



Neutral Citation No. [2024] EWHC 447 (SCCO)

Case No: T20200024

SCCO Reference: SC-2023-CRI-000063

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 29 February 2024

Before:

COSTS JUDGE LEONARD

R

v

Victoria Amas

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

Appellant: Christopher Meredith (Counsel)

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

The appropriate additional payment, to which should be added the £100 fee paid on appeal, should accordingly be made to the Applicant.

COSTS JUDGE LEONARD

1. This appeal concerns payment to defence counsel under the Advocates' Graduated Fee Scheme, set out at Schedule 1 to the Criminal Legal Aid (Remuneration) Regulations 2013, specifically a claim for payment for special preparation.
2. The relevant provisions of the 2013 Regulations as in effect on 15 August 2017 (the date of the Representation Order in this case) are as follows.
3. The graduated fee due to the Appellant is calculated, along with other factors, by reference to the number of served Pages of Prosecution Evidence ("PPE"). PPE, broadly speaking, describes the evidence upon which the Prosecution relies, as opposed to "unused material," which describes relevant material that may undermine the prosecution case or support the defence, and which for that reason must be disclosed by the Prosecution.
4. The provisions of Schedule 1 for calculating the PPE count are at paragraphs 1(2)-(5). Those paragraphs explain how, for payment purposes, the number of pages of PPE is to be calculated:

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

(3) The number of pages of Crown 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 Crown in electronic form is included in the number of pages of Crown evidence.

(5) A documentary or pictorial exhibit which—

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

is not included within the number of pages of Crown evidence unless the appropriate officer decides that it would be appropriate to include it in the pages of Crown evidence taking into account the nature of the document and

any other relevant circumstances.”

5. The PPE page count is subject to a cap, which for present purposes is 10,000 pages.
6. There are circumstances in which an additional fee may be payable. Paragraph 17 of Schedule 1, as in effect in August 2017, reads, insofar as pertinent for present purposes:

- (1) “This paragraph applies where, in any case on indictment in the Crown Court in respect of which a graduated fee is payable under Part 2 or Part 3...

- (a) it has been necessary for an advocate to do work by way of preparation substantially in excess of the amount normally done for cases of the same type because the case involves a very unusual or novel point of law or factual issue;

- (b) the number of pages of prosecution evidence, as defined in paragraph 1(2), exceeds 10,000 and the appropriate officer considers it reasonable to make a payment in excess of the graduated fee payable under this Schedule; or

- (c) a documentary or pictorial exhibit is served by the prosecution in electronic form where—

- (i) the exhibit has never existed in paper form; and

- (ii) the appropriate officer—

- (aa) does not consider it appropriate to include the exhibit in the pages of prosecution evidence; and

- (bb) considers it reasonable to make a payment in respect of the exhibit in excess of the graduated fee.

- (2) Where this paragraph applies, a special preparation fee may be paid, in addition to the graduated fee payable under Part 2 or Part 3.

- (3) The amount of the special preparation fee must be calculated...

- ... from the number of hours which the appropriate officer considers reasonable to read the excess pages...

and in each case using the hourly fee rates set out in the table following paragraph 24 as appropriate to the category of trial advocate...

- (5) A trial advocate claiming a special preparation fee must supply such information and documents as may be required by the appropriate officer in support of the claim.”

7. The Appellant seeks payment under paragraph 17(b), for time spent working on PPE in

excess of 10,000 pages.

Background

8. I am grateful to the Appellant for the following account of a protracted prosecution.
9. The Appellant represented Victoria Amas (“the Defendant”) in the Crown Court at Maidstone. The proceedings against the Defendant and her co-defendants, principally her twin brother, Ben Richardson, commenced in 2015 with Mr Richardson’s arrest. The Defendant was arrested in 2016.
10. Indictments charging the Defendant, Mr Richardson and Mr Richardson’s wife Dawn were preferred in mid-2017. The primary charge was evasion of VAT, but the alleged offences extended to a number of additional fraudulent activities involving the Construction Industry Scheme, Income Tax, National Insurance contributions, Mortgage Fraud and Money Laundering.
11. The Prosecution case was that the Exchequer had been cheated out of more than £2,170,000. The Defendant was charged with three counts of fraudulent evasion of VAT, concealing criminal property and fraud by false representation.
12. Between mid-2017 and the Trial in November 2022, the case was listed for trial on five occasions. The Trial in November 2022 was the sixth and final trial listing.
13. On 3 March 2023 the Defendant was sentenced to a 12-month sentence of imprisonment, suspended for 12 months. The sentence was based, as I understand it, on her pleading guilty to peripheral involvement in concealing criminal property. Mr Richardson was sentenced to a term of six years’ imprisonment.
14. Over more than five and a half years, the Appellant represented the Defendant first as junior counsel acting alone and then (from January 2019) as leading junior counsel.

Paul Lawlor’s Evidence

15. Mr. Paul Lawlor acted as Mr Richardson’s accountant between 2009 and 2015. He became a key prosecution witness at a late stage. Given his personal knowledge his evidence was, says the Appellant, fundamental to the Crown’s case against Ben Richardson.
16. The material the prosecution seized from Mr Lawlor was initially provided as unused material. I understand that it was provided in electronic format, on disc. It was so substantial that the prosecution contracted external IT consultants to scan parts of it.
17. The first tranche of documentary exhibits provided to the defence team, in August 2018, represented the evidence and material contained in four boxes which HMRC Officers seized from Mr Lawlor on or about 21 July 2015. This material amounted to more than 16,800 pages.
18. The second tranche of documentary exhibits provided to the defence in November 2018 represented the evidence and material Mr Lawlor had retained at his office. This was

contained within several lever arch files, folders and USB sticks. The bulk of that material was seized by HMRC Officers in March 2016 and August 2018. This tranche of material numbered approximately 4,600 pages.

19. Mr. Lawlor's witness statement was not composed and signed until 14 December 2018. For a period of more than three years, the prosecution remained undecided as to whether to charge Mr Lawlor with involvement in the fraud, or to rely upon his evidence at trial.
20. Ultimately, the prosecution decided that it would rely on Mr Lawlor as a witness. This was communicated to the defence team long before Mr Lawlor's statement was uploaded to the Crown Court's Digital Case System ("CCDCS").
21. When Mr Lawlor's statement was formally served in May 2020, the approximately 21,400 pages of documentary material which had been supplied to the defendants in August 2018 and November 2018 as unused material was exhibited to Mr Lawlor's statement. The Prosecution however did not upload this very substantial volume of material to the CCDCS, and it was not included within the formal PPE count.
22. Despite that, the Crown's Forensic Accountant, Ms Sara Bagnall, required sight of the entirety of the exhibits to Mr Lawlor's statement in order to compose her expert report, as did the expert Forensic Accountants instructed on behalf of Ben Richardson and the Defendant. All three experts used Mr Lawlor's statements and exhibits as the bases for their calculations, conclusions and reports.
23. The prosecution would not, says the Appellant, have been able to calculate the overall loss to the taxpayer arising from Ben Richardson's frauds (£2,170,000) without reference to the evidence seized by HMRC from Mr Lawlor.

The Defendant's "Cut-Throat" Defence

24. The Appellant says that it was necessary for the defence team to understand the totality of Mr Lawlor's evidence, and the expert evidence, in order to prepare the Defendant's defence to the accusation that she participated with Ben Richardson and Dawn Richardson in the VAT and associated frauds.
25. Her case was that Ben Richardson had duped her into becoming a director of SBR UK Ltd, one of five limited companies involved in the fraud, for about nine months in 2012, during which period the Defendant worked as a civil servant at the Ministry of Defence and played no role whatsoever in the activities of the company of which she was a registered Director. It was her defence that Mr and Mrs Richardson controlled and operated SBR UK Ltd at a time when it was evading payment of large sums of VAT to HMRC, and that they did so with the assistance of Mr Lawlor.
26. The Defendant was also accused of the fraudulent purchase of a cottage as a residence for Ben and Dawn Richardson to reside in. Her defence was that Mr and Mrs Richardson and Mr Lawlor worked with a mortgage broker together to involve her in fraudulent schemes without her knowledge, and that, in the beginning at least, she was

an innocent dupe.

27. A fraudulent mortgage application had been made in the Defendant's name. It was her defence that Ben Richardson, Paul Lawlor and David Garrod fabricated the mortgage application, without her knowledge, in 2012, and that she only became aware of the fraudulent application (accompanied by false wage slips in her name produced by Mr Lawlor at the request of her brother) long after it had been submitted.
28. Consequently, at trial, the Defendant proposed to cross-examine, amongst others, Mr Lawlor, Ben Richardson and Dawn Richardson. The defence team had to assimilate the evidence of Mr. Lawlor, in addition to the expert evidence, in order to be ready to advance the proposed cut-throat defence.

The Appellant's Claim and the Determining Officer's Decision

29. The Defendant has claimed 348 hours' special preparation, split into 19 hours at junior rates and 329 hours at leading junior rates. The Determining Officer has allowed 54 hours.
30. It would appear that the basis upon which the Appellant's special preparation was claimed, when it was put before the Determining Officer, was not as clear or consistent as it should have been, and the process of determination seems to have been marked by a degree of confusion.
31. For example, the Determining Officer's written reasons appear to refer to paragraph 20 of Schedule 2 to the 2013 regulations, which relates to the Litigators' Graduated Fee Scheme rather than Advocates' Graduated Fee Scheme (although the substantive provisions are much the same). The written reasons also address the "novel" criteria set out in the Schedule 2 equivalent of paragraph 17(1)(a), which does not seem to be the basis upon which the special preparation claim was made.
32. A taxation note supplied by the Appellant indicates that the claim was originally submitted on the basis that the exhibits to Mr Lawlor's evidence had the status of unused material. By the time the Determining Officer supplied her written reasons, the claim was clearly based upon the review of PPE in excess of 10,000 pages, but the Determining Officer still approached the claim on the basis that the exhibits to Mr Lawlor's evidence were to be treated as unused material. For that reason, she allowed 54 hours' special preparation, based upon a total PPE count of 12,678 pages.
33. I suspect that this came about because the basis for the claim was not properly spelt out, but in any event I accept that the exhibits to Mr Lawlor's evidence should not be treated as unused material.
34. I have seen a copy of Mr Lawlor's statement, which is three pages long. Its purpose was to verify the mass of exhibits that came with it. Obviously Mr Lawlor's statement is part of the PPE, and I find it difficult to see how the exhibits which it verifies could be classed as unused material, whether or not they were uploaded to CCDCS.
35. It would follow that those exhibits which had existed in paper form (which would seem

to be most of them) should be included within the PPE count.

36. As to exhibits that had only ever existed in electronic form, I refer to the judgments of Mrs Justice Nicola Davies DBE (as she then was) in *Lord Chancellor v Edward Hayes LLP & Anor* [2017] EWHC 138 (QB), and of Holroyde J (as he then was) in *Lord Chancellor v SVS Solicitors* [2017] EWHC 1045 (QB).
37. *Lord Chancellor v Edward Hayes LLP* and *Lord Chancellor v SVS Solicitors* both concerned cases in which electronic evidence (which had never existed in paper form) had not been formally served, but was instead supplied informally on disc. The principle to be derived from those judgments is that formal service is not a prerequisite to the inclusion of such electronic evidence within the PPE count. *Lord Chancellor v SVS Solicitors* established that it will be appropriate to treat it as served if it was of central importance to the trial.
38. The documents exhibited to Mr Lawlor's evidence were of central importance to the trial. It follows that all of it, including such parts of it as had never existed in paper form, should be included within the PPE count.
39. For those reasons the Appellant is entitled to make a special preparation claim for reviewing an additional 20,400 pages of evidence in excess of the PPE cap.
40. The Determining Officer has pointed out, rightly in my view, that the worklog submitted by the Appellant is not particularly helpful as a means of supporting his total claim of 348 hours' special preparation. The Appellant is equally right however to point out that the claim amounts to less than a minute per page, over a period of years. Whilst special preparation time is not assessed in minutes per page, that does offer a useful cross-check which supports the reasonableness of the total claim.
41. For those reasons, my conclusion is that the appeal should be allowed in full.