



Neutral Citation No. [2023] EWHC 268 (SCCO)

Case No: T20207535

SCCO Reference: SC-2022-CRI-000115

**IN THE HIGH COURT OF JUSTICE**  
**SENIOR COURTS COSTS OFFICE**

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

Date: 27<sup>th</sup> January 2023

**Before:**

**COSTS JUDGE WHALAN**

**R**

**v**

**BLAKE AGHEDO TROMBY**

**Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration)  
Regulations 2013**

Appellant: Ashcott Solicitors

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

## Costs Judge Whalan

### Introduction

1. Ashcott Solicitors ('the Appellants') appeal against the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') to reduce the number of pages of prosecution evidence ('PPE') forming part of its Litigator's Graduated Fee Scheme ('LGFS') claim. The issue on appeal is whether the total PPE count should be 10,000, as claimed, or 3,756, as allowed.

### Background

2. The Appellants represented Mr Blake Aghedo Tromby ('the Defendant') who appeared with a co-defendant at Manchester Crown Court on an indictment alleging thirty three counts of robbery, theft, conspiracy to steal, conspiracy to rob, GBH, possession of an imitation firearm with intent and having an article with a blade or point.
3. It was alleged that the two defendants offered to buy mobile telephones via on-line trading sites such as 'Gumtree' at competitive prices. Potential sellers were required to come to the defendants to complete the sales and deliver the goods. On arrival, the defendants would steal the items by force, using a gun and/or knives to threaten their victims.
4. The Defendant was arrested in April 2019 at a flat in Salford. Police officers seized several mobile telephones, including an Apple iPhone (exhibit KO/1) an Apple iPhone (KO/2) and an Apple IMAC (KO/3). Datum was downloaded from these phones and relied on by the prosecution.
5. The Defendant entered not guilty pleas in February 2021 but changed pleas in July 2021 when the trial 'cracked'.

### The Regulations

6. Paragraph 1 of Schedule 2 to the 2013 Regulations provides (where relevant) as follows:

*"1. Interpretation*

...

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

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

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

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

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

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

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

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

#### Case guidance

7. Authoritative guidance was given in PPE cases by Mr Justice Holroyde in Lord Chancellor v. SVS Solicitors [2017] EWHC 1045 (QB). The parties refer specifically to para. 50(i) to (xi).
8. The Respondent cites a number of cases, including specifically R v. Gyanfi [2022] EWHC 2550 (SCCO), R v. Barrass [2020], SC-2020-CRI-000083 and R v. Mucktar Khan [2019] SCCO Ref: 2/18.
9. The Appellants cite and rely specifically on R v. Furniss [2015] 1 Costs LR 151.

### The submissions

10. The Respondent's case is set out in Written Reasons dated 9<sup>th</sup> September 2022 and in Submissions drafted by Mr Jonathan Orde, a Barrister employed at the Government Legal Department, dated 20<sup>th</sup> October 2022.
11. The Appellants' case is set out in Grounds of Appeal, an Appellants' Skeleton Argument drafted by Mr Colin Wells, Counsel, dated 10<sup>th</sup> September 2022 and Additional Submissions dated 28<sup>th</sup> September 2022, and in an original Taxation Note (11 pages).
12. At para. 1 of the Additional Submissions, Mr Wells states that the "Costs Judge has decided that this SCCO costs appeal is to be determined on the papers without a hearing". This is not correct. The Appellants' Notice requests specifically (Section 1) a determination on the papers as the Appellants did not wish to attend an appeal hearing. I gave the parties an additional opportunity to lodge written submissions by 14<sup>th</sup> October 2022 and both sides complied with this direction.

### My analysis and conclusions

13. The Respondent, in summary, submits that the DO exercised her discretion properly. Recognising the relevance of the electronic phone datum to the prosecution, she allowed all calls (including call logs), chats, contacts, messages (MMS, SMS and Instant), locations, emails and passwords. Other datum, such as images, audio, applications and technical metadata were excluded as irrelevant. Some allowance was made in the Timeline for "duplication". (The DO's schedule of allowance/disallowance – summarised here – is set out in detail at pages 5, 6 and 7 of the Written Reasons.) Mr Orde submits that the Appellants have adduced no persuasive evidence on appeal to justify the addition of these categories to the PPE count, save the broad assertion that the defence was under an obligation to consider all material served by the prosecution. He is critical of the Appellants' alleged failure to explain why it is submitted that certain categories of electronic datum be included in the PPE count. Thus (from para. 3 of his Submissions): "The Lord Chancellor, and Costs Judge on appeal, is given minimum assistance in the Grounds of Appeal as to why the specific categories of evidence claimed were of central importance to the

case. This is unfortunate given that these appeals concern large claims from public funds”.

14. The Appellants, in summary, advance two broad propositions. First, that an additional 2159 pages from the DO’s schedule would be allowed “as relevant for telephone attribution and usage”. Second, that the electronic datum as a whole, totalling 16021 served pages, should be allowed to the capped limit of 10,000 by application of the principle set out in R v. Furniss (ibid), namely that the defence is obliged professionally to consider every page served by the prosecution. Looking at the 2159 pages identified in the DO’s schedule, the disputed categories include calendars, searched items, web history and text, these concern a fairly small number of pages. The vast majority comprise images.
15. In this appeal, I must prefer the submissions of the Respondent to those of the Appellants. It is clear that the DO carried out a careful, item specific consideration of the electronic datum, in the manner suggested in SVS (ibid). While it is possible that a small number of relevant pages were excluded from the PPE calculation, the number would be essentially de minimis in the context of the volume considered in this appeal. I am not persuaded that there are reasonable grounds for including images within the PPE count. The DO, in my view, correctly excluded other irrelevant categories, such as (but not limited to) audio and, on the facts of this case, the technical metadata. Nor am I persuaded by the broad reliance place on Furniss (ibid). It is fair to say the relevant jurisprudence has developed since 2015 and that Costs Judges now start with the guidance set out in SVS. As Holroyde J. emphasised in that case (para. 50(ix)), the discretion exercised by the DO under para. 1(5) constitutes ‘an important and valuable control mechanism which ensures that public funds are not expended inappropriately’. In this particular case, I am satisfied that the DO conducted the process properly, with the conclusion that 3756 is the appropriate PPE count. I must, for these reasons, dismiss this appeal.

TO:

Ashcott Solicitors  
5<sup>th</sup> Floor  
St James' Tower  
7 Charlotte Street  
Manchester M1 4DZ

DX303412 MANCHESTER

COPIES TO:

Mr Jonathan Orde  
Legal Aid Agency  
102 Petty France  
London SW1H 9AJ  
DX328 London

Determining Officer  
Legal Aid Agency  
1 Unity Square  
Queensbridge Road  
Nottingham NG2 1AW

DX10035 Nottingham

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

