Neutral Citation No. [2022] EWHC 3109 (SCCO)

Case No: SC-2020-CRI-000048
SC-2020-CRI-000060

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
London, WC2A 2LL

Date: 30/11/2022

Before:

COSTS JUDGE JAMES

- -

Between:

R
-v-
BOWMAN and D'ARCY

and

IN THE MATTER OF AN APPEAL AGAINST REDETERMINATION

NEWTON LAW PRACTICE, SOLICITORS (Bowman)

MANDLA BHOMRA AND CO., SOLICITORS (D'Arcy)

Appellants

-and-

THE LORD CHANCELLOR

Respondent

Mr Miah (instructed by Newton Law Practice, Solicitors) and
Mr Bhomra (instructed by Mandla Bhomra, Solicitors) for the Appellants
Mr Rimer (instructed by The Legal Aid Agency) for the Respondent

Hearing date: 29 March 2021

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Approved Judgment

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I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Costs Judge James:

1. This is an appeal by Newton Law Practice Solicitors ('NLP') for Mr Bowman, and Mandla Bhomra Solicitors ('MB') for Mr D'Arcy, against the fees allowed in respect of PPE by the Determining Officer ('DO') in accordance with the Criminal Legal Aid (Remuneration) Regulations 2013. These are the reasons for my decision to dismiss the one 'live' issue, but to allow an element of the costs of appeal.

2. The issue arising in this appeal is as to the correct assessment of the number of PPE when determining the Advocate's and Litigator's fees due under the Criminal Legal Aid (Remuneration) Regulations 2013. As is well known and explained in more detailed in the decision of Holroyde J (as he then was) in *Lord Chancellor v SVS Solicitors* [2017] EWHC 1045, the scheme provides for legal representatives to be remunerated by reference to a formula which takes into account, amongst other things, the number of served pages of prosecution evidence as defined in the 2013 Regulations, the PPE, and the length of the trial.

3. The Appellants appeared in person at the hearing, which took place as long ago as 29 March 2021, appearing by Mr Miah (Counsel) for NLP and by Mr Bhomra (Solicitor) for MB. The Legal Aid Authority (the LAA) were represented by Mr. Rimer, who is an employed lawyer; I also had the benefit of written submissions from both sides. I owe both parties a sincere apology for the lengthy delay in producing this Judgment, which has been due to a variety of factors including the pandemic, but even so, clearly, they deserved the certainty of a decision much sooner than this.

4. The Appellants are appealing decisions of the DO to pay a graduated fee on the basis that there were considerably fewer pages of prosecution evidence (PPE) than NLP and MB had claimed. The pages served by the Crown included 20,755 electronic PPE from the download of mobile telephones from which several reports were generated including a Report for each of three numbers linked to the three Defendants and a very large Memory Card Download Report. The DO has accepted that based on the evidence provided, the electronic material should be considered as served evidence as it was a substantial part of the Crown case. In Bowman the DO allowed 2,407 and in D'Arcy the DO allowed 1,919 of these electronic pages. There were in addition some 2,039 'paper' pages on the CCDCS, of which the DO allowed 1,478 in Bowman and 1,258 in D'Arcy.

5. In D'Arcy, by the time of filing this appeal, MB asserted that there were 15,833 relevant electronic pages in addition to the 2,039 'paper' pages on CCDCS; they had initially asserted that all of the pages were relevant and should be counted. As MB's claim was for the LGFS PPE 'cap' of 10,000 pages, demonstrating that even a proportion of those pages were relevant (i.e., not mere blanks or pages containing nothing of relevance) would achieve that figure. In Bowman, whilst NLP initially claimed that there were 12,616 relevant electronic pages and that all 2,039 'paper' pages should also be recoverable, by the time of filing this appeal, NLP had reconsidered the position and taken into account the DO's comments, and their claim stood at 7,846 PPE.

Firm and Defendant represented	**Total paid exc. VAT**	**Claim (on appeal)**	**PPE paid**	**CCDCS pages**	**Electronic pages**
Newton Law Practice (Bowman)	£23,914.42	10,000	2,799	1,478	1,321
Mandla Bhomra (D'Arcy)	£26,954.44	7.846	3,177	1,258	1,919
McGrath (Clarke)	£29,873.46	Unknown	3,639	1,953	1,686

6. A striking feature of this case is the fact that NLP and MLB challenge the disparity between the amounts allowed by the DO to the three Litigator firms involved, yet their own claims in this appeal were significantly disparate. MB is claiming 10,000 PPE and NLP is claiming 2,154 fewer pages; NLP's claim is made on the basis that they accept that the remaining pages were not relevant and could not be claimed.

7. By the hearing, the parties had agreed that 1,966 'paper' pages on CCDCS, should be paid; the principal reason for this increase was that the DO had disallowed hundreds of pages as 'duplicates' but when Mr Rimer reviewed them in preparation for the hearing, he conceded that there was no issue with duplication and in effect every page, except cover sheets created whenever evidence was uploaded, was recoverable.

8. The parties had also agreed that, on the facts in this case, parity between the amounts allowed on the fee claims of NLP and MB was appropriate. On different facts, Defendants in a single case might be facing very different charges with very different arguments being advanced; here the three Defendants were involved in a spur-of-the-moment retaliation or revenge shooting, planned and carried out within a matter of hours on a single date and in person rather than over the phone. The fact that NLP represented the shooter and MB represented the getaway driver, did not affect the need for both firms to consider the same evidence in this case, in an equal amount of detail.

9. Accordingly, by the time of the hearing, the only 'live' issue was NLP's Ground 2, or MB's Ground 3, namely whether the LAA should have allowed more pages to be paid as PPE from the electronic evidence which was served in this case. NLP in their second redetermination claimed 5,807 pages for evidence served in electronic format and the LAA allowed 929 pages for evidence served electronically, hence 4,879 pages were in issue. For MB, out of a 'cap' of 10,000 pages, minus 2,039 'paper' pages, left 7,961 electronic pages claimed. The LAA allowed 1,919 electronic pages giving a balance of 6,042 electronic pages in issue. This issue remained live at the hearing.

10. The DO in D'Arcy stated that *"the remaining pages do not appear to be relevant to the case and therefore it is considered more appropriate to include these pages as special preparation".* MB respectfully submitted that the DO had not given full consideration to the electronic evidence served in this case and had not applied a proper and fair test in determining the pages which were relevant and the pages which were irrelevant. In the circumstances of the case against Mr D'Arcy, in filing the appeal it was argued that 15,833 pages of the electronic evidence should have been allowed (subject to the 10,000 PPE 'cap').

The background facts and the Crown case

11. In this matter, NLP acted for Mr Zak Bowman and MB acted for Mr. Aaron D'Arcy, who faced trial on indictment at the Crown Court in Birmingham for Conspiracy to possess a firearm with intent to endanger life contrary to section 1(1) of the Criminal Law Act 1977. It was alleged that they together with Leon James Junior Clarke (whose legal team, McGrath Solicitors, was not a part of this appeal) on 29 March 2017 conspired to possess a firearm with intent to endanger life. They pleaded not guilty and were convicted after a trial.

12. Per the Appellants, this was to all intents and purposes a 'telephone case' and was to that end (download) evidence heavy. They set out how the Crown put the case against Bowman and D'Arcy to show why the electronic evidence should have been allowed as claimed.

13. The Crown case was that these three men travelled in two vehicles to an address in Northfield, Birmingham in March 2017, and fired at least three bullets through the window of a house using a revolver. They then left the location and tried to cover their tracks. Using CCTV footage, fingerprint evidence, vehicle identification and experts comparing images of people to these Defendants, *"tied*

together with telephone usage and cell site location", the Crown said it was Bowman and Clarke on the street firing a gun, and D'Arcy was their backup, close by in case things went wrong. The Crown alleged that the material together established that these three men conspired together intending to endanger other people's lives using a firearm. The relevant facts put forward were as follows:

14. At about 12.39 on 29 March 2017, the police received telephone calls from the public reporting three shots being fired from a vehicle on the Bristol Road, Longbridge. The vehicles and individuals involved in firing those shots could not be identified by the police; Bowman seemed to be the target but he would not tell the police who he thought the gunman was (it was the Crown's case that it was – or that Bowman thought it was – one Mr Turner, the current partner of Bowman's ex-girlfriend).

15. Instead of cooperating with the police, Bowman alerted D'Arcy by telephone. The Crown said that within the next 90 minutes Bowman and D'Arcy met up with Clarke, collected a loaded firearm and headed to Northfield. A little after 14.00, the police received more telephone calls that shots were being fired on Almond Close, Northfield. The Crown case was that Bowman and Clarke were responsible for the discharge of a handgun on Almond Close (firing three shots through the window) and that D'Arcy was their lookout and backup getaway driver. D'Arcy drove them out of the area and when he did so, he knew what had been planned and executed by Bowman and Clarke that afternoon.

16. The address at Almond Close in Northfield is the home address of the grandmother of a former girlfriend of Bowman, whose relationship with her was over by 2015. When they were together, when the grandmother went on holiday, Bowman and his then girlfriend stayed at the address, so he was familiar with the home and its layout. By 2016, Bowman's now ex-girlfriend was in a new relationship with her new partner, Mr Turner, with whom she had a child in 2017.

17. The Crown said there was no reason for Bowman to go to Almond Close on 29 March 2017, unless he was looking for someone there, or was there for some particular reason. At 14.11 on that date, neighbours on Almond Close heard 3 or 4 loud bangs. One witness who was at home, went straight to her front window. She saw a male, with a scarf covering his face, wearing a baseball cap with his hood up, walking away from the address. He was holding what she described as a black revolver in his right hand. She saw this male walking from Green Meadow Road before jogging towards Shenley Lane. Parked on Shenley Lane was a new model black Ford Mondeo. The shooter got into the driver's seat and the car sped off.

18. Another neighbour saw the same thing and they immediately called the police. The police officers who attended the scene took a look around the Close and then left. CID officers returned the next day for a closer investigation. The officers recovered 3 spent bullets from outside the grandmother's house on Almond Close. The police sought to identify the black Ford Mondeo used by the shooter. Police logs showed that on 29 March 2017, another member of the public had reported a black Ford Mondeo being abandoned by some garages on Bigwood Drive, about 2 miles from Almond Close. The police had recovered that black Ford Mondeo on 29 March 2017 and impounded it, not realising its significance.

19. The Mondeo's displayed registration number was EY14 UAN but these were false number plates and its correct registration was MC14 EPK. It had been stolen at 03.00 a.m. on 27 March 2017, two days before this incident. After its forensic examination, two fingerprints were recovered from inside the car on the rear-view mirror. Those two prints belonged to Leon Clarke's left thumb.

20. The police viewed hours of CCTV footage from the area to trace the Mondeo's route to Almond Close, as well as its escape route after the shooting, up to where it was abandoned. They wished to identify who got out of that car, where they went and who they met. The CCTV footage also captured a white Vauxhall Combi Van registered to D'Arcy's father under registration WU02 CJX. D'Arcy's mother, as part of police enquiries, confirmed that this van had been given to D'Arcy, who was in a relationship with Bowman's sister. D'Arcy and Bowman's sister lived together at an address in Rednall where (in January 2018) this Combi Van was seen parked on their driveway.

21. In April 2018, D'Arcy was stopped whilst driving this same vehicle. The Crown alleged that photographs from the CCTV footage from 29 March 2017 showed that the shooter got out of the Mondeo and he was then taken by D'Arcy in the Combi Van away from the area. The Crown identified three males, Male A, Male B, and Male C. Bowman had accepted that Male A was him (but at trial, after realising that by accepting this he had placed himself near the scene of the crime, Bowman sought to retract that admission). In any event, a PC Beard had positively identified Bowman as the person in the footage. Male B was identified to be Leon Clarke, but the Crown was not able to identify Male C.

22. At trial, all three Defendants were convicted and received lengthy sentences. Bowman received 18 years and the other two Defendants received 14-year terms of imprisonment.

Telephone Evidence

23. Per the Appellants, the lack of any direct evidence forced the Crown to resort to a painstaking analysis of telephone and cell site data and imagery analysis. The police attributed telephones to the three Defendants as to Bowman (number ending 3294) Clarke (7616) and D'Arcy (6760). They provided Call data schedules – KCW/04 to explain the telephone evidence. The combined call data schedule for the three Defendants showed the phone traffic from 15 to 28 March 2017. Cell Site Maps were provided to show Bowman's location relative to the timing of calls. The Crown contended that the evidence showed D'Arcy also travelled to near this location.

24. From a telephone recovered from Bowman, the police recovered a video recording made on 16 May 2017. This recording was a telephone conversation between 2 males, one of whom the Crown said was Bowman. The conversation in the recording suggested there had been some sort of 'turf war' concerning drugs, with the understanding that drugs were or may have been stored at Almond Close and/or that there was a personal war going on between Bowman and his ex-girlfriend's new partner, the father of her child, with the ex herself being in the middle. It was alleged that this conversation provided the possible explanation for Bowman's, Clarke's and D'Arcy's actions on 29 March 2017.

25. Per the LAA, the telephone evidence is explained in the Crown Opening, which explained the three numbers that the Crown attributed to the three Defendants and explained by reference to their call data (material obtained from the telecoms companies rather than from the mobile downloads) how much contact there was between the Defendants. It noted that there was little contact at all from 15 to 28 March, and then looked at the position on 29 March around the time of the shooting.

26. Exhibit KCW was a schedule made from the raw phone call data (which, the LAA reiterated, is obtained from the telecoms companies, not from phone handsets). The schedule is within the PPE and was allowed as it was one of the exhibits uploaded to the CCDCS. This Court was referred to the schedule because it clarified the defence's role in looking at the raw phone call data from the telecoms companies which is the subject of this appeal.

27. Cell Site Maps (again, obtained from the telecoms companies not from the phone handsets) showed Bowman's location shortly before the shooting, because he used his phone at that time. Another map (made from Cell Site material) showed that Bowman and Clarke were both located close by at various times around the shooting; both phones (and their owners) could have been in Almond Close at the time shots were fired through the window. Another map showed that all three Defendants' phones were located close by one another after 15:00.

28. However, in the LAA's submission, the case was made out by a variety of evidence including Clarke's fingerprints, CCTV of the Defendants in the Mondeo car and the Combi van, identification including Bowman's acceptance that he was Man A, spent shell casings and so forth. To the extent that the PPE were relevant, they were allowed but to suggest that the mobile phone downloads were so pivotal that every single page had to be (and was) pored over by the Litigants, is simply unsustainable.

Court directions on service of telephone evidence

29. The Court made specific directions as to the disclosure of material in this case which had to be considered by counsel, solicitors and experts. On 2 April 2019 at a pre-trial hearing HHJ Bond made a direction which was endorsed onto the digital system as follows:

"….At the PTPH of Clarke and D'Arcy (when Bowman was listed for mention), I directed the prosecution to serve ALL of the phone evidence (including raw data) by Stage 1 and not Stage 3. I was told that the reason for the delay was a "breakdown in communication between the police and CPS". The case against Clarke and D'Arcy is mainly about cell site evidence which the prosecution have had in their possession for many months. Therefore, I made this "robust" direction to ensure the case is prepared as soon as possible. We have already lost the trial date of 1.7.19. It is now listed for 3.9.19."

The served prosecution evidence:

30. The Crown served part of its case on CCDCS and part on disc. The served electronic prosecution evidence was comprised of:

Disc **(electronic pages)**	**Total page count**	**Claimed (Bowman)**	**Allowed (Bowman)**	**Claimed (D'Arcy)**	**Allowed (D'Arcy)**
d. RM/2 (handset download)	17,995	12,616	) 929	17,995	1,366
e. RM/2 (SIM card download)	6	6	)	6	7
f. Images downloaded from RM/2	1,003	1,003	)	1,003	0
g. Images of RM/2	7	7	)	7	0
h. Call data (3294 - Bowman)	619	0	) 392	619	211
i. Call data (6760 – D'Arcy)	363	0	)	363	19
j. Call data (7616 - Clarke)	762	0	)	762	316
Total	**20,755**	**13,632**	**1,321**	**20,755**	**1,919**
Add CCDCS pages	2,039	2,039	1,478	2,039	1,258
Claim versus allowance:		**'cap' 10,000**	**2,799**	**'cap' 10,000**	**3,177**

PPE allowed - Bowman

31. In Bowman, NLP claimed in respect of exhibit AH/1 Download of Exhibit RM/2 (phone handset download) – 12,616 pages. The download of RM/2 was presented on Excel worksheets with a total page count of RM/2 at17,995 pages; the Solicitor with conduct perused and considered the entire contents of RM/2 as part of the case preparation due to the importance of the evidence. In fact, 5,382 pages contained no data or information and therefore that is why NLP claimed just 12,616 pages.

32. Following further consideration of the electronic material and the comments of the LAA the claim on second redetermination was based upon the PPE being 7,846 pages. On 18 December 2019 the LAA made an assessment and PPE was paid on the basis of the PPE being 2,346 pages. NLP made application for redetermination on 22 December 2019 and served an explanatory note and additional documents; the LAA allowed a further 453 pages of electronic evidence on 6 January 2020, totalling 2,799 pages. A second redetermination was requested by NLP on 17 January 2020 and a further explanatory note and documents were served, but on 27 January 2020 the LAA notified NLP that no further PPE was payable. NLP requested written reasons on 27 January 2020 and the LAA provided written reasons on 5 February 2020.

PPE allowed – D'Arcy

33. On 15 October 2019 in D'Arcy, the DO allowed the following in respect of the electronic evidence on disc:

d. RM/2 (Handset) 17,995 pages: Allow 1,366 pages of Excel data as to Activity Analytics - 268 pages, Analytics Phones - 16 pages, Call Logs - 126 pages, Chats - 217 pages, Contacts - 80 pages, Cookies - 152 pages, Locations - 9 pages, Searched Items - 8 pages, SMS Messages - 93 pages, Web bookmarks - 2 pages, Web History - 393 pages and Wireless Networks - 2 pages.

e. RM/2 (SIM) 6 pages Allow 7 pages of Excel data as to Activity Analytics - 2 pages, Analytics Phones - 4 pages and Contacts - 1 page

f. Images downloaded from RM/2 1,003 pages Allow 0 pages of data

g. Images of RM/2 7 pages Allow 0 pages - not on the USB and not relevant

h. Call data (3294 - Bowman) 619 pages Allow 211, as to Summary - 13 pages and Results - 198 pages

i. Call data (6760 – D'Arcy) 363 pages Allow 19, as to Summary - 1 page and Results - 18 pages

j. Call data (7616 - Clarke) 762 pages Allow 316, as to Summary - 19 pages, Results - 297 pages

34. For Excel data, it was stated (by the DO) that blank pages were taken off. For phone downloads, only the contact, location and web data were allowed. For billing data, only the summary and results sections were allowed. Therefore, the evidence allowed in D'Arcy was electronic evidence 1,919 pages, plus paginated CCDCS evidence 1,258 pages, totalling 3,177 pages.

The legal framework

35. Paragraphs 1(2) to 1(5) of Schedule 2 of the 2013 Regulations provide as follows:

(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 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."

36. Subpara. 1 (5) set out above makes it clear that even if evidence has been served it is a matter for the DO and hence for me to consider whether it is appropriate that such evidence counts towards the PPE. I have considered the judgement of Nicola Davies J (as she then was) in *Lord Chancellor v Edward Hayes LLP* [2017] EWHC 138 (QB) (including in particular para. 20) and the judgement of Holroyde J in *SVS* (including in particular para. 44 to 48) which, although principally directed to the issue of service, are relevant in determining how the DO or Costs Judge should exercise his or her discretion under this provision. When dealing with the issue as to whether served material should be regarded as PPE, Holroyde J (as he then was) said this:

"If an exhibit is served, but in electronic form and in circumstances which come within paragraph 1(5) of Schedule 2, the Determining Officer (or, on appeal, the Costs Judge) will have a discretion as to whether he or she considers it appropriate to include it in the PPE. As I have indicated above, the LAA's Crown Court Fee Guidance explains the factors which should be considered. This is an important and valuable control mechanism which ensures that public funds are not expended inappropriately.

If an exhibit is served in electronic form but the Determining Officer or Costs Judge considers it inappropriate to include it in the count of PPE, a claim for special preparation may be made by the solicitors in the limited circumstances defined by Paragraph 20 of Schedule 2".

37. At paragraph 20(1)(a) of Schedule 2, a Litigator may claim special preparation as set out below. Such a fee would be based on time actually spent; that is to say, the number of hours the DO considers reasonable to view the evidence not allowed as PPE; the LAA says that the remaining disputed pages in Bowman and D'Arcy's cases should be compensated by such a fee.

"20.—(1) This paragraph applies in any case on indictment in the Crown Court—

(a)where a documentary or pictorial exhibit is served by the prosecution in electronic form and—
(i)the exhibit has never existed in paper form; and
(ii)the appropriate officer does not consider it appropriate to include the exhibit in the pages of prosecution evidence; or
(b)in respect of which a fee is payable under Part 2 (other than paragraph 7), where the number of pages of prosecution evidence, as so defined, exceeds 10,000, and the appropriate officer considers it reasonable to make a payment in excess of the fee payable under Part 2.

(2) Where this paragraph applies, a special preparation fee may be paid, in addition to the fee payable under Part 2."

38. The Crown Court Fee Guidance, which was updated in March 2017, prior to the decision in *SVS*, provides as follows:

"In relation to documentary or pictorial exhibits served in electronic form (i.e., those which may be the subject of the Determining Officer's discretion under paragraph 1(5) of the Schedule 2) the table indicates –

"The Determining Officer will take into account whether the document would have been printed by the prosecution and served in paper form prior to 1 April 2012. If so, then it will be counted as PPE. If the Determining Officer is unable to make that assessment, they will take into account 'any other relevant circumstances' such as the importance of the evidence to the case, the amount and the nature of the work that

was required to be done, and by whom, and the extent to which the electronic evidence featured in the case against the defendant."

39. At paragraph 38 of Appendix D, the Guidance gives examples of documentary or pictorial exhibits which will ordinarily be counted as PPE. They include –

"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.

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 to dispute the extent of the defendant's involvement.

Raw phone data where the case is a conspiracy and the electronic evidence relates to the defendant and co-conspirators with whom the defendant had direct contact."

40. In his decision Holroyde J also cited, with apparent approval, part of the decision of Senior Costs Judge Gordon-Saker in *R v Jalibaghodelezhi* [2014] 4 Costs LR 781. That decision concerned a Funding Order, which was in force at the material time and is, in material respects, similar to the 2013 Regulations; the relevant passages are at paragraph 11:

"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. <u>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 treated as pages of prosecution evidence if they require a similar degree of consideration to evidence served on paper.</u> 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." [my underlining]

41. Following the guidance set out or referred to above, downloaded material need not be regarded as one integral whole, as a witness statement would be. To use the analogy of Holroyde J, the downloaded material, which was itself a copy of the material held electronically on the Defendant's telephone, was more in the nature of the contents of a filing cabinet capable, in principle, of subdivision so that some material may count towards PPE and some may not. It does not follow that simply because the material was served that it was relevant and appropriately dealt with as part of the PPE: that is apparent from the rules themselves and confirmed by the guidance I have set out and referred to above. Whether it is appropriate to subdivide material and indeed how any such subdivision should occur is a matter to be determined on the facts having regard to the discretion referred to by Holroyde J and the guidance which I have set out above.

42. Costs Judge Rowley has also pointed out in *R v Mooney* (SCCO Ref, 99/18) that the task is to be undertaken without hindsight, The exercise should not generally be carried out on a page-by-page basis as such an approach would put an excessive burden on the practitioner, the LAA and the Court and would undermine the effective working of the scheme. Thus, what may be required may be relatively broad bush in nature. It is notable that *R v Mooney* relates to a different scheme than in this appeal; Costs Judge Rowley was ruling against any attempt by the LAA to cherry-pick items in a given category so as to bring a claim below a certain set threshold. That is different to the main issue here, namely claiming per page for reams of material that, according to the LAA, simply has no relevance.

Application to the facts in this case – Newton Law Practice's submissions

43. Exhibit AH/1 (the download of RM/2) was central and pivotal to the Crown's case against Bowman. Exhibit RM/2 was an iPhone, seized by the police when Bowman was first arrested for this offence in May 2017; it was the property of Bowman and the Crown case relied heavily upon Exhibit AH/1 as part of their case against Bowman at trial in order to prove and demonstrate the following:

(a) Bowman's communications - The call records on the download were used by the Crown to show the contact that Bowman had with his co-Defendants and other individuals for the weeks prior to the date of the incident, just prior to the shooting, during the time of the shooting and in the aftermath of the shooting. In fact, the Crown placed before the jury in the Jury Bundle telephone records relating to the three Defendants from as far back as January 2017.

(b) Attribution – The download of RM/2 was also utilized by the Crown to evidence what phone numbers Bowman and his co-Defendants were using prior, during and post the shooting. The Crown would use the data contained within the phonebook of the download in this respect.

(c) Cell Site Evidence – The phone data which was retrieved from RM/2 was also used by the Crown for cell site analysis. The Crown placed before the jury a vast amount of evidence relating to the movements of the phones that they stated that the Defendants were using on the day of the incident being 29th March 2017. This was also a pivotal part of the Crown's case.

(d) Lack of communications between Bowman and his co-Defendants – The Crown also demonstrated to the jury that prior to the date of the incident the phone contact between Bowman and his co-Defendants was very limited which they stated was an important feature of the case. The Crown relied upon the limited communications between Bowman and his co-Defendants including the lack of calls, text messages, WhatsApp messages, messenger and social media platforms, downloaded from RM/2.

(e) Voice Recordings – Contained within the handset was a voice recording in which (the Crown alleged) Bowman had been discussing the shooting incident with another associate. During the recording (the Crown would also state) Bowman was also discussing serious criminality involving himself and others. A transcript of the recording was placed before the jury; per the LAA the transcript was included in the 'paper' CCDCS pages accordingly and I did not understand NLP or MB disagreed with that assertion.

(f) Images – Contained within the download were a number of images of Bowman and other associates. The Crown sought to rely upon certain images which displayed certain clothing that Bowman had been wearing previously and compare it to clothing of an individual who was seen at the location where the vehicle used in the shooting was abandoned. The Crown's case was that Bowman was present at the location of the vehicle being abandoned, alleging that Bowman organised the shooting as well as being the shooter.

44. As demonstrated above the download of RM/2 was an extremely important piece of evidence and was (per NLP and MB) of central importance relied upon at the trial by the Crown. The Crown could (if they wanted) only have served upon the Defence what they deemed to be the appropriate material from the download of RM/2, but they 'must have' decided that, due to the importance of the download and the amount of material that they were seeking to rely upon from the download, the whole download should be served upon the Defence. Pausing here, HHJ Bond at the PTPH ordered that all of the phone evidence (including the raw data) must be downloaded. That does not indicate any qualitative determination by the Crown (nor in my view by the learned Judge); it was simply giving the Appellants the opportunity to interrogate the material if they so chose.

45. As to NLP pointing out that this was a case whereby the Crown served Exhibit AH/1 without any requests being made by the Defence; the Defence did not need to make any request, HHJ Bond already made the order. Nothing in my view hinges on this other than the fact that the material was indisputably served (which is no doubt why the LAA did not dispute that it was served).

NLP GROUNDS OF APPEAL – ISSUE 2/MB GROUNDS OF APPEAL – ISSUE 3

46. Should the LAA have allowed more pages to be paid as PPE from the electronic evidence which was served in this case? NLP asserted that the number of electronic pages claimed (5,807) should be allowed in full. NLP claimed that 5,807 electronic pages were relevant and pivotal to the Crown case as follows:

d. RM 2 Handset Report: Summary – 1 page; Device Information – 1 page; Activity Analysis – 276 pages; Analytical Phones – 16 pages; Calendar – 18 pages; Call Log – 244 pages; Chats – 341 pages; Contacts – 205 pages; Cookies – 234 pages; Locations – 15 pages; Notes – 3 pages; Searched Items – 8 pages; SMS messages – 155 pages; Web History – 532 pages; Timeline – 1,244 pages.

e. RM 2 Sim Card Report: RM 2 Sim Report – 14 pages;

RM 2 Recovered Files – Chats – 225 pages;

RM 2 Recovered Files – files – Image – 518 pages.

Call Data for 3294 (Bowman) – 619 pages;

Call data for 6760 (D'Arcy) – 376 pages;

Call data for 7616 (Clarke) – 762 pages.

47. Matters also raised in NLP's second redetermination included the following. After service of Exhibit AH/1 – the download of RM/2, this material had to be considered in detail. The Defence has a duty to consider the evidence and it would be negligent not to do so. The LAA's position on this (in brief) is that the Defence's duty to consider this material does not extend to the level of scrutiny appropriate to PPE. It should be paid as special preparation instead, based upon a reasonable amount of time to scan through the material rather than a per page charge amounting to a much higher fee.

48. Whilst the case worker/DO on the first determination (in only allowing 868 pages) stated that this was assessed on the submissions provided, per NLP the submissions provided demonstrated why Exhibit AH/1 – the download of RM/2, was an important and pivotal part of the Crown's case and did not state that only parts of the electronic evidence were considered. The DO should not pick and choose what they believe is relevant and make an assessment on that basis; per the Appellants, once it is agreed that the electronic evidence is to be paid as PPE then it should be paid in its entirety; for NLP that is 5,807 pages and for MB it is 6,042 pages.

49. The LAA's response as to the 'pivotal' Timeline (1,244 pages) is that, as usual in phone downloads, the Timeline is simply a chronological arrangement of material from other sections of the download. Even to the extent that it is relevant, it is entirely duplicated elsewhere and the LAA submits that Litigators can either be paid for the material in other sections or can be paid for it in the Timeline but cannot be paid for the same material in two different places.

50. It appears to be both Appellants' position that they did not know that the Timeline was duplicated until after they looked at it, by which time their work had already been done, but that begs a couple of questions in my view. As experienced Litigators why would neither NLP nor MB be on the alert for a Timeline that was like countless other Timelines? Also, once they began looking at it, why were they so slow to realise that this material was duplicated elsewhere? It was in Excel format and could be searched electronically. A claim - in excess of £10,000 - for the Timeline, predicated upon the Appellants trawling through it page by page without either realising that it was, just like countless other Timelines, merely a chronological duplication of other material or interrogating the material using electronic search tools, seems unreasonable. The DO would be entitled to disallow such a claim.

51. Turning to MB's claim, which is based upon a substantially higher page count that that relied upon by NLP, on 19 November 2019 the claim was refused on the basis that no justification had been provided to show how the omitted sections were relevant to the case. For my benefit, and as I understand it for the first time, MB set out the justification relied upon, principally based upon the Crown case.

52. The electronic evidence in RM2 Handset Report contained 17,995 pages, but the pages containing the summary, device information, calendar, configurations, databases, images, installed applications, notes, notifications, passwords, text and videos (and timeline) were not allowed. Per MB, no reason was given why these pages were not allowed. It was not disputed that this evidence was served by the Crown and once served MB stated that they were duty bound to consider all of the evidence to see whether it supported the Crown's case or indeed if it contained any evidence which may assist the Defendant D'Arcy. These pages should be allowed because, once served by the Crown as evidence, the firm could not disregard the evidence. It was important to go through the evidence in each of the worksheets and ascertain whether there was any link or pattern which would assist or not assist D'Arcy. As with NLP, the LAA agrees but asserts that looking through the disallowed pages at special preparation rates would be reasonable, given what they contain.

53. The major difference between NLP and MB is that only MB asserted that the worksheet containing 'Configurations,' should be taken into account. These pages were not claimed by NLP who appear to accept the LAA's assertion that they were not relevant. Configurations contained 9,228 pages; in columns E and F, there were the "Path" and the "Meta Data", evidence showing when the telephone accessed particular websites or applications, with creation times and modified times set out in column F. Since MB were looking for activity between the telephones of the Defendants, it was necessary to go through this evidence and see whether on and around 29 March 2017, there was any evidence which assisted or disproved the Crown's allegations. MB needed to check the Crown's schedules and to ensure that they were accurate by considering the data from which the schedules were prepared.

54. Looking at the case of Bowman, who is in fact D'Arcy's brother-in-law, the firm had to check whether there was any pattern of communication between them. In 'Configurations,' at columns J, K, L, and M, the times on which the date was modified, the time was modified, and the item was created, are set out. By checking these dates and times MB asserted that it was possible to check if the phone was active on or around the time of the offence.

55. The DO allowed all communications and web listings but not configurations. She also allowed web history, but MB submitted that web history cannot be looked at in isolation; they had to look at the configurations in conjunction with it, as part of the same piece of evidence. The web history and the configurations are not identical and taking into account the way in which the case was put against Mr D'Arcy, the worksheets containing the configurations were relevant and should be allowed as PPE.

56. The LAA's position is that the suggestion that the configurations worksheet was so pivotal that every single page had to be (and was) pored over by the Litigants, is simply unsustainable. It is not pivotal and indeed in large part it consists of thousands of blank pages for which MB wishes to be paid something like £10 per page. Elsewhere the LAA asserts that PPE are not meant to represent the

number of pages perused by the Litigator but are a proxy for the amount of preparation needed, based upon how difficult/evidence-heavy the case was. Blank pages, cover sheets and the like, have to be disallowed and where (as here) firms put forward a claim based on actual work on a number of pages, several thousand of which contained no data at all, they should also be disallowed. At the hearing, Mr Rimer went so far as to suggest that a comparison of what MB claimed they did with the 'Configurations' worksheet, with what it actually contained, would be somewhat risible

57. In the worksheet containing 'images' there are 3,126 pages (of which NLP were claiming a much lower number, 518 pages – see paragraph 46 above). Details of the path used by the phone in accessing social media, giving the date and time of creation and the date and time it was modified, are to be found there. Per MB they had to consider it, to check whether there was any evidence of activity around 29 March 2017 which would assist D'Arcy or support the Crown's case. It was impossible to disregard the evidence and since it was served, it had to be considered on behalf of Darcy.

58. Per MB it is important to note that the case against D'Arcy was not on fingerprint evidence, not on DNA evidence, and not on identification evidence; they asserted that it was purely on the telephone links as provided in the telephone data evidence. Pausing here, that is not a correct statement; D'Arcy was driving the Combi Van, CCTV established that Bowman left the getaway car for the Combi Van and witness evidence (of D'Arcy's mother-in-law) established that D'Arcy was the owner of that van.

59. From previous occasions D'Arcy's telephone number was said to be one ending 6760. When he was arrested, he said the calls were being made and accepted as part of a routine between him and his brother-in-law (Bowman). The DO looked at just a small span of time when considering the relevance of the telephone evidence, namely on or around 29 March 2017; on that day there was in fact no link. D'Arcy's case had been that because Bowman was his brother-in-law, there was a pattern of making telephone calls between him and Bowman.

60. Therefore, per MB, it was relevant to look at the history and not just the small timespan around 29 March 2017. Further, D'Arcy's mobile phone used to switch off because he used to work on site and his battery would die. There were no charging points for him to use. In looking at his previous communications, it was important to see if there was a pattern when his phone switched off. It was important to check his previous communications because he said his communications were for innocent purposes. He was talking to his brother-in-law Bowman and his communications, whether on 29 March 2017 or any other day, were for innocent purposes and simply part of the normal communication between him and Bowman.

61. The LAA's position is simple; D'Arcy and Bowman were linked as brothers-in-law and had clearly good reason to be in contact with each other. However, on 29 March 2017, someone shot at Bowman and he called upon his brother-in-law and Clarke to support him in an act of retaliation or revenge, all of which was planned and took place within a few hours later that same day. The lack of telephone contact on that date was used to allege that the three Defendants were in cahoots and in the same location (able to communicate directly, without the phones). The fact that D'Arcy spoke to his brother-in-law at other times or had a phone that was prone to powering down at odd times, had no relevance. On the facts, there was unlikely to be much phone chatter ahead of time because the Defendants acted swiftly on the same day, and there was unlikely to be any afterwards because the Defendants would be aware of the incriminatory nature of any such.

LAA Submissions

62. The LAA's submissions appear above wherever it was easier to follow their responses by including them alongside the Appellants' points. Having taken all of that into account, the LAA submits that the remaining issues for this appeal were whether any additional sections from AH1 (the handset download) should be included in the PPE count, besides the call, contacts, locations and message data sections allowed already allowed, and whether the final 'Reference' tab in the call data, which contains

a list of generic phone numbers (and is the same in each document) should be included in the page count – their position being that it should not.

63. The LAA made various adjustments to the figures in preparing its submissions accepting that, by oversight, the DO missed some of the information contained in separate tabs in the call data (and described as duplicates, pages on the CCDCS which it now accepts were unique).

64. The LAA now asserts that the correct position is as follows; on AH1 (Excel handset download) there should be **929** pages for Bowman (although the court was invited to reduce this amount by 110 pages in relation to the Call Log, Contacts and Chats sections). The DO assessed the comparable page count at **1,366** for D'Arcy, but the LAA says this just shows how different DO's can reach a different but lawful/correct assessment on the same evidence. As to Call data: this was assessed at 392 in Bowman's case and at 546 in D'Arcy's, but it appears that tabs in each of the three Excel documents were missed and so the LAA accepted that the page count for this material should be increased to **660.**

65. The LAA therefore concedes that the PPE is **3,555 in relation to Bowman** as to 1,966 CCDCS pages, 929 AH1 and 660 Call data. The LAA added that a number of pages in relation to the sections of the handset download which included blank pages, could be deducted at the Court's discretion. The LAA stated that the increase from the DO's allowance of 2,799 pages to 3,555 could have been resolved by way of correspondence to the LAA simply by pointing out the error in relation to the call data. As such, the LAA concedes that the appeal fee should be reimbursed in respect of the increase made to the paper PPE.

66. Pausing here, both Appellants went through a lengthy process of determination, redetermination and Written Reasons prior to appeal, and in my view, it sits uncomfortably upon the LAA's shoulders to suggest that they acted prematurely in appealing something that might have been resolved in correspondence. Evidently, the only way to break this logjam was to appeal and the Appellants are in my opinion entitled to their appeal fee and an element of their costs; the LAA made significant concessions by the time of the appeal hearing but only because Mr Rimer picked up on a number of errors by the DO which were not corrected despite earlier challenges by the Appellants.

67. In D'Arcy, the LAA concedes the same figure of 1966 for the CCDCS pages plus the same figure of 660 pages for the call data. The DO made a greater allowance in relation to RM/2 on D'Arcy, so that the overall PPE the LAA would allow for the Second Appellant is **3,999** (444 pages greater than the assessment in the First Appellant's case). The LAA invited the Court to consider reducing the PPE count in MB's case to **3,555** so that it was consistent with the PPE count in the First Appellant's claim.

68. How this would square with the 'different but lawful' approach above (in relation to the DO's discretion) is unclear; if I am to equalise the payments to NLP and MB, I have been given no cogent reason to do so at 3,555 instead of 3,999. In Schedule 1 to the LAA's submissions, it invited the Court to reduce the Contacts allowance by 50 pages in NLP's claim because the DO had not spotted that the last 50 pages of the Contacts section were blank and to reduce MB's claim by 152 pages because it was stated to be entirely unclear why the Cookies section was allowed, but by the time of the hearing, I understood that an equal allowance of 3,999 PPE to NLP and MB, is now the LAA's position.

Electronic Evidence

69. Per the LAA under the Regulations electronically served evidence is not included in the number of pages of prosecution evidence, but the DO can decide whether to include this evidence taking into account the nature of the document and any other relevant circumstances. There is no limit to the range of factors that the DO may take into account when determining whether to include electronically served material within the PPE, but generally the DO will consider whether the material was of pivotal importance to the case and the amount and nature of the work required to be done, including whether the evidence required a similar degree of consideration as a page of evidence served in paper format.

70. The LAA accepted that telephone evidence was very important in this case as the call data and cell site data enabled the police to show that the three Defendants' phones were together at key times before and after the shooting on 29 March 2017. However, the Appellants have confused reliance on AH1 (which was served upon them) with reliance on call data and cell site data (which was not). Grounds of Appeal assert that "*the call records on the download were used by the prosecution to show the contact that* [Bowman] *had with his co-defendants.*". The DO allowed the calls section from the handset download, but the Crown obtained the call records from the phone companies, not from AH1. The call charts between the Defendants were made from the call records; an individual can delete calls from a handset, but records of them would still appear in the information from the phone company.

71. The Grounds of Appeal also assert that the Crown used the information in the phone book (the contacts section) for attribution purposes. The DO allowed the contacts section of AH1 in full anyway, but in attributing AH1 to Bowman there could have been few issues. The handset was found in his bedroom and the User Accounts section confirms that the various email addresses attached to AH1 were his.

72. Grounds of Appeal assert that phone data retrieved from AH1 was used by the Crown for cell site analysis; per the LAA cell site evidence is not obtained from handsets but comes from the phone companies. The only data from AH1 that could possibly have indicated where the phone was located was the 'Locations' section from the report, which the DO allowed. This does not give the location from the phone from masts (cell sites), but locations from where the phone was connected to wi-fi.

73. As to lack of communication between Bowman and the other Defendants in the weeks prior to the incident and the lack of calls and messages, whilst the DO allowed the full message data, it is unlikely that the Crown relied on any of this. They were simply asserting a negative (lack of contact) but nevertheless, the DO allowed all of the message data, spanning many years, in the PPE.

74. As to the relatively damning voice recording (elsewhere described as a video but clearly not one in which the speakers' faces could be seen) it was recovered from AH1. However, a voice (or video) recording cannot fall within the statutory definition of PPE; it is not a pictorial or documentary exhibit and could never of itself add to the PPE count. Nor could meta data etc. about it, count as PPE, and whilst the LAA accepted the recording was clearly an important and pivotal part of the Crown's case, the Crown prepared a transcript of the recording which itself would be included in the PPE count from the CCDCS. As to the LAA's point that the video/audio recording could never constitute PPE, that seems to me to be entirely right; such a recording is evidence, but not in 'page' form.

75. As to the Crown relying on a number of images of Bowman from the handset that showed him wearing clothing similar to what he was seen wearing in the CCTV footage, the LAA pointed out that these images did not come from the AH1 Excel document. Excel does not support images when data is extracted from a handset; instead, the images that the Crown extracted are in the CCDCS PPE count because they would have been exhibited to a police officer's statement and shown to the jury. Exhibit I0172 (Appendix 6 to the appeal bundle) indicates that the Police relied on only 15 pages from AH1, also referred to as RM2, which was the exhibit reference for the handset itself.

76. The LAA anticipated that the Appellants would rely the Police's (or Crown's) use of these 15 pages to assert that all 1,003 pages of images should all be included in the PPE count (i.e., one page per image) on the basis that the Crown extracted a small number of relevant images showing the Defendant (Bowman) in clothing similar to that worn by the person identified as him in the CCTV. The LAA argued that this alone could not merit the inclusion of almost a thousand additional pages of irrelevant images that could not have had any bearing on the issue in the case.

77. Put another way, perusing images of the Defendant wearing different clothes would not help him explain the similarity in clothing from images identified by the Crown to the clothing worn by the person identified as Bowman in the CCTV footage; it just proves that he owned more than one outfit.

Per the LAA it is even more unclear on what basis the MB are claiming that the images on Bowman's phone were relevant to their client's defence; in my view given D'Arcy's status as the getaway driver, MB had as much of a basis (if any) as NLP had to consider them on behalf of Bowman.

78. The LAA argued that it is for the Appellants to explain why any of the 1,003 images should be allowed in the PPE, and that absent any cogent submissions, the Court should conclude that the DO's decision not to include this section of the report was correct. They referred to a number of Costs Judges' decisions that have dealt with the issue of a small number of images being extracted and served separately as exhibits, and whether the balance of images in the download report should also fall to be included in the PPE.

79. The LAA cited *R v Beckford* (2019) SCCO 204/18, where Master Nagalingam noted at para 22, "*I cannot comprehend how the absence or otherwise of further incriminating images could help to explain the* [single incriminating]*'burner' phone image or storage of the Defendant's smartphone number on the 'burner' phone under "Me".* They also cited *R v. Mucktar Khan* (2019) SCCO ref 2/18, in which Master Brown refused to certify a point of principle that effectively asserted it was wrong in principle for a DO or costs judge to subdivide a phone download report. They also cited *R v. Purcell* (2019) SCCO ref 132/19, in which Master Brown said at para 15, "*I have looked through the samples provided of this material. I accept that it needed to be considered. However, that does not of itself merit inclusion of this material within the PPE. Consideration of this material can be compensated as part of a special preparation fee claim.*"

80. Per the LAA, the same considerations apply to the use of a small number of images that were extracted and relied on by the Crown in this case, to make good the Crown's case that Bowman was involved in the shooting by matching him to the person – Man A – seen in the CCTV leaving the scene where the car was abandoned.

The Excel documents containing call data and the LAA's general observations about the evidence

81. Per the LAA, the Crown prepared numerous call schedules, one of which appeared in the appeal papers at Appendix 4. The Crown's schedules were made from the raw (phone company) data, and they were shown to the jury. The basis for excluding the raw data from the page count, following paragraph 11 of *R v. Jalibaghodelezhi* [2014] 4 Costs LR 781, is that all the Defence had to do was to check using the search and find facilities to see whether their client's number appeared at the times and dates asserted in the Crown's schedules. The only remaining issue is therefore whether the generic numbers in the 'Reference' tab should also be included in the PPE Count.

82. Evidence in this case predominately relates to an isolated incident on 29 March 2017; Bowman was apparently the target of a shooting earlier that day, decided on the spur of the moment and planned relatively rapidly to retaliate. The LAA would not expect much relevant message data predating the event since none of the Defendants may have thought it until the first shooting occurred. They would not expect much if any message data directly incriminating the Defendants after the incident either, because it would have been foolish for any of them to have sent any incriminating texts. The incriminating recording that Bowman made was some months later, when (presumably) he thought it was safe to talk about it.

83. Certain sections of the report cannot have had any bearing on the offence. For example, the web history pages which the DO allowed in relation to MB's claim in error; Bowman did not need to look for firearms on the phone, nor could his internet search history have provided a defence to evidence against him based upon being located with the other two Defendants, cell site evidence, CCTV evidence and his own recording some months later which was tantamount to an admission of participation.

Decision

84. It seems to me clear in exercising the discretion described by Holroyde J and in particular having regard to the nature of the documents and relevant circumstances that the disputed material was likely to have been of limited or no relevance – even if it needed to be checked – and would not have required the degree of consideration that is ordinarily appropriate to PPE; paragraph 50 of *SVS* refers.

85. It is material that the person charged with considering these pages, should have been able to check them with considerable speed; I agree with the LAA that the 'Images' convey nothing of pith, and could therefore have been scanned fairly rapidly. The Timeline was, as set out above, entirely duplicated (and already allowed) elsewhere and the generic numbers in the 'Reference' tab add nothing of relevance, let alone being pivotal to the Crown's case. The 'Configurations' worksheet simply does not warrant close scrutiny either.

86. Whilst I do not endorse the LAA's suggestion that MB's claim to the 'Configurations' pages was risible, I do not find that it was sustainable, and nor were claims for 'Images', 'Timeline' or 'Reference' pages. Refusing to allow such material as PPE does not mean that the Litigator is not paid for such work or that the work did not have to be undertaken (as part of the Appellants' duty to their own clients) but as the LAA argued, the appropriate way of compensating the Litigator for such work on less relevant matters, is clearly by way of a special preparation fee.

87. The alternative approach advanced by the Appellants in seeking 7,846 or 10,000 PPE would not in my judgement achieve the underlying intention of the provisions as interpreted in *Jalibaghodelezh*i, nor the balance required between ensuring that practitioners are properly paid and safeguarding the public purse. This approach would, in my view distort the operation of the fees scheme (*R. v Napper [2014] 5 Costs LR 947,* para. 11).

88. I therefore leave it to the parties to agree a timescale to deal with a claim for special preparation in respect of the disallowed pages. Given the very late stage at which the LAA conceded the extra pages, it was clearly appropriate for the Appellants to bring these appeals and I allow them at 3,999 PPE.

89. The LAA has already conceded the £100 Court fee on these appeals and I would in addition allow £500 costs of appeal, to each Appellant. That is likely only to be a contribution to their costs but both firms were pursuing claims for thousands of irrelevant (and in MB's case blank) pages and hence I have reflected that in the costs figure.

COSTS JUDGE JAMES