



Neutral Citation No. [2023] EWHC 3363 (SCCO)

Case No: T20207413

SCCO Reference: SC-2023-CRI-000018

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 21st December 2023

Before:

COSTS JUDGE WHALAN

R

v

JEANETTE CARR

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

Appellants: Yates Arden Solicitors

The appeal has been unsuccessful, for the reasons set out below.

COSTS JUDGE WHALAN

Introduction

1. Yates Ardern Solicitors ('the Appellants') appeal against the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') to reduce the number of pages of prosecution evidence ('PPE') forming part of its Litigator's Graduated Fees Scheme ('LGFS') claim. The issue on appeal is whether the total PPE count should be 10,000, as claimed, or 2885, as allowed.

Background

2. The Appellants represented Jeanette Carr ('the Defendant'), who was charged with seven co-defendants at Manchester (Minshull Street) Crown Court on an indictment alleging two counts of conspiracy of supply Class A drugs.
3. It is common ground that the PPE count should include 409 pages of witness statements, 1902 pages of exhibits and 47 pages of SFR.
4. The prosecution also relied on electronic datum downloaded from two mobile phones recovered from the Defendant and exhibited AC-1 and DJR-1. This material comprised 13,348 pages. The Appellants submit that the totality of this datum should be included in the PPE count, subject to the 10,000 page 'cap' in the regulations. The DO assessed and included 527 pages of electronic datum in the PPE count.

The Regulations

5. Paragraph 1 of Schedule 2 to The Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations'), as amended in 2018, provides (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 subparagraphs (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”.

Case guidance

6. Authoritative guidance was given in PPE cases by Mr Justice Holroyde in Lord Chancellor v. SVS Solicitors [2017] EWHC 1045 (QB).
7. I was referred also to Lord Chancellor & Lam and Neerbux Solicitors [2023] EWHC 1186, [2023] EWHC 1186, R v. Lawrence [2022] EWHC 3355, R v. Baptiste SCCO Ref: 189/18, R v. Sereika SCCO Ref: 168/13, R v. Furniss [2015] 1 Costs LR151 and R v. Napper [2014] 1 Costs LR9.

The submissions

8. The Respondent’s case is set out in Written Reasons dated 3rd February 2023 and in Written Submissions drafted by the Government Legal Department on 13th October 2023. The Appellants’ case is set out in the Grounds of Appeal, a Skeleton Argument (undated, pp 1-4 of the Appeal Bundle), an Appeal – Request for Re-Determination (pp 11-19), and a detailed Schedule relating to AC-1 and DJR-1. Mr Chapman,

solicitor, appeared for the Appellants and Ms Quarshie, a lawyer at the GLD, appeared for the Respondent at the appeal hearing on 10th November 2023.

My analysis and conclusions

9. The Respondent, in summary, submits that the DO conducted a correct assessment of the electronic datum and allowed into the PPE count “all the relevant categories of evidence”. With regard to AC-1, she allowed Call logs, Device users, Emails, Instant messages and Search items. Application usage, Autofill, Cookies, Installed applications, Passes, Web history, Data, Files and other (smaller) remaining categories were excluded as irrelevant. With regard to DJR-1, she allowed Call logs, Credit cards, Instant messages and Search items. The remaining categories were excluded as irrelevant. Essentially, when reflecting the Crown’s focus on messages to demonstrate the degree of contact and co-operation between the Defendant and her co-defendants, the DO admitted these categories into the PPE count, while excluding other larger categories, such as images.

10. The Appellants, in summary, submit that all the electronic datum should be included in the PPE count, as the datum was served on the defence by the prosecution and the phone evidence in general was “pivotal” to the Crown’s case. Further, or alternatively, categories such as Cookies, Downloads, Installed Apps, Web History, Audio, Databases, Images and Video should be admitted, as this usage served to distinguish between usage by the Defendant, as alleged by the prosecution, and her sons (and co-defendants), as averred by the Defendant. In short:

Who was using the telephone at the crucial times essential to the Crown’s case. Therefore, in this case it is different to other cases where phone evidence is attributable to one particular person whereas in this case on the face of the prosecution case there were phones that were attributable to the Defendant, but it was necessary to go through the phone evidence to show that she was now using the phone at particular times and that the phones were being used by her sons, the co-accused (p. 9 (Appeal-Request)).

11. I note at this point that during the oral hearing an issue arose as to whether or not the DO had included the WhatsApp page in the PPE count, as she had purported (and certainly intended) to do. Mr Chapman expressed some concern that the count had

not, in fact, included these pages. After some debate, however, a consensus emerged that the WhatsApp pages had in fact been included in the PPE count, so that this is not now an issue on appeal.

12. Ultimately, having considered the parties' respective submissions carefully, I am satisfied, on the facts of this case, that the DO carried out a correct assessment of the electronic datum, pursuant to para. 1(5) of Schedule 2 of the 2013 Regulations and the guidance in Lord Chancellor v. SVS Solicitors (ibid). I am not persuaded by the Appellants' arguments that the wider categories of datum, including voluminous image, audio and video files, had sufficient relevance to be included in the PPE count. Images account for 9714 of the disputed pages in AC-1 and DJR-1, and I am not persuaded by the submission that this material, either wholly or in part, was of sufficient relevance "to establish the use of a phone". Nor am I persuaded that the datum from Web History, Cookies and Apps were similarly of an real or sufficient relevance to establish usage. As Holroyde J stated in SVS Solicitors, the DO's discretionary assessment discharges "an important and valuable control mechanism which ensures that public funds are not expended inappropriately". On the facts of this case, I am satisfied that her assessment was correct and that the PPE count should be 2885, as assessed. The appeal is dismissed.

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