



Neutral Citation No. [2024] EWHC 109 (SCCO)

Case No: T20207269

SCCO Reference: SC-2022-CRI-000008

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

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

Date: 24<sup>th</sup> January 2024

**Before:**

**COSTS JUDGE WHALAN**

**R**

**v**

**NATHAN POWELL**

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

Appellant: Mr Keith Harrison, Counsel

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

The appropriate additional payment, to which should be added the £100 paid on appeal, and assessed costs of £250.00 (+any VAT payable), should accordingly be made to the Appellant.

## COSTS JUDGE WHALAN

### Introduction

1. Mr Keith Harrison, Counsel ('the Appellant') appeals against the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') in a claim submitted under the Advocate's Graduated Fees Scheme ('AGFS'). The issue for determination is whether this case should be assessed and paid as a 27-day trial, as claimed, or as a 21-day trial, as assessed. A secondary issue concerns payment for a conference on 1<sup>st</sup> December 2021 between the Appellant and his client.

### Background

2. The Appellant represented Mr Nathan Powell ('the Defendant') who appeared with other co-defendants at Manchester (Crown Square) Crown Court on an indictment alleging conspiracy to supply Class A drugs and conspiracy to transfer criminal property. The Appellant's AGFS claim included a 27-day trial that took place between 18<sup>th</sup> January 2021 and 19<sup>th</sup> January 2022. The Respondent concluded that the trial lasted for 21 days. The DO found that the hearings on 1<sup>st</sup> March 2021, 9<sup>th</sup> April 2021, 20<sup>th</sup> April 2021, 20<sup>th</sup> May 2021, 28<sup>th</sup> May 2021 and 15<sup>th</sup> November 2021 were not trial days, but were rather subsidiary hearings which attracted the standard appearance fee. The Appellant challenges this assessment regarding the first five disputed days; the hearing on 15<sup>th</sup> November 2021 is no longer challenged. Thus, the issue on appeal is whether this was a 26-day or 21-day trial.
3. The initial PTPH was held on 15<sup>th</sup> July 2020, and the judge indicated that there would be a Preparatory Hearing pursuant to ss29-31 of the CPIA 1996. It was listed initially on 9<sup>th</sup> November 2020 but, following several adjournments, did not actually begin before Dove J until 18<sup>th</sup> January 2021. The court then sat on various days between 18<sup>th</sup> January 2021 and 18<sup>th</sup> June 2021. Judgment was reserved and delivered on 19<sup>th</sup> July 2021. It was appealed. On 19<sup>th</sup> January 2022, the Defendant changed his plea to guilty and, except for sentencing, the case concluded.

### The Regulations

4. The Representation Order is dated 2<sup>nd</sup> July 2020 and so the Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations'), as amended, apply. I am referred variously to para. 1, 'Interpretation', of Part 1 to Schedule 1, which sets out, inter alia, the definition of 'standard appearance', and para. 19, 'Fees for conferences & views', of Part 5 to Schedule 1, which provides for the payment of conferences.

### The submissions

5. The Respondent's case is set out in Written Reasons dated 21<sup>st</sup> November 2022. No appearance was made at the appeal hearing on 21<sup>st</sup> July 2023. The Appellant's case is set out in the Grounds of Appeal filed on or about 20<sup>th</sup> January 2023 and in a detailed Draft Chronology dated 17<sup>th</sup> June 2021. The Appellant attended and made oral submissions at the hearing on 21<sup>st</sup> July 2023.
6. The Respondent, in summary, submits that the DO correctly assessed the hearings on 1<sup>st</sup> March, 9<sup>th</sup> April, 20<sup>th</sup> April, 20<sup>th</sup> May and 28<sup>th</sup> May 2021 as standard appearances and not days which comprised part of the preparatory hearing/trial. The Court Log shows that contested hearings "were all listed for mention only and therefore fall within the Regulatory definition of a Standard Appearance". No fee, other than the standard appearance fee, is payable in respect of those days. Although, moreover, the trial lasted 21-days (the minimum threshold set out in para. 19), the Appellant had not demonstrated that the conference on 1<sup>st</sup> December 2021 was 'reasonably necessary', and so payment was refused.
7. The Appellant, in summary, submits first that as the preparatory hearing/trial began on 18<sup>th</sup> January 2021, a starting point accepted by the Respondent, "all days on which the court sat" between that date and the end of the hearing were "days of the preparatory hearing" which should be paid as trial days and not hearings attracting a standard appearance fee. Alternatively, if each contested date is assessed properly, it is clear that those hearings comprised work that was substantive to the preparatory hearing, to the extent that it should be assessed and paid as trial days. Given that the Defendant was not present on many of the preparatory hearing days, it was reasonably necessary to hold a conference with him on 1<sup>st</sup> December 2021, so that the Appellant could explain

and unravel “the complex nature of the proceedings”. Time was also spent reasonably “as to preparation of defence evidence and disclosure issues relevant to the jury trial”.

8. I reject the Appellant’s first contention, namely that all dates listed between the start and end of the preparatory hearing should be assessed and paid automatically as trial days. It seems to clear to me that the regulations provide for the possibility of listings and hearings within the ambit of a trial (mentions, bail applications etc.) and should properly be classified and assessed differently to ‘trial days’ for the purposes of the AGFS. I also reject the Respondent’s apparent contention that payment is determined by the fact of the court listing; in other words, if the hearing day is listed as a ‘Mention’, it is automatically classified and paid as a standard appearance. It seems to me to be reasonable and necessary to look at each disputed day and determine whether the work undertaken formed a qualitative, substantive part of the preparatory hearing/trial, or whether it dealt simply with relatively straightforward matters of procedural direction.
9. I am satisfied that the hearing on 1<sup>st</sup> March 2021 should be classified as a trial day and not a standard appearance. Looking at the narrative on p.3 of the Written Reasons and the detail outlined at para. 5 of the Draft Chronology, I am satisfied that the work undertaken on that day was of sufficient complexity (dealing, in part, with evidence disputed by the prosecution and defence), to justify a trial day fee.
10. I am not satisfied that the hearings on 9<sup>th</sup> April, 20<sup>th</sup> April, 20<sup>th</sup> May or 28<sup>th</sup> May constituted trial days. The DO, in my conclusion, was right to classify them as standard appearances. On 9<sup>th</sup> April, the case was listed for the prosecution to update the Court and Defence as to the progress of the case, leading to the conclusion that it would resume on 4<sup>th</sup> May. The case was listed on 20<sup>th</sup> April to confirm simply that the matter would be ready to proceed as listed. 20<sup>th</sup> May was listed ‘for mention to update the Court as to the progress the defence had made in identifying and instructing an expert’. On 28<sup>th</sup> May the case was listed ‘by the Defence for mention following their concerns about their expert’s access’ to some relevant, digital datum. These were straightforward procedural hearings at which no substantive progress was made and could not properly be described as ‘trial days’.
11. I am satisfied that the conference between the Appellant and the Defendant on 1<sup>st</sup> December 2021 was ‘reasonably necessary’, for the reasons set out in the Grounds of

Appeal. Insofar as this was a 22- day trial, both limbs of para. 19(3) are satisfied, and the conference fee is payable.

12. I direct, in conclusion, that the Appellant's claim should be payable as a 22- day trial, with payment for the conference on 1<sup>st</sup> December 2021, with standard appearance fees payable for 9<sup>th</sup> April, 20<sup>th</sup> April, 20<sup>th</sup> May and 28<sup>th</sup> May 2021.

#### Costs

13. The Appellant's contested appeal has been successful (in part) and I award costs of £250 (+ any VAT), in addition to the £100 paid to lodge the appeal.

TO:

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COPIES TO:

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