



Neutral Citation No. [2023] EWHC 3364 (SCCO)

Case No: S20220258

SCCO Reference: SC-2023-CRI-000044

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 29 November 2023

Before:

COSTS JUDGE ROWLEY

R
v
CHAPEL

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

Appellant: Forrester Solicitors

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

The appropriate additional payment, to which should be added the sum of £250 (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 Forrester solicitors against the decision of the determining officer to categorise the litigators' fee as being a breach of a Crown Court order rather than a committal for sentence under the Criminal Legal Aid (Remuneration) Regulations 2013 as amended.
2. The solicitors were instructed on behalf of Ian Chapel who had previously been sentenced to a suspended sentence of 12 months' imprisonment by the Crown Court. The probation service alleged that he had failed to attend several appointments and a trial was held in the magistrates' court. Chapel was convicted of the offence of failing to comply with the community requirements of a suspended sentence order. Given the length of the original suspended sentence, and the wish of the probation service that it be imposed in full, the magistrates were required to send the case to the Crown Court for sentencing.
3. The proceedings in the Crown Court were complicated by Chapel's appeal against the magistrates' court's decision. According to the determining officer's written reasons, the appeal proceedings were ultimately discontinued on the basis that the magistrates' findings did not constitute a conviction which gave a right of appeal and so the appeal proceedings were a nullity. Chapel was then sentenced for his admitted breaches of the suspended sentence.
4. The relevant provisions of the 2013 Regulations are paragraphs 15 and 18 of Schedule 2 as follows:

15 Fees for appeals and committals for sentence hearings

The fee payable to a litigator instructed in-

- (a) an appeal against conviction from a magistrates' court;
- (b) an appeal against sentence from a magistrates' court; or
- (c) a sentencing hearing following a committal for sentence to the Crown Court,

is that set out in the table following paragraph 19.

18 Fees for alleged breaches of a Crown Court order

- (a) This paragraph applies to proceedings in the Crown Court against one assisted person arising out of a single alleged breach of an order of the Crown Court.
 - (b) The fee payable to the litigator in respect of the proceedings to which this paragraph applies is that set out in the table following paragraph 19.
5. The determining officer has described the events in this case as being a breach of the unpaid work requirements of the suspended sentence order and concluded that this

was “the case that was dealt with and that type of work does not fit within the scope of paragraph 15, instead falling squarely within the scope of paragraph 18.”

6. Whilst the suspended sentence order which the defendant breached was made in the Crown Court, I am afraid that I do not agree with the determining officer that this was clearly a case falling within paragraph 18. On a purely factual basis, there were three alleged breaches of the order and so that, in itself, would prevent paragraph 18(a) applying.
7. In any event, it seems to me that paragraph 18 is reserved for cases which are purely dealt with in the Crown Court i.e. a single hearing to decide upon an alleged breach of a Crown Court order. This case concerned a magistrates’ court trial and then a committal for sentence because of the length of sentence sought by the probation service being outside the magistrates’ jurisdiction. It seems to me to be a paradigm example of a sentencing hearing following a committal for sentence as described at paragraph 15(c).
8. As such, I find that the determining officer has not applied the correct fixed fee for this claim and the appropriate fixed fee needs to be paid together with the costs of this appeal.