



SENIOR COURTS  
COSTS OFFICE

24 APR 2017

SCCO Ref: 149/16, 155/16 and 185/16

Dated: 16 March 2017

**ON APPEAL FROM REDETERMINATION**

**REGINA v TARIQ MAHMOOD, ZAYARIT MAHMOOD**

CROWN COURT AT MINSHULL STREET

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

CASE NO: T20140772 and T20140775

LEGAL AID AGENCY CASE

DATE OF REASONS: 15<sup>th</sup> July and 9<sup>th</sup> August (x2) 2016

DATE OF NOTICE OF APPEAL: 15<sup>th</sup> August, 30<sup>th</sup> August and 13<sup>th</sup> September 2016

APPLICANTS: Shafi Solicitors LLP, Mr Rick Holland, Counsel and Mr Timothy Storrie, Counsel.

The appeals have been successful (in part) for the reasons set out below.

The appropriate additional payments, to which should be added the sums of £100 (x3) paid on the appeals, should accordingly be made to the Applicants.

**MARK WHALAN**  
**COSTS JUDGE**

## REASONS FOR DECISION

### Introduction

1. These consolidated appeals raise the same issue, namely the calculation and number of pages of prosecution evidence ('PPE'), and arise from the prosecution of Tariq and Zayarit Mahmood at Minshull Street Crown Court in 2015. Shafi Solicitors LLP ('the First Appellant') and Mr Rick Holland, Counsel ('the Second Appellant') represented Mr Zayarit Mahmood pursuant to a Representation Order dated 2<sup>nd</sup> July 2014. Mr Timothy Storrie, Counsel ('the Third Appellant') represented Mr Tariq Mahmood pursuant to a Representation Order dated 25<sup>th</sup> June 2014.
2. The Appellants submitted claims under the Litigators Graduated Fee Scheme ('LGFS') and the Advocates Graduated Fee Scheme ('AGFS') and each claimed 5890 PPE. The Determining Officer at the Legal Aid Agency ('the Respondent') assessed the claims and allowed each Appellant 870 PPE. It has been noted subsequently that a further 86 pages should have been allowed (as these documents existed in paper form) and I understand that these have been paid. 4934 PPE remain in dispute and comprise the point in issue in these appeals.

### The relevant facts

3. Zayarit and Tariq Mahmood ('the Defendants') were two of three co-defendants charged with offences under the Consumer Credit Act 1974 and the Proceeds of Crime Act 2002. It was alleged that they had been unlawfully engaged in the activities of a consumer credit business for which a licence was required and/or they possessed, converted, transferred or removed criminal property, namely money, knowing that it comprised the proceeds of illegal money laundering. It was alleged essentially that the Defendants operated an unlawful business supplying cash loans to gamblers in and around casinos, loans which were redeemed subsequently with excessive charges for interest and, on occasion, threats of violence.
4. The disputed PPE comprised electronic datum downloaded from a mobile telephone seized from Zayarit Mahmood. I should note at this stage that it is not disputed that the disc containing this material was served by the prosecution on the court as evidence and so falls within the definition of material that is capable of being PPE. The issue in these appeals is whether, pursuant to paragraph 1(5) of Schedule 2 to the 2013 Regulations (see below) the disputed PPE should be included and paid, "*taking into account the nature of the document and any other relevant circumstances*".

### The Appeals

5. The Respondent's decisions were confirmed in Written Reasons dated 15<sup>th</sup> July 2016 (the First Appellant), 9<sup>th</sup> August 2016 (the Second Appellant) and 9<sup>th</sup> August 2016 (the Third Appellant). Notices of Appeal were filed on or about 15<sup>th</sup> August 2016, 30<sup>th</sup> August 2016 and 13<sup>th</sup> September 2016.

6. These appeals have generated voluminous written and extensive oral submissions. I have, in summary, considered the following: (i) the First Appellant's Submissions dated 15<sup>th</sup> August 2016; (ii) the Second Appellant's Submissions dated 26<sup>th</sup> August 2016 and Further Submissions dated 5<sup>th</sup> February 2017; (iii) the Third Appellant's Original Note dated 20<sup>th</sup> May 2016, a Note dated 28<sup>th</sup> June 2016, detailed Grounds of Appeal dated 12<sup>th</sup> September 2016 and a Note dated 6<sup>th</sup> February 2017; and (iv) the Respondent's Written Reasons (cited above) and Submissions drafted by Mr Michael Rimer, a Senior Legal Adviser at the LAA, dated 8<sup>th</sup> February 2017.
7. At the hearing on 9<sup>th</sup> February 2017, oral submissions were made by Mr Mahmood, a Solicitor at the First Appellant, the Second and Third Appellants, and Mr Rimer for the Respondent.

### The Regulations

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

*"1. Interpretation*

*...*

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

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

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

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

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

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

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

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

The disputed PPE; and analysis

9. The disputed 4934 PPE comprises, as noted, electronic datum on a disc containing mobile phone downloads of 5020 pages. Mr Rimer reproduces at paragraph 10 of his Written Submissions an uncontroversial breakdown of this material as follows:

Tab 1	Summary
Tabs 2-4	Analytical data relating to the phones and WhatsApp. This is described as “ <i>Technical Information</i> ”.
Tab 5	185 pages of “ <i>Audio material</i> ”. It is understood that this material comprises a “ <i>digital imprint</i> ” (date and timestamp) of audio files saved to the device.
Tabs 6 & 7	A “ <i>calendar</i> ” and “ <i>call logs</i> ” comprising 19 pages.
Tab 9	420 pages of “ <i>Configurations</i> ”. This is described as “ <i>largely technical information about the device</i> ”.
Tab 10	15 pages of contacts.
Tab 11	580 pages of cookies.
Tab 12	100 pages of “ <i>databases</i> ”.
Tab 13	2 pages of “ <i>device information</i> ”.
Tab 14	2 pages of “ <i>GPS fixes</i> ”.
Tab 15	3455 pages of images. It is understood that these are not pages of individual pages, but pages of “ <i>digital imprints</i> ” for images saved to the device, comprising lists of images and the

	date and time the image was created.
Tab 16	12 pages of installed applications.
Tab 17	8 pages of "Locations".
Tab 18	3 pages of "Notes".
Tab 21	2 pages of "User Accounts".
Tab 22	28 pages of "User Dictionary".
Tab 23	30 pages of "Videos". These pages comprised apparently lists of videos and when they were created.
Tab 24	9 pages of "Web bookmarks".
Tab 25	2 pages of "Wireless networks".
Tab 26	14 pages of contact information data.

#### The Appellants' submissions

10. The Appellants, in distilled summary, submit that all the disputed PPE should be included. First, insofar as this electronic material would, prior to the introduction of the 2013 Regulations, have been previously served on paper, it should be included in the PPE count automatically. This argument is summarised at paragraphs 8 and 9 of the Second Appellant's Submissions dated 26<sup>th</sup> August 2016 as follows:

*"8. When the Funding Order (SI 2012 No. 750) was amended with effect to representation orders from 1<sup>st</sup> April 2012, the expressed intention was that there would be no negative impact upon PPE. The purpose of the amendment was to ensure that advocates and litigators would not suffer from reduced page counts as a result of the service of evidence electronically.*

*9. The wording of the Order is opaque. However, the LAA made it clear to the professional bodies that material served electronically which never existed in paper form would be included within the PPE if it*

*consisted of a category of evidence which was previously served on paper”.*

Second, insofar as the disputed PPE was of relevance to both the prosecution and defence, its inclusion is appropriate. This argument was made specifically (but not exclusively) by the Third Defendant who summarises the point at paragraphs 3 and 4 of his Note dated 6<sup>th</sup> February 2017:

*“3. The service of the material in question was vital to allowing for an analysis of his role in the events that formed the basis of the allegations against him.*

*4. The fact that no trafficking messages, materials or data of any kind was hugely valuable to his defence. The absence of evidence of exchanges of any type or in any style, provided a powerful form of corroboration for his confident claim that he was not criminally linked to the co-defendants”.*

#### The Respondent’s submissions

11. The Respondent, in distilled summary, concedes that the disputed PPE comprised electronic datum on a disc that was served as evidence, pursuant to paragraph 1(2) and (3) of Schedule 2 to the 2013 Regulations. The issue, therefore, is whether the Determining Officer was correct in concluding that this electronic datum should not be included within the PPE as its inclusion was inappropriate given *“the nature of the document in any other relevant circumstances”*. Essentially, argues Mr Rimer, the electronic datum comprised largely the sort of written, audio and visual material saved on modern (smart) mobile phones, material which, given the nature and fact of this prosecution, was of no direct or indirect relevance to either the prosecution or the defence. The Appellants had failed simply to demonstrate any degree of relevance so the disputed PPE should be excluded.

#### My analysis and conclusions

12. The issue, as noted, is whether the Respondent discharged correctly the discretionary task of determining whether or not it was appropriate to include the electronic datum in the PPE count, either wholly or in part, pursuant to the test at paragraph 1(5) to Schedule 2 of the 2013 Regulations, namely when *“taking into account the nature of the document and any other relevant circumstances”*. It is common ground that if I find that the Respondent discharged this task correctly, the appeals should be dismissed. Conversely, if I find that the Respondent failed, either wholly or in part, to do so, this court (insofar as it has the same powers of the Determining Officer) has the power to re-make the decision.
13. I reject the Appellants’ submission that the disputed material should be included within the PPE count automatically as, prior to 1<sup>st</sup> April 2012, it would have consisted of a category of evidence which would previously have been served on paper. This argument was considered specifically (and in some considerable depth and detail) by Master Simons in R v. Napper [2014] 5

Costs LR 947. Master Simons concluded that whether or not the material would have existed in paper form before the amendment to the Regulations was not the correct test. This was not the effect of the Funding Order (SI 2012 No. 750) or any other submissions made at that time. To interpret the 2013 Regulations in that way rendered the words "...and any other relevant circumstances" at para. 1(5) of Schedule 2 of the 2013 Regulations "totally redundant". Master Simons' analysis and reasoning is set out at paragraphs 33-37 of the judgment in Napper and while the analysis is not binding on me, I respectfully consider it to be correct. It is necessary, in my conclusion, to consider inclusion or exclusion by reference to both "*the nature of the document*" and "*any other relevant circumstances*".

14. In my conclusion the Respondent erred in excluding the following material identified by reference to the Table at paragraph 9 above. These pages should be counted as PPE: Tabs 1, 2-4, 6, 7, 9, 10, 12, 13, 14, 17, 18, 21, 22, 25 and 26. Mr Rimer, to be fair, conceded that Tabs 6, 7, 10, 17, 18 and 26 "*could potentially be relevant*". I find that material relating to contacts, user accounts, GPS whereabouts, the networks of Mr Zayarit Mahmood, along with the core technical datum relating to the operation and interpretation of the mobile phone, constitutes material that is of sufficient proximity and relevance to the issues in the prosecution to require inclusion in the PPE count. It is not clear exactly from the incomplete information provided to me how many pages these Tabs comprise; clearly it is 615+, although the 86 pages identified and paid subsequently must, I suspect, be deducted from this count. It will now be a matter for the parties to calculate the additional PPE by reference to the disc and the breakdown.
15. I conclude further that the Respondent was correct to exclude the following from the PPE count: Tabs 5, 11, 15, 16, 23 and 24. Tab 5 is described as a "*digital imprint*" of "*Audio Material*". The best (and essentially uncontentious) interpretation of this is that it comprised a schedule of the music downloaded by Mr Zayarit Mahmood to his phone. I could not conclude reasonably that this material has any direct or indirect relevance to the prosecution. Tabs 11 (cookies), 16 (installed applications) and 24 (web bookmarks) comprise similarly the sort of material downloaded invariably on a modern smart phone and it has no direct or indirect relevance to the prosecution. Tabs 15 and 23 comprise "*images*" and "*videos*". Again these Tabs comprised "*digital imprints*" – essentially lists or schedules – of photographs and videos saved to Mr Mahmood's phone. Again, I cannot conclude reasonably that this material was of any direct or sufficient indirect relevance to the prosecution, thereby justifying inclusion. Prosecution counsel's Opening Note (30 pages) makes little reference to the telephone datum per se and none at all to any photographs or videos of the Defendants, casinos or other relevant persons or locations. The submission of the Third Appellant, namely that it was this absence or dearth of relevance that constituted an exculpatory significance, at least in respect of Mr Tariq Mahmood, is not persuasive. I find that the "*digital imprints*" of the photographs and videos comprises nothing more than the social material to be found and downloaded on most people's modern smart phones. Inclusion within the PPE count cannot be justified as appropriate when "*the nature of the document in any other relevant circumstances*" is

considered. I find, therefore, that the Respondent was correct in excluding these 4271 pages from the PPE count.

16. The Appellants' appeals are allowed accordingly to the extent set out at paragraph 14 above. Excluding the remaining documentation from the PPE count is endorsed and maintained as set out at paragraph 15 above.
17. In these circumstances I consider it reasonable for the Appellants' costs recovery to be limited to the £100 x 3 paid to issue the appeals.



TO:

Mr Mahmood  
Shafi Solicitors LLP  
The Bank  
99 Palatine Road  
Manchester M20 3JQ

Mr Rick Holland  
Lincoln House Chambers

DX14338  
Manchester 1

Mr Timothy Storrie  
Lincoln House Chambers

DX14338  
Manchester 1

COPIES TO:

Mrs M. Spillane, Ms  
Siobhan O'Hanlon and Mr  
Rimer  
Legal Aid Agency

DX10035  
Nottingham

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