



Case No: 83/18

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/04/2020

Before :

MASTER GORDON-SAKER
SENIOR COSTS JUDGE

Between :

REGINA
(FUSEON LIMITED)
- and -
SHINNERS

This judgment does not follow a hearing

Approved Judgment

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.

A Gordon-Saker

.....
MASTER GORDON-SAKER

MASTER GORDON-SAKER:

The procedural background

1. Fuseon Limited (“Fuseon”) is entitled to a payment out of central funds under section 17 of the Prosecution of Offences Act 1985 in respect of its costs of the prosecution of Timothy Shinnars in the Crown Court at Preston. In September 2017 Fuseon submitted a claim for costs of £427,909 to the Criminal Cases Unit of the Legal Aid Agency. That claim was determined in November 2017 by Mr FitzGerald-Morris, a case manager, in the sum of £180,000. Fuseon requested a redetermination and, in February 2018, Mr FitzGerald-Morris increased the sum allowed to £240,000. He provided written reasons in respect of the redetermination in April 2018.
2. Still dissatisfied, Fuseon appealed to a costs judge pursuant to regulation 10 of the Costs in Criminal Cases (General) Regulations 1986. The appeal was heard by Master Rowley in September 2018. He dismissed the appeal by his written decision dated 30th April 2019 and, on 7th June 2019, he declined to certify a point of principle of general importance for the purposes of regulation 11 of the 1986 regulations.
3. In August 2019 Fuseon commenced judicial review proceedings in respect of Master Rowley’s decision, invoking the inherent jurisdiction of the High Court to cure a real injustice. Those proceedings were opposed by the Lord Chancellor.
4. In *Fuseon Limited v Senior Courts Costs Office* [2020] EWHC 126 (Admin) Lane J. quashed both the decision of Master Rowley not to certify a point of principle of general importance and his decision to dismiss the appeal from the redetermination. By paragraph 2 of his order dated 28th January 2020 Lane J. directed that:

“The assessment of the Claimant’s costs from central funds ...
be remitted to the Senior Costs Master for further directions
...”.
5. The decision of Master Rowley on appeal having been quashed, it seems to me that the task I am given is to rehear the appeal from the redetermination by Mr FitzGerald-Morris.
6. On 13th February 2020 Fuseon’s solicitors wrote to me requesting that I decide the appeal on the papers and without a hearing. Given the extent to which the issues have been ventilated before both Master Rowley and the Administrative Court I indicated that I was minded to do that, but would first invite written representations from the Legal Aid Agency.
7. On 16th March 2020 Mr Michael Rimer, a Senior Lawyer at the Legal Aid Agency, sent a short email to my clerk:

Thank you for your email dated 25 February 2020 which notified us that Master Gordon-Saker is going to decide the appeal on the papers and invited any written representations in

relation to the appeal or the costs of the appeal to be served and filed by 18 March.

The LAA does not have any representations on the specific question of whether it was reasonable for Mr Laycock to have instructed EMM. Paras 82 and 84 of Mr Justice Lane's [judgment] consider this point in some detail. The LAA simply submits that if this question is answered in the affirmative, the Court should go on to consider the Singh Reduction as set out in paras 41-43 of the Judgment in order to assess whether globally the costs claimed are reasonable.

8. Fuseon's solicitors made written submissions in response by their letter dated 18th March 2020.

The background to the section 17 order

9. Fuseon carries on the business of letting agents based in Horwich, a small town in Lancashire between Bolton and Chorley. Mr Laycock is its director. In 2015 he discovered that Shinnars, then a co-director, had committed fraud and theft to a value of over £100,000. The fraud consisted of failing to register tenancy deposits, charging over £50,000 of personal expenses as business expenses and creating false invoices.
10. Mr Laycock informed Greater Manchester Police but they declined to investigate, citing the effects of "austerity". So he decided to pursue a private prosecution and, having failed to find a local firm to undertake it, in January 2016 he instructed Edmonds Marshall McMahon Limited ("EMM"), who specialise in private prosecutions but are based in Central London. On 26th August 2016 an information was laid at Preston magistrates' court. The final indictment contained 6 counts: 2 of false representation, 2 of making articles for use in fraud and one each of theft and fraudulent trading. The trial of 5 counts took place over 11 days in May and June 2017 before HH Judge Knowles QC and a jury. Shinnars was convicted of 4 counts and was sentenced to 3 years' imprisonment. On 7th July 2017 an order was made "that a payment be made to the prosecution out of central funds in respect of prosecution costs, including the costs of the investigation, and that the sum to be paid shall be determined" by the National Taxing Team. In making that order the Crown Court had been specifically told that Fuseon's costs were £427,909.

The statutory framework

11. Section 17 of the 1985 Act provides:

(1) Subject to [subsections (2) and (2A)] below, the court may -

(a) in any proceedings in respect of an indictable offence;

...

order the payment out of central funds of such amount as the court considers reasonably sufficient to compensate the

prosecutor for any expenses properly incurred by him in the proceedings.

...

(2A) Where the court considers that there are circumstances that make it inappropriate for the prosecution to recover the full amount mentioned in subsection (1), an order under this section must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.

(2B) When making an order under this section, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and -

(a) the prosecutor agrees the amount, or

(b) subsection (2A) applies.

(2C) Where the court does not fix the amount to be paid out of central funds in the order -

(a) it must describe in the order any reduction required under subsection (2A), and

(b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.

12. Regulation 7 of the Costs in Criminal Cases (General) Regulations 1986 provides:

(1) The appropriate authority shall consider the claim, any further particulars, information or documents submitted by the applicant under regulation 6(5), and shall allow such costs in respect of—

(a) such work as appears to it to have been actually and reasonably done; and

(b) such disbursements as appear to it to have been actually and reasonably incurred.

(2) In calculating costs under paragraph (1) the appropriate authority shall take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved.

(3) Any doubts which the appropriate authority may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved against the applicant.

(4) The costs awarded shall not exceed the costs actually incurred.

(5) Subject to paragraph (6), the appropriate authority shall allow such legal costs as it considers reasonably sufficient to compensate the applicant for any expenses properly incurred by him in the proceedings.

The determination and redetermination

13. Mr FitzGerald-Morris took the view that “this was not an exceptionally complex Crown Court case” and that the total loss to Fuseon as the result of Shinnars’ activities was approximately £62,000 (excluding any liability in respect of the tenants’ deposits). He considered the costs claimed “disproportionate to the fairly ordinary nature of the case”. He allowed the solicitors’ time at the rates “of a local firm acting”. He first assessed the bill on an item by item basis and allowed counsel’s fees of £21,644, other disbursements (principally accountants’ fees) of £45,291 and profit costs of £215,658. He had then stood back and, applying the *Singh* principle, reduced that to £180,000. All of these figures are inclusive of value added tax.
14. On redetermination Mr FitzGerald-Morris remained of the view that the costs claimed were disproportionate and that this was “a fairly ordinary Crown Court case” rather than a complex fraud case. He was also of the view that “there should not be a significant disparity between the cost of a private and public prosecution” but accepted that a private prosecutor “does not have access to work done at the same kind of rates as the Public Prosecutor”. He maintained his view that the guideline hourly rates for Preston should be allowed, rather than the London rates claimed. However, allowing for the higher rates that private prosecutors will incur, he decreased the *Singh* reduction and increased the amount allowed to £240,000.
15. Mr FitzGerald-Morris’ subsequent written reasons are probably the most detailed that I have seen. He did not accept that Fuseon had no choice but to instruct a central London firm and considered that it could have instructed a firm in the North West. The instruction of EMM was a “luxury choice” and therefore unreasonable. Applying the guideline hourly rates for summary assessment, he had allowed the equivalent of national band one rates. So, as against £350 claimed for grade A fee earners, he had allowed £217. He had consequently reduced the travelling time and expenses claimed to that which would have been reasonable for local solicitors.
16. In respect of the solicitors’ time Mr FitzGerald-Morris had allowed, before applying a *Singh* reduction, a total of 1,107.9 hours as against 1,348.3 hours claimed. Travelling time was reduced from 63.1 hours to 23.1 hours. He disallowed all of the attendances by second fee earners, a total of 89.4 hours, on the basis that the case did not warrant either inter-fee earner discussions or two or more people attending the same event. In respect of short communications he allowed 1 hour and 53 minutes against 11.3 hours claimed, on the grounds that some of the communications were incoming, some were administrative (calling somebody who was unavailable), some were of a routine nature although timed and some were de minimis. He disallowed 5.8 hours of legal research and 44.3 hours of work of a secretarial nature (for example, copying and collating). 9.7 hours were disallowed on the basis that they fell outside the scope of the costs order. He disallowed 1.5 hours spent perfecting the contemporaneous notes

of the hearing. He allowed 2 hours, as against 45.8 hours claimed, for the perusal or review by second or junior fee earners of documents previously considered by other fee earners. Very helpfully the specific items that were disallowed were listed in appendices to the written reasons.

17. Mr FitzGerald-Morris reduced counsel's fees from £27,194 to £21,644. As against £5,000 for the first day of trial, he allowed £1,250 and reduced appearance fees of £750 and £1,250 to "half day fees" of £625. He made a modest reduction to disbursements liable to VAT by disallowing items of postage and stationery but other disbursements were reduced from £5,175 to £1,026, principally as the result of disallowed travelling expenses and hotel accommodation.
18. Mr FitzGerald-Morris explained that, having determined the claim on an item by item basis, he had then applied the *Singh* principle, standing back and considering the reasonableness of the total. It is clear that an important factor in his decision remained the disparity between the costs claimed and the probable cost of the prosecution of this case had it been conducted by the Crown Prosecution Service.

The Appellant's Notice

19. Fuseon appeals the decisions in relation to hourly rates, travelling time (appendix 1), attendances by a second fee earner (appendix 2), non-fee-earner work (appendix 5), non-recoverable work (appendix 6), attendance notes (appendix 7), some of the disallowed perusals (appendix 8), the reduction in counsel's fees for a case management hearing and the first day of trial, travelling expenses and the *Singh* reduction.
20. No appeal is made in respect of the disallowance of routine items or abortive telephone calls (appendix 3) or legal research (appendix 4).

The effect of the decision of Lane J. on the judicial review

21. Although this matter came before Lane J. by way of judicial review rather than appeal, it is clear that he considered that Master Rowley's decisions to refuse the appeal on hourly rates and the *Singh* adjustment were wrong.
22. That is apparent from the following passages in his judgment:

Hourly rates

84. Even on the basis of Mr Laycock's 2018 witness statement, read with the evidence of Mr Fairbrother, the answer to the question that should have been posed was, I find, plain. Mr Laycock had done everything that could reasonably be expected of a person in his position. He had made enquiries of his solicitors. He researched the matter online and did not find firms offering private prosecution services for fraud, who were more local than EMM.

85. Mr Laycock's 2019 witness statement contains a more detailed description of his search for a suitable solicitor, in

response to the Master's attempt to justify the designated officer's decision on rates on the basis that firms offering criminal defence services can mount private prosecutions. There is, however, nothing whatsoever to suggest that Mr Laycock knew or ought to have known about that possibility. In any event, it must be doubtful whether the Master's assumption is soundly based. The duties on prosecutors are, in significant respects, different from and more onerous than those placed on defence teams. It is, accordingly, unsurprising that Mr Laycock's 2019 witness statement records that defence solicitors he contacted were unwilling or unable to assist him.

86. Mr Boyle sought to place reliance on the judgment in *Wraith/Sheffield Forgemasters* and to categorise Mr Laycock's decision to instruct EMM as a "luxury" choice, as opposed to something an ordinary reasonable litigant would make, contrary to the guidance given by Potter J in that case. Mr Boyle also laid emphasis on the finding that, although it was reasonable for Mr Wraith to consult his trade union, the trade union "knew or ought to have known what sort of legal fees it would have to expend to obtain competent services for Mr Wraith, who lived in Sheffield and had sustained a serious accident there".

87. That imputation of knowledge from the trade union to Mr Wraith does not, however, assist the present defendants. The trade union occupied a special position, vis-à-vis Mr Wraith, in that he relied on it to handle his claim for compensation. The principle of imputed knowledge cannot be stretched so far as to fix Mr Laycock with the knowledge of some hypothetical solicitor or other legal professional. In any event, such a person would need to possess a degree of knowledge that was certainly not present in Mr Laycock's existing solicitors and which I doubt anyone would, at the time, have possessed.

88. In my view, the part of the judgment in *Wraith/Truscott* which is of more relevance in the present case is the passage in which the Court of Appeal, applying *Dudley Magistrates' Court*, set out the list of matters which should have been regarded as relevant in considering the reasonableness of Mr Truscott's decision to instruct ATC Solicitors. Importantly, one of the factors identified by the court was that Mr Truscott "had sought advice as to whom to consult, and had been recommended to consult ATC".

89. The judgment is also important for pointing out that the question of whether it was reasonable for Mr Truscott to instruct ATC "is not a question of discretion, it is a question of the proper approach to be adopted to the matter under consideration". That is precisely the position here.

90. In conclusion, the Master's decision on London/regional rates contains an error of law as to the approach to be adopted under the Regulations. As such, it is an error of the same kind as that identified in *Brewer* [2009].

Singh discount

100. I consider that the Court of Appeal authorities of *R (Law Society)* and *Zinga* are incompatible with the designated officer's decision in the present case (upheld by the Master) to introduce the CPS as a comparator for the purposes of applying the *Singh* discount. In particular, the Lord Chief Justice's judgment in *Zinga* cannot in any sense be read as justifying use of the CPS in determining what is the relevant market for private prosecutions. On the contrary, as has been seen, the whole thrust of the judgment is to the opposite effect.

101. The point of Lord Thomas's observations was to highlight the fact that the then inability of the CPS to undertake prosecutions for particular kinds of fraud was unnecessarily costing the public purse, since it was having to compensate private prosecutors using private firms that were more expensive than the CPS would be, if it were to be in a position to do the work. In the present case, by the same token, the state was unable to bring a prosecution of Mr Shinnars; not because the police and the CPS lacked in-house expertise to do so, but because of lack of resources at a time of "austerity". As the evidence shows, Mr Laycock tried his best to get the police to take the case. His decision to institute the private prosecution was a last resort.

...

104. I also agree with Mr Cohen that the way in which the CPS was used as a comparator by the designated officer and the Master inevitably involved the application of hindsight, which is not permitted in an exercise of this kind. Both the designated officer and the Master looked at how the CPS would have handled the prosecution, by reference to the now completed Crown Court proceedings.

105. As I have already noted, the claimant rightly does not contend that the *Singh* reduction can play no part in the assessment of costs of private prosecutors. I also do not consider it can be said, as a matter of law, that it will always necessarily be wrong to look at CPS costs, when determining the amount of costs to be awarded to a private prosecutor. If an individual resolves to embark on a private prosecution with no regard to whether the state is willing and able to prosecute, a comparison with the CPS might be legitimate. That, however, was not the position in the present case.

23. Clearly it would be difficult for me to reach a contrary view, even were I so minded. These issues were fully argued by counsel instructed by Fuseon and by the Lord Chancellor, the same parties as are involved in this appeal. Accordingly it seems to me that I am bound by the decision of Lane J. and it is not, I think, necessary for me to decide whether the principles of *res judicata* apply (and as to which I have had no submissions).

Hourly rates

24. It follows therefore that the appeal in relation to hourly rates must be allowed. If, as Lane J. found, Mr Laycock could not find a firm more local than EMM, it must have been reasonable for him to instruct EMM. The issue then is whether the rates charged by EMM were reasonable for a central London firm.

25. The rates charged were:

Partner (TE)	£350
Senior Associate (ME) (Bar 2005)	£285
Senior Associate (BT) (admitted 2005)	£225
Senior Associate (AF) (admitted 2016)	£225
Senior Associate (MCA) (Bar 2011)	£225
Trainee (FG) (admitted 2018)	£120/£175
Trainee (JBC) (admitted 2019)	£225
Paralegals (PH) (CK)	£120
Disclosure (EP)	£70

26. Having regard to the classifications in the Guide to the Summary Assessment of Costs, it seems to me that at the time this work was done TE, ME and BT were Grade A, MCA was Grade B, AF (whose involvement was limited) was Grade C, FG and JBC were Grade D, as were the paralegals. Other people listed in the bill are claimed as Grade D with the exception of Ms Jennifer Kay who is claimed at £225. There is nobody of that name presently admitted to the roll or practising as a barrister and, given the nature of the work that she was doing, I think that she should be treated as Grade D.

27. The guideline hourly rates for central London (where EMM were then based) for 2010 were: A £317, B £242, C £196, D 126.

28. The use of the guideline rates in the determination of criminal costs appears to derive from guidance given by the Ministry of Justice to determining officers. In *R (Virgin Media Ltd) v Zinga* [2014] EWCA Crim 1823, Lord Thomas of Cwmgiedd, then Lord Chief Justice, quoted that guidance (at paragraph 12):

"In determining... costs of a private prosecutor ... National Taxing Team determining officers will be guided as to the reasonableness of hourly rates claimed, by the composite rates set out in the Senior Court [sic.] Costs Office Guide to the Summary Assessment of Costs. These guidance rates can be found on the Senior Courts Costs Office website.

... Where the rate claimed is in excess of the guidance rate indicated in the Senior Court [sic.] Costs Office guide, further explanation should be provided in the narrative of the claim."

29. The court indicated that regard should be given to that guidance although some adjustment would be required given the passage of time since the rates were last published.
30. The guideline rates are of course just that. They are fairly blunt instruments designed to assist judges in the summary assessment of costs. The passage of time since 2010 means that they tend now to be used as a starting position rather than as carved in stone.
31. Part 45 of the Criminal Procedure Rules 2015 applies where the court makes an order for costs under Part II of the 1985 Act. Rule 45.2 provides:
 - (7) On an assessment of the amount of costs, relevant factors include—
 - (a) the conduct of all the parties;
 - (b) the particular complexity of the matter or the difficulty or novelty of the questions raised;
 - (c) the skill, effort, specialised knowledge and responsibility involved;
 - (d) the time spent on the case;
 - (e) the place where and the circumstances in which work or any part of it was done; and
 - (f) any direction or observations by the court that made the costs order.
32. It seems to me that this was not a particularly complex case. It was however conducted by specialist solicitors and, for the reasons found by Lane J., the work was properly done in London. Given the amount of time spent by the solicitors, over 1,000 hours, I do not think that it can be said that the matter was handled with despatch.
33. The only factors which it seems to me elevate this matter above the guideline rates are the specialism of the solicitors instructed and the passage of time. To my mind those factors justify the following hourly rates:

Partner (TE)	A	£350
Senior Associate (ME) (Bar 2005)	A	£285 ¹
Senior Associate (BT) (admitted 2005)	A	£225 ¹
Senior Associate (AF) (admitted 2016)	C	£210

¹ limited by the indemnity principle

Senior Associate (MCA) (Bar 2011)	B	£225 ²
Trainee (FG) (admitted 2018)	D	£120 ² /£140
Trainee (JBC) (admitted 2019)	D	£140
Paralegals (PH) (CK)	D	£120 ²
Disclosure (EP)	D	£70 ²

34. The time allowed should be recalculated at those rates.

The *Singh* reduction

35. It follows from the decision of Lane J. that the appeal in relation to the *Singh* reduction must be allowed.

36. In his written reasons Mr FitzGerald-Morris commented that the costs claimed were “disproportionate”. Proportionality, in the sense that it is employed in relation to the assessment of civil costs, is not part of the tests imposed by section 17 of the Prosecution of Offences Act 1985 or by the 1986 regulations. The determining officer’s obligation is to allow a sum reasonably sufficient to compensate expenses properly incurred. If the expenses were properly incurred, then a reasonable sum should be allowed.

37. In *R v SCTO ex parte John Singh & Co* Henry LJ said³ -:

The second point taken is this: whether the determining officer and taxing master could take an overall view and reduce the hours for each individual class of work over the board in the way that they did. The task to be performed in this taxation is preserving the balance between reasonable remuneration of the legal profession for work done on legal aid and protecting the fund against making an open-ended commitment to pay for more hours work than the task reasonably required. The judge dealt with it in this way at page 16:

... the notice of appeal ... essentially challenged the Determining Officer’s right to stand back from the individual items in the bill and determine that the aggregate produced from those individual items, although not capable of being impugned as separate items, nonetheless produced a result which established that the time claimed was unreasonable. It seems to me that that must be one of the necessary functions of the Determining Officer, once he has carried out what might be called the audit exercise in relation to the individual items on the bill. The Determining Officer in the first instance, and the Taxing Master on appeal, should

² limited by the indemnity principle

³ [1997] 2 Costs LR 56

exercise great care to ensure that the sum payable on a determination such as the one in question is kept within reasonable bounds, whilst accepting that particular clients may pose particular problems. It is perhaps well to remember the comment of Russell LJ in *Re Eastwood (deceased)* [1974] 3 All ER 603 at page 608 where he said that the field of taxation, albeit in that case an *inter partes* taxation, was one where:

‘Justice is in any event rough justice, in the sense of being compounded of much sensible approximation’.

I can see nothing to recommend an approach to taxation in this field which merely requires some justification of each item of the claim, followed by an aggregation, without a sensible assessment of the consequence of aggregation in the light of the overall complexities of the case, and above all the experience of the Determining Officer and Taxing Master.

I agree with the passage entirely. How else can the unreasonable claim be controlled? That is, the judge found, a point of principle but it is not a point of principle as to which there is any dispute. A fortuitous example of the point of principle is to be found in *R v Shemilt & others ex parte Buckley* which I have already referred to, where the complaint of taxing down the bill was at the time claimed by the applicant as “recklessly extravagant”. The proper use of the Legal Aid Fund requires that the efficient are rewarded for the economies of time in and out of court which their efficiency produces. It also requires that the inefficient are not over-compensated by being given an open cheque to take as long as they like. Reasonable economy and dispatch must be required while making proper allowance for matters such as a difficult client and the dangers of hindsight in the unpredictable field of litigation.

38. It may be remembered that Mr Pearson, the Determining Officer in *Singh*, had classified the work claimed into 15 categories of activity. He reduced some individual items but then “formed the view that the time spent was excessive, a view which I based on my experience of assessment of other solicitors’ claims in large cases ...” (quoted by Henry LJ at p.52). The Court of Appeal recorded Mr Pearson’s description of his approach:

This said, for several categories of work, I did not feel able to point to any particular attendance as being either unreasonable in length or unreasonably held, and I accepted that something was gained from nearly all the attendances. However, as well as examining each individual item, I felt it reasonable for me to step back and look at the totality of the time claimed in relation

to each type of activity and consider if, taken as a whole, the time claimed for that activity was reasonable.

To assist my task I therefore classified the activities undertaken into a total of 15 categories as listed in annex I to these reasons. This lays out a category number, class of activity, the total claimed and the total allowed after redetermination. A note then indicates if my allowance for the activity is based on a global figure of all the items classed in the relevant activity or whether I have made separate and specific allowances on the claim, my 'total allowed' figure on the chart being simply the allowance for each item totalled up.

39. What the determining officer did in *Singh* therefore was to reduce the overall time allowed for certain classes of work, so that a reasonable total was allowed for those particular tasks. The *Singh* principle cannot be used to reduce the reasonable hourly rate that has been allowed. What Mr FitzGerald-Morris did in the present case was to reduce the total sum that would otherwise have been allowed by his item by item determination. It seems to me that this approach is impermissible. That appears also to have been the view of Lane J. on the judicial review (see paragraph 91 of his judgment).
40. It is not in issue that the *Singh* principle applies to the present case, provided that it is applied correctly. I have attempted to apply it correctly below.

Travelling time

41. It follows from the decision that it was reasonable to instruct London solicitors, that some of their time spent travelling from London should be allowed. It is not however reasonable for a client to pay a solicitor to travel to him. The client is expected to travel to the solicitor. In respect of the items listed in Appendix 1 to Mr FitzGerald-Morris' written reasons, I would allow all of the time claimed (at the adjusted rates) apart from items 11 and 12 which relate to travelling to see the client and items 940 and 950 which relate to PH's attendance at trial.

Attendances by second or other fee earners

42. Reasonable time spent in inter-fee discussions is properly allowable. It is difficult to delegate tasks to junior fee earners without instructing them what to do and the reasonable time of the delegator and the delegate is usually now considered to be recoverable. Insofar as the Legal Aid Agency's Criminal Costs Assessment Manual, as quoted by Mr FitzGerald-Morris, may suggest otherwise, in my view it does not reflect current practice and is wrong. As Laing J said in *TUI UK Ltd v Tickell* [2016] EWHC 2741 (QB):

I agree with the Master that, in principle, if, as here, much of the work on files was being done by paralegals under the supervision of legal executives, it was necessary, from time to time, to have discussions between fee earners, specifically supervising solicitors, including partners.

43. On the other hand, two fee earners attending on a witness or the client will rarely be reasonable, unless there is a specific reason. Lawyers should be reasonably adept, like most people, at speaking or listening and writing at the same time.
44. For similar reasons I cannot see that more than one fee earner attending trial, together with counsel, was reasonably required save that I would allow FG, as disclosure officer, to attend the start of the trial in addition to ME. This was not a case which involved substantial documentation (114 pages of statements and 2,116 pages of exhibits) or a significant number of witnesses.
45. In respect of the disallowed items in Appendix 2 I would allow as reasonable the following: 98, 112, 148, 166, 468, 496, 137, 548, 619, 447, 621, 723, 801, 59, 21, 815.

Non-fee earner work

46. By its appellant's notice Fuseon contends that the investigation of the Defendant's social media presence, the scheduling of outstanding action, the creation of the jury bundle, the drafting of notices of additional evidence and contacting witnesses about the trial was properly done by fee earners and should not have been disallowed as non-fee earner work. I agree entirely. In my experience this work is generally done by fee earners. However photocopying bundles is not fee earner work.
47. Accordingly I would allow the items in Appendix 5 with the exception of the following:
 - 130 – printing and posting is secretarial
 - 354 – booking flights is secretarial
 - 859, 869, 871, 888 – 27 hours is spent preparing bundles. Some of this will have been copying or scanning. I would allow 20 hours.
 - 900 – “collating extra copies” can translate into English only as photocopying
 - 939 – “preparing copies of documents” can also be translated as photocopying. I would allow 3 hours as against the 7 claimed.

Non-recoverable work

48. Surprisingly Mr FitzGerald-Morris disallowed time spent liaising with counsel's clerk and an inter-fee earner discussion and also disallowed time spent providing the client with a costs estimate. It seems to me that both (items 43 and 236) are recoverable in principle, being either part of or ancillary to the costs of the prosecution. However he was right, in my view, to disallow the other items in Appendix 6. Item 178 is not part of this prosecution. Nor was the work done to advise the client on how he could obtain the Defendant's shares in Fuseon (items 218 and 220). Item 834 was properly disallowed as it was duplicated work which Fuseon's own solicitors decided should not be charged (and so presumably was not charged to the client).

Attendance notes

49. I would allow the 1.6 hours claimed, but disallowed, for drafting attendance notes of the court hearings listed in Appendix 7. These are notes of substance which record what happened in court.

Perusals

50. By the appellant's notice Fuseon contends that Mr FitzGerald-Morris should have allowed work done in respect of drafting the advice on evidence, drafting instructions to counsel, analysing the bank statements and creating a schedule of transactions and the time spent by the disclosure officer preparing for trial.

51. In relation to the items listed in Appendix 8 it seems to me that some should have been allowed and some should not:

36 – should be allowed. It is reasonable that the partner reviews the witness statement.

75 – should be allowed. This was the partner answering the expert's enquiries.

92, 94, 96, 106 – should be allowed but for less time. This was the review of the evidence submitted by Fuseon and the forensic accountant (77pp) which led to the advice given to the client and the draft schedule of charges. The total of 20.5 hours however seems high. I would allow 15 hours in total.

97 – should be allowed. It is reasonable that the partner reviewed that advice.

109 – should be allowed. This was reviewing the company's bank statements.

493 – should be allowed. This was a junior fee earner drafting instructions to counsel. I cannot see that there was any duplication.

502 – should be allowed. This would appear to be a reasonable inter-fee earner discussion.

589 – should not be allowed. This was a junior fee earner reading the attendance note of the PTPH, rather than the communication of instructions to him.

600 – should be allowed in part. It was reasonable that this junior fee earner should read the accountant's report in preparation for drafting the schedule referred to. However I would allow 3 hours rather than 4.

790 – should not be allowed. It is not necessary for every fee earner to read everything.

891 – should be allowed. This was assistance with the trial bundles.

901, 907, 951 – should not be allowed. This was trial preparation by the second fee earner who attended trial, the attendance of whom I have disallowed.

Counsel's fees

52. Overall my view is that the fees of counsel claimed in this case appear quite modest and the determining officer had no difficulty in allowing most of them. He did however reduce the fee for the case management hearing on 24th November 2016 from £1,250 to £625. It would have been helpful to have an explanation as to why this fee was out of kilter with the other fees for interim hearings where £750 was charged. Without such explanation no more than £750 would be reasonable.
53. Mr Potter's clerk charged a brief fee of £5,000, in addition to preparation of £4,500 and 8 refreshers of £550. Mr FitzGerald-Morris reduced the brief fee to £1,250.
54. The conventional way of viewing counsel's brief fee is that it includes all preparation and attendance on the first day of trial: *Loveday v Renton (No 2)* [1992] 3 All ER 184. So, viewed in conventional terms, Mr Potter's brief fee was £9,500, as against which the determining officer allowed £5,750.
55. The "reasonable brief fee" that should be allowed is the fee that "a hypothetical counsel, capable of conducting the case effectively, but unable or unwilling to insist on the higher fees sometimes demanded by counsel of pre-eminent reputation, would be content to take on the brief: but there is no precise standard of measurement and the judge must, using his or her knowledge and experience, determine the proper figure" – per Pennycuick J. in *Simpsons Motor Sales (London) Ltd v Hendon Corpn* [1964] 3 All ER 833. In criminal cases the factors which should be taken into account are helpfully suggested in Part II of the Taxing Officers' Notes for Guidance (2002). The amount of preparation time is a factor but brief fees are not the product of preparation time multiplied by an hourly rate.
56. This was a 9 day trial for fraud in the Crown Court. As I have already indicated it was not particularly complex. Mr Potter was then a senior junior and, I believe, has since been appointed a circuit judge. 30 hours has been suggested as reasonable preparation time and I would accept that. The statements and exhibits would probably have run to 4 or 5 lever arch files. The refreshers claimed are very modest.
57. I cannot say that £9,500 was an unreasonable brief fee and the fee charged of £5,000 should be restored.

Travelling expenses

58. It follows from the decision that instructing London solicitors was reasonable that some of the travelling and accommodation expenses should be restored.
59. In respect of the items listed in the schedule of "other disbursements" to Mr FitzGerald-Morris' original determination I would allow items 22 to 37, 39, 45, 53 to 57, 61, 62 and 64, being the expenses of travelling to court and accommodation expenses of ME and FG. I would not allow further sums for items 1 to 7 as they relate to the costs of travelling to the client, postage (which should be included in the solicitors' overheads) and the travelling and accommodation expenses of PH.

The *Singh* principle

60. The *Singh* principle having been applied incorrectly by Mr FitzGerald-Morris, it falls to me to apply it as best I can.
61. I would not apply the *Singh* principle to the items which I have allowed at paragraphs 41 to 51 above which were previously disallowed. I am satisfied that the time now allowed in respect of those items was reasonable without further reduction.
62. In respect of the solicitors' time that was allowed by Mr FitzGerald-Morris, I do think that 1,107.9 hours is simply too high to be reasonable.
63. Fuseon is entitled, under the order that was made, to the costs of investigation as well as prosecution and I take that fully into account. However, at the risk of repetition, this was not a complex case. Nor was it a document heavy case. There were 114 pages of statements, 2,116 pages of exhibits and 517 items of unused material.
64. Fuseon's claim for costs was presented as 2 spreadsheets of 74 and 987 items listed chronologically. The first is in respect of disbursements and the second profit costs. In determining the claim Mr FitzGerald-Morris rearranged the schedule of profit costs by fee earner. That enabled him to produce the totals for each grade of fee earner.
65. Claims for costs out of central funds are usually made by prescribed forms which divide the solicitors' time between preparation, attendance, travelling and waiting. Because of the way the claim was drawn and the way that it was determined it is, in practical terms, impossible to divide it between particular tasks and activities (in the way for example that Precedent S, the electronic bill for detailed assessment in civil cases, can be manipulated). The only sensible way of approaching it is by reference to fee earner rather than activity. In fact, as the fee earners were involved with different aspects of the case, the two are not very different.
66. TE's time was allowed on the item by item assessment at 62.7 hours. The work was essentially review and oversight at partner level. In my view that does not require further reduction.
67. ME was the principal fee earner involved, had the day to day conduct of the case from May 2016 to trial, and was allowed 541.3 hours. The time allowed seems surprisingly high, particularly taking into account the time allowed for other fee earners, and in my judgment should be reduced to 450 hours.
68. BT was allowed 65.7 hours. He was the principal fee earner before ME and had day to day conduct between February and June 2016. I would not make any further reduction.
69. MCA was allowed 5 hours in respect of the draft of the witness statement of Louise Trinder. The other fee earners treated on the determination as Grade C fee earners (AF and JK) were allowed a total of 2.4 hours. I would not make any further reduction.
70. The Grade D fee earners (other than EP) were allowed 379.3 hours. As one would expect they were involved in the more routine work and document management,

including disclosure. They were also involved in some less routine work (particularly FG) such as drafting witness statements. Overall I think that the time is too much to be reasonable and I would allow 320 hours, or roughly a 15% reduction. As the Grade D fee earners are allowed at 2 different rates (£120 and £140) the total number of hours at each rate should be reduced by 15%.

71. EP (a Grade D fee earner charged at £70) was involved in the initial work of reviewing and scheduling disclosure. 51.4 hours were allowed and I would not make any further reduction.
72. The total allowed is, I think, 957.2 hours, to which should be added the items which were disallowed but are now allowed at paragraphs 41 to 51 above (all recalculated at the rates now allowed), counsel's fees and travelling expenses.

Decision and costs of the appeal

73. The appeal is allowed to the extent indicated above.
74. On the assumption that the sum now allowed is greater than that allowed by Mr FitzGerald-Morris, Fuseon is entitled to the costs of the appeal to Master Rowley pursuant to paragraph 4 of the order of Lane J. The costs claimed of £11,953.50 plus value added tax are surprisingly high for a short hearing.
75. The hourly rates claimed are in line with what has been allowed above. I would allow the communications and the solicitors' attendance at the hearing as claimed. The costs lawyer's fee should be reduced to £1,500. I would disallow the photocopying, which was not of unusual amount. The 33.1 hours on documents is surprising. I appreciate that there was a significant sum in issue but a criminal costs appeal is generally the pursuit of an argument, and usually not a complex argument, which has already been argued. I would reduce the time claimed by one-half. I think that gives a total of £7,232.50, excluding value added tax (9,172.50 – 3,540 + 1,500 + 100). If Fuseon can claim credit for the value added tax as an expense, it should not recover it.
76. In any event it must be entitled to the costs of this appeal. For that, 8.5 hours at £225 is claimed. The Lord Chancellor was invited to make submissions on the costs of the appeal but did not. I think 5 hours at £225 would be reasonable. That is a total of £1,125 plus value added tax (if recoverable).