonable. I assumed additional hours are allowed in relation to attendance upon the client and conferences and the like and consideration of summaries prepared by the appellant's Instructing Solicitors.

Appeal by counsel – 2nd August 2013

LAA decision upheld

- **Reading time**

Contract Manager's original decision:

(1) Allowed 45 seconds per page for consideration of the first 30,000 pages of the exhibits by solicitors and counsel
(2) Allowed 30 seconds per page for scheduling of the exhibits by solicitors

Adjudicator's Decision:

The appeal is <u>allowed in part</u>:

(1) Allowed 1 minute per page for consideration of the first 30,000 pages of the exhibits for solicitors and both counsel
(2) Allowed 45 seconds per page for scheduling of the exhibits by solicitors
(3) Allowed, by agreement, 2 minutes per page for consideration of those schedules by both counsel.

Reasons:

(The full reasons for the decision should be noted here, making specific reference to points raised at the appeal if necessary)

<u>Introduction</u>

1. This is an appeal by the solicitors, leading and junior counsel against the decision of the Contract Manager to award a rate of 45 seconds per page for the reading of the first 30,000 pages of the exhibits (375 hours) and 30 seconds to schedule them (162.5 hours). The solicitors request 1 minute 30 seconds to consider the exhibits (750 hours) and 1 minute 30 seconds to schedule them (750 hours). Counsel request 1 minute per page to consider the exhibits (500 hours) and 2 minutes per page to consider the solicitor's schedules.

2. The defendant is indicted, together with a number of others, with a vast mortgage fraud – vast in terms of money and in terms of length of perpetration. The allegations against the group generally are set out in the 'Outline Written Statement of the Prosecution Case' dated 30th November 2012. Unfortunately, as the defendant was not charged until some months later, there exists no updated case summary to assist with the direct prosecution allegations against him.

3. That said he is a surveyor – one of a number – providing, as is required in a fraud of this type, valuations said to be false and dishonestly so. On the prosecution case he must be one of the central links in the chain required to perpetrate such a scheme; whether involved on 'one side or the other' or as a 'bridge' between the two sides.

4. I do not think it is a helpful exercise to try to compare one defendant with another especially GP and this defendant. Each played a different but significant role and, in the context of mortgage fraud, a valuer is required; either dishonest and a part of the conspiracy, or as a 'patsy'; usually naïve.

The Original Decision

5. The Contract Manager has allowed 45 seconds per page for the first 30,000 pages of exhibits pointing out – correctly – that this is a 50% increase on the 'standard' allowance in cases governed by the 2010 Contract, Arrangements and (informed by) the Guidance.

6. Further that there is an additional 30 seconds for scheduling for solicitors (and the Contract Manager has indicated that she does not, in principle, object to two minutes per page for counsel to read the schedules produced thereby).

7. The Contract Manager is of the view that these allowances are 'more than adequate to prepare this case'.

8. There has been considerable amount of effort put in by both parties to avoid the need for an appeal by seeking to compromise, on a without prejudice basis, on the rates which is only to be commended. However this has understandably failed given the differences that exist. I shall consider the appeal on the basis of reasonableness. I do not hold against either party anything said or done in furtherance of the spirit of compromise.

Papers

9. I have been provided with:

- VHCC Appeals Representations Form, dated 1st July 2013
- VHCC Appeals Response Form, dated 11th July 2013
- A series of emails dated 19th May 2013, 27th June 2013 and 1st July 2013
- Previous Appeal decisions in the cases of (1) DP, the lead (first) co-defendant and (2) GP, a co-defendant
- The Prosecution Outline, dated 30th November 2012
- A 35 page document entitled 'Appeal Submissions re time for exhibits', dated 30th June 2013
- A 3 page document, undated, responding to the submissions of the Contract Manager enclosing a variety of schedules demonstrating work to date and the value of such schedules
- The VHCC Case Plan for this case
- An 8 page 'note re exhibits', undated
- The defendant's representation order demonstrating, as it appeared necessary to do so, that he was indicted with his co-defendants on the same all encompassing conspiracy to defraud.

10. I will not mention in the course of this decision every document or point made but I have nonetheless taken them all into account when reaching my conclusions.

11. I personally do not find the decisions in DP and GP of any significant assistance in the context of this case. They were plainly decisions confined to the cases of each defendant whose appeal was being considered; notwithstanding their links as co-defendants. I do not have the submissions of the parties nor do I know, other than in the broadest terms, what attracted the panel and the single adjudicator respectively within the submissions that allowed them to come to the conclusions that they did. Each side in the current appeal – as one would expect from experienced practitioners and a long standing member of High Cost Crime – is able to make points that are said to support their respective positions; perhaps illustrating the limited value of such decisions to me.

Conclusion

12. I have read the 25 page submissions dated 30th June 2013 (especially the first 21 pages), the email dated 19th May 2013 (especially the first five paragraphs) and the VHCC response in great detail as these, it seem to me, encapsulate the respective cases.

13. This is not a standard mortgage fraud. It is not a standard VHCC mortgage fraud as recognised by the decision to upgrade the category. This is a vast, complex web of which the defendant is said to have played an important part.

14. In my view the critical element of this defendant's case is that any valuation he carried out was honest and no different from that of other valuers who have had the fortune not to be charged and that his methodology was at least influenced by and at most required by the way the banks approached the issue. I believe this reflects the Appellant's case (para. 28 and 29 of submissions). I also accept, although to a more limited degree for these purposes, that cutting the throats of other defendants who, says this defendant, were making false statements will benefit him; whilst protecting himself against the reverse. He does, of course, protect himself by proactively demonstrating his approach was honest for the reasons given in the manner described.

15. The Contract Manager is fully alive to the first element of what I consider to be the main issue (penultimate page VHCC response; first paragraph).

16. I do think however that her response underestimates the complexity of considering and then preparing a defence being a professional charged (and it would seem the only professional – email paragraph 3) in the context of many others who have not been. However I do not accept that a combined total of 3 minutes for solicitor's consideration and scheduling is reasonable. Whilst the allegation against the defendant is an important and key one it is, by its nature, limited.

17. In my view, with a focussed approach that the Appellants have shown they are capable of, and on a swings and roundabouts basis, I conclude that 1 minute per page to consider the exhibits and 45 seconds per page more for solicitors to schedule the same – with appropriate emphasis on sorting 'the wheat from the chaff' – is reasonable. I then accept, as the Contract Manager herself quite properly does, that 2 minutes for counsel to review the schedules is appropriate.

18. On that basis where the need for increased review arises – for example in relation to comparing this defendant's behaviour with the many other valuations – that can be catered for; but at the expense of a number of exhibits which are of less relevance.

19. I emphasise that this decision relates to the 30,000 pages of evidence. If more material is served then the same, lesser or greater time may be appropriate.

Appeal by solicitors & counsel – 8th August 2013

LAA decision upheld in part

- **Category**

Case Manager's original decision:

To refuse an application to re-categorise this case as a Fraud Category 2, from a Category 3.

There are two disputed criteria from 'Block A' in this case, the first and third, namely 'national publicity and widespread public concern', and 'significant international dimension'.

I am not satisfied that the first is made out, but I am satisfied that the third is, and therefore allow this Appeal on that basis.

In my view the incident in India which resulted in the death of [redacted] is at the heart of the case and the frauds, part of the 'res gestae', and should be taken into account when considering whether the defendant's case satisfied the third criterion. Although the taking out of life policies and the alleged fraudulent application for credit occurred in this country, as did the subsequent claims, the Contract Manager has taken, with respect, too narrow a view of the case; given the Crown's approach of trying to adduce evidence of systematic behaviour with the ultimate intention of committing murder to 'cash in', the defendant's case clearly hinged upon whether the incident was an accident or indeed murder. If murder had not been established then counts 2,3, and 4 would not have been made out. Further, the absence of 'motive' would have considerably weakened count 1.

The defendant's case, from what I have read, satisfies paragraphs 4.21 to 4.24 of the2010 VHCC Guidance. Further, and simply by way of an observation, it seems to me that the defence team here has adopted an economic and proactive approach in this case which must have had some bearing upon the Crown's decision to 'drop the case' at the last minute, thereby saving a substantial amount of public funds.

Appeal by counsel – 12th August 2013

LAA decision overturned

- Category

This appeal is on the single issue as to whether the case should be classified as Category 2 or Category 3 under the Very High Costs (Crime) Case Scheme 2010.

The scheme provides for different payment rates for cases classified under different categories.

In the case of this defence the Legal Aid Agency position is that the case is, and should remain, as a Category 3.

The Appellant argues that it should be a Category 2 case and appeals against the Category 3 assessment.

It is common ground that for this case to be classified as Category 2 it must demonstrate two out of the four BLOCK A criteria from the Guidance. I have to assume therefore that the appropriate criteria under BLOCK B are met.

The Legal Aid Agency accept that the defendant's case requires legal accountancy and investigative skills to be brought together within the BLOCK A criterion (4.27 to 4.29 of the VHCC Guidance).

The Appellant does not argue that the defendant's case involves a significant international dimension (4.21 to 4.26 of the Guidance).

The question for me to consider is whether the defendant's case involves the criteria in 4.16 to 4.21 namely "the defendant's case is likely to give rise to national publicity and widespread public concern".

and/or

"the defendant's case requires highly specialised knowledge (4.17 to 4.20).

National Publicity

So far as the criteria likely to give rise to national publicity and widespread public concern are concerned I have read the Guidance carefully and considered the representations of both parties.

I have seen the news articles submitted by the Appellant.

This case involves allegations of substantial mortgage fraud. It is not a unique case in that respect. I take into account that there is a reporting restriction and understand the reasons, as explained, behind that. I do not accept, very simply speaking, that this case is likely to give rise to National publicity. The VHCC Guidance contemplates that for this to apply one would expect nationwide publicity with interest from broadcast, print and electronic media. Cases of this nature, whilst thankfully not common place, are not exceptional or newsworthy. This case has an Indictment period ending in 2008 and is

somewhat historical. I do not believe that there would be national publicity. I do not accept the suggestion that "national" in this case means "Wales".
"National" must be construed as "jurisdictional" i.e. England and Wales in this case. The suggestion that LIBOR manipulation featured in trial 1 and attracts national publicity is not relevant to this case which is not a case of LIBOR or manipulation.

In any event I am unable to accept that this case, having in mind its age and the fact that it is not unique, would give rise to widespread public concern. It may cause some concern of course, and substantial concern to some, but any reporting might regrettably be met with indifference by many or simply not impact upon the consciousness of the public. The Guidance refers to "far reaching and significant concern, such as that which might trigger editorial debate". I do not accept that this case would come even close to fulfilling either of the criteria necessary.

Highly specialised knowledge

I have very much in mind the Guidance in 4.17 to 4.20. I agree with the Legal Aid Agency that Mr [redacted] of the Appellant solicitors possesses highly specialised knowledge. Their acceptance of this is sufficient for me not to have to elaborate further.

The issue at the centre of whether this criterion applies is whether (4.20) the defendant's case requires this skill and expertise and whether the highly specialised knowledge goes to the heart of the case. I find that it does for the following reasons:-

1. The defendant faces a conspiracy allegation under count 1.

2. She is therefore alleged to have agreed with the co-defendants to commit the unlawful acts alleged in that count.

3. To defend that count, and the defendant denies the charge as seen in the defence statement, those representing her need to assess in full the case against the alleged co-conspirators and understand the detailed evidence of falsification of mortgage applications, statements of income, letters in support of such applications and statements and other documentation used in support of such applications and statements.

I have considered and understand the Legal Aid Agency contention that the defendant's case, on a stand alone basis, could be construed as a simple straight forward denial of any involvement in offending. It is not however a stand alone case which can be considered in this discrete manner. To defend a conspiracy the solicitors and counsel have to understand the evidence in full against the co-conspirators which must, by definition, be at the heart of the defence of anyone and everyone charged on such a count. This defendant is entitled to assess whether there was a conspiracy at all as well as seeking to distance herself from it and quite simply to deny any dishonesty. It is a fundamentally difficult and onerous task to defend such a count and on the facts of this case, where the prosecution adduce expert conveyancing evidence, it clearly is the case that the highly specialised knowledge criterion applies.

Against this background therefore I do not need to consider the need for highly specialised knowledge in relation to the other counts.

After very detailed consideration therefore I allow this appeal on the basis that two criteria from BLOCK A are satisfied.

Appeal by solicitors – 29th August 2013

LAA decision overturned

- Preparation

This is a FURTHER appeal against a certain decision by the Contract Manager of the Very High Case Costs Unit of the Legal Aid Agency [LAA] formally the Legal Services Commission [LSC].

In this case I have had the benefit representations in writing from both the Appellants and the Respondents. I am asked to consider the case on those representations.

I do so having initially determined certain issues as a single adjudicator on this mater and also as Chairman of an Appeal Committee that sought to determine the issue on the 29th May 2013.

I have reminded myself of this appeal from my original notes.

I am now asked to make a decision on one item that remains in dispute and to rule as to whether to dismiss the appeal, allow it or allow it in part.

This ruling should be regarded as out full reasons for our decision.

I find as follows:

Appeal as to time and tasking:

On an earlier occasion the appeals committee allowed:

"1 minute per page to consider the exhibit at a grade A fee earner level and 1 minute per page to schedule the exhibits at a grade to be allocated by the LAA Contract Manager."

The Contract Manager submits to me that;

'….it does not appear that the Committee took the view that, in order for the case to be fully and carefully prepared, the exhibits ***must*** *be scheduled at A grade. Otherwise, it would have been reasonably expected that the Committee's decision would have been to allow the scheduling at A grade rather than at a level of fee earner to be determined by the LAA Case Manager (albeit the Case Manager recognises that the Committee's decision allows for the scheduling to be carried out at A grade if that was the outcome of the Case Manager's determination).*

The Appellants in turn, submit, simply put that it is nonsensical for a Grade A to consider and a Grade B to have to schedule the information.

I am of the view that the necessity of the scheduling process would require an effective re-read of all the paperwork by a Grade B whilst a Grade A could effectively schedule as he or she went along with the read.

An effective second reading of this material by solicitors is not necessary and is not authorised.

In making this decision I remind myself of the concession made by the Contract Manager in that he confirms the time agreed prior to the Committee hearing for the Appellant's reading and scheduling of the exhibits was all agreed at A grade.

I do however take the unusual course by asking that both the contract manager and the appellants closely monitor this task.

I am certain that the work required here is necessary, but there should always be the need to keep in mind the public purse and the need fro it to be protected as it is clearly far from an infinite resource.

I therefore ask that this task is reviewed in 4 weeks from today and to allow for all parties to be circulated with this decision I direct that the matter should be reviewed on 4th October 2013.

To this end I allow this appeal.

Again I state that this appeal is considered on the case of this defendant alone and his special position as first defendant. It should not be considered in any way as effecting the positions of others in this case and my ruling is not to be seen in any way as setting a precedent as to the time allowance of the co-defendants or the category of their cases.

Appeal by solicitors – 30th August 2013

LAA decision overturned

- Category

1.The appellant claims in his appeal documents that the contract ought to be category 2, as opposed to the contract manager's ('CM') opinion that is only satisfies the level 3 criteria. The appeal is focussed on whether the appellant's case satisfies the 'highly specialised knowledge' criterion required by the 2013 VHCC contracts guide –
4.17 To satisfy this criterion, the Case Manager would expect that, as a prerequisite, practitioners must demonstrate a certain level of skill and expertise in dealing with large fraud cases, cases involving serious financial impropriety and complex financial transactions.
4.18 They would be expected to be familiar, or equipped to deal, with most matters frequently prosecuted by the Serious Fraud Office, Revenue and Customs Prosecution Office, Crown Prosecution Service, or any prosecution agency into which any of the above have been incorporated, or are likely to be incorporated.
4.19 The defence team would need to show that a case meeting this criterion involved an area of skill and expertise outside the usual scope of a criminal fraud practitioner's expertise, taking into account the expectations of skill and experience raised in paragraphs 4.17 and 4.18 above.
4.20 The defence team would need to show both that the defendant's case required this skill and expertise, and that they were able to provide it in house. It would be expected that any putative highly specialised knowledge would go to the legal heart of the defendant's case, and would be of a significant level of complexity. Where experts are instructed to address highly specialised issues, the Case Manager would expect to see evidence that the outside expertise complements expertise within the firm, rather than obviating the need for it.

2. I have read the 3 case summaries, indictment, appellant's submissions and CM response. The appellant is alleged to be a co-conspirator in a publishing fraud. Victims received cold calls offering advertising space; the first summary described the fraud as *'simple in operation*'. Case summary III states *"Whilst the majority of the complainants are dissatisfied customers almost all, if not every one, of those who were persuaded to part with their money is a victim of the fraud because they were simply not getting what they had paid for."* This is not a case where, for example, the workings of a financial market need to be understood.

3. The appellant was employed as a sales representative for an unincorporated business which was a 'phoenix company', and aggressive invoice enforcement tactics were used. He is charged with conspiracy to commit fraud by false representation. This is a substantial case, the paperwork is voluminous and the figures pleaded indicate" sales" of over £5 million between January 2007 and February 2010. The appellant is described by the prosecution as a member of the 'cold calling team'. He generated 17% of the company's sales in that period, over £860,000.

4. In a detailed written submission the appellant's counsel and solicitor have set out the nature of the fraud, and the extent of the work required on the appellant's behalf. He is said to be head of the sales team. It seems that the defences of those above him claim that the appellant was responsible for the fraud and the defendants working below him seem to have adopted the same approach. Thus he is at the centre of cross-fire cutthroat defences, whilst maintaining his innocence. Paragraphs 9 – 11 of the appellant's submission set out the nature of the work required. This work is of the type expected by those who practice fraud specialisms. Paragraphs 13and 14 detail the reasons why 'highly' specialised knowledge is required. By way of example regulatory matters require consideration, together with a working knowledge of different statutes, and contractual and employment obligations/liabilities between various parties; company law requires attention.

5. The CM, in rejecting the appellant's submissions, stated *"They would be expected to be familiar, or equipped to deal with, most matters prosecuted by the Serious Fraud Office, Revenue and Customs Prosecution office, Crown Prosecution Office, or any Prosecution agency into which any of the above have been incorporated, or are likely to be prosecuted… Unless further evidence can be provided to show that the case involves an area of skill and expertise outside the usual scope of a criminal fraud practitioner's expertise, taking into account the expectations of skill and experience raised in paragraphs 4.17 and 4.18".*

6. I agree with the CM decision. The appellant's advisers have set out the extent of the work required; it will undoubtedly be time consuming and detailed but in the context of fraud specialists I do not see that they have satisfied the adverb 'highly' in respect of their specialised knowledge. The issues raised are familiar to fraud practitioners. The extent and nature of the work involved does not satisfy the criterion and I therefore reject this appeal.

Appeal by solicitors & counsel – 4th September 2013

LAA decision upheld

- Non-payment of unauthorised work

Contract Manager's original decision:

Refused to pay any of the 246.25 hours worked by Appellant Counsel during stage 6 (30.7.12 to 31.10.12) for the single task of continuing to read case papers.

Appeal rejected

The Committee rejected the appeal for the following reasons:

1. Counsel failed to comply with section 4.24 of the VHCC 2010 contract specifications:
2.

"Neither party can assume hours for tasks that were agreed in a previous Stage will automatically rollover into the next stage. If a task that was agreed in a previous stage, has not been completed the stage end date, and it must be completed in the next or subsequent stage, the hours for incomplete tasks must still be incorporated into the task list and agreed for the next stage".

No roll-over of hours from stage 4 was agreed for stage 6.

No extension of the time period for the work had been sought.

Counsel signed a VHCC 2010 contract on 18.3.12 confirming that he had read and understood the 2010 specification. Despite that Counsel was unaware of section 4.24, until 16.10.12 when the Case Manager emailed Counsel.

The 2010 contract specifically states at section 4 Carrying out Contract Work:

"4.1 Extensions or any other variation to the deadlines imposed may be granted by agreement between you and the VHCC Contract Manager"

Subsequent stages

"4.22 Unless agreed otherwise:
(a) You must prepare a Task List for each stage and submit this to the VHCC Contract manager prior to undertaking any work..."

Appellant Counsel failed, after 16.10.12 when he first became aware of the section 4.24 contractual requirements, to seek the Contract Manager's agreement to "roll-over" the unused hours from the previous stages into stage 6.

Appeal by counsel – 20th September 2013

LAA decision upheld

- Preparation

Contract Manager's original decision:

Consideration of witness statements: 37.1 hours

Consideration of exhibits: 394.2 hours

Scheduling time for exhibits and witness statements was agreed in part by the contract manager by a block of 150 hours at grade B rates with 50 hours at Grade C rates

A total of 621.3 hours

Appeal allowed

The Committee allowed the appeal for the following reasons:

The 789.2 hours undertaken to consider and schedule over 52,000 pages of exhibits and the 59.2 hours to consider and schedule 1,177 pages of witness statements was necessary trial preparation:

Taking account of (a) the time constraints faced by the Appellants (b) cut-throat defence (c) positive legitimate trading defence to be advanced (d) high level of client care required against a background of the defendant having dismissed his previous legal team after the first trial alleging negligent representation (e) absence of trial transcripts at the stage of undertaking the preparatory work.

The total hours undertaken kept within the time rates that the Committee considered reasonable and proper.

Appeal by solicitors – 20th September 2013

LAA decision overturned

- Reading time

1. The Applicants, leading and Junior Counsel, appeal against the decision of 2nd August 2013 to allow 30 seconds pp reading time for exhibits. The Appellants contend for 1min pp for the exhibits served up to that point, namely 27,824 pages. The difference between that allowed and that claimed is consequently 231.87 hours for each Appellant.

2. There is a subsidiary but important point as to whether either or both Appellants are time barred and/or whether Leading Counsel has a right to appeal. Having considered the chronology on both sides and the points advanced, I take the view that there are reasons to entertain the appeal on its merits. The materials before me do not point to a definitive failure by the Appellants. The absence of a mail identifying the trigger date for the appeal process or that Leading Counsel falls outside the process serves to confirm my view. I have specifically considered the Guidance (4.114) and the submissions made by the Respondent when forming that view. The decisions reached on the appropriate time allowances have application to both leading and Junior Counsel.

THE APPROACH

3. This appeal is subject to the 2010 Guidance. The guidance makes clear the basis upon which the VHCC scheme will operate and it sets out how the appeal process is determined. In the present case, I have considered that guidance and I have been provided with and I have read all the materials supplied on both sides, including the case summary, indictment, appeal submissions and reported decisions.

4. Guidance note 4.30 makes plain that a rate of 30 sec pp is generally allowed for Exhibits with tranches of evidence served at the outset. Plainly, that rate may increase or decrease (4.31 & 4.32) depending on the material. It is also necessary to consider the material against the case of the particular defendant concerned.

THE TYPE OF CASE AND THE MATERIAL TO BE CONSIDERED

5. The case is a Conspiracy to Defraud concerned with banks and properties. On any analysis, it is a substantial case with vast amounts of paperwork and multiple defendants. I understand that beyond the first tranche of evidence the next batch could amount to a further 100,000 pages. There are significant, identified cut-throat elements between this defendant and others and given that the losses run

into hundreds of millions, there is a significant media and public interest (Para. 22 Appeal grounds 14/8/13).

6. The Appellants have identified the types of material served within the initial 27,824 pages at their appeal para. 39. The types of documents vary but they are documents not surprisingly connected to mortgages. Importantly, it is said that the application forms contain material that are "*significant issues that this defendant needs to address through a pro-active and robust defence*" (appeal para 39.c). The forms, taking a single batch as an example, run for thousands of pages (X951-X3133 as an example). Each form allegedly contained untruths. In essence, its is said that the forms each need considering not just to answer the Crown case but also to deal with the cut-throat.

7. I have taken examples for what the Appellants contend is important material that needs to be considered carefully. It is said to be far from a "standard case". The Respondent contends that the defendant is placed at the bottom of the hierarchy (See Prosecution note 9/6/13). A previous case manager reviewed all or most of the material in December 2012 (Response 29/8/13 page 3). Having considered the material and the case of the defendant, the 30 sec pp rate was considered appropriate. The cut-throat element to the case, which I am told is significant and appears to be, is noted as being "*standard knowledge for criminal practitioners*" (Response 29/8/13 page 3). A distinction is sought to be drawn between the case against the defendant's mother (who this defendant is in conflict with) and this defendant.

8. I agree with the Respondent that many of the features identified by the Appellants go to "Category" of case. However, it is important to understand the case against the defendant by reference to how the Crown use the material and also how the material might impact for and against the defendant in a cut-throat trial. Understanding the extent of any cut-throat does have an effect on the way material is read, considered and applied. It has a dual purpose when in a real cut-throat; avoid and answer the Prosecution case and attack or defend the cut-throat. I see some force in the comments articulated in the Appellant's further response document of 2/9/13 para.15. Confess and avoid is vastly different in the preparation of a case from a full on cut-throat.

9. Both sides have set out their own personal experience of dealing with fraud cases of similar types. What the Respondent terms "*standard conveyancing documents*" (Response 19/9/13 page 3), the Appellants' contend are far from it. Each form being different, it is necessary they say to establish the changes in documents

over time to support the defence advanced (Appeal document 2/9/13 para 10). The Respondent acknowledges that on a review of the tenancy agreements, there are changes made over time buy they were the same or minimal. The Respondent suggests that the major percentage of the served exhibits (over 87%) is standard form conveyancing documents. Even that figure in itself is not accepted by the Appellant. In the context of the case of this defendant, the principal point seems to be that the documents cannot be interpreted in a standard way.

10. While earlier decisions in VHCC appeals are a useful reminder of the guidance and how in fact specific cases it has been applied, the cases are not binding and are of limited use. Given that each side has been able to cite cases that advance their own submissions, the safer course is to look at this case without any detailed reference to them.

CONCLUSION

11. I am mindful that both sides have identified reasons for the competing rates. I am conscious of the fact that the starting point within the guidance identified is 30 sec pp for Exhibits and that this decision has significant impact on public expenditure. However, this does not appear to me to be anything like a standard case or even a complicated but otherwise standard case. It is a quite exceptional case and the case of this defendant has its own complications borne out of her position in the overall scheme and because of the cut throat elements identified. The arguments set out by the Appellants in their various appeal documents give sufficient insight to the way the case is to be run to make it plain that the time taken to read and analyse the documents will more time consuming than might ordinarily be the case.

12. In my view, an appropriate rate for the 27,824 pages of exhibits in this particular defendants case, given the issues I have pointed to, is **1 min pp**. That should apply to both Leading and Junior Counsel, especially since it is the first tranche of evidence. That does not affect any further evidence served in the case, which will have to be separately considered.

Appeal by counsel – 29th September 2013

LAA decision overturned

- Payment of defendant's travel expenses when attending trial

I refuse this application.

It would be in appropriate use of Legal Aid funds. A defendant being required to travel long distances to his or her trial is not "exceptional"

1. The application remains lacking in detail or specifics as to how the figure requested is made up. E.G. Simple research shows that basic return without any discounts for forward purchasing age or employment status discounts between Peckham and Kingston come to less than £5.00 per day. (if certain discount qualifications apply it is even cheaper) National Express coach journeys between London and Stoke amount to approx £15.00 each way. Aggregating for a week's attendance at court to approximately 50% of the figure being requested .Such an aggregate figure is not "exceptional"

2. I am unconvinced by arguments of having to travel separately from co-defendants, due to nature of a "cut-throat" defence. Unless there has been a sudden change in direction of the trial presumably defences were known well in advance of the trial. In absence of any other information on this point I do not find it to be "exceptional"

3. Equally, any financial burden when facing what was to be a trial of several months (though I understand may now be considerably shorter) would have been known well in advance and forward planning of a family budget and forward planning of applications for discounted travel terms prepared for and obtained.

Appeal by solicitors – 10th October 2013

LAA decision upheld

- Preparation

This is an Appeal concerning Tasks 23 and 24 only, Task 22 having been agreed between the parties.

The Appellant seeks 40 hours preparation in respect of Task 23 and 40 hours preparation in respect of Task 24.

The Appellant has provided detailed submissions (including further submissions dated 23.10.13 on which the LAA were invited to respond) and numerous documents in support of these submissions, all of which have been of assistance.

The Contract Manager has not allowed any time for Task 23 and in Task 24; 2 minutes per page to read the co-defendants defence statements.

The reasons given by the contract manager for this approach is that the time sought by the Appellant is not justified as the work/time requested is already encompassed within the reading time as allowed. I refer of course to the full reasons in support of the contract managers decision. Whilst the contract managers approach is sound and reasonable in general terms on the particular circumstances of this Appeal it is the

single Adjudicators view that the Appeal should be allowed in full.

The time sought by the Appellant given the extent and complexity of the evidence is not in itself excessive by any means and in keeping with the rate of 30 seconds per page for exhibits which has apparently been clarified by an Adjudicator earlier in the case (as stated by the contract manager). Furthermore; the Appellant has provided compelling and detailed arguments relating to not only what work he wishes to undertake but also the reason why that work must be undertaken and furthermore; to what use that information will be put.

The work contemplated within both tasks goes much further than the reading of the evidence and is not in my view time simply to allow Counsel to "think through his next steps when working on the case" (as stated by the contract manager).

The Appeal is allowed in full.

Appeal by counsel – 30th October 2013

LAA decision overturned

- Disbursement

Refusal to authorise instruction of a Private Investigator agent to travel to Portugal to locate and proof a potential Defence witness in relation to contested Confiscation proceedings.

The appeal is allowed.

In defending confiscation proceedings solicitors for the defendant (first named on a five defendant indictment covering Conspiracy to Defraud ("boiler room" fraud over a two year period), Fraudulent Trading and various counts of Money Laundering) have been served by the Prosecution with a 24 page section 16 POCA statement, with a 27 page section 17 Defence Statement.

The confiscation proceedings are contested with a hearing listed on 16th December 2013 with a week set aside for the proceedings.

The Prosecution allege a benefit figure of over £7 million against the Defendant and over £2 million of available assets; with a hidden assets assertion.

The Prosecution are to invite the Confiscation Judge to conclude that £727,653 from the fraud was transferred to a contact of the defendant and or her company, and that she laundered the money before returning it to the defendant. The Defence dispute this.

Defence solicitors have attempted to contact her (tracing her to a Portuguese address via the internet) to request she give evidence at the confiscation proceedings or provide a statement supporting the Defence case that the defendant did not receive money from her.

The expenditure is reasonable (£350 per day plus expenses), proportionate (to the Confiscation assertions) and important for the Defence preparation of substantial contested confiscation proceedings (with a possible 10 years' imprisonment default period as the sum is over £1 million).

Appeal by solicitors & counsel – 1st November 2013

LAA decision overturned

- Preparation

The Appellant seeks 500 hours at Grade B to sift 88,828 pages of unused material taken from the office computers at two companies. The initial request was for 1000 hours at Grade B.

The Case Manager has suggested 370.12 hours (15 seconds per page) at Grade C. This is an increase from the original proposal of 250 hours (approximately 10 seconds per page).

The sifting of material is a very important task and should be dealt with by a fee earner who has knowledge of the case. I have allowed this task at either a Grade B or C fee earner who has knowledge of this case as it will be a far more focussed approach and the relevant fee earner can identify and extract relevant material

I do not favour the approach of seconds per page but instead take the view that a block of hours is more appropriate (to be divided up by the Appellants at either grade B or C as they deem appropriate)

Having regard to the fact that a fee-earner with knowledge of the case will be undertaking this task I allow a block of 325 hours to complete the task.

Appeal by solicitors – 12th November 2013

LAA decision upheld in part

- Preparation

Case Manager's original decision:

To allow 30 seconds per page for the review of sifted unused material up to a maximum of initial block of 100 hours. Further allocation of time to them to be negotiated based on an assessment of relevance.

Adjudicator's Decision:

To allow the appeal in part:

(a) An initial allocation of 100 hours to review the material for relevance is deemed unnecessary and unreasonable:
(b) The allocation of time for review of the material is allowed as follows:

Grade A – 30 secs to read and 30 secs to schedule = 1 min total
Junior Counsel – 30 secs per page
Leading Counsel – 30 secs per page

1. In this matter I am asked to determine whether the allocation of 30 seconds per page for the reviewing of Unused Material is reasonable. Further I am asked to determine whether an initial allocation of 100 hours to asses the relevance of the material under review is a reasonable and proportionate approach to the task.
2. I have considered at length the submissions of the appellant which have been helpfully set out in the supporting bundle. This included the representations made in relation to the previous appeal in which I adjudicated. In that appeal I determined that an allocation of 20 seconds per page was reasonable to carry out an in initial sift for relevance of e disclosure (unused) served by the prosecution in this matter. This material had been served by the Crown having previously been subject to the application of key word searches in order to reduce its size and volume. This was in accordance with the Attorney General's Guidance of Disclosure of Electronic material.
3. The appellants having sifted the material for relevance have reduced it in volume by almost 50% to 41,047 pages. They have requested 1 min per page for both counsel and a Grade A fee earner to review this material with an extra 1 minute for the grade A to conduct "ancillary work" which is not defined but which I assume to be scheduling of the material. The Contract Manager has attempted to obtain from the appellant a list of the documents that are to be reviewed so that he may conduct an assessment of their level of relevance and thus make an informed decision as to how much time should reasonably be allocated for their review. The appellant has been unable/unwilling (it is not entirely clear to me which is applicable) to provide such a list. Instead they refer to previous submissions which included a breakdown of the type of documents to be reviewed together with examples of the same. In their present appeal they refer in particular to an e mail which they claim includes content which is manifestly of assistance to the defendant.
4. Having considered all the representations made by both parties which are helpfully set out at length in both the appeal form and the response I have determined the issues in this matter as follows:

(a) It is neither appropriate or necessary for there to be any further assessment of the potential relevance of the material to be reviewed. The data has already been through two effective sifts. Firstly, by the Crown to provide CPIA compliant disclosure. Secondly, by the defence in accordance with the previous appeal decision. It is therefore hard to understand what may usefully be gained from any further “sifting” for relevance. Especially where, as in this case, the material is likely prima facie to be of relevance to this defendant given his pivotal role in the alleged fraud. In that regard I am mindful of the representations made by prosecuting counsel in the e mail referred to by the appellant.

(b) The issue to be determined therefore is the appropriate allocation of time to complete the task. The Contract Manager refers us to the Guidelines issued by the LAA and based upon their experience of managing other cases. This recommends a starting point of 30 seconds per page for the consideration of unused material. However, this is just a guideline and the Contract Manager concedes that in any given case the rate may be higher or lower. In each case a number of factors have to be considered including the position of the individual defendant in the conspiracy, the nature and quantity of the material and the ease of access to and management of the data in question. In this case the Case Manager is concerned that he cannot assess the overall relevance of the sifted material to this defendant without receiving a list of the documents to be reviewed and more to the point an explanation from the appellant as to the criteria applied in carrying out that sift. The appellant has not supplied the requested list because they state that they are unable/unwilling (I am not clear which) to do so. They point out that they have previously given a breakdown of the type of material to be reviewed and supplied examples of the documents themselves. The basis for assessing relevance they say is clear from the very detailed defence statement.

(c) I therefore have to make my determination based upon the material before me. The appellant states that the unused material is to be equated with served evidence given the central role played by their client. However, they concede that

a reduction of one-third from the rate agreed for the served evidence would be reasonable. Hence their request for 1 minute per page and a further 1 minute for ancillary work. This concession I assume is a reflection of the status of the material as unused rather than a concession as to its potential relevance.

(d) On balance I am persuaded that the time allocated by the Contract Manager is insufficient for the completion of this task but I am not persuaded that the time sought by the appellant is wholly reasonable. It seems to me that it is important that instructing solicitors are granted sufficient time to review and schedule unused material. However, I am not persuaded that there needs to be a similar allocation of time for counsel. After all once instructing solicitors have reviewed and scheduled the material presumably those schedules can be utilised by counsel to enable them to carry out a more focused approach. Indeed I am not wholly persuaded that counsel need to review all of the sifted unused but note that the Contract Manager does not dispute this in principle. Thus 30 secs per page for counsel is in my view sufficient.

(e) In conclusion therefore I would allow the following allocation of time for completion of the task namely:

(1) Grade A – 30 secs + 30 seconds to schedule the material = 1 minute per page in total;

(2) Junior Counsel – 30 seconds per page

(3) Queens Counsel – 30 seconds per page.

Addendum

Following notification of the above decision to the LAA I received from them the following documents :

1. Note to Single Adjudicator from the Appellants
2. 2010 VHCC Guidance Document
3. E mail traffic regarding the above between the Appellants and the Contract Manager
4. Response from Contract Manager

I have been asked if I am prepared to consider the above material notwithstanding the fact that I received it after delivering my decision. Ordinarily I would not be happy to do so but I am assured by the Co-ordinator that the text of the above decision has not been shown or discussed with either of the parties. That being the case I am prepared in these

exceptional circumstances to review the documents supplied and reflect on whether they affect my decision.

The appellant refers to the more recent guidance in 2010 which states that for consideration of unused material and in particular paragraph 4.35 which states:

Where the prosecution serve tranches of such material at the outset of the case, the Contract Manager will expect to allow reading time at a rate of no higher than one minute per page. A Contract Manager may wish to allow a lower rate where one or more of the factors listed above at paragraph 4.30 apply.

Para 4.30 sets out the factors to be considered by the LAA where they wish to allocate "lesser allowances". I do not think that any of those factors apply in this case. However, the Contract Manager is correct in his response in pointing out that the guidance is just that – guidance. Also that the allowance is for "up to" one minute per page. Each case has to be judged on its own merits. In my view the additional documentation and information does not change my assessment that one minute per page for the appellant to read and schedule the unused material in this case is reasonable. Equally I remain of the view that 30 seconds a page is a reasonable allocation of time for counsel to review the material especially once it has been read and scheduled by their instructing solicitors.

Appeal by solicitors – 20th December 2013

LAA decision upheld in part

- Pre-contract assessment

The Adjudicator has had the benefit of Counsel's written representations of the 10th October 2013, a response from the Case Manager of the 17th October 2013, together with various emails exchanged between the parties and Counsel's work logs.

In addition the Adjudicator has been provided with a pen drive featuring folders A-S, constituting some of the exhibits in this case.

The current appeal is in respect of the taxation of Counsel's pre contract work but the Adjudicator had additionally received documentation in relation to two other appeals launched by Counsel in relation to the same proceedings which have now fallen away as a result of Counsel returning the brief in this case.

It follows that the Adjudicator therefore had a full and complete picture of the proceedings as they had unfolded prior to the return of the brief.

There appear to be two contentious issues remaining as between the parties and these can be summarised as follows:-

1. The parties disagree as to the time allowed to consider advance disclosure in the pre contract stage which was limited to 2 mins per page and on one specific occasion the refusal by the LAA to make payment pending the provision of further information and,

2. Time taken during the pre contract stage to consider evidence then served in the form of statements, interviews and exhibits.

It observed that in the Contract Manager's response to the appeal of the 17th October 2013 she makes reference to the fact that the Appellant had noted on is Grounds of Appeal there was a further issue relating to time to consider defence documents within the pre contract stage. She assumed that this was an error on behalf of the appellant because all time spent reviewing such defence documents had been paid and, in the absence of any response from the appellant to those representations of the 17th October 2013, the Adjudicator has made the assumption that this was not an issue as between the parties.

The Appellant makes reference in his representations to the test for work undertaken in the pre contract stage has been governed by the VHCC Contract Terms 2010 but it was noted that the Representation Order in this case was dated the 11th May 2013 which would thus bring this appeal within the frame work of 2013 Regulations. This may be immaterial in this instance.

In dealing with time spent in considering the FCA Opening the Adjudicator had the benefit of considering the Case Summary dated the 8th May 2013 together with the appendices thereto amounting to 18 pages. It was noted that the summary speaks as to 8 defendants, with this defendant being the final defendant on the indictment.

It was felt, just, on balance, having considered these documents, that a combined rate of 3 mins per page should be allowed being 2 minutes for the actual perusal of the documentation together with a further 1 minute allowance for making notes, cross referencing etc.

For the sake of express clarity this would include the time spent perusing advance disclosure on the 21st May 2013, mistakenly described in the Contract Manager's representations as time claimed on the 31st May 2013.

Therefore, to that extent, this appeal succeeds in part.

The Adjudicator then gave consideration to the second limb of the appeal namely time allowed to consider statements, interviews and exhibits which, at the initial taxation of pre contract work, was limited to the rates that had been applied during stage 1 of the Contract, thus applied retrospectively. The Contract Manager commented in her representations of the 17th October 2013, that she believed that it would be unreasonable to make any decision other than to bring pre contract work of this nature into line with that allowed for Stage 1, but she then made the concession that she would be happy to increase the time paid for pre contact work of this nature if her decision to award 30 seconds per page for exhibits in this case was overturned on appeal.

In essence, the issue therefore between the parties, is whether the initial tranche of served exhibits merits an award of time of greater than 30 seconds per page.

The Appellant makes reference in his representations to the reading of witness statements, non excel exhibits and interviews but provides scant, if any, detail as to precisely what work was involved in considering this evidence.

It would have greatly enhanced the prospects of an appeal under this heading succeeding if some greater detail had been furnished to include examples of the types of exhibits, their relevance to the defendant in question, time spent in scheduling and cross referencing etc. That was absent within the representations forcing the Adjudicator to have to look to the material as served himself to try and do justice as between the parties.

It acknowledged that within the 2010 VHCC Guidance at paragraph 4.30 that a Contract Manager would ordinarily apply a rate of 30 seconds per page for the viewing of exhibits and so this was a stance entirely properly adopted by her in this case.

It has often been argued that the aforementioned reading rates represent a "starting point" when it comes to discussions of this nature albeit that was not raised by the Appellant in this case as indicated above.

It is acknowledged that this is a case of some complexity and novelty but, in the absence of any detailed representations from the Appellant the best that the Adjudicator could do was to allow 45 seconds per page for the perusal of such items and then only with a degree of reluctance.

It follows, therefore, that insofar as exhibits were read by Counsel during the pre contract stage then the rate of 45 seconds per page for exhibits should be applied retrospectively and no doubt the Contract Manager will acknowledge the concession made in her representations and apply this uniformly.

Appeal by counsel – 16th December 2013

LAA decision upheld in part

- Preparation & disbursement

Contract Manager's original decision:

1) To refuse the Appellants (within a requested task 46 item) time to consider in full 1658 pages (later amended to 1599 pages) of liquidation papers at 2 minutes per page. This amounts to a potential maximum time allowance of 53:30 hours for Solicitors and Counsel.

2) To refuse to allow in full proposed work to be conducted by an instructed Forensic Accountant, [redacted]

3) To refuse to grant funding for the instruction of [redacted] and [redacted]

Adjudicator's Decision:

1) Task 46 – Liquidation papers proposed work.

I allow the Appellants Appeal in relation to this proposed work item and consider it reasonable that each of the Appellants in the circumstances of this particular case can consider the liquidation papers in full to a maximum of 35:30 hours at the maximum rate of 2 minutes per page for the quantified 1599 pages within what I understand are papers and digital PDFs forwarded by the previous solicitors [redacted]

2) Forensic Accountants Instruction

I received written notification from the Legal Aid Agency indicating that I did not need to reach an adjudication on this aspect of the Appeal as "this has now been resolved between the parties".

3) Appellants request to instruct a VAT Investigations Expert [redacted] LLP) and a Mobile Phone Distribution Expert [redacted] in the requested Prior Authority sums of £10,851.00 (excluding travel time, travel expenses and VAT) and £7,515.00 respectively.

I dismiss this aspect of the Appellants Appeal. I find that the decision of the Case Manager to refuse to allow these two disbursements is a fair and reasonable decision and a decision I agree with having considered the respective written representations now before me.

A] Introduction

1. I understand that this was a case which was originally contracted in 2008 and therefore falls under the VHCC Panel Scheme.

2. The Re-Trial of [redacted] is due to commence in very early January 2014 and I therefore understand that all parties have agreed that these Appeals should be dealt with by the Single Adjudicator process rather than by a Full Committee on 10 January 2014.

B] Papers considered by myself as Single Adjudicator

For the avoidance of any doubt I indicate that in considering this matter as a Single Adjudicator on the written papers I have seen and reviewed the following material:

- Emails from [redacted] (High Costs Crime Appeals Manager – Legal Aid Agency) dated 20 December 2013 enclosing the Appeal papers.
- VHCC Appeals Representations Form.
  (Task 46 and Forensic Accountant) – [redacted] dated 6 November 2013.
- VHCC Appeals Response Form
  (Task 46 and Forensic Accountant) – [redacted] dated 21 November 2013.
- Indictment – Birmingham Crown Court – R –v- [redacted] – 5 Counts (Cheating the Public Revenue; Transferring criminal Property and Using Criminal Property – x3).
- Advice on Liquidation Files and requirement for review by Accountants and Solicitors. [redacted] dated 6 August 2013.
- [redacted] submissions (7 pages) in respect of the application for Prior Authority.
- CPS letter dated 9 May 20132 to [redacted] Solicitors enclosing applications to introduce evidence of a Defendant's and non-Defendant's bad character.
- Email correspondence between the Appellants:
  22 and 30 August 2013;
  6 September 2013;
  4 September 2013 [redacted]
  26 September 2013;
  4 October 2013;
  11 October 2013;
  21 October 2013;
  25 October 2013;

29 October 2013; and
5 November 2013

- Index: R –v- [redacted] – Defence Material (Page 33).
- Note for Contract Manager on Bad Character issue and Insolvency Proceedings. – [redacted] – 17 October 2013.
- Letter [redacted] – 12 November 2013
- Letter [redacted] 29 November 2013 enclosing Prior Authority applications for [redacted]
- Advice on instruction of expert on MTIC VAT Fraud – [redacted] dated 12 November 2013
- Estimate of costs of VAT investigations expert – [redacted] Customs Investigation and Litigation Team – November 2013.
- Estimate of costs of mobile distribution expert [redacted] – November 2013.
- Instruction letter – 26 November 2013 – to [redacted] Solicitors.
- Statement of Roderick Guy Stone dated 15 May 2009. Page 1-80.
- Statement of Roderick Guy Stone. Page 481-492 – undated.
- Statement of Roderick Guy Stone OBE dated 25 October 2012 - Page 1118-1131.
- VHCC Appeals Representations Form – [redacted] dated 12 December 2013.
- VHCC Appeals Response Form – [redacted] dated 19 December 2013.
- First Tier Tribunal Tax Chamber Transcript (10 pages) – LON/2008/2398 – Chandanmal.
- First Tier Tribunal Tax Chamber Decision – LON/2008/1471 – 123 pages of transcript – CCA Distribution Limited.
- First Tier Tribunal Tax Chamber Decision Transcript (26 pages and 34 pages) Brayfal Ltd and Brayfal Ltd (2).

C] The Appellants and Respondents Submissions

1. I am grateful to both Appeal parties for providing extensive background documentation for my consideration and yet still setting out their main submissions in a succinct and coherent manner.

2. Although, very late in the day, I was told that the parties had reached agreement in relation to the funding of a Defence Forensic Accountant [redacted]. I nevertheless reviewed the documentation provided to me in relation to that aspect of the Appeal. This documentation provided me with further background about this case.

3. I do not propose to set out the detailed background to this VHCC case as it is already set out in a number of helpful documents prepared by the Appeal parties set out above within their respective representations forms.

4. I can see clearly from the papers the circumstances in which [redacted] Solicitors took over the representation of Mr [redacted] under a transfer of Representation Order issued by Birmingham Crown Court on 13 May 2013. I also note the relatively short period of time [redacted] Solicitors have been instructed in this matter before the commencement of the Re-trial date of 6 January 2014.

5. Again, I am assisted by the Appellants submissions relating to the way in which they propose representing [redacted] at this re-trial in contrast to the approach taken by his then instructed Defence Team at Mr [redacted]'s original trial.

6. I am asked to determine as the first part of this Appeal whether Defence Solicitors and Counsel should be allowed, in full, to consider the task 46 Liquidation papers totalling an agreed 1599 pages revised figure at a maximum review time of 2 minutes per page.

7. It appears to me to be common ground between the parties that the Contract Manager has allowed some but not all of these 1599 pages to be read on the basis of this two minutes per page time formula.

8. I am greatly assisted inter alia by the background e-mail correspondence on this subject between the Appellants and the Contract Manager. This sets out the arguments and counter arguments very fully and in conjunction with the advice on Liquidation file and requirement for review by Accountants and Solicitors dated 6 August 2013 enables me to have a detailed understanding of this area of the case.

9. It appears that these 1599 pages of material have been received from Mr [redacted]'s former solicitors in paper and electronic format.

10. I suspect that the Defence Forensic Accountant [redacted] has been allowed time to consider this material and it seem illogical and potentially dangerous to the smooth running of this re-trial for Mr [redacted]'s Defence Team to only be allowed review time to consider some but not all of the documentation.

11. I am satisfied on the papers that this material (all 1599 pages) should be considered by Mr [redacted]'s Defence Team. I have considered whether solicitors and Counsel should be allowed to review all this material but have concluded that given the nearness to the re-trial, the late instruction of the Defence Forensic Accountant and the various different potential arguments that this material may generate after Defence team review that it is a reasonable expense that should be borne by the Legal Aid fund. I am also satisfied that a maximum of 2 minutes per page is a reasonable time formula in this regard.

12. I now turn to the second part of the Appeal. I am asked to adjudicate upon namely the refused prior authority applications of the Defence team to incur the proposed fees of
    a. VAT Investigations Expert – Mr. [redacted]; and
    b. Mobile Phone Distribution Expert, Mr. [redacted]

13. I have reviewed the relevant material relating to this Appeal matter particularly the helpful and full applications for Prior Authority which include the proposed letters of instruction for both gentlemen; their respective estimates of costs; the Advice on instruction of expert on MTIC VAT Fraud dated 12 November 2013 from Defence Counsel and supporting Roderick Stone statements and various, sometimes lengthy, Tax Tribunal Transcript Decisions.

14. I note that Mr [redacted] is apparently a former HMRC Officer and is currently a Partner at [redacted] LLP in the Customs Investigation and Litigation Department of that firm. It would appear from the papers before me that Prior Authority is sought for Mr [redacted] to write "an independent expert report" (and advise in a 2 hour conference "to discuss our report and any matters arising") which will have the potential to seriously undermine" the Prosecution witness Mr Roderick Stone.

15. I note from M[redacted]s estimate of costs that of the proposed 60.28 hours at £180 per hour, just over 43 hours of this time will be spent reviewing highlighted material and the remainder of the time will be spent in preparing "a preliminary report". A "list of suggested areas of disclosure … necessary to dispute Mr. Stone's statements" and "work with [redacted].

    Mr [redacted]s November 2013 estimate of costs for his proposed itemised work totals £10,851.00 "excluding travelling time, travel expenses and VAT."

16. I also note that Mr [redacted] "proposes working with a highly experienced former senior buyer in the mobile phone distribution industry to introduce factual evidence to rebut certain assumptions made by HMRC." I also understand "Mr [redacted] is highly experienced in his field but is not experienced at giving evidence" and further he "will require assistance presenting his evidence in the form of an expert's report".

17. Mr. [redacted]s estimate of charges totals 41:60 hours at (the same hourly rate of Mr [redacted]) £180 per hour and totals £7,515.00.

18. I have carefully considered the arguments and counter arguments of the Appellant and Respondent which are set out in the papers and summarised within their respective VHCC Appeals Representations Form dated 12 December 2013 and 19 December 2013.

19. I can understand why the Appellants might seek to instruct these two gentlemen but on balance I agree with the representations of the Case Manager [redacted] when she states "that because this is a legally aided case, the level of funding that can be approved should be akin to that of a client of moderate means. The Legal Aid Agency cannot agree funding for a "Rolls-Royce Service".

20. I find taking into account all the written representations and particularly:

    (a) The previous considerable history of numerous criminal MTIC case challenges to the evidence of Mr Roderick Stone; and

    (b) The agreement of the Legal Aid Agency to fund the instruction of a Defence Forensic Accountant who, in my view, can deal with many important potential cross examination matters of Mr. Stone; and

    (c) The vast and specialist experience in MTIC cases of the combined Defence team who are already extremely well equipped to argue pertinent matters relating to Mr Stone's admissible evidence in this criminal re-trial.

    that the Case Manager's decision to refuse the Prior Authority requests for Mr [redacted] and Mr [redacted] is a fair and reasonable decision and one I agree with and uphold.

Appeal by solicitors – 10th October 2013

LAA decision upheld

CONCLUSION

1. I find fully in favour of the Appellant in relation to the Liquidation papers aspect of this Appeal.

2. I am now not asked to adjudicate on any aspect of the instruction of the Defence Forensic Accountant.

3. I find fully in favour of the Respondent, the Case Manager, in relation to the refused proposed Prior Authority instruction of Mr. [redacted] and Mr. [redacted]

Appeal by solicitors – 3rd January 2014

LAA decision upheld in part

- Category

Case Manager's original decision:

CASE MANAGER DECLINED TO AWARD THIS CASE CATEGORY 2 STATUS

Adjudicator's Decision:

CATEGORY 2 STATUS AWARDED

Reasons:

This appeal is now of some considerable vintage, the Appellant having received the Case Manager's decision not to award this case category 2 Status as long ago as December 13th 2012.

The Independent Adjudicator has had the benefit of representations made by the appellant on the 20th December 2012 together with a response from the Case Manager of the 24th January 2013.

Additionally, the Independent Adjudicator has had the benefit of sight of the Indictment in this case, a detailed Case Summary together with a number of submissions and in particular a document entitled Categorisation Submissions, drafted by the QC and the appellant which is unfortunately undated, but runs to some 13 pages.

As indicated above this is a categorisation appeal and as long ago as February of 2012 the Independent Adjudicator invited further written representations from the parties to this appeal, particularly focusing on representations under the heading "Significant International Dimension".

In a note from the appellant in response, dated 24th November 2013, there is reference to that invitation which is quoted verbatim unfortunately with a typographical error in the penultimate sentence where the word "scanned" should have "scant".

The appellant has thus made further representations in relation to categorisation and the respondent has been offered the opportunity to comment further but has declined.

As this is a categorisation appeal, the criteria under the 2010 VHCC Specification need to be addressed and the Adjudicator would now comment as follows:-

1. The Category B criteria are not in issue as it is accepted between the parties that this case is a qualifying case.

2. As to the Block A criteria, it is accepted by the respondent in the reply of the 24th January 2013, that the defendant's case requires legal, accountancy and investigative skills to be brought together. Therefore that is a further criterion agreed between the parties which need not form part of this appeal.

3. It follows that there are a further three Block A criteria of which, if the appellant was to succeed on any one of those three criteria, then this appeal would be successful. As the parties are fully familiar with the criteria in question they are briefly described here as "publicity, highly specialised knowledge and a significant international dimension".

4. Submissions were specifically invited in relation to the third of the criteria referred to above, namely significant international dimension, and it was with interest that the Adjudicator considered the representations made on pages 7 and 8 of the 13 page submission document prepared by the appellant and referred to above.

   It was noted that those submissions have been drafted in May of 2013 and, tragically, it would appear that the defendant is now unlikely ever to come to trial having been diagnosed with terminal cancer.

   That said, this appeal is still of importance to the appellant in relation to work done by him prior to that diagnosis.

The Case Manager's position, taken broadly, on this criterion, is that the movement of monies, the involvement of FCIB and the VAT carousel nature of the case are not in themselves sufficient to qualify within the definition "significant international dimension".

In fact she goes further suggesting that elements of many VAT or carousel frauds, involved the movement of monies and often the now defunct FCIB does feature

She seeks to persuade the Adjudicator that there is no evidence beyond this of a significant international dimension which marks this case out from "run of the mill" cases.

The appellant counters the respondent's submissions at paragraph 9 onwards of the aforementioned representations, asserting that there is a significant international dimension to the case and making reference to third party payments to companies incorporated in the BVI and ACM, the involvement of the First Curacao National Bank in the Dutch Antilles, procurement of a loan purportedly from Hong Kong but in fact emanating from Spain. Additionally the appellant pleads the necessity of interrogating the method in which the FCIB server was examined by the Dutch authorities; the fact that the Prosecution relied upon foreign bad character evidence possibly involving a knowledge and understanding of French criminal law and procedure, and finally the fact that the defendant has asserted in his Defence Case Statement that some of the loan agreements in this case were drawn up by a Californian lawyer.

The Adjudicator felt that the appellants representations and submissions was indicative of the fact that this was far from a "run of the mill" carousel fraud where sometimes the only international dimension is a deliberately fictitious paper trail.

The Adjudicator thus found there was a significant international dimension to this case. That finding, coupled with the parties agreed position that the criteria in relation to the bringing together of legal accountancy investigative skills, means that this case should therefore attract a category 2 status.

Appeal by counsel – 7th January 2014

LAA decision overturned

- Category

Case Manager's original decision:

The defendant's case is not one that is likely to give rise to national publicity and widespread public concern.

Adjudicator's Decision:

Allowing the appeal - The defendant's case is likely to give rise to national publicity and widespread public concern.

Reasons:

I have read the large volume of material supplied with this appeal. I have looked at the criterion in dispute and note that the test includes what is "likely" to be the case. That decision is informed by what has occurred to-date and what, in my judgement, is likely to happen in the future. In my judgement the defendant's case is likely to give rise to national publicity; it already has. I also have no doubt that the defendant's case is likely to give rise to widespread public concern; every member of the public will have concern about a criminal enterprise seeking to cause such massive loss to the public purse**.**

Appeal by solicitors – 23rd January 2014

LAA decision overturned

- Distant travel

Case Manager's original decision:

Application for travel and hotel expenses refused.

I am asked as a single adjudicator to rule upon an appeal by counsel in a claim for travel and hotel expenses in this case. I will first deal with a preliminary point. When asked to consider this case the Appeals Manager informed me of the identity of appellant and the contract manager. The appellant is a member of my Chambers in Liverpool. I have no involvement in this case or any financial or other interest in the outcome of the appeal. The fact that the appellant and I are members of the same chambers does not in my judgement preclude me from considering this appeal. My view would be the same if roles were reversed and the case manager were known to me in a professional capacity. I am able to deal with this matter objectively and can apply the appropriate and necessary criteria. I do not feel it is either appropriate or necessary to recuse myself. I will deal with the matter and deliver my judgement and reasons. This is NOT a provisional ruling but a final ruling. I do however grant both parties permission to address me further on this

specific issue if they feel it appropriate to do so. If such submissions have not been received by 1st February 2014 the appeal will be final on all matters.

The matter is listed the Birmingham Crown Court. This venue was selected as it was the Court centre able to do the trial most expeditiously. The local travel rule was applied. The full regulations and the exceptions are set out in the papers and need not be recited herein. The exceptions relied upon are 4.9(a) and 4.9(b) along with the general exception in 5.38. I do no disservice to the representations made by not repeating them herein. I have read all documents that both parties have sent to me along with the appropriate regulations and extracts from the VHCC contract.

It cannot be reasonably argued that the appellant does not have "…significant involvement with the client in these proceedings". It is clear that he has had very significant dealings with this defendant and obviously has secured his confidence. In that regard he is "uniquely" suitable to conduct the case.

The claim is not a blanket request for hotel accommodation merely for hotel accommodation on those days which are likely to concern the client directly. I express no view upon the prevailing circumstances as to when this is appropriate. This is a matter for counsel's judgement and prior agreement. This aspect of the appeal is allowed. I also allow the claim for travel and find there to be exceptions to the distant travel rule for the reasons set out in the appellant's documents and arguments for which I am grateful. I can quite understand why the contract manager applied the rule initially, but circumstances have change with the allocation of the trial, the appellant's greater involvement and the delay in the case. This ruling is NOT retroactive and applies to future expenditure only.

To that extent the appeal is allowed in full.

NOTE:

I notice from the list of Counsel and representatives that there are others who are likely to fall outside the local rule. This Judgement is case and Counsel specific and is not intended to set a precedent and may not be relied upon to this effect. It is not to be considered binding upon either myself nor any other adjudicator in this case nor in other proceedings.

Appeal by counsel – 24th January 2014

LAA decision overturned
