



Neutral Citation No.[2022] EWHC 3111 (SCCO)

Case No: T20097647

SCCO Reference: SC-2022-CRI-000031

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 24 November 2022

Before:

COSTS JUDGE ROWLEY

R

v

BHADRESH GOHIL

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

Appellant: Imran Khan & Partners (Solicitors)

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

The appropriate additional payment, to which should be added the sum of £2,000 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

COSTS JUDGE ROWLEY

Costs Judge Rowley:

1. This is an appeal by Imran Khan & Partners against the sums allowed by the determining officer in respect of confiscation proceedings under the Criminal Legal Aid (Remuneration) Regulations 2013.
2. Mr Bhadresh Gohil was a solicitor in private practice who represented, or at least assisted, James Ibori, the one-time Governor of Delta State in Nigeria. Mr Gohil pleaded guilty in 2010 to four offences of money laundering and one of prejudicing an investigation. He later pleaded guilty to a further eight offences arising from the investigations of the Metropolitan Police and was sentenced to a total of 10 years in prison. According to the Section 16 statement served by the prosecution in the subsequent confiscation proceedings:

“The defendant’s role, utilising his position as a solicitor, was to assist James Ibori, and his relatives and associates in the laundering of James Ibori’s proceeds of crime. The defendant received criminal property into his client accounts, or the accounts of companies which he controlled and then arranged for them to be used in the purchase (or attempted purchase) of assets including various properties and an aircraft. In carrying out these actions the defendant arranged the setting up of offshore companies, allowed his client accounts to be used in the laundering of James Ibori’s proceeds of crime and modified his records to try and hide the true ownership of the assets.”
3. Imran Khan & Partners did not represent Mr Gohil in the substantive proceedings. Indeed, they were not involved originally in the confiscation proceedings either. They began representing Mr Gohil on 8 August 2018 and came off the court record in 2020 with the confiscation proceedings still continuing.
4. The length of these proceedings marks them out as being exceptional. There are numerous other facts which could be set out to amplify this point but the existence of 225 appendices to the defendant’s Section 17 statement is more than sufficient on its own. The prosecution relied on the entirety of the trial bundle based on a later Section 16 statement that it served. The defendant, notwithstanding that he had pleaded guilty in the substantive proceedings, sought to argue that he was essentially not guilty in the confiscation proceedings since he had received no criminal benefit. According to the prosecution’s financial investigators report, the defendant was convicted of offences benefitting the defendant in the sum of £16,973,657 which, together with benefits calculated under statutory assumptions of £24,230,631 generated a total benefit of £41,204,288. Available assets to the defendant were valued at £28,357,019.
5. In the context of such proceedings, it is not surprising that the claim by Imran Khan & Partners for costs so far has been allowed at £185,711.62, nor that there is a further £137,241.59 at stake in this appeal. In fact, at the hearing of this appeal I was informed by Mr O’Donnell, a solicitor at Imran Khan & Partners, that two of the four grounds of appeal were not being pursued, but that only reduced the sum in issue slightly (to £133,040.12.)

6. There is no dispute that this is an exceptional case and the determining officer allowed 100% enhancement to reflect this.

Documents from the defendant

7. The first challenge relates to documents which are described in the spreadsheet setting out the claim as being “Docs from client re PoCA defence.” In the entry at line 71, the determining officer allowed 516.9 hours of the 1,648 hours claimed for considering these documents over a period of seven months. She considered that the documents would always have been referred to a forensic accountant in a case of this nature and therefore although it was reasonable to the documents to be considered by the fee earner with conduct in the first instance, the determining officer did not think that consideration in such detail was justified. Instead, she allowed preparation / consideration time equivalent to 8 weeks’ work solely on this documentation. That translated to 500 hours for Mr O’Hara who was the fee earner with conduct and a further 16.9 hours of grade C time that was not in dispute.

8. In her written reasons, the determining officer describes the documents from the defendant in the following terms:

“These documents, as well as vast quantities of financial records, include general trial material in relation to the substantive proceedings against this defendant and his co-conspirators. In relation to these documents, I was asked to take into account the following to support the time claimed:

- i. The defendant was a “*commercial solicitor*” and instructed “*detailed consideration of papers as being relevant*”;
 - ii. The defendant’s previous solicitors had withdrawn following the breakdown of the “*professional relationship...after they had failed to consider material directed to them by the defendant*”;
 - iii. The prosecution’s case that much of the defendant’s business dealings were fraudulent;
 - iv. Despite the defendant having been both found guilty and pleaded guilty he continued to protest his innocence.”
9. Mr O’Donnell indicated that the defendant had produced bundles of documents to challenge each and every allegation made by the prosecution. Much of that documentation came from the trial bundle. The defendant’s background as a commercial solicitor meant that his instruction to consider the documentation to support his argument was rather more compelling than some other defendant’s instructions would be. He did not accept therefore that much of the documentation was not relevant to the POCA proceedings. The complexity of the network of offshore companies that were used meant that not only a forensic accountant but also Ogier were instructed to see whether what had been done was actually illegal in some instances.

10. In her written reasons, the determining officer considered that much of the documentation provided by the defendant was not directly relevant to the POCA proceedings and/or would be more appropriately considered by the instructed forensic accountant.
11. Mr O'Hara, who also attended on behalf of Imran Khan & Partners, stated that the accountant instructed was very clear that he required the material he was to consider to be focused. Otherwise, he would not have the capacity to deal with the case. Mr O'Hara said that in fact most forensic accountants would not have the necessary capacity and there was some difficulty in finding one who could do so. Mr O'Donnell disputed the suggestion that all of the documents would be sent to the forensic accountant. He informed me that the accountant was given 2,366 pages to review which was approximately 3% of the total pages in this case. In addition to the risk of overloading the accountant, Mr O'Donnell pointed to the cost of the accountant reviewing the documents at £144 per hour (based on figures in the 2013 Regulations) which was obviously not cost-effective when compared with the documents being reviewed by the solicitors at any of their hourly rates.
12. The determining officer's direct comments in respect of the documents provided by the client are set out in paragraph 10 above. It is a very short set of reasons for a time claimed of 1,648 hours, even allowing for the comments on the spreadsheet which I have précised at paragraph 7 above.
13. The determining officer's central reasoning for allowing less than one third of the time claimed is that the documents should not have been considered in detail by the solicitors. For some of the documents, the detail would be considered by the forensic accountant; for others, they simply did not relate to the POCA proceedings. There are no examples given of either category in the written reasons and it seems to me that the solicitors' explanation of why they considered the documents in detail is to be preferred. I accept that the extent of the documentation could very easily overload a forensic accountant and the hourly rate charged by that person to consider all of the documentation would not be a cost-effective approach for the public purse. In any event, the solicitors dealing with the claim could not simply abdicate responsibility to the expert in this fashion. Given the extensive information involved, it may well be that both the solicitor and the accountant needed to consider the documentation. However, it would appear that the accountant has been saved from doing so by the efforts of the solicitor.
14. The reason that the comments are so succinct is, it appears to me, that the determining officer really relies upon her application of the so-called "Singh discount" (from the case of R v Supreme Court Taxing Office ex parte John Singh & Co [1997] 1 Costs LR 49) to justify the reduction. I have said that this appears to me to be the case because the written reasons do not specifically say that is what has happened. But, under the heading "*Application of "Singh"*", in the written reasons, the determining officer's approach is set out of taking "a broader view in relation to some of the subcategories of work." I have therefore considered the possibility that the consideration of the documents from the defendant is one of those subcategories.
15. The determining officer sets out the well-known passage of the Court of Appeal's judgment in Singh as follows:

“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 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.”

16. The determining officer records that her application of the Singh approach was criticised by the solicitors as failing to be sufficiently particularised. She stated her approach in the following paragraphs of her written reasons:

“The application of the principles of Singh have long been accepted as a reasonable approach on taxation, in particular where there are vast quantities of documentation in a case.

Whilst I accept that “*the audit exercise is understood to require an item by item assessment*”(Waite), this does not prevent me from applying the same principle to a claim where a vast number

of documents are considered in relation to a particular part of the preparation...

I remain of the view that my application of *Singh* was both fair and reasonable. Unlike in *Davis* my reduction was not based on a comparison of the costs claimed for the co-defendants, but on my experience (30+ years) of determining claims for costs, including costs in substantive proceedings prior to the introduction of the graduated fee schemes, as well as consideration of the circumstances of this case and proceedings and a proportionate sample of the documents provided.

As in the case of *Miller Gardner v Lord Chancellor* my “application of experience...inevitably involves an element of “feel”, which (it is not) possible to express very precisely.”

17. I do not need to say anything about the case of *Davis* since the determining officer expressly took a different approach. But I have made reference to the decision of Costs Judge Brown in R v Waite (SC-2020-CRI-000094) later in this decision.
18. In the paradigm case, a solicitor’s claim for costs is dealt with line by line by the determining officer. Each entry is either disallowed or allowed in whole or in part. When the total of the entries is aggregated, that sum may need to be considered further by the determining officer to satisfy themselves that not only is each individual entry allowed in a reasonable amount but that the total figure is also reasonable. This is described in Singh as being the justification of each item of the claim followed by an aggregation.
19. It is therefore a two-stage process requiring a detailed consideration (sometimes described as the “audit stage”) followed by a “stepping back” to consider matters on a broader basis. Both stages are important and it is the solicitors’ argument in this case that the first (audit) stage has not been carried out. It ought to be the case that the determining officer can either point to a statement in the written reasons (or spreadsheet) confirming that all the individual items are reasonable in themselves or that the individual entries have been assessed down, where the determining officer believes a certain activity has taken too long, for example. Those individual entries can then be totalled to a figure (whether 1,648 hours or fewer) before the determining officer steps back to consider whether that aggregated figure is unreasonable and should be discounted.
20. I cannot see in the written reasons or spreadsheet that the determining officer has in fact carried out the audit stage in the manner that I have set out. In the original determination it appears to me that she accepted that it was, in principle, reasonable for all of the documents to be considered by the solicitors taking all the relevant circumstances into account, but she did not consider the time taken overall to be reasonable. She said the following:

“I am satisfied that this work qualified as preparation as set out in the Regulations and I am also satisfied the work was actually done. Having gone on to consider whether the totality of the time claimed is reasonable, my view is that it was not.”

21. It does not seem to me that this statement, which is the closest to a statement following the audit stage that I have seen, is sufficient for me to be satisfied that the determining officer did consider all of the entries to be individually reasonable.
22. In fact, I think the key to the determining officer's approach is set out in the first two paragraphs of the quotation in paragraph 16 above regarding the "vast" amount of documentation in this case. This is reflected in the claim spreadsheet which runs to more than a thousand lines claiming over 3,700 hours of work. Is a determining officer really expected to carry out a line by line assessment of every entry? Or, as appears to have occurred here, is a broader assessment appropriate in respect of some subcategories of work?
23. In my view, the 2013 Regulations expect the determination to be carried out by looking at each and every entry. Furthermore, the case of Singh certainly requires that approach as a first stage before any broader view is taken. In my judgment the determining officer here has elided the two stages by considering a sample of the documentation supporting the time claimed and then "taken a view" of the reasonableness of the time claimed overall. Having decided that the overall time of 1,648 hours was unreasonable, the determining officer has then imposed a lower figure which she considered to be reasonable. When challenged, she has described the reduction as reflecting a Singh discount.
24. I should say at this stage that it seems to me the determining officer has assessed this bill with considerable diligence. It is obviously a significant undertaking and she has gone into detail on numerous occasions and has clearly considered the documents provided to her both electronically and on paper. This must have been a hugely time-consuming exercise and if every line was to be considered individually, that would have involved yet further time. The question clearly arises as to what is a determining officer to do if it is not realistically possible for all of the lines to be considered individually?
25. The answer, fortunately in my view, is actually relatively simple. The 2013 Regulations may expect a line by line assessment but, as the practice has plainly already arisen, a determining officer may take something of a "sampling" approach in order to consider a proportion of a category of work done in detail and then to extrapolate that consideration to the whole category. The crucial point is that the methodology needs to be explained if it is challenged by a redetermination. Just as it is unrealistic for every supporting piece of paper to be read in larger cases, so too is it unrealistic for every entry to be considered individually where thousands of entries are concerned. A determining officer must, in my view, be entitled to harness their experience with the evidence provided in the particular case to form a view on certain aspects where that is appropriate. But if it is challenged, then it needs to be justified in its own right and not by reference to a Singh discount. The case of Singh only deals with cases where the entries are all considered to be reasonable individually, but the aggregate is not.
26. This leads me onto the case of Waite. There, 878 routine items had been claimed and the determining officer allowed 500. In her written reasons she stated:

"There were 878 routine items claimed in this case. Rather than check every individual item (I was unable to as the disc supplied was inaccessible) I looked at approximately 25%, over 220 of the routine items which were available, a good amount allowing

me to make a sensible estimation of a reasonable amount to allow in this case. There were abortive calls – no answer, messages left to return calls – and email threads containing multiple emails where one telephone call would suffice. Had these emails needed to be sent as letters, I doubt very much they would have been sent, and it follows that should not be considered suitable payment from the fund.

The disc provided would not open all the information it contained, so rather than waste time I considered the simplest solution was to take a global view based on the many cases of similar size and type that I have determined in the past 30 years, and allow a figure commensurate with those cases. I took into consideration the fact that this case ran for a little over 2 years, the amount of papers and issues involved, and all the other relevant factors, and I determined 500 routine items were reasonable in all the circumstances of this case.”

27. It can be seen from this description that the determining officer took the sampling approach. Whilst it was done to avoid “wasting time”, I do not take the view that there has to be any such exigency to adopt this approach. The question is one of whether it is appropriate in the circumstances of that case to take a broader view of the particular category of work.
28. It was the appellant’s solicitors in Waite who criticised the approach by saying that every item needed to be considered and raised the issue of a Singh discount. Costs Judge Brown rejected the challenge to sampling in the case and was plainly concerned about how the solicitors could challenge the extent of the documents seen when the determining officer had made it clear that she could not access the disc and had not been provided with any alternative copies. He upheld the determining officer’s allowance based upon the reasons given by the determining officer.
29. The determining officer’s written reasons in this case refer to Waite in terms of the phrase “*the audit exercise is understood to require an item by item assessment*”. The passage in Waite following this quotation then goes on to distinguish between the process of standing back after assessment of the individual items in Singh from a process of ascertaining the reasonableness of a large number of small items by a process of sampling. I respectfully agree with that distinction. To the extent that the determining officer seeks to draw any support from her quotation of Waite as enabling her to sample the individual items and directly employ a discount by reference to Singh then I do not think Costs Judge Brown’s decision provides any such support.
30. Drawing the threads together, the determining officer in this case could have sought to justify her allowance of 500 hours at Grade A by reference to a review of some of the documents and her knowledge of the case. Alternatively, she could have assessed all of the individual items and then stepped back to consider if that overall figure was unreasonable.
31. I have described above that I am not entirely clear as to which of the two approaches the determining officer has taken. If it is the “sampling” approach, then I have already set out that I prefer the solicitors’ view of the matters upon which the determining

officer based her reduction. If, on the other hand, the determining officer has indeed sought to apply a Singh discount, then the process has been undermined by the absence of an audit stage establishing the aggregate figure on which to consider the overall reasonableness. In either eventuality, my conclusion is that the determining officer's allowance of 500 hours cannot stand.

Ibori Confiscation Bundle

32. The second challenge concerns the time claimed in respect of considering the confiscation bundle. It is described in the correspondence as being the Ibori confiscation bundle but Mr O'Hara said that it was properly described as the Ibori, Gohil and Onuigbo bundle. He said this in order to make the point that the bundle related to all three defendants and that since they faced a joint benefit claim, then everything was relevant to each defendant.
33. In the spreadsheet, the determining officer reduced the 305.5 hours claimed (there are a further 10.4 hours which are not in dispute). The determining officer allowed 100 hours for this work and stated at line 816:

“A total of 315.9 hours claimed for considering the confiscation bundle in the Ibori POCA proceedings along with the closing submissions and authorities bundle (11,937 pages). The closing submissions and authorities have been considered by JO, the bundle by GS at grade A. JO is the FE with conduct of this matter. I find no justification for this work to have been undertaken by a grade A fee earner. As at line 620 - it would be reasonable to use a search mechanism to discover any documents/comments that have a direct impact on this defendant. Reasonable time allowed.”

34. The determining officer amplified these comments in her written reasons. She said that an index to the bundle had been considered and from that index the reader could easily identify the documents that were particularly relevant to this defendant and then the determining officer provides three examples. She said that many of the documents within the bundle had limited relevance to the POCA proceedings or would have been considered elsewhere, for example copies of the indictments against all the defendants, photographic exhibits and copies of passports. The bundle consisted of 1,166 pages plus appendices. The appendices relevant to Gohil, according to the determining officer, amounted to 3,707 pages.
35. The interrelationship between the defendants was at the heart of Mr O'Donnell's submissions on this part of the appeal. He said that various elements of the prosecution claim were said to be put against either Ibori or against Gohil in different proceedings that were on foot. The solicitors considered whether to delay the Gohil confiscation proceedings to prevent this uncertainty by waiting for findings to be made in respect of Ibori. Mr O'Donnell also told me that the cost of a noting brief in respect of the Ibori proceedings had been granted by the LAA which demonstrated the interlinked nature of the defendants.
36. Mr O'Donnell drew my attention to the determining officer's comments in her second redetermination under this heading. She accepted that the evidence against the main co-

defendant was directly relevant to Gohil's proceedings but took the view that it was not reasonable for these documents to have been considered in such detail. She then went on to say that there were a number of keywords and phrases on which an initial search of the bundle could have been used. Taken together with other available documents, they would provide a starting point for the initial sift of documents that may have been relevant.

37. I was told by Mr O'Donnell that the proceedings were so old and the documents that were relevant to them were of such a vintage that they were scans of scanned documents. They could not consequently be produced in an Optical Character Recognition format and so could not be searched in the way the determining officer suggested. The total number of pages in the bundle was 11,937.
38. I do not think that there is any suggestion that a Singh discount has been applied in respect of this category of work. The determining officer has simply taken the view based on a review of the documents that the amount of time taken to consider the relevant ones was too long and is therefore reduced it to a little under a third of the original claim.
39. Having heard the solicitors on the appeal, I prefer their description of the relevance of the documentation. In particular, the interrelated nature of the benefit claimed against all of the defendants in the confiscation proceedings and the need to consider all of the documents. I do not get the impression from the determining officer's comments that she considered the amount of time claimed was unreasonable if all of the documentation had to be considered in detail. There is the suggestion that some form of filtering, presumably electronically, might have been employed but given the age of the original events in this case, I accept the solicitors' description of the documentation as defying the modern usage of OCR to search for keywords et cetera. I have come to the conclusion that all of the documentation needed to be considered in detail on the basis that it was all relevant to the confiscation proceedings against Gohil.

Assessment of the claims for consideration of documents

40. Having concluded that the determining officer's assessments of the time claimed in respect of both the documents provided by the defendant and the Ibori confiscation bundle needs to be reconsidered, I need either to return this case to the determining officer with a direction to reassess the time claimed on the basis set out in this judgment, or to substitute figures.
41. I have not considered the documentation in the detail of the determining officer and there is certainly something to be said for remitting this assessment to her. However, the assessment process has been on foot for some considerable time and a detailed assessment by the determining officer would involve yet further time on her part which could perhaps be better spent dealing with other claims. For those reasons, I have decided that it would be better for me to reconsider the assessments in this decision, notwithstanding the much broader brush that would have to be employed.
42. During the appeal, Mr O'Donnell raised the guidance in the Criminal Bills Assessment Manual of, as a "rough guide", the spending of two minutes per page to read and consider the contents of a document. In Mr O'Donnell's submission, if the number of pages were divided by the number of hours spent, then Imran Khan & Partners came

well within the guidance. This was not a new point and the determining officer had previously pointed out that the manual states in the introduction that it applies to the assessment of bills in criminal matters in cases “(other than in the Crown Court)”. As such, in her view, the “rough guide” was of little relevance.

43. Mr O’Donnell did not accept that the manual only applied to cases other than in the Crown Court. He referred to the index which showed that the manual does specifically apply to confiscation proceedings at Section 11. They are the only proceedings which are assessed “ex post facto” and as such do not fit within the graduated fees which are the essence of the Crown Court arrangements. Mr O’Donnell also suggested that if two minutes per page was sufficient for magistrates’ court work, then it could hardly be any less for Crown Court work.
44. As both the determining officer and Mr O’Donnell accept, and as has been said in previous cases, the amount of time to be allowed is not to be calculated on a minutes per page basis. Consequently, the rough guide in the manual can be no more than a cross check to an assessment based on the times actually claimed in the documentation involved.
45. I have formed the clear view that this is an exceptional case, notwithstanding the fact that those cases which go on appeal to costs judges are often somewhat outside the norm. Consequently, even though the amounts of time claimed are hefty, it does not seem to me that they are obviously above the amount of time that might reasonably be spent in considering the extent of the documents of which I am aware.
46. The determining officer’s reduction to the time claimed centres very much on the relevance of the documents. She has discounted the time on the basis that many of them either did not need to be considered or not considered in any detail. I have taken a different view and, on that basis, the prospect of allowing all of the time claimed comes into view. The complexity of the issues involved means that the solicitors could not give work to others such as the forensic accountant without understanding both the detail and the overview of the case themselves.
47. On the basis that the overall amount of time appears justified by the weight of this case and the “rough guide” suggests that the work was done at an appropriate pace, it seems to me inescapable that I should allow the time actually claimed rather than the 30% or so allowed to date. As such I allow the claims of 1,648 hours and 305.5 hours respectively.

Grades of Fee earner

48. The scope of this challenge was reduced at the appeal hearing from the matters set out in the appellant’s notice. The challenge came down to work carried out by two Grade A solicitors which was allowed at Grade B and some work carried out by a Grade B fee earner allowed at Grade C.
49. The appellant’s notice states that the LAA has accepted that these are “uniquely exceptional” proceedings. In those circumstances, the solicitors say that it is entirely reasonable to deploy Grade A fee earners and especially so in relation to the tranches of work concerned. Shobhini Ehzuvan was deployed to carry out work on the corrections and errors material relating to the forensic report as well as the disclosure

bundle. Balvinder Gill was deployed to carry out work on the Ibori transcripts, the material served by the CPS and by a third party.

50. The communications with the determining officer during the redetermination process repeatedly raised the rhetorical comment of if a Grade A fee earner could not be used on this case, then when could it happen? The determining officer responded with reference to the regulations which required her to assess the appropriate grade of person who did the work (or ought to have done the work) in the determining officer's opinion and to allow an appropriate hourly rate to whichever was the lower grade. Concluding that the case justified a 100% enhancement did not obviate the need for carrying out that assessment. Furthermore, the determining officer made reference to the comment in the request for redetermination that the instructing solicitors only had a "finite number of grade B fee earners each of whom have a finite capacity." In a similar vein, the determining officer pointed out that Ms Ehzuwan was not held out as a specialist POCA practitioner unlike, for example either Mr O'Hara or Mr O'Donnell.
51. At the appeal hearing, Mr O'Hara informed me that he had been trained by Ms Gill and that both had traditionally been heavily involved in this line of work. The work on which they had been deployed was focused and important work. Mr O'Hara could have claimed his own work at Grade A, based on subsequent decisions, but claimed it at Grade B. He was certainly under the impression that this grading impacted on the determining officer's willingness to allow other solicitors to claim Grade A rates when he was the fee earner with conduct of the case overall.
52. Whilst that might be a natural reaction, it does not seem to me that the determining officer has given any indication that that was relevant to her decision. I note that she originally gave the requested enhancement on the basis of the skill and expertise demonstrated by Mr O'Hara rather than in respect of the complexity et cetera of the proceedings themselves. On that basis, not all of the work would necessarily receive enhancement and the determining officer had taken the approach of disallowing enhancement on certain routine items. That conclusion would also lead to a view being taken about the skill and expertise being demonstrated by other solicitors involved in the work and that is the approach that is demonstrated by the determining officer in this case.
53. Having looked at the work being carried out by Ms Gill and Ms Ehzuwan, I cannot see that it is more important or requiring greater expertise than would be the case for the work that of Mr O'Hara had carried out himself. The use of Ms Ehzuwan in particular in this case, given her apparent role within the firm, does suggest that the comment about finite numbers of fee earners had led to the use of more senior fee earners to carry out work that needed to be done rather than that it was a reflection of their particular expertise or the nature of the work.
54. Similarly, in relation to the work of Ghislaine Sandoval, some of which has been allowed at Grade C rather than Grade B, it seems to me that the determining officer has appropriately formed a view of the nature of the work that was being done. Where other work was done by Ms Sandoval, it has been allowed at Grade B and that is entirely to be expected of the determining officer considering whether the work was being done at the appropriate grade and therefore rate for the task.

55. Consequently, in my view, the determining officer has properly assessed the level of fee earner deemed to be carrying out the work and where appropriate has reduced the grade when compared with the level of seniority of the person who actually did that work.