SENIOR COURTS
COSTS OFFICE

SCCO Ref: 160/14

Dated: 4 September 2014

ON APPEAL FROM REDETERMINATION

REGINA v NAPPER

LUTON CROWN COURT

APPEAL PURSUANT TO ARTICLE 30 OF THE CRIMINAL DEFENCE SERVICE (FUNDING) ORDER 2007

CASE NO: T20137053

LEGAL SERVICES COMMISSION CASE

DATE OF REASONS: 14 APRIL 2014

DATE OF NOTICE OF APPEAL: 25 APRIL 2014

APPLICANT: Solicitors

Petherbridge Bassra
DX 11706
Bradford

The appeal has been successful for the reasons set out below.

The appropriate additional payment, to which should be added the sum of £500 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

J. SIMONS
COSTS JUDGE
REASONS FOR DECISION

1. Messrs Petherbridge Bassra appeal against decisions made by Determining Officers at the Advocate Graduated Fee Team and the Litigator Graduated Fee Team at the Legal Aid Agency to reduce those parts of their respective Advocate Graduated Fee Claim and Litigator Graduated Fee Claim that relate to electronically served pages of prosecution evidence ("PPE") on the grounds that the time spent for considering this evidence should be claimed as special preparation.

2. This issue has been considered in numerous appeals made to this Court when such appeals have been heard in the absence of either written or oral submissions on behalf of the Lord Chancellor. In respect of the appeals being heard by me today, detailed oral and written submissions have been made to me by Mr Andrew Morris, a senior High Court Advocate, on behalf of the Lord Chancellor. The Appellants are represented by Mr Andrew Keogh of Counsel.

3. The definition of "pages of prosecution evidence" in Schedule 2 of the Criminal Defence Service (Funding) Order 2007 ("the Funding Order") has undergone two amendments. As originally made, the Funding Order contained no definition. When Litigator Graduated Fees were introduced by SI 2007/3552, a new Schedule 2 was substituted containing the following definition at paragraph 1(2):

> *"1(2) For the purpose of this Schedule, the number of pages of prosecution evidence served on the court 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, but does not include any documents provided on CD-rom or by other means of electronic communication".*

4. That substituted schedule applied to proceedings in which the representation order was granted on or after 14 January 2008 (see SI 2007/3552, Article 3).

5. SI 2011/2065 introduced an exception in respect of proceedings in which a representation order was granted on or after 3 October 2011 (see Article 1(4)):

> *"(2A) A document which has existed in paper form and which the prosecution has converted into digital form to enable service by means of electronic communication is included within the number of pages of prosecution evidence for the purposes of this schedule".*

6. Paragraphs 1(2) and (2A) were replaced by SI 2012/750 in respect of proceedings in which a representation order was granted on or after 1 April 2012:

"(2) For the purposes of this Schedule, the number of pages of prosecution evidence served on the court shall be determined in accordance with paragraphs (2A) to (2C).

(2A) The number of pages of prosecution evidence includes all –

(a) witness statements;

(b) documentary and pictorial exhibits;

(c) records of interviews with the assisted persons; 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.

(2B) Subject to paragraph (2C), a document served by the prosecution in electronic form is included in the number of pages of prosecution evidence.

(2C) A documentary or pictorial exhibit which –

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

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

7. The above references are to the Litigator Graduated Fee Scheme, but exactly the same provisions apply in respect of the Advocate Graduated Fee Scheme.

8. When the amended Funding Order was made in 2012, the Legal Services Commission (as the Legal Aid Agency then was) issued Guidance ("the Guidance"), and the following paragraphs are relevant:

"Introduction

1. The Criminal Justice System is moving towards digital working which means service of digital evidence will increase. Therefore, in order to ensure there is no difference in Legal Aid funding when evidence is served digitally or on paper, the Ministry of Justice amended the definition of PPE in the Criminal Defence Service (Funding) Order 2007 in April 2012.

2. The intention behind the amendment is to preserve the status quo insofar as remuneration is concerned, despite the change in the manner of service. If evidence is relied upon that would previously have been served on paper it should be included in the PPE count.

Documentary and Pictorial Exhibits

5. In relation to documentary and pictorial exhibits, although it has not been possible to draft the wording of the Funding Order in such a way as to make this explicit, it is intended that where the prosecution served such a digital document, which has never existed in paper form, the appropriate officer will assess whether this would previously have been served in digital form or printed out.

6. If the former, then the special preparation provisions will apply. If the latter, then the number of pages that would have resulted would be added to the PPE.

8. An example of the new procedure is where the prosecution obtain telephone records or financial records on a disc, and extract the relevant material, ie the material on which they rely. (This may or may not be produced as an exhibit to the statement of a prosecution witness in a statement).

9. The relevant material would be payable as PPE, but the underlying source material, which may be voluminous, but is not specifically relied on by the prosecution, would not count as PPE, if the appropriate officer decides that it would not previously have been printed out and served in paper form. It would instead be subject to an assessment under the special preparation provisions (assuming it is not unused material).

10. Therefore, the only difference between the old and new systems is that whereas previously the relevant material would have been printed and served in paper form, now it will remain in digital form, but would be paid as PPE if the Determining Officer considers that it would previously have been printed. Any material that would not previously have been printed (whether specifically relied on or not) will not be paid as PPE but as special preparation".

9. When SI 2012/750 was laid before Parliament, an Explanatory Memorandum ("the Memorandum") was prepared by the Ministry of Justice. Paragraph 7.1 of the Memorandum stated:

"7.1 The Order:

.....provides that the electronic evidence may count towards "pages of prosecution evidence" (PPE) for payment purposes in the same way that paper evidence has been counted to date. This amendment supports the recent introduction of electronic service of evidence by the Crown Prosecution Service. Paper bundles are no longer being produced in every case. This amendment is intended to maintain the

current position of paying "paper" documents as PPE and "electronic" documents by means of special preparation on a costs neutral basis. As there will no longer be any "paper" documents, the definition in the Order will allow the appropriate officer to count a document as part of the PPE when it would have previously been included in the paper bundle. The assessment of what does, or does not, count towards PPE would be subject to redetermination and appeal to a Costs Judge in the usual way".

10. An Advocate or Litigator receives significantly increased remuneration if the evidence is regarded as PPE, than they would receive if they make a claim for considering the documentation under the special preparation provisions. This has led to many appeals being made to this Court where Advocates and Litigators are claiming that the electronically served documentary evidence should be regarded as PPE, but where the Legal Aid Agency is determining that the time claimed for considering this evidence should be part of a claim for special preparation. One such case was that of *R v Jalibajhodelehzi* (SCCO Ref: 354/13) and in paragraph 11 of his decision, Master Gordon-Saker stated:

> *"I would add this, as appeals on this issue are now numerous. The Funding Order requires the Agency to consider whether it is appropriate to include evidence which has only ever existed electronically "taking into account the nature of the document and any other relevant circumstances". Had it been intended to limit those circumstances only to the issue of whether the evidence would previously have been served in paper format, the Funding Order could easily so have provided. It seems to me that the more obvious intention of the Funding Order is that documents which are served electronically and have never existed in paper form, should be regarded as pages of prosecution evidence if they require a similar degree of consideration to evidence served on paper. So in a case where, for example, thousands of pages of raw telephone data have been served and the task of the defence lawyers is simply to see whether their client's mobile phone number appears anywhere (a task more easily done by electronic search), it would be difficult to conclude that the pages should be treated as part of the page count. Where, however, the evidence served electronically is an important part of the prosecution case, it would be difficult to conclude that the pages should not be treated as part of the page count".*

11. It is the Lord Chancellor's case that the Guidance issued in April 2012, and paragraph 7.1 of the Memorandum are clear as to the intention behind the amendment made to the Funding Order in April 2012. The amendments reflect the move towards digital working across the criminal justice system, and the purpose was to protect both defence practitioners and the Legal Aid Fund should the prosecution serve their whole case bundle in digital format instead of paper, ie to maintain the status quo with movement from one format to another. The Lord Chancellor submits that there is nothing within those paragraphs which creates or purports to create any test based on either:

(a) whether the evidence served on disc was pivotal; or
(b) whether the evidence served on disc was important to add to the defence or the prosecution case; or
(c) whether the evidence would have been served on paper prior to the move by the CPS towards serving a greater proportion of evidence electronically.

12. He further submits that the spirit behind the Amendment in 2012 was to provide for the situation where evidence that would have previously been served on paper prior to the introduction of digital service of evidence would be counted towards PPE. Prior to the change, evidence served on disc could only be counted towards PPE if it had previously existed in paper format and had been converted into digital format. For this reason, appellants should not be permitted to advance the argument that the word "previously" in the Guidance should apply to the years when there was no electronic evidence served, ie before the introduction of electronic evidence at all. If this were the case, then any material served on disc would always count towards PPE and the Funding Order amendment would be redundant.

13. Mr Morris refers to the Memorandum and submits that at no point within the Memorandum does it imply or state that the definition of PPE would revert back to the old days (ie the pre-digital age) when there was no service of digital material.

14. Mr Morris' submission with regard to the reference in the amendment to the Funding Order to the *"nature of document in any other relevant circumstances"* is that these words were included to deal with an analysis of the method by which the material was served, and not upon the importance or relevance of the material to a particular defendant's case or the case for the Crown. If that were not the case, it would involve the Determining Officer analysing which particular documents were important for each Defendant's case. The only matters that the Determining Officer should look for in considering the nature of the document or any other relevant circumstances are those matters referred to the Guidance, ie to consider whether the material on disc would previously have been printed.

15. Mr Morris submits that on the proper reading of both the Memorandum and the Guidance, there is no support for the contention that the Determining Officer should make any decisions about the importance of the evidence in the case. To do so would be to provide for a funding argument after almost every large criminal trial. This is a task which the Determining Officer is not required to carry out and it would be wholly unreasonable for them to do so. Furthermore, there is nothing within the Guidance which gives the Determining Officer any power or discretion to decide which evidence is important in the prosecution or defence case and which is not.

16. With regard to these particular appeals, the solicitors acted as both Litigator and Advocate for Dean Napper who was one of eleven defendants in a case where Napper faced two counts of conspiracy to supply a controlled drug of

Class A. In both the Advocate Graduated Fee Claim and the Litigator Graduated Fee Claim, the solicitors claimed 8,412 PPE, but were allowed 3,491 PPE. The 4,921 disallowed PPE consisted of electronically served telephonic evidence and the Determining Officer in each case decided that the time spent in considering that telephonic evidence should be remunerated by way of special preparation. Mr Morris submits that the Lord Chancellor does not accept that the original evidence in this case existed on paper. Seized telephones do not exist on paper and collected telephone numbers may well not exist on paper and the Appellants have not supplied any evidence to show that the material ever existed on paper. Furthermore, Mr Morris submits that it is not clear why it was necessary for the Appellants to read 4,921 pages of material on disc. It was understood that Napper's defence was that he was a user of Class A drugs and not a dealer and that he had no part to play in the organisation of the drug dealing enterprise. Furthermore, the Appellants have produced no attendance notes or evidence to support their claim that they actually read and considered the material on disc. The case summary in this case is 54 pages in length and the large majority of the content of the summary deals with the observation evidence of the money transfer. Consequently, it is not accepted that the case against Mr Napper was based entirely on telephone evidence. It is conceded that a document named "Operation Relko – Telephone Evidence" was served, but this was twelve pages in length and only three pages of this document referred to Mr Napper's case. The case against him was neither complicated nor difficult to follow. He was the last of the eleven Defendants on the Indictment and was the Defendant with the least amount of evidence against him. In Mr Morris's submission the Appellants have not produced any evidence that the billing records and telephone data were integral to the case against the Defendants.

17. Mr Morris also submits that the Advocate and Litigator in this case are claiming for the same work that has been carried out by the same firm, and refers to the decision *R v Gillett* (SCCO Ref: 185/14) dated 5 August 2014 when the court expressed concern whether the Advocate and Litigator within the same firm should both receive the higher fee for carrying out the same work. In this case it appears that the Advocate and Litigator were the same solicitor, Mr Rachim Singh.

18. Mr Morris refers to the various decisions that have been made by Costs Judges on this issue and submits that at the time those decisions were made, the Memorandum was not before the Court. With reference to *R v Jalibajhodelehzi*, the Lord Chancellor does not accept that the relevant test is as per paragraph 11 of that judgment, and submits that had the Judge had the entire Memorandum before him, he would not have made that finding.

19. Mr Morris stated that it was never the intention of the Funding Order that the Determining Officer should be required to look at the importance of the documents. This was quite clear from paragraph 7.1 of the Memorandum. The intention of the amendment was as set out in the Memorandum, namely that the only matter for any Determining Officer to consider was whether or not the documentation had previously existed in paper form. It was not, he

submitted, the duty of the Determining Officer at the Legal Aid Agency to analyse each case to consider the importance of documentation which the Litigator or Advocate claims to be PPE. It was not the intention that the Determining Officers make such quasi-legal decisions.

20. Mr Morris also referred to a letter sent by Dr Elizabeth Gibby, the Deputy Director responsible for Legal Aid Reform (Remuneration and Provider Strategy) at the Ministry of Justice to Mr Richard Miller, Head of Legal Aid at the Law Society, on 9 March 2012. In that letter (a copy which was also sent to the Bar Council) Dr Gibby stated on page 3:

> *"It has not been possible to draft the wording of the Funding Order in such a way to make this explicit, but it is intended that where the prosecution serve an electronic document that falls within one of a number of categories specified in the special preparation provisions, the appropriate officer will assess whether this would previously have been served electronically or printed out. If the former, then the special preparation provisions will apply. If the latter, then the number of pages that would have resulted will be added to the PPE. The assessment would be subject to redetermination and appeal to a Costs Judge".*

21. Mr Morris submitted that that was the intention behind the Funding Order and there was no reference, either in the Memorandum or in the correspondence between the Law Society and Dr Gibby that the importance or content of any document was a matter that the Determining Officer had to take into account when deciding whether or not documentation should be regarded as PPE.

22. Mr Morris referred to the case of *R (on the Application of the Confederation of Passenger Transport UK) v Humber Bridge Board & Another* [2004] 4 All ER 553, which was a decision of the Court of Appeal where the head note reads:

> "Where a statutory instrument made under a power conferred by primary legislation on a Secretary of State to make an order exercisable by statutory instrument contains a plain case of drafting mistake, the court must be sure, before adding or omitting or substituting words;
>
> (i) of the intended purpose of the order;
> (ii) that the draftsman and the Secretary of State failed by inadvertence to give effect to that purpose; and
> (iii) of the substance of the provision that would have been made but for the mistake.
>
> Where it is plain from the language used that a mistake was made by the maker of the order, and the order is neither clear nor unambiguous on the face of it, it is permissible to use extraneous material, if it is clear and unequivocal, to identify the purpose of the order and the words omitted".

23. Mr Morris submitted that it was clear from the Memorandum what the intention of the order was and if the wording of the order was ambiguous then the court must look at the intention behind the regulations.

24. In conclusion, Mr Morris submitted that the appeals should be dismissed on the grounds stated in both Determining Officers' reasons, namely that the documentary evidence has never existed in paper format. Alternatively, if that submission was not successful then the appeals should be dismissed on the grounds that as there is no evidence of whether the work carried out in going through the electronically served evidence was carried out by the Litigator or by the Advocate, then any time spent for considering the documentation should be dealt with under a claim for special preparation.

25. Although I have endeavoured to record all of Mr Morris's written and oral submissions, the fact that I have not mentioned every submission does not mean that I have not taken every submission into account. I have also read and considered the witness statement of Nick Poulter, who is employed as Head of Operations (Crime) by the Legal Aid Agency, which sets out the background to the changes to the Funding Order and the Graduated Fee team's approach to payments.

26. Mr Keogh's submission, as set out in his skeleton argument, was that in both cases as these documentary exhibits previously existed in paper form, they should be included as the PPE. In the alternative, he submitted that it is appropriate to include them as PPE, taking into account the nature of the documents and any other relevant circumstances.

27. Mr Keogh submitted that the mere fact that evidence is served in electronic format is not conclusive of the issue and gives as an example cases where paper documents are scanned into a digital format. He further submits that even where the only obvious manifestation of the exhibit is digital, that is not conclusive of whether or not it has previously existed in paper form. Mr Keogh's example of this was where one of the electronically served exhibits appeared to be a computer generated representation of incoming and outgoing calls. He states that that exhibit was clearly not a simple deposit (or dump) of raw data as the document generated has externally applied attributes, namely the target telephone number, the incoming and outgoing calls and SMS data, and a date range. Mr Keogh submits the significance of these attributes is that they were derived from other evidence that previously existed on paper, ie the original investigation that traced suspects, seized phones, collected phone numbers and derived the parameters of the investigation and the relevant dates.

28. Mr Keogh submitted that prior to April 2012 evidence served in cases such as this was served in paper form. It was only in a minority of cases such as serious fraud cases, terrorism cases and some Very High Costs Cases, that all evidence was served in digital form and not in paper format. The status quo was that evidence of the nature served in this case was served in paper format prior to April 2012. The Guidance issued in April 2012 specifically

refers to the *"intention behind the amendment is to preserve that the status quo so far as remuneration is concerned ..."*, and as the status quo is that evidence of this nature existed in paper form, then Advocates and Litigators are entitled to be remunerated on the basis that this evidence is included in the PPE.

29. With regard to these appeals, it was clear from reading the prosecution case summary that the entire case was pinned on the telephone data and connections of time, place and people, made as a result of the analysis of that data. The wording of the Regulations was clear in that it permitted the Determining Officer to *"take into account the nature of the document and any other relevant circumstances"*. The effect of these words is that the Determining Officer must consider whether the evidence is pivotal, whether the evidence underpins the understanding or admissibility of any other piece of evidence, and whether the volume of evidence disrupts the fair and predicted economic balance of the remuneration paid for a case in the light of the Legal Aid Agency's position statement that the statutory changes were not designed to disrupt the status quo.

30. Mr Keogh concedes that the intention behind the 2012 amendment was to retain the status quo, thereby ensuring that evidence that would previously have been served on paper but now, due to the drive towards a digital criminal justice system, will be digitised. However, notwithstanding the intention of the executive, the resulting statutory instrument as approved by the legislative, does not give clear effect of that intention. He submits that the Memorandum has no statutory force and is not approved by the legislative. Mr Keogh accepts that a Memorandum can be used as an aid to interpretation should that be deemed necessary, but in this case, the relevant provision does not lack clarity. He submits that it is abundantly clear that the words *"and any other relevant circumstances"* mean that factors other than the physical nature of the document may be taken into account.

31. With regard to this particular appeal, Mr Keogh submitted that the electronically served evidence previously existed in paper form. This means that the appeals must be allowed and the fact that claims are made by both the Advocate and the Litigator is not a factor that should be taken into account.

32. As with Mr Morris, Mr Keogh has made detailed written and oral submissions and if I have not specifically referred to them in these Reasons, it must not be assumed that they have not been taken into account.

33. In my judgment, the wording of the Regulation is quite clear. If the electronically served evidence had previously existed in paper form, then it can be included as PPE. The difficulty is not only to decide whether or not the electronically served evidence previously existed in paper form, but also as to whether or not it existed in paper form prior to April 2012. I consider this to be an almost impossible task. I have heard a great number of appeals on this issue, and what is abundantly clear is that the practice of serving evidence of this nature electronically or in paper form or both varies considerably. I have

seen cases where the print out of the electronically served evidence has been endorsed by the Crown Prosecution Service with the date of the printing. I have been shown evidence of cases where telephonic evidence of this nature has been served electronically both before and after April 2012 and cases where similar evidence has existed in paper format both before and after April 2012. As there has been such a wide variation in practice, how can a Determining Officer determine whether particular evidence in a particular case would have been served in paper or electronic format prior to April 2012?

34. I do not accept Mr Morris's submission that the role of the Determining Officer is simply to ascertain whether electronically served evidence ever existed in paper form. Historically, the Determining Officers did indeed have a quasi-judicial role as is evidenced by their functions and duties set out in the Funding Order, its predecessors and other regulations. In the Funding Order the Determining Officer is described as "the appropriate officer", and in paragraph 2 of that Order, the appropriate officer means in the case of proceedings in the High Court, the Legal Services Commission (now the Legal Aid Agency). I do not accept that the change in title from Determining Officer to "appropriate officer" constitutes a complete downgrading of the role of a Determining Officer.

35. I accept Mr Morris's submission that the content of the Memorandum can be used as extraneous evidence to assist in the interpretation of a regulation where there is error or mistake or ambiguity. However, I do not accept there is error or mistake or ambiguity in this regulation. If, as Mr Morris submits that the words *"taking into account the nature of the document"* is limited to the role of the Determining Officer ascertaining whether the electronically served evidence previously existed in paper form, then that would make the words that follow *"... and any other relevant circumstances"* totally redundant. As Master Gordon-Saker stated in *R v Jalibajhodelehzi*, had it been intended to limit those circumstances only to the issue of whether the evidence would previously have been served in paper format, the Funding Order could easily so have provided. In my judgment, the regulation requires the Determining Officer to have a much wider role than as submitted by Mr Morris. He or she can take into account the nature of the document which clearly cannot be limited only to the physical nature of the document. Even if it did, the appropriate officer must also take into account all the relevant circumstances which clearly must go beyond whether or not the document previously existed only in paper form.

36. Paragraph 1(3) of Schedule 2 to the Funding Order reads:

> *"(3) In proceedings on indictment in the Crown Court initiated otherwise than by committal trial, the appropriate officer must determine the number of pages of prosecution evidence in accordance with sub-paragraph (2), or as nearly in accordance with sub-paragraph (2) as possible, as the nature of the case permits".*

37. This provision follows immediately after sub-paragraph (2C) of the Funding Order and the final few words refer to the nature of the case rather than the nature of the document.

38. Mr Keogh requested that I should make a general finding to the effect that all digitally served evidence of the nature of the evidence in these appeals always existed in paper format prior to April 2012 and that was the status quo. I am not prepared to make such a finding as I have insufficient evidence that would allow me to do so. I am satisfied that the practice has varied throughout the country on a case to case basis as to whether evidence of this nature was in electronic or paper format.

39. With regard to this particular appeal, I have insufficient evidence for me to make a finding that the electronically served evidence originally existed in paper format.

40. In my judgment, the Determining Officers are required to and should have considered the nature of the documentation and all the relevant circumstances. In their submissions to the Determining Officers made with their requests for redeterminations, the solicitors went into considerable detail as to the necessity for the analysis of the telephonic evidence. They stated that the evidence was integral to the case against the Defendant, and the Crown, in reliance upon that evidence, produced schedules to the court comprising of almost 300 pages. During the middle of the trial further schedules were then prepared to show links with other co-conspirators. Following an analysis of the material, the solicitors concluded that it was necessary to instruct their own telephonic expert in order to provide evidence of interaction between Napper's phone and the phones of the co-conspirators in order to show that Napper's phone was in fact his own personal phone and that the majority of calls were made to family, friends, etc. The solicitors also stated that the telephone evidence on the disc contains data for the co-conspirators, and therefore detailed analysis of the contents of the disc was necessary to show that there was little or no contact between Napper and the other co-conspirators.

41. I am satisfied from the nature of the documents and all of the other circumstances, that it is appropriate that the pages of digitally served evidence should be included as PPE. However, one of the circumstances that I take into account is whether there has been duplication of this work by the Litigator and the Advocate. The solicitors have not satisfied me that there has been no duplication between Advocate and Litigator and consequently it would not be appropriate for both the Advocate and the Litigator to make a claim for PPE.

42. Accordingly, the appeal made by the Litigator succeeds and I direct the Determining Officer to remunerate the solicitors for the 8,412 PPE as claimed.

43. The appeal by the Advocate does not succeed and must be dismissed.

TO: Ms Lisa Julian
Petherbridge Bassra
DX 11706
Bradford

COPIES TO: Ms Carmel Curran
Legal Aid Agency
DX 10035
Nottingham 1

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.