



Neutral Citation Number: [2021] EWHC 1001 (QB)

Case Nos: QA-2020-000191
QA-2020-000192

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/04/2021

Before:

LORD JUSTICE DINGEMANS
MR JUSTICE NICOL
MRS JUSTICE O'FARRELL

Between:

**(1) FOOTBALL ASSOCIATION PREMIER
LEAGUE**
**(2) SPORTS INFORMATION SERVICES
LIMITED**

Appellants

- and -

LORD CHANCELLOR

Respondent

Nicholas Bacon QC and Dominic Donoghue (instructed by **DLA Piper UK LLP** and
Hickman Rose) for the **Appellants**
Richard Clarke (instructed by **Government Legal Department**) for the **Respondent**

**SUMMARY ASSESSMENT
OF COSTS**

O'Farrell J giving the judgment of the Court:

1. In the judgment handed down remotely on 30 March 2021 (neutral citation [2021] EWHC 755 (QB)), the Court allowed the appellants' appeal on costs and remitted the case to the costs judge to determine recoverability of the pre-commencement costs and expenses incurred by private prosecutors from central funds pursuant to orders made under section 17(1) of the Prosecution of Offences Act 1985.
2. The Court ordered that the respondent should pay the appellants' costs of the appeal, such costs to be summarily assessed on paper, and gave directions for the parties to make short written submissions.
3. We are grateful to the parties for their written submissions.
4. The first appellant claims costs of £44,406.16 and the second appellant claims costs of £31,882.27. Therefore the total costs claimed by the appellants for the appeal are just over £76,000.
5. The pre-commencement costs forming the subject of the appeal were £87,050.33 in respect of the first appellant and £78,846.30 in respect of the second appellant, a total of £165,896.63.

Reasonableness and proportionality

6. The respondent submits that the totality of the claimed costs is unreasonable in amount and disproportionate to the amounts in dispute and complexity of the issue on appeal. No disclosure or new evidence of fact was required for the appeal; the preparation was limited to the appellants' notices of appeal, a joint appeal bundle, drafting of a skeleton and attendance at the remote hearing.
7. The appellants submit that the costs claimed are reasonable when having regard to the importance of the appeal to the parties, the novelty of the issues raised, the significant wider implications of the outcome for private prosecutions generally and the finality of the decision of this Court.
8. In assessing the reasonableness and proportionality of the incidence and amount of the costs incurred, the court will have regard to all the circumstances, including the conduct of the parties, the value of the claim, the importance of the matter to the parties, the complexity of the issue, and the skill, time and effort spent on the appeal as set out in CPR 44.4.
9. We agree with the respondent that the costs are too high and disproportionate to the sums in issue, amounting to approximately 50% of the disputed sums in the bills of costs. As I stated in paragraph 56 of the substantive judgment, the Costs in Criminal Cases (General) Regulations 1986 are intended to ensure, so far as possible, that costs proceedings do not themselves become expensive satellite proceedings following the original criminal proceedings. We do not doubt that the issue was of importance to the appellants, and of wider interest for those involved in private prosecutions, but the appeal concerned a single issue of principle that had been identified and argued in full before the costs

judge below. It justified careful thought and preparation but that did not necessitate long hours spent by various members of the legal teams engaged in the same tasks. We bear this in mind when considering the detail of the statements of costs and the specific objections raised by the respondent.

Application for permission to appeal out of time

10. On 1 October 2020 an Appellant's Notice and Grounds of Appeal were filed in respect of the appeal by each appellant. The deadline for filing notices of appeal in each case was 25 September 2020. Therefore, the appellants sought a short extension of time for permission to appeal. On 9 November 2020 Stewart J granted permission to bring the appeal out of time.
11. The appellants are not entitled to recover the costs of that application from the respondent and we reduce the total costs by £4,000 to reflect that element.

Unnecessary duplication and/or excessive time spent

12. The respondent submits that there has been significant, unnecessary duplication in the costs claimed. The appellants dispute that there was unnecessary duplication, drawing to our attention that steps were taken to limit the costs by sharing the costs of leading counsel and the costs lawyer and by agreeing a joint approach for the purposes of the pleadings before the Court.
13. On appeal, the Court was not required to consider the detail of the amounts claimed and recoverable in the bills of costs; the single issue of principle was the approach to assessment of pre-commencement costs, which was common to both appellants. The statements of costs indicate some unnecessary duplication of effort. We understand that the costs lawyer and solicitors for both appellants will have had an interest in reading and commenting on the skeleton but it was drafted by leading counsel over two days, having already considered the costs judgments, advised in conference and settled grounds of appeal. Similarly, the time and effort spent preparing, reviewing and revising the bundles seems to have been duplicated; alternatively, too much time has been claimed in total for preparation of the materials for the appeal. These points are taken into account when assessing the costs lawyer's time below.
14. The respondent submits that the time spent by the costs lawyer of 157 hours is excessive. In particular the following points are made:
 - i) 18 hours considering the judgment of Master Rowley and making notes for the appeal is excessive - 3 hours would be reasonable;
 - ii) 10 hours 54 minutes spent considering appeal procedure and having a conference is excessive – 5 hours would be reasonable;
 - iii) 45 hours 30 minutes spent liaising with parties, preparing an appellant's notice and detailed submissions for use in the skeleton (£4200 also being claimed for leading counsel's time spent preparing the skeleton) and reviewing draft grounds of appeal is excessive – 25 hours would be reasonable;

- iv) 6 hours 18 minutes considering *Mirchandani*, and further considering/amending counsel's skeleton is excessive – 4 hours would be reasonable;
 - v) 11 hours 18 minutes considering the Respondent's Notice and compiling the electronic bundle is excessive – 5 hours would be reasonable;
 - vi) 35 hours 12 minutes for updating the bundle with additional material, updating page numbering and skeleton references, plus reviewing Hansard and drafting a statement of costs is excessive – 8 hours would be reasonable;
 - vii) 8 hours 48 minutes considering the respondent's skeleton and Hansard reference, and updating the bundle to include new material is accepted to be reasonable;
 - viii) 9 hours liaising with the parties about relisting, reading Master Whalan's judgment and updating the costs schedule is excessive – 4 hours would be reasonable;
 - ix) it is not clear what work is envisaged in the 12 hours claimed for conferences, final preparation, considering the judgment and reporting to the Appellants - 4 hours would be reasonable.
15. The appellants submit that the majority of the preparation work for the appeal was undertaken by the costs lawyer, at the very economic rate of £120 per hour, and leading counsel, whose fees are not subject to direct challenge. The 157 hours spent by the costs lawyer was reasonable, including the following:
- i) 18 hours spent considering the 35-page judgment of the costs judge, including his approach to the issue under appeal and the additional law and cases referred to therein, in order to discuss this with leading counsel and properly advise the appellants in conference;
 - ii) 45 hours 30 minutes preparing the draft joint skeleton argument, saving time spent by leading counsel, charging a much higher rate;
 - iii) 6 hours 18 minutes spent considering the *Mirchandani* judgment, which was an important addition to the skeleton;
 - iv) 11 hours 18 minutes spent considering the Respondent's Notice and compiling the electronic bundle and index, which was a significant task as it contained 78 documents and 1,559 pages of material;
 - v) 44 hours updating the bundle and index following receipt of the respondent's skeleton and the subsequent receipt of further material, including Hansard extracts relied on by the respondent in its skeleton and which had not featured before in the appeal.
16. The appeal concerned a single issue of principle that had been identified and argued in full before the costs judge. Although it was necessary for the parties

to refine and revise the arguments for the purpose of the skeleton (and to update the skeleton taking into account the *Mirchandani* judgment), the statutory framework and most of the relevant authorities had already been considered. Although we were grateful for the care with which the case was prepared, the compilation of an electronic bundle was a straightforward exercise and the additional materials were not voluminous. We consider that excessive time was spent by the costs lawyer as set out by the respondent in its submissions and that a reduction of £10,000 from the total costs would be appropriate.

Costs incurred by fee earners for the first appellant

17. The respondent submits that where the first appellant utilised the services of a costs lawyer and leading counsel, the hourly rates claimed by the first appellant were unnecessary and unreasonable. The appellants submit that the rates are commensurate with the rates proposed by the Civil Justice Council sub-committee in its current review of guideline hourly rates.
18. Given the involvement of a costs lawyer and leading counsel, we consider that it was unnecessary for such high fee earner costs to be incurred for this appeal and that a reduction of £2,000 from the total costs would be appropriate.

Assessment of costs

19. As set out above, the costs claimed by the appellants are just over £76,000. The respondent invites the Court to assess the first appellant's costs in the sum of £27,500 and the second appellant's costs in the sum of £26,000, a total of £53,500.
20. Taking a broad-brush approach to the summary assessment, the adjustments we have identified above would reduce the overall costs claimed to £60,000, which we consider is reasonable and proportionate for this appeal.
21. For the above reasons, we summarily assess the costs payable by the respondent to the appellants in the sum of £60,000, of which £30,000 shall be paid to each appellant, such sums to be paid by 17 May 2021.