



Neutral Citation No. [2022] EWHC 3347 (SCCO)

Case No: T20217086

SCCO Reference: SC-2022-CRI-000108

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

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

Date: 20 December 2022

**Before:**

**COSTS JUDGE LEONARD**

**R**

**v**

**BERRY**

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

**Appellant: Mr. Paul Lewis KC (Counsel)**

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

**COSTS JUDGE LEONARD**

1. The Appellant represented Emma Berry (“the Defendant”), who had been charged with murder, in the Crown Court at Mold. This appeal concerns the Appellant’s claim for expenses, which is governed by the Graduated Fee provisions of Schedule 1 to the Criminal Legal Aid (Remuneration) Regulations 2013. The relevant provisions are to be found at paragraph 29 of schedule 1:

**“29. Non-local appearances**

Where an advocate is instructed to appear in a court which is not within 40 kilometres of the advocate's office or chambers, the appropriate officer may allow an amount for travelling and other expenses incidental to that appearance, provided that the amount must not be greater than the amount, if any, which would be payable to a trial advocate from the nearest local Bar unless the advocate instructed to appear has obtained prior approval under regulation 13 for the incurring of such expenses or can justify the attendance having regard to all the relevant circumstances of the case.”

2. Leading Counsel originally retained on behalf of the Defendant was Patrick Harrington KC of Farrar’s Building, Temple. The Appellant undertook the brief as a “chambers return” when Mr. Harrington KC was unable to undertake the trial. Both Mr. Harrington KC and the Appellant are former Leaders of the Wales and Chester Circuit, and practise predominantly upon that Circuit.
3. The Appellant in January 2022 submitted a fee claim which included travel and accommodation expenses incurred when appearing in the Crown Court on 6 and 7 December 2021.
4. The Determining Officer described paragraph 29 of Schedule 1 as similar to the provisions considered in *R v Thomas, Davidson & Hutton* [1997] Costs L.R. (Core Vol.) 469, an SCCO decision dating from 1 March 1995, and reiterated Criminal Defence Service (Funding) Order 2007 and the 2013 Regulations. She took the view that this made it clear that the provision was intended to apply irrespective of any Circuit boundaries.
5. Referring to the LAA’s Crown Court Fee Guidance, the Determining Officer observed that the Appellant’s chambers are in London, well over 40 kilometres from the court. That could justify payment of travel and other expenses under paragraph 29 of Schedule 1, but payment should not be more than that payable to an advocate from the nearest local bar unless prior approval had been obtained (it was not) or is justified having regard to the relevant circumstances of the case.
6. The Determining Officer found that the Appellant had provided no case related justification as to why he should have been instructed rather than an advocate from the nearest local bar. The Crown Court at Mold being within 40 kilometres of Liverpool, it would follow, she concluded, that no payment was permissible under paragraph 29.
7. The Appellant’s case is as follows. The Defendant came from North Wales. Her solicitor and junior both practise in North Wales. The case had been committed by a Magistrates’ Court in North Wales for trial at the Mold Crown Court, which is also in North Wales.

8. The Appellant practises from chambers in London and lives in Abergavenny, South Wales. His practice is mainly upon the Wales and Chester Circuit (of which Mold is a part.) He could not undertake the representation of the defendant without incurring travelling and accommodation expenses.
9. There are no sets of chambers in North Wales, says the Appellant, which serve Mold. Traditionally, Queen's Counsel from South Wales and Wales Circuit members from London chambers have undertaken murder cases at Mold and have been paid reasonable hotel and travelling expenses. The Appellant has personally conducted about 20 such cases at Mold, and has never previously been denied expenses.
10. In the current case, Leading Counsel's expenses were modest. However, says the Appellant, a point of principle applies. If Counsel's expenses are properly denied, then the effect of the decision is to make any circuit boundaries irrelevant; and to ensure that (in the vast majority of cases, at least,) counsel who practise in Wales are unable to obtain payment of their reasonable expenses for attending at Mold because Liverpool is deemed to be a Local Bar. The result of that is to effectively deny a Welsh client, solicitor and junior the choice of a Welsh Leading Counsel unless he or she is prepared to conduct cases in Mold without payment of expenses.
11. The Taxing Officer chose not to follow *R v Thomas, Davidson & Hutton*. The Appellant submits that the decision remains good and should be applied in this case.

## **Conclusions**

12. *R v Thomas, Davidson & Hutton*, as the Determining Officer observed, considered the then-current provisions for the payment of travel and other expenses which were not materially different, for present purposes, to the paragraph 29 of Schedule 1 to the 2013 Regulations. As in this case, a Determining Officer had disallowed leading counsel's expenses on the basis that either there was an adequate local Bar or that an adequate local Bar was available at a lesser distance than leading counsel's chambers.
13. Leading counsel argued that in order to make the circuit system work and to give solicitors a reasonable choice of Queen's Counsel, Circuit KCs are expected to and do appear anywhere on circuit.
14. The Taxing Master accepted that and, allowing the appeal, explained his conclusions:

“I am entirely satisfied, (and in this view I am fortified by the views of the presiding judges of the North Eastern Circuit), that leading counsel should not be regarded as being “local” to any particular city or area, even though his chambers are in one particular place. I find therefore that where leading counsel regularly practises on a circuit he should, as a general rule, receive an amount in respect of his travelling and hotel expenses actually and reasonably incurred and necessarily and exclusively attributable to his attendance at a court on that circuit.”

15. It seems to me that the Determining Officer has taken a view directly contrary to *R v Thomas, Davidson & Hutton* in concluding that paragraph 29 of Schedule 1 as worded must be understood to mean that circuit boundaries are irrelevant. Paragraph 29 does not specifically mention circuit boundaries, but it does not follow that they are irrelevant: the provisions considered by the Taxing Master in *R v Thomas, Davidson & Hutton* did not mention them either, and they clearly were found to be relevant.
16. It also seems to me that there is no good reason for imposing a narrow interpretation upon the necessarily wide-ranging phrase “all the relevant circumstances of the case”. The fact that the Crown Court at Mold is on the Wales and Chester Circuit and the fact that the Appellant practices on the Wales and Chester Circuit do in my view fall within the relevant circumstances of this case and can, in accordance with the provisions of paragraph 29, justify the attendance of the Appellant for the purpose of paying his expenses.
17. For those reasons, this appeal is allowed. I trust that there will be no dispute about the amount of expenses to be paid but if there is, it can be referred back to me.