



**Neutral Citation No.** [2022] EWHC 2356 (SCCO)

Case No: SC-2019-CRI-000144  
Criminal case number: T20190735

**IN THE HIGH COURT OF JUSTICE**  
**SENIOR COURTS COSTS OFFICE**

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

Date: 14/09/2022

**Before:**

**COSTS JUDGE JAMES**

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**Between:**

**REGINA**

**-v-**

**NICOLA BEVAN**

**and**

**IN THE MATTER OF AN APPEAL AGAINST REDETERMINATION**

**LUCY CROWTHER (ADVOCATE)**

**Appellant**

**-and-**

**THE LORD CHANCELLOR**

**Respondent**

Matter decided on paper: no Hearing took place

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**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.

.....  
COSTS JUDGE JAMES

## **Costs Judge James:**

1. This is an appeal by Miss Lucy Crowther (Advocate) who seeks to appeal the decision of the Determining Officer ('DO') dated 22 October 2019 to refuse to pay a second graduated fee in respect of a sentence hearing as well as a committal for sentence fee on the same date, 3 October 2019, in accordance with the Criminal Legal Aid (Remuneration) Regulations 2013.
2. I must sincerely apologise to the parties for the lengthy delay in producing this Judgment; the parties indicated that they were content for it to be dealt with on the papers a long time ago, and although the amount at stake is not large the parties deserved the certainty of a decision long before this. These are the reasons for my decision not to allow the appeal.

### **Background**

3. The Appellant represented the Defendant in proceedings before the Crown Court at Cardiff. She was charged with three counts of fraud contrary to section 1 of the Fraud Act 2006 and one count of using a false instrument with intent, contrary to section 3 of the Forgery and Counterfeiting Act 1981.
4. The facts alleged were that she had for 6 months between 21 December 2016 and 8 June 2017, been running a cosmetic health care business whilst on long-term sick leave, thereby intending to gain £11,200.11 in employer-based statutory sickness payments to which she was not entitled, presumably due to being well enough to work at her own business (which was the first count of fraud). The remaining two counts of fraud and the count of using a false instrument were based upon allegations that the Defendant had resubmitted up to 27 prescriptions that had already been filled elsewhere, and had also submitted a false instrument, in every instance seeking to obtain prescription-only drugs to which she knew that she was not entitled.
5. The Advocate initially submitted a claim for graduated fees based upon a main hearing for the T number (T20190735) in respect of the Guilty plea on 13 September 2019. The main hearing for the S number (S20190699) in respect of the committal for sentencing, was claimed as 3 October 2019. The Appellant's initial challenge was that she was entitled to seek a fee for both hearings as (she said) they were not heard concurrently. However, the Legal Aid Agency ('LAA') case worker stated that a committal for sentence under the S number took place on the same day as the sentence hearing on the T number and hence the LAA did not pay a Graduated Fee for the sentence hearing on 3 October 2019 for the T number.
6. The DO upheld that decision, stating in the Written Reasons that as Counsel had been paid the highest available fee for the hearing on 3 October 2019 (the committal for sentence fee) there was no additional fee or uplift available for attendance at the same hearing on the Graduated Fee case. It is unclear from the papers to which of the offences she pleaded Guilty (the Graduated Fee, T number case) and which were the subject of committal for sentence (the S number case). It appears to make no difference in practical terms but might have made the sequence of events easier to follow.

### **Regulations**

7. Paragraph 5 "Fees for Sentence Hearings" states as follows:

*"15.—(1) Subject to sub-paragraphs (2) to (4), the fee payable to an advocate for appearing at a sentencing hearing is the fixed sentencing hearing fee.*

...

*(4) Where the sentencing hearing takes place on a day, or at a time, in respect of which an advocate receives, or is to receive, a banded fee—*

*(a) no fixed sentencing hearing fee is payable to the advocate for appearing at the sentencing hearing under sub-paragraph (1);*

...

Interestingly, the DO cites this provision in the Written Reasons but does not appear to apply it. The same can be said for the provision set out in the following paragraph (Paragraph 20).

8. Paragraph 20, Fees for Appeals, committals for sentence and breach hearings, states as follows:

*“20.—(1) Subject to sub-paragraphs (4) and (5) and paragraph 26 the fee payable to a trial advocate in any of the hearings referred to in paragraph 2(1)(b) is the fixed fee specified in the table following paragraph 24.*

...

*(4) Where it appears to the appropriate officer that the fixed fee allowed under sub-paragraph (1) would be inappropriate taking into account all of the relevant circumstances of the case the appropriate officer may instead allow fees of such amounts as appear to the appropriate officer to be reasonable remuneration for the relevant work in accordance with sub-paragraph (5).*

*(5) The appropriate officer may allow any of the following classes of fees to an advocate in respect of work allowed by the appropriate officer under this paragraph—*

*(a) a fee for preparation including, where appropriate, the first day of the hearing including, where they took place on that day—*

*(i) short conferences;*

*(ii) consultations;*

*(iii) applications and appearances (including bail applications);*

*(iv) views at the scene of the alleged offence; and*

*(v) any other preparation;*

...

9. Paragraph 27, additional charges and additional cases, is the paragraph upon which the DO bases her Written Reasons and it reads as follows:

*“27.—(1) Where an assisted person is charged with more than one offence on one indictment, the fee payable to the trial advocate under this Schedule must be based on whichever of those offences the trial advocate selects.*

*(2) Where two or more cases to which this Schedule applies involving the same trial advocate are heard concurrently (whether involving the same or different assisted persons)—*

*(a) the trial advocate must select one case (“the principal case”), which must be treated for the purposes of remuneration in accordance with this Schedule;*

*(b) in respect of the main hearing in each of the other cases the trial advocate must be paid a fixed fee of 20% of—*

*(i) the basic fee (B) specified in the table following paragraph 5 or that following paragraph 8, as appropriate, for the principal case, where that is a case falling within paragraph 2(1)(a); or*

*(ii) the fixed fee for the principal case, where that is a case falling within paragraph 2(1)(b) or paragraph 10.*

*(3) Nothing in sub-paragraphs (4) to (6) permits a fixed fee under Part 5, other than one to which paragraph 14 applies, to be paid in a case to which Part 4 applies.*

*(4) Where a trial advocate or substitute advocate appears at a hearing specified in paragraph 12, 13, 14, 15 or 16, forming part of two or more cases involving different assisted persons, the trial advocate or substitute advocate must be paid—*

*(a) in respect of the first such case, the fixed fee for that hearing specified in the table following paragraph 24; and*

*(b) in respect of each of the other cases, 20% of that fee.*

*(5) Subject to sub-paragraphs (1) to (4), where a trial advocate or substitute advocate appears at a hearing forming part of two or more cases, the trial advocate or substitute advocate must be paid the fixed fee for that hearing specified in the table following paragraph 24 in respect of one such case, without any increase in respect of the other cases.”*

### **The Parties' Submissions**

10. The DO stated (in written reasons dated 22 October 2019) that the Court records show that at the hearing on 3 October 2019, the Court dealt with both cases within the same hearing at the same time. As this was the main hearing for one case (the S number not the other, the cases were not dealt with 'concurrently' and paragraph 27(2) of the Regulations does not apply. Nor was it a situation where the Advocate represented two or more assisted persons, hence paragraphs 27(3) and 27(4) do not apply either.
11. The DO added that this was a case, not subject to paragraphs 27(1) to (4), where the Advocate appeared at a hearing forming part of two or more cases, the fees for which are fixed and specified in the table following paragraph 24 and thus, in accordance with 27(5), the Advocate must be paid the fixed fee for the hearing specified in the table after paragraph 24 in respect of one such case without any increase in respect of the other case.
12. In this case, per the Determining Officer, Counsel has been paid the highest available fee for the Hearing on 3 October 2019 (the committal for sentence fee, S number) but there is no additional fee or uplift payable for attendance at the same hearing on the Graduated Fee (T number) case and that is the issue before this Court.
13. The Appellant submitted that a separate fee is payable on the basis that, on 13 September 2019 the Defendant pleaded Guilty to two offences on indictment (the T number); those pleas were acceptable and sentence was adjourned until 3 October 2019 when, in the Crown Court at Merthyr Tydfil, she was sentenced for those matters. She also fell to be sentenced for [other, unspecified] matters committed for sentence (the S number). As such, a Graduated Fee was claimed to reflect the 'additional' sentencing hearing on the T number in the sum of £126 plus VAT and a separate fee to reflect the additional work undertaken in respect of the committal for sentence in the S number, of £152 plus VAT.
14. The Appellant asserts that, subject to professional conduct issues, had she known that the committal for sentence matters would not attract a fee or would simply diminish the fee for sentencing on indictment, she could have refused to accept instructions for the committal for sentence matters. This approach would not be in the interests of justice nor the interests of the Defendant but if the LAA refuse to pay for two matters because there is only one hearing on the Court list, it would be an option.

15. As I understand it, the Appellant still has this wrong; she believes that she has not been paid for the committal for sentence (S number), only for the sentencing on indictment (T number). It is clear from the Written Reasons that the reverse is true; she has been paid for a main hearing on the T number on 13 September 2019 but has not then been paid any further Graduated Fee for that case on 3 October 2019, in circumstances that she was already being paid for attending on the S number, on that date.

16. The Appellant refers to a quote, which I have not been able to attribute from the papers before the Court. After stating that, under schemes 10 and 11, all hearings generate a fee, the quote reads as follows:

*“If the committal for sentence and sentence are heard concurrently then one fee is payable as only one hearing has been attended. Generally, it would make more financial sense for the committal for sentence fee which pays higher to be claimed/paid.*

*For this reason, if the Court logs for the Guilty plea show linked committal for sentence case and the two were sentenced together/concurrently as is often recorded, only one hearing has been attended and only one fee is payable.*

*If there was a definitive break and the two were heard separately on the same day, they wouldn't be concurrent and there would be scope for additional payment.”*

17. The Appellant adds that, *“I have considered the June 2019 version 1.11 [Advocates' Graduated Fee] scheme in relation to Crown Court fees and can find no support for this proposition.”* I do not know from whence this proposition originated (it is not in the written reasons nor, as far as I can see, in the original determination). The proposition is not in the Crown Court Fee Guidance either, but there is some support for it in that document, which states (at paragraph 2.27(1) that:

*“An uplift of 20% of the main hearing fee (basic fee on indictment, fixed fee for appeals and committals) of the principal case is allowed for each additional case involving the advocate that had been heard concurrently and/or each additional defendant that the advocate represents”*

18. The above is cited as coming from Paragraph 27, Schedule 1, the provision upon which the DO based her decision. The Crown Court Fee Guidance goes on (at paragraph 2.27(2)) to add that, for two cases to be heard concurrently, the main hearing in each case will have been heard at the same time. As held in Costs Judge decisions: R. v. Fletcher (1998) and R. v. Fairhurst (1999) cases where the main hearings are held on different days are not heard concurrently, counsel is entitled to separate fees for each case. The Appellant does not argue that the two were heard separately on the same day; in her submissions she accepts that they were not but deplors the ‘unfair’ result in terms of not being remunerated for her time and effort.

19. The Appellant goes on to quote from the Crown Court Fees Guidance at section 2.15 (Fees for sentencing hearings):

*“1. Provisions of paragraph 15, Schedule 1 of the Remuneration Regulations (and this section of the guidance) only apply to cases on indictment. The fee payable for a sentencing hearing for cases with a representation order dated on or after 1 April 2018 is a daily fixed fee. The fee is payable unless the hearing is held on a day where a graduated fee applies. Sentencing hearings that are held on the same day as the verdict are counted towards a day at trial.”*

20. The Appellant refers to other situations where an additional fee is permitted e.g., for Confiscation hearings, or in relation to a deferred sentence, but states that the section is silent regarding committals for sentence. She adds that, under “Additional Charges and Additional Cases” the Guide states (at paragraph 4) that:

*“Where an advocate selects one offence, in preference to another, or one case as the principal case, in preference to another, the advocate is still entitled to claim such fixed fees to which they would have been entitled had they selected a different offence or principal case.”*

21. The Appellant then goes on to state that section 2.20 (of the Guide) refers to remuneration for committal for sentence:

*“1. A fixed fee is payable for appeals, committals for sentence, and breach hearings...”*

22. The Appellant goes on to add that it appears the only way to be paid for the work actually done, would be to split hearings so that committals for sentence which involve (or did in this case) a substantial amount of work, would have to be listed separately to the sentencing following indictment – the Appellant refers to them being listed on different days but presumably a different hearing later on the same day would meet the requirement of separateness, so as to qualify for payment. The Appellant asks for examples of where such a situation could ever arise, asserting that it would be nonsensical and contrary to the interests of justice.

23. Per the Appellant, two fees are ‘self-evidently’ payable in this situation to avoid Advocates from being faced with a ‘strange’ interpretation of the Regulations [and thereby being denied payment] or from having to refuse to accept instructions to act in the second matter (professional conduct permitting) rather than acting without payment as is the case here. She describes the LAA as taking advantage of Counsel’s obligation to the client and exploiting an ‘obviously unintended’ loophole which the increase in fixed fees for matters on indictment to include a separate sentencing hearing, was designed to prevent.

## **Decision**

24. Confusion has reigned in this matter; the Appellant deplores the unfairness of not being paid for the committal for sentencing on 3 October 2019, whereas she was paid the highest available fee for that date, i.e., the committal for sentencing fee. She has not been paid a Graduated Fee for the sentencing on indictment (for the two offences to which the Defendant pleaded Guilty on 13 September 2019).

25. Further confusion arises because, in her original correspondence with the DO, the Appellant asserted that she should be paid two fees because the main hearings were on two separate dates, with the main hearing for the T number (T20190735 – the Guilty pleas) on 13 September 2019 and the main hearing for the S number (S20190699 – the committal for sentencing) on 3 October 2019. She now accepts that both were heard together on the latter date but still wishes to claim two fees. There is no suggestion that the Appellant’s claim in respect of 13 September 2019 was incorrect and I take it (from the lack of any submissions) that the Appellant is content with whatever she was paid for that date.

26. Can the matters heard at the hearing on 3 October 2019, being committal for sentencing (S number)

and sentencing on indictment (T number) be paid separately under the Regulations? The Appellant accepts that the main hearing for T20190735 took place on 13 September and as I understand it payment for that has already been received. Per the Crown Court Fee Guidance citing Regulation 2(1), a ‘main hearing’ is one of the following:

*(a) in relation to a case which goes to trial, the trial;*

***(b) in relation to a guilty plea (within the meaning of Schedule 1 of the Remuneration Regulations), the hearing at which pleas are taken or, where there is more than one such hearing, the last such hearing;***

*(c) in relation to a cracked trial (within the meaning of Schedule 1), the hearing at which—*

*(i) the case becomes a cracked trial by meeting the conditions in the definition of a cracked trial, whether or not any pleas were taken at that hearing; or*

*(ii) a formal verdict of not guilty was entered as a result of the prosecution offering no evidence, whether or not the parties attended the hearing;*

*(d) in relation to an appeal against conviction or sentence in the Crown Court, the hearing of the appeal;*

***(e) in relation to proceedings arising out of a committal for sentence in the Crown Court, the sentencing hearing; and***

*(f) in relation to proceedings arising out of an alleged breach of an order of the Crown Court, the hearing at which those proceedings are determined.*

27. It is clear that the T number hearing on 13 September 2019 was a main hearing within category (b) and that the S number hearing on 3 October 2019 was a main hearing under category (e) which is why I have put those in bold type. It was not argued before me that the sentencing on indictment on 3 October 2019 (T number) can also be a main hearing; the Appellant accepts that the hearing on 13 September 2019 was the main hearing for that case.
28. That being the case, whilst I appreciate the Appellant’s concern that she has not been remunerated for the sentencing on indictment (pursuant to Guilty pleas on 13 September 2019) on 3 October 2019, I believe that the DO has applied the Regulations correctly. The provisions for additional payments (at Regulation 27(2)) are couched in terms of a ‘main hearing’ which this was, in respect of committal for sentencing (S number) but was not for sentencing on indictment (T number).
29. There are provisions for extra payments where more than one assisted person is involved (at Regulations 27(3) and (4)) but that was not the case here. Hence, the provisions of Regulation 27(5) prevail and the Appellant must be paid the fixed fee for that hearing specified in the table following paragraph 24 in respect of one such case, without any increase in respect of the other cases, as has happened here.
30. As Master Gordon-Saker observed in *R v Fury* [2011] Costs LR 919 at paragraph 28:

*“As has often been stated the graduated fee scheme involves ‘swings and roundabouts’. As David Clarke J said in *Meeke and Taylor v Secretary of State for Constitutional Affairs* [2006] 1 Costs LR 1, even where the Regulations produce a ‘harsh anomaly’ they must nevertheless be applied in a mechanistic way. There is no equity in the scheme.”*

It therefore follows that the Appellant has not succeeded in her Appeal.