



SENIOR COURTS  
COSTS OFFICE



SCCO Ref: 168/13

Dated: 12<sup>th</sup> December 2018

**ON APPEAL FROM REDETERMINATION**

**REGINA v LAURYNAS SEREIKA**

CROWN COURT AT BURNLEY

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

CASE NO: T2017 7086

LEGAL AID AGENCY CASE

DATE OF REASONS: 29<sup>th</sup> August 2018

DATE OF NOTICE OF APPEAL: 10<sup>th</sup> September 2018

APPLICANT: SOLICITORS  
Harris Solicitors  
DX 11721 Bradford

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

The appropriate additional payment, to which should be added the sum of £250 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

**ANDREW GORDON-SAKER  
SENIOR COSTS JUDGE**

## REASONS FOR DECISION

1. This is an appeal by Harris Solicitors of Bradford against the calculation of a litigator graduated fee.
2. The solicitors were instructed to represent Laurynas Sereika who was charged with one count of conspiracy to produce a controlled drug. The prosecution case was that Sereika and two others were involved in the cultivation of cannabis plants at a number of houses in Nelson, Lancashire.
3. The evidence against Sereika derived from surveillance which showed that he had visited two of the houses in the company of one of the co-defendants. When he was arrested he had the key to one of those houses and his mobile phone was seized. The phone contained six messages and a number of photographs which the prosecution stated related to the growing of cannabis. The prosecution opening indicated the importance that they attributed to the evidence taken from the phone:

*The prosecution say from that material that the owner of that phone is clearly involved in the production of cannabis and that is Mr Sereika.*
4. Mr Sereika's defence was that he was not involved in the cultivation of cannabis. The co-defendant with whom he visited the houses was an employee in his bodyshop business and he had simply been giving him a lift. The phone was used by other people and the photographs and messages were not his.
5. The solicitors submitted their claim for a graduated fee on the basis that there were in excess of 10,000 pages of prosecution evidence. The Legal Aid Agency assessed it on the basis that there were 644 pages of prosecution evidence, made up of 61 pages of statements, 191 pages of exhibits and 392 pages of evidence on disc.
6. There is no issue as to the numbers of pages of statements and paper exhibits. The issue is as to the treatment of the pages of evidence served on disc, that evidence being the data downloaded from the mobile phone. According to the written reasons, the 392 pages allowed by the Determining Officer comprised 305 pages of activity analytics, call logs, locations, MMS and SMS messages and the time line, together with a further 87 pages of exhibits. The Determining Officer explained that he had not allowed the images served on disc as they did not appear to be relevant to the case. Many of the images would not have required detailed consideration.
7. The representation order was granted on 1<sup>st</sup> November 2017 and so the solicitors' claim is governed by the Criminal Legal Aid (Remuneration) Regulations 2013.
8. Paragraph 1 of Schedule 2 provides:

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

9. The issue on the appeal is whether the Determining Officer should have decided that it was appropriate to include the number of pages served electronically contended for by the solicitors.
10. The solicitors rely on a breakdown of those pages (tab 6 in the bundle) which Mr McCarthy, who represented them at the hearing of the appeal, told me had been provided to the Agency with the request for redetermination. That breakdown conceded that not everything on the discs was claimed. On disc 1 they claimed 30 pages of documents such as flight tickets and car receipt payments which went to the defence that others used the phone. 5,762 pages of images were claimed on the same basis. These included photographs of driving licences and personal pictures of other people. 515 pages of files and applications were claimed on the basis that this could identify the other users of the phone. On disc 2, 14,846 pages of images and 465 pages of data and applications were claimed on the same basis. Although the breakdown sought 37,845 pages of reports on disc 3 in excel format, at the hearing of the appeal Mr McCarthy conceded that they were not now claimed.
11. On behalf of the solicitors, Mr McCarthy relied on paragraph 15 of Appendix D to the Agency's Crown Court Fee Guidance (v1.9) which gives as examples of documentary or pictorial exhibits that will ordinarily be counted as PPE prosecution analysis carried out on phone data, raw phone data where a detailed schedule has been created by the prosecution which is served and relied on and is relevant to the defendant's case and raw phone data if it is served without a schedule having been created by the prosecution, but the

evidence nevertheless remains important to the prosecution case and is relevant to the defendant's case e.g. it can be shown that a careful analysis had to be carried out on the data in order to dispute the extent of the defendant's involvement.

12. Mr McCarthy submitted that the phone evidence was central to the case against Sereika, for it associated him with the cultivation of cannabis. It was therefore crucial to the defence to show that the phone had been used by others and that the messages and photographs relating to cannabis were not necessarily his. It was as a result of that analysis that the prosecution accepted that Sereika's role was limited, the charge of conspiracy was dropped and he pleaded to a lesser charge on the basis of his visits to the properties on one day.
13. Finally the solicitors produced a bundle of 120 photographs taken from the phone. These, they stressed, were simply examples of relevant photographs. It would be unreasonable, they said, to require them to identify every relevant photograph. The photographs show damaged cars, driving licences and identity cards of people other than Sereika, images of people other than Sereika, documents such as receipts, passports and so on. They also include the photographs relied on by the prosecution showing the apparatus and chemicals used in growing cannabis.
14. On behalf of the Lord Chancellor, Mr Rimer submitted that the Determining Officer had correctly allowed those documents served electronically which were central to the case and disallowed those which were not. It would not have been necessary to review thousands of images to try to identify some which cast doubt on whether Sereika had been the sole user of the phone. It would have been very easy quickly to discount many of the images such as icons, logos, pre-installed graphics for games and advertisements and images of public figures.
15. There is no issue that the pages served electronically fall within the discretion allowed to the Determining Officer by sub-paragraph 1(5). They may be included in the page count only if the appropriate officer decides that it would be appropriate to include them taking into account the nature of the documents and any other relevant circumstances.
16. In this particular case, the exercise of that discretion is not easy. On the one hand the prosecution chose to serve this evidence as an exhibit. The solicitors were under a professional obligation to consider it. Given the nature of the defence, that the phone was used by others, it is not difficult to conclude that the solicitors will have wished to look for photographs indicating that use. On the other hand it is unlikely that the vast majority of those photographs will have been relevant to that task. It would seem unlikely that the solicitors will have looked in detail at each of the 20,608 images served on disc. Most will have required a glance or less.
17. In short, it is clear that the evidence on the phone was central to the case against Sereika and his assertion that others had used the phone was central

to his defence. The solicitors were required to consider the phone evidence carefully. However much of the evidence on the phone would not require consideration.

18. It seems to me that in these circumstances there is no reason why a Determining Officer (or costs judge on appeal) should not take a broad approach and conclude that as only a proportion of the images may be of real relevance to the case, only that proportion should be included in the page count. Inevitably that will be nothing more than "rough justice, in the sense of being compounded of much sensible approximation": per Russell LJ in *In re Eastwood* [1974] 3 WLR 454 at 458. But that is the nature of the assessment of costs.
19. The solicitors have produced 120 examples of images that may have been of relevance. The impression I have gained is that the vast majority of the images would not have been of relevance and would not have required any consideration. Doing the best that I can it seems to me that it would be appropriate to allow no more than 1,000 pages of images. That is approximately 5 per cent of the total. I would also allow the 30 pages of documents and 515 pages of files on disc 1 and the 465 pages of text on disc 2. That is a total of 2,010 pages of evidence served electronically, as opposed to 392 pages allowed. I believe that results in an additional 1,618 pages and the graduated fee should be recalculated accordingly.

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