



Neutral Citation No. [2025] EWHC 181 (SCCO)

Case No: T20227178
SCCO Ref: SC-2024-CRI-000048

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 28/01/2025

Before :

COSTS JUDGE NAGALINGAM

Between:

R

-v-

Tanvir Islam & Others

IN THE MATTER OF AN APPEAL AGAINST REDETERMINATION

Stokoe Partnership Solicitors

Appellant

- and -

The Lord Chancellor

Respondent

Hearing date: 23/01/2025

Approved Judgment

This judgment was handed down remotely at 12.30pm on 28/01/2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

COSTS JUDGE NAGALINGAM

Background

1. The Defendant was charged, along with multiple co-defendants, with conspiracy to supply Class A and Class B drugs, contrary to s1(1) of the Criminal Law Act 1977 and s5(3) of the Misuse of Drugs Act 1971.
2. The Defendant's arrest followed a police investigation, dubbed "Operation Carmine", which led to the arrest of a Mr Mohammed Hamza whom, along with 4 others, was accused of running an organised crime group (OCG) which distributed cocaine, MDMA and other controlled drugs across London, and in particular within the London Borough of Tower Hamlets.
3. In December 2021, Mr Hamza pleaded guilty to his involvement in the conspiracy, and consequently it became known the OCG had been using a Mr Riaz Hussain and his brother to "bag-up" drugs and stock the bags at their home address. Drivers would then attend that address to pick up drugs for delivery.
4. Through their investigations of phones seized from Mr Hamza and his associates, the police arrested a number of other persons alleged to be involved in the drugs operations ran by the OCG, including the Defendant. Thereafter investigations focused on the Defendant's involvement.
5. The Defendant was implicated through mobile phone communications between himself, the heads of the OCG and Mr Hamza. The Defendant then stood accused of being in contact with the heads of the OCG and working on a drugs line that sold class A and B drugs.
6. Messages retrieved from the handsets of the heads of the OCG appeared to evidence the Defendant's involvement in the supply of cocaine and MDMA
7. Following his arrest, the Defendant appeared before Thames Magistrates Court on 3 March 2022, and his case was sent to the Crown Court at Snaresbrook with a PTPH listed for the 31 March 2022. At the PTPH, the Defendant was not required to attend and in his absence, the Court set dates for the preparation and management of the case.
8. The Crown relied on messages from the phone of another suspected conspirator, namely Riaz Hussain, to evidence that the Defendant participated in the alleged conspiracy. The phone download of Mr Hussain was converted into a report of 14,255 pages. It is that report which is the subject of this appeal.
9. On 11 May 2022 Counsel for the Defendant served a notice of application to dismiss all charges. At a further cases management hearing on 16 May 2022, the Court made directions for the Crown to complete stage 2 (including service of a Defence Statement) and adjourned arraignment to a date in the future.
10. Following service of a Defence Statement on 4 July 2022, the application to dismiss was adjourned to the 23 September 2022. However, due to industrial action by the Bar,

and Court availability, the application to dismiss was re-listed to 8 December 2022.

11. The application to dismiss ultimately proceeded unopposed and all three counts against the Defendant were dismissed.
12. The Appellant brings this appeal against a determination by the Respondent to allow PPE of 4,789 pages after the Appellant claimed 10,000 PPE in their claim under the Litigator Graduated Fee Scheme.
13. The Determining Officer's decision included an allowance of 2,355 pages of electronic evidence, which accounted 242 pages of contacts and calls (pages 370-482, 13,175-13,264, and 14,201-14,239), 1,006 pages of messages in the form of SMS, MMS, and chat (pages 506-1,290 and 13,283-13,304), 186 pages of location data (pages 1,291-1473 and 13,305-13,307), and 10% of the pages of images on the phone which equates to 326 pages. The remaining 595 pages are made up of 0001 to 0005 and 0007 to 0010 of Section J1 MME (served evidence).

Submissions

14. The Appellant's submissions are set out in the skeleton argument of Mr Lane dated 2 December 2024 and have been taken into account in the decision below.
15. The Appellant relies on the manner in which the download report was served, being in "the form of a paginated PDF report..". There is no dispute that the report was served, that it was in PDF format, and that the report is paginated.
16. The Appellant describes the report as being served "in its original form" and relies on the PDF format of the report in support of the same falling squarely within the paragraph 1(3)(b) definition of Schedule 2 of the 2013 Regulations (set out below).
17. The Appellant relies on the finding of the court in *R v Furniss* (Nottingham Crown Court case number T20137653) as to how electronic PPE ought to be treated.
18. The Appellant also relies on LAA Crown Court Fee Guidance (Issue October 2022) Appendix D 'PPE Definition', in particular paragraphs 52 and 53 of the same.
19. The Appellant submits that because the electronic material in question was a served exhibit (which I understand is not disputed) it falls to be counted as PPE and comes within the interpretation of a documentary exhibit at paragraphs 1(3)(b) and 1(4) of the 2013 Regulations. The Appellant's argument is that having been served, the relevance of the material contained within the exhibit need not be justified and should therefore be allowed in full.
20. The Appellant's argument may be summed up by paragraph 38 of Mr Lane's skeleton argument dated 2 December 2024, which states:

“It is submitted that this misses the point for this particular exhibit. Where the material had been served in electronic format or as data, then it is conceded that an assessment of this kind would be appropriate, however in the current case, the exhibit is a paginated PDF. It therefore comes within the category of served evidence which should be included as PPE because as the Cost Judge in *Nutting* [2013] 6 Costs L.R. 1037 concluded at para 28 ‘Had the material which was served electronically in the present case instead been relied on by the Crown before the “digital age”, it would have been printed out on paper”.’”

21. The Appellant is thus seeking that the court, as a matter of principle, find that the served report be treated as though it was not served in electronic form, or otherwise that the form it was served in means that it has existed in paper form, such that it be treated as PPE under paragraph 1(3)(b) to Schedule 2 of the regulations and outside of the exercise of discretion that arises for pages which fall under the paragraph 1(5) definition of PPE.
22. The Respondent relies on the Determining Officer’s written reasons and the additional written submissions document of Ms Walker, who appeared for the Respondent.

Relevant Legislation

23. The applicable regulations are The Criminal Legal Aid (Remuneration) Regulations 2013 (‘the 2013 Regulations’), as amended in 2018.
24. Both parties refer to and rely on paragraph 1(2)-(5) of Schedule 2 of the 2013 Regulations, which sets out:

(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.

Analysis and decision

25. In so far as any reference is made to the decision in *The Lord Chancellor v Lam & Meerbux Solicitors* [2023]EWHC 1186 (KB), I do not consider that decision, when read as a whole, assists the Appellant.
26. The reference the Appellant relies on is the “usual PDF”. However, *Lam & Meerbux* was concerned with an Excel version of data being viewed as a print preview (resulting in many blank pages) and then converted to PDF. That is wholly different from a download report being produced in editable and searchable PDF format.
27. I would have some sympathy with the Appellant’s position if all they had received was a 14,000+page document with no contents, no order, no pagination, no tabs, no hyperlinks and no search functionality. However, the precise opposite is the case in this matter.
28. Adding in the fact that the download report is taken from an exhibit which is data on a phone – data which has, by definition, never existed in paper format – *Lam & Meerbux* reinforces numerous SCCO decisions that it is then a matter of discretion by the determining officer (or costs judge on appeal) as to which of the electronic pages will be permitted as PPE.
29. For the sake of completeness, if any portion of the Appellant’s argument is to say that *any* document presented in PDF format may be treated as the document having “existed in paper form” I consider that argument fails for two reasons.
30. Firstly, PDF is still an electronic format. A PDF document is not in paper form. It may, in certain instances, bear some resemblance to or have some equivalence to paper form. However, unlike a document which has only ever existed in paper form, the PDF report in this matter enjoys a data functionality and searchability that simply is not present in a pure paper format.
31. Secondly, if all that is required to overcome the exclusion set out at paragraph 1(5) to Schedule 2 of the regulations is to convert any electronic document to PDF format, then it would render the discretion exercise at paragraph 1(5) redundant and open the door for the very kind of overpayments the court warned of in *Lam & Meerbux*.
32. As such, I do not accept the general proposition that the PDF report in this matter may be treated as falling under the definition of paragraph 1(3)(b) absent the exercise required by paragraph 1(5).
33. In so far as the Appellant relies on *R v Furniss* (Nottingham Crown Court case number

T20137653), I do not consider I am bound by the same and, in any event, the index matter does not concern a scenario by which the Respondent has “refuse[d] to include telephone material served in digital form in the PPE”. In fact quite the contrary, the Respondent not only accepts that telephone material in digital format may be included in the page count, it has also allowed remuneration that takes into account a substantial number of pages of electronic material.

34. Reflecting on the commentary in *R v Furniss*, I take the view that my role is not to comment on the suitability of the regulations and the remuneration consequences of the same, but rather interpret what the regulations permit and justly allow for. Thus one must recall that even in cases where the page count exceeds 10,000 pages, a litigator or advocate reserves the right to seek an additional remuneration claim in special preparation for pages in excess of 10,000 pages. Further, even where PPE based remuneration is allowed at less than 10,000 pages, a claim in special preparation for the balance may still be submitted.
35. The purpose of paragraph 1(5) of the regulations is to provide an important control mechanism in circumstances where, due to an increasingly digital world, an electronic page count may run to several thousands of pages, and where a significant proportion of those pages are often completely irrelevant and capable of swift dismissal, by experienced discerning legal professionals who have been tasked with focusing their minds on the relevant in favour of the irrelevant.
36. In my view, the Respondent has exercised that important function in this matter and arrived at an electronic page count figure based on sound logic, which has been explained to the court and the Appellant.
37. In so far as the Appellant has referred to the latest LAA Crown Court Fee Guidance, that is in terms of the *definition* of PPE. It does not follow that simply establishing the total page count means that remuneration will be calculated based on 100% of that page count.
38. In the index matter there is no dispute as to what the total page count of the download report is. The issue is determination of how many of those pages the Appellant ought to be remunerated for, under the PPE provisions of the regulations (with the Appellant eligible to seek a claim in remuneration of the balance as special preparation).
39. There is no dispute as to the status of the electronic material, in that the Respondent accepts the same was served. However, I disagree that any consideration of the relevance of the material may then automatically be dispensed with - because the material was served in electronic form.
40. For the avoidance of doubt, I also disagree that the report can be treated as though it is a paper report simply because it was served in PDF format. That is because one also has to consider the report produced and the functionality of the same.
41. A key factor which I consider the Appellant has neglected to account for is the fact that

whilst the download report may have been served in PDF format, it provides for functionality that goes well beyond a PDF being simply a digital equivalent to a printed page.

42. Firstly, not only is the report paginated but it is hyperlinked, such that the contents tab of the report accurately corresponds with the pagination.
43. Secondly, the contents tab permits the report to be rapidly navigated for different categories of documents. This also means that categories of documents which are obviously going to be irrelevant are capable of quick dismissal without a laborious page by page analysis. For example, pages 4,845 to 8,022 are “Apple_iPhone_Generic_P234348_:Files & Media/Databases” which represents thousands of pages of binary data. Not only would these have been capable of swift dismissal in terms of relevance, the Appellant has not elected to descend into any alternative argument as to the relevance of the sections of the report the Respondent has not allowed for in the remunerated PPE count.
44. Thirdly, and similar to the functionality offered by Excel, one can use the search bar in the PDF report to isolate, for example, all the pages containing a particular name, word or telephone number. This avoids the need for a laborious page by page visual trawl for such information.
45. In those aspects alone, there is insufficient equivalence between the pages of the report in the index matter and pages of a paper document in the pre-digital era.
46. One then considers the relationship between the report in this appeal and the wording of paragraph 1(2)-(5) of Schedule 2 to the Criminal Legal Aid (Remuneration) Regulations 2013. The Appellant’s argument is that the report falls under the definition of (3)(b) such that it qualifies as a “documentary [or] pictorial exhibit”.
47. I do not consider the Appellant’s argument that the report was served “in its original form” to be sustainable. The original form is the phone itself. The data on the phone was downloaded to a computer and converted into a format that was readily readable and navigable. That data has never existed in paper form.
48. In circumstances where the Appellant has no argument in the alternative where their primary submissions fails, and in circumstances where it is not obvious to me what additional categories of work ought to be added to the page count over and above the allowances made by the Respondent, and in the absence of any submissions in the alternative as to the percentage of images that ought to be allowed, and in any event this court being in agreement that an allowance of 10% of the pages of images is reasonable, the page count is assessed at 4,882 pages.

Costs

49. Whilst this appeal has not succeeded in terms of the Appellant’s primary argument, I do recognise that the Respondent’s entirely correct concession to permit a further 93 pages

would not have been achieved absent this appeal being raised. Accordingly, I order the Respondent to pay the Appellant's appeal fee of £100.

COSTS JUDGE NAGALINGAM