



Neutral Citation No. [2022] EWHC 2551 (SCCO)

Case No: T20197579

SCCO Reference: SC-2021-CRI-000141

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

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

Date: 04/10/2022

**Before:**

**COSTS JUDGE NAGALINGAM**

**Between:**

**R**

**-v-**

**Clare Houselander**

**and**

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

**Alexander Johnson**

**Appellant**

**- and -**

**The Lord Chancellor**

**Respondent**

Hearing date: 26/05/2022

-----  
**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 NAGALINGAM**

### **Costs Judge Nagalingam:**

1. The appeal, to a limited extent, has been successful for the reasons set out below. The appropriate additional payment, to which should be added the sum of £100 paid on appeal, should accordingly be made to the Appellant.
2. This is an appeal by Alexander Johnson solicitors against the number of pages of prosecution evidence (“PPE”) allowed by the determining officer when calculating the appropriate fee under the Criminal Legal Aid (Remuneration) Regulations 2013.

### **Background**

3. The Defendant was originally indicted on a single count of CONSPIRACY TO COMMIT FRAUD BY FALSE REPRESENTATION, contrary to section 1(1) of the Criminal Law Act 1977. Namely, that the Defendant between 1 March 2015 and 31 August 2018 conspired with Julia Waddell, Scott McEwan and Nana Yaw Akomeah to commit fraud by false representation by representing that they had legitimate access to the bank accounts of Diane Wiseman intending to cause her or another loss.
4. The Defendant’s mobile phone was deemed to be a key piece of evidence containing messages about her NatWest bank account along with messages about various other accounts, to include login and password details.
5. In the event, NatWest bank had been defrauded out £223,438.41 by refunding such sums where the Defendant’s own NatWest bank account was, whether knowingly or not, used as a vehicle for the fraud when substantial sums were transferred to it from Diane Wiseman’s NatWest bank account. The monies fraudulently transferred to the Defendant’s account were then dissipated by way of cash withdrawals, transfers to accounts outside of the UK and substantial online purchases including around £54,000 to a single jewellery shop.
6. The Defendant denied any knowledge of the fraud, and in her defence alleged that others had in fact been controlling her bank account without her knowledge.
7. On the first day of trial, the crown conceded they could not prove conspiracy to commit fraud by false representation and instead sought to have a new count added to the indictment (count 10) of BEING CONCERNED IN AN ARRANGEMENT WHICH FACILITATES THE ACQUISITION, RETENTION, USE OR CONTROL OF CRIMINAL PROPERTY BY ANOTHER, contrary to section 328(1) of the Proceeds of Crime Act 2002, i.e. money laundering.
8. The crown was given leave to have the money laundering count added to the indictment and, following the expression of views as to sentencing by the trial judge, the Defendant pleaded guilty to the single money laundering count, with the fraud charge left to “lie on the file”.
9. In light of the Respondent’s concession of the notes section, this appeal is already deemed successful and accordingly the Appellant will be remunerated for an additional 90 pages (notes section) and the amount of the appeal fee paid.

10. Otherwise, the Respondent's position is that remuneration on the basis of the sections for calls, chats, messages, contacts, GPS locations, notes and 5% of images is reasonable.
11. As at the time of writing this judgment, the Appellant has confirmed it is common ground that there are now only two areas of focus in this appeal, being the timeline and the images sections of the mobile phone extraction report, and how many pages ought to be allowed for the same.

## **Regulations**

12. The Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations'), and in particular paragraph 1 of Schedule 2 to the 2013 Regulations provide (where relevant) as follows:

“1. Interpretation

...

(2) For the purposes of this Schedule, the number of pages of prosecution evidence served on the court must be determined in accordance with sub-paragraphs (3) to (5).

(3) The number of pages of prosecution evidence includes all –

- (a) witness statements;
- (b) documentary and pictorial exhibits;
- (c) records of interviews with the assisted person; and
- (d) records of interviews with other defendants,

which form part of the committal or served prosecution documents or which are included in any notice of additional evidence.

(4) Subject to sub-paragraph (5), a document served by the prosecution in electronic form is included in the number of pages of prosecution evidence.

(5) A documentary or pictorial exhibit which –

- (a) has been served by the prosecution in electronic form; and
- (b) has never existed in paper form,

is not included within the number of pages of prosecution evidence unless the appropriate officer decides that it would be appropriate to include it in the pages of prosecution evidence taking in account the nature of the document and any other relevant circumstances”.

## Decision

13. The Appellant's case is that the disc material amounted to more than 15,000 pages, of which 8,102 pages is claimed as electronic material which had to be considered. The Determining Officer originally allowed 2,733 pages, 2,054 of which are electronic PPE (including 161 pages of images, calculated as being 5% of all the pages of images on the disc). With the allowance of the notes section the page count stands at 2,823.
14. This appeal now proceeds on the basis of a claim for the timeline (1,852 pages) and images (3,223 pages) sections of the extraction report.
15. As to the timeline, the Respondent has allowed nil on the basis that there is nothing in the pages of the timeline evidence that has not in some form or another been allowed in the PPE allowance made thus far.
16. The Appellant does not assert the timeline contains any evidence which is not available elsewhere, and accepts that to all intents and purposes the content of the timeline is duplication of what has been allowed elsewhere.
17. The Respondent's submissions very much focus on whether or not the timeline is a duplication of the allowances already made. However, the Appellant's agreement in this regard is neither a concession of the pages of timeline evidence, nor does it lead me to conclude that the timeline pages ought to be automatically discounted.
18. The reality is that in a great many cases, analysis of the timeline will not be appropriately remunerated as PPE and will in any event not require any closer analysis than a very short period of time, on occasions a single date, which will yield no greater a picture of events than the calls, messages and location data on or around such dates. Thus where the pages of such sections have already been allowed elsewhere, allowance of the timeline in addition is likely to be unreasonable.
19. In the instance appeal, and right up until the first listed date for trial, the Defendant was facing serious fraud charges along with three co-defendants. The period of offending was set out as being from 1 March 2015 to 31 August 2018, some 3 and half years. This is not an inconsiderable length of time.
20. The Appellant's case with respect to the timeline is that the crown could not prove conspiracy to defraud because the Defendant's contact with the co-defendants was well before the eventual victim of the fraud had been identified. It was only by looking at the evidence in chronological order and in context that distance of time could be put between the period of offending and the period of contact between the Defendant and co-defendants.
21. The Appellant points to the fact that on the first day of trial the crown admitted they could not prove conspiracy to commit fraud by false representation, and instead sought to have an indictment of money laundering added. Leave to add a money laundering count was thereafter given, to which the Defendant pleaded guilty and was given a non-custodial sentence. The conspiracy charge was left to lie on the court file.
22. There is no suggestion that the timeline evidence is not covered elsewhere in the extraction report. The Appellant accepts the timeline is a form of duplication of what

has already been allowed by the Respondent. However, the Appellant's case is that consideration of the timeline was important in disproving the allegations of conspiracy to defraud faced by the Defendant, and at a time when it could not be known the crown would relent from pursuing that particular count.

23. Whilst I can see the logic of the Appellant's argument, the Respondent has at no stage rejected the assertion that the Appellant needed to consider the timeline, nor that they ought not to be remunerated for work done that properly advanced the Defendant's case. The question is one of the how that work ought to be remunerated.
24. In my view, the notion of remuneration of the pages of timeline evidence as PPE does not fall at the first hurdle simply because it might be largely or wholly duplicated by pages allowed elsewhere. I accept the general notion that one should be alive to those occasions when consideration of the evidence in its proper context and chronology is important.
25. However, I am not satisfied that the explanation of the Appellant in this case justified remuneration of 1,852 timeline pages as PPE simply to demonstrate that the Defendant's contact with the co-defendants was not exclusively limited to the alleged period of offending.
26. I am satisfied that to the extent it may have been necessary to review historical contact between the co-accused over and above that demonstrated by the sections of the extraction report already allowed, this may be appropriately remunerated by means of a claim for special preparation, if the Appellant is so advised.
27. With regard to the claim for images, the application of a percentage approach is not disputed. However, the Appellant's case is that an allowance of 5% is simply inadequate when proper regard is had for the importance of the image evidence.
28. This is because the Defendant is said to have presented as a single parent with a modestly paid full time job, which was in contrast to images which were suggestive of the Defendant living beyond her means or engaging in activities which were inconsistent with her reported family and employment status. For example, images of luxury items and screenshots which indicated the use of multiple bank accounts.
29. The Appellant invites focus on the original indictment faced, and submits that it was important to analyse the images in order to establish a defence to accusations the image evidence demonstrated the Defendant could be seen to be actively engaged in the conspiracy and was benefitting from the same.
30. The Respondent considers that an allowance of 5% is sufficient and points to an equivalent allowance of 1,449 images (based on 161 pages and an average of 9 images per page). The Respondent submits that images depicting the Defendant's lifestyle would not alone prove a conspiracy to commit fraud by false representation. Further, the Respondent submits that the Defendant would likely have been able to direct the Appellant to any images of concern, i.e. those which might appear inconsistent with her stated earnings, and provide innocent explanations if she was not guilty of the conspiracy charges faced.

31. I have reviewed the images and firstly, I am satisfied that the same could be considered with relative ease from the thumbnail versions of the same. Secondly, I am also satisfied that the vast majority of the images can be immediately discounted as irrelevant in terms of the fraud conspiracy with which the Defendant was charged.
32. Images that might be said to depict a lifestyle beyond those of moderate means are few and far between. Images that have the appearance of depicting banking or financial details are easily identified, largely by virtue of their stark contrast to the more commonly appearing photographs of various adults and children or graphics. There are also many images which are duplicated several times.
33. This is not a case where one can reasonably conclude that the image evidence was of such central importance to the case that an allowance of more than 5% is justified. Thus on this occasion I am in agreement with the Determining Officer's assessment.
34. In all the circumstances, the appeal succeeds because of the Respondent's concession with regards to the Notes section of the extraction report. However, No further allowances to be made as PPE for the pages of timeline and images.

**COSTS JUDGE NAGALINGAM**