



Neutral Citation No. [2024] EWHC 1762 (SCCO)

Case No: T20227129

SCCO Reference: SC-2023-CRI-000090

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

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

Date: 4<sup>th</sup> July 2024

**Before:**

**COSTS JUDGE WHALAN**

**R**

**v**

**STEVEN PARLE**

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

Appellants: IMS Law Limited

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

The appropriate additional payment, to which should be added the £100 paid on appeal, and assessed costs of £750.00 (+ any VAT payable), should accordingly be made to the Appellants.

## COSTS JUDGE WHALAN

### Introduction

1. IMS Law Limited ('the Appellants') appeal against the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') in a claim submitted under the Litigator's Graduated Fees Scheme ('LGFS').
2. The Appellants challenge the Respondent's decision to reduce the number of pages of prosecution evidence ('PPE') in the claim. The Appellants submitted initially a claim for 6213 PPE, which was assessed by the Respondent at 250 PPE. On redetermination the Respondent increased the PPE count to 1358 pages. The Appellants now claim a total of 4737 PPE, meaning that 3379 pages remain in dispute and comprise the issue in this appeal.
3. The appeal was listed for hearing on 21<sup>st</sup> March 2024 and my subsequent determination was promulgated under reference R v. Steven Parle [2024] EWHC 776 (SCCO). Regrettably, as a result of serious administrative errors at the SCCO office, whereby the Respondent was not given notice of the appeal hearing, I set aside my original decision. This determination follows a re-hearing on 3<sup>rd</sup> June 2024.

### Background

4. The Appellants represented Mr Steven Parle ('the Defendant'), who was charged at Liverpool Crown Court on an indictment alleging the possession of a prohibited firearm, namely an Italian Beretta sawn-off shotgun. The Defendant pleaded guilty to the charge but disputed the circumstances of his possession. While the prosecution alleged that he knowingly took possession of a prohibited firearm, he claimed that he did not know what was in a bag delivered to him by an associate called 'Tubs' and, or alternatively, that his possession was provoked by coercion. The issue was determined at a Newton hearing and the Defendant's case was rejected. He was sentenced to 12 years' imprisonment.
5. The police seized a mobile telephone from the Defendant and the datum was downloaded onto two exhibits identified as SH1.17082022 ('1708') and SH1.15092022 ('1509'). The 1085 pages of electronic datum allowed in the PPE

count by the Respondent is taken from 1509. An additional 1962 pages of datum are disputed by the Appellants. Exhibit 1708, which was served first, comprises 1437 pages, which are disputed in their entirety.

### The Regulations

6. The Representation Order was issued in April 2022 so the Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations') as amended, apply.
7. Paragraph 1 of Schedule 2 to the 2013 Regulations 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 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.*

## Case Guidance

8. Authoritative guidance was given in Lord Chancellor v. SVS Solicitors [2017] EWHC 1045 (QB) where Mr Justice Holroyde stated (at para. 50):

- (i) *The starting point is that only served evidence and exhibits can be counted as PPE. Material which is only disclosed as unused material cannot be PPE.*
- (ii) *In this context, references to “served” evidence and exhibits must mean “served as part of the evidence and exhibits in the case”. The evidence on which the prosecution rely will of course be served; but evidence may be served even though the prosecution does not specifically rely on every part of it.*
- (iii) *Where evidence and exhibits are formally served as part of the material on the basis of which a defendant is sent for trial, or under a subsequent notice of additional evidence, and are recorded as such in the relevant notices, there is no difficulty in concluding that they are served. But paragraph 1(3) of Schedule 2 to the 2013 Regulations only says that the number of PPE “includes” such material: it does not say that the number of PPE “comprises only” such material.*
- (iv) *“Service” may therefore be informal. Formal service is of course much to be preferred, both because it is required by the Criminal Procedure Rules and because it avoids subsequent arguments about the status of material. But it would be in nobody’s interests to penalise informality if, in sensibly and cooperatively progressing a trial, the advocates dispense with the need for service of a notice of additional evidence, before further evidence could be adduced, and all parties subsequently overlooked the need for the prosecution to serve the requisite notice *ex post facto*.*
- (v) *The phrase “served on the court” seems to me to do no more than identify a convenient form of evidence as to what has been served by the prosecution on the defendant. I do not think that “service on the court” is a necessary pre-condition of evidence counting as part of the PPE. If 100 pages of further evidence and exhibits were served on a defendant under cover of a notice of additional evidence, it cannot be right that those 100 pages could be excluded from the count of PPE merely because the notice had for some reason not reached the court.*
- (vi) *In short, it is important to observe the formalities of service, and compliance with the formalities will provide clear evidence as to the status of particular material; but non-compliance with the formalities of service cannot of itself necessarily exclude material from the count of PPE.*
- (vii) *Where the prosecution seek to rely on only part of the data recovered from a particular source, and therefore served an exhibit which*

*contains only some of the data, issues may arise as to whether all of the data should be exhibited. The resolution of such issues would depend on the circumstances of the particular case, and on whether the data which have been exhibited can only fairly be considered in the light of the totality of the data. It should almost always be possible for the parties to resolve such issues between themselves, and it is in the interests of all concerned that a clear decision is reached and any necessary notice of additional evidence served. If, exceptionally, the parties are unable to agree as to what should be served, the trial judge can be asked whether he or she is prepared to make a ruling in the exercise of his case management powers. In such circumstances, the trial judge (if willing to make a ruling) will have to consider all the circumstances of the case before deciding whether the prosecution should be directed either to exhibit the underlying material or to present their case without the extracted material on which they seek to rely.*

- (viii) *If – regrettably – the status of particular material has not been clearly resolved between the parties, or (exceptionally) by a ruling of the trial judge, then the Determining Office (or, on appeal, the Costs Judge) will have to determine it in the light of the information which is available. The view initially taken by the prosecution as to the status of the material will be a very important consideration, and will often be decisive, but is not necessarily so: if in reality the material was of central importance to the trial (and not merely helpful to the defence), the Determining Officer (or Costs Judge) will be entitled to conclude that it was in fact served, and that the absence of formal service should not affect its inclusion in the PPE. Again, this will be a case-specific decision. In making that decision, the Determining Officer (or Costs Judge) will be entitled to regard the failure of the parties to reach any agreement, or to seek a ruling from the trial judge, as a powerful indication that the prosecution’s initial view as to the status of the material was correct. If the Determining Officer (or Costs Judge) is unable to conclude that material was in fact served, then it must be treated as unused material, even if it was important to the defence.*
- (ix) *If an exhibit is served, but in electronic form and in circumstances which come within paragraph 1(5) of Schedule 2, the Determining Officer (or, on appeal, the Costs Judge) will have a discretion as to whether he or she considers it appropriate to include it in the PPE. As I have indicated above, the LAA’s Crown Court Fee Guidance explains the factors which should be considered. This is an important and valuable control mechanism which ensures the public funds are not expended inappropriately.*
- (x) *If an exhibit is served in electronic form but the Determining Officer (or Costs Judge) considers it inappropriate to include it in the count of PPE, a claim for special preparation may be made by the solicitors in the limited circumstances defined by paragraph 20 of Schedule 2.*

(xi) *If material which has been disclosed as unused material has not in fact been served (even informally) as evidence or exhibits, and the Determining Officer has not concluded that it should have been served (as indicated at (viii) above), then it cannot be included in the number of PPE. In such circumstances, the discretion under paragraph 1(5) does not apply.*

9. I am referred additionally to the decisions in R v. King, R v. Napper, R v. Hayes, R v. Sereika, R v. Lawrence, Lam v. Neerbux, R v. Baptiste, along with a number of other reported cases.

#### The submissions

10. I am supplied by the Appellants with a Costs Appeal Bundle paginated 1-108.

11. The Respondent's case is set out in Written Reasons dated 11<sup>th</sup> September 2023 (pp 22-32) and in Written Submissions drafted by Ms Margaret-Victoria Quarshie, dated 1<sup>st</sup> June 2024. The Appellants' case is set out in Grounds of Appeal submitted on 2<sup>nd</sup> October 2023 (pp 1-4) and (at some considerable length) in a Case Summary drafted on or about 19<sup>th</sup> March 2024 (25 pages). Ms Quarshie and Mr MacDonald, a solicitor at the Appellants, attended and made oral submissions at the hearing on 3<sup>rd</sup> June 2024. After the hearing, Ms Quarshie filed an additional (short) written submission in an e-mail at 14:35 hours on 3<sup>rd</sup> June 2024. This e-mail was sent with the permission of the court and copied to Mr MacDonald.

#### My analysis and conclusions

#### SH1.15092022

12. This exhibit is known in the papers as the 'Full Extraction' report and it was served by the prosecution on or about 16<sup>th</sup> September 2022. The datum sub-divides into 34 categories of material. Some are agreed by the Respondent and others are accepted by the Appellants to form part of the 'special preparation' and not the PPE claim. The categories that remain in dispute are contacts, cookies, e-mails, installed applications, locations, searched items, databases, images, and videos. Collectively this datum comprises the 1962 pages which remain in dispute between the parties.

13. The Respondent, in summary, accepts that the prosecution utilised “a small number of images” downloaded from the Defendant’s phone, but notes that the evidence relied on amounted to 5+ images, a very small proportion of the total. The majority of the images on the phone downloaded were irrelevant emoji’s, thumbnails and screenshots. Thus, whilst some PPE allowance should be made for images, this should be small, comprising “1-2%” of the total. This conclusion, submits Ms Quarshie, is consistent with the approach adopted in cases like Sereika and Lawrence. Turning to the video evidence, it was “not clear that this was relevant” to the prosecution. Whilst it was agreed that Home Security Camera datum was stored on the phone, it did not include footage of a man – identified as “Tubs” by the Defendant- attending the property and delivering the firearm. Other categories of evidence – including searched items, installed applications, user accounts, wireless networks, cookies and device events containing technical material – were irrelevant to the prosecution.
14. I have considered the submissions of the Appellants and the Respondent very carefully. With regard to images, it is clear that in some cases it is appropriate to approve a % - often a fairly modest % - of the total datum in the PPE count. But on the particular facts of this case, I am satisfied the totality of the images datum should be included in the PPE count. This case turned on the possession of a prohibited firearm – more particularly, the precise circumstances of the Defendant’s admitted possession – and it is clear from the prosecution’s evidence that firearms images were recovered from the Defendant’s phone. Indeed, it is evident from the prosecution’s Opening Note that this datum comprised a specific and, according to the prosecution, potentially determinative category of evidence. Given the centrality of the images evidence, it seems reasonable to me that the totality of this datum should be included in the PPE count as, notwithstanding the reality that a lot of the material would ultimately be irrelevant, it was reasonable and necessary for the defence to concentrate on this category of evidence. Videos comprise a small part of the total, but video evidence was undoubtedly of some importance to this case. Regardless of whether or not the material recovered supported ultimately the Defendant’s case, the fact that he had installed CCTV cameras to his home, the feed from which was linked to his mobile telephone, was necessarily of relevance to the prosecution. There is more merit in the Respondent’s submission that other categories of datum should be

excluded from the PPE count, although the Appellants' submissions advance a spirited case for some (at least partial) inclusion.

15. There is – or appears to be – some dispute as to the images page count; the Appellants records 1151 pages, while the Respondent submits that images comprised 773 pages of the downloaded datum. Given the Appellants' familiarity with the material, and the detailed consistency of his submissions, I prefer the Appellants count to that of the Respondent. Doing the best I can – because the various page counts relevant to the other, excluded material are not clear – I am satisfied that an additional 1500 pages from SH1.15092022 should be added to the PPE count.

#### SH1.17082022

16. The datum from this exhibit is referred to variously in the papers as the 'Timeline' or the 'Partial Extraction' report, which was served by the prosecution on or about 12<sup>th</sup> September 2022. It comprises 1473 pages of datum, the inclusion of which is disputed in its entirety.
17. The issue here is different and a little more discreet to that applicable to the other exhibit, SH1.15092022. Here, while 'relevance' is broadly accepted, the material was excluded from the page count by the Respondent because it duplicated material disclosed in 1509. Mr MacDonald, for the Appellants, accepts this, but submits nonetheless the material should be included in the PPE count.
18. Mr MacDonald submits that 1708 was served by the prosecution first, on a date shortly before the original listing of the Newton Hearing. (I understand that this listing was non-effective because it coincided with a date chosen for the 'Bar Action', essentially a strike pursued by Barristers protesting against levels of legal aid remuneration in criminal case.) In any event, the Appellants considered it necessary to review this material in detail, with the impending Newton Hearing and, more particularly, the fact that at that time it was the only electronic datum disclosed by prosecution. Having reviewed this datum, they found it to be incomplete (to an extent, apparently, that excluded all the material relied on by the Crown), and so the Appellants requested service of the Full Extraction Report, namely exhibit 1509,



which appeared on or about 16<sup>th</sup> September 2022. Thus, whilst the material in 1708 is ultimately duplicated by datum disclosed in 1509, it was not duplicative at the point of disclosure or, indeed, at the time it was reviewed properly by the defence. Obviously, with the benefit of hindsight, consideration was unnecessary, because the material was duplicated by that contained in 1509. But the Appellants were not able to know or determine this at the time or, indeed, until the material itself was reviewed, was held to be incomplete. Any duplication, in other words, would manifest in 1509 and not 1708 and, insofar as it is relevant to do so, the Appellants have made provision for this in their revised PPE claim.

19. The Respondent, in summary, submits that the Determining Officer was correct in disallowing the timeline, as it was entirely duplicative set out in the full extraction report. Ms Quarshie cited the decision of CJ Brown in R v. Baptiste [2019] SCCO Ref: 189/18. In that case, the court rejected the Appellant's submission that 'it was necessary for him to consider the relevant communications in chronological order', as the material in the Timeline comprised 'the same messages and call information available in other sections already allowed as PPE'. In Baptiste, in other words, the fact of duplication overrode the apparent desire of the solicitor to consider communications in chronological order. The Appellants, in response, relies on the decision in R v. King [2019}, where the Costs Judge accepted that, in certain particular circumstances, the subsequent duplication did not invalidate consideration of the original material, which should be included in the PPE count. The circumstances cited in King were similar to those in this case, in that there was a second disclosure by the prosecution after service of the initial (defective) exhibit.
20. On this issue – and again on the particular facts of this case – I agree with the submissions of the Appellants in preference to those advanced by the Respondent. The circumstances here are more analogous to King than Baptiste. It was reasonable and necessary for the Appellants to review the datum in 1708 before service of the subsequent exhibit 1509. This was because it was the fact of this initial consideration that revealed problems with the prosecution's disclosure and led to the service of the second exhibit. In these circumstances, the fact of (what appears to be a partial) duplication cannot invalidate the fact that it was reasonable and necessary for the

Appellants to scrutinise both exhibits. As such, I conclude that the PPE count should also include the 1473 pages that comprise SH1.17082022.

21. This appeal is allowed (in part) and I direct that the Appellants' LGFS claim be assessed by reference to a PPE count of 4275.

#### Costs

22. This appeal has been largely successful and the Appellants are awarded costs of £750 (+ any VAT) payable along with the £100 paid when lodging the appeal.

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