



Neutral Citation No. [2023] EWHC 272 (SCCO)

Case No: T20197257

SCCO Reference: SC-2022-CRI-000052

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 27th January 2023

Before:

COSTS JUDGE WHALAN

R

v

RAMZAN HANIF

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

Appellant: Jonathan Turner, Counsel

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

The appropriate additional payment, to which should be added the sum of £125.00 (+ any relevant VAT) for costs, along with the £100 paid on appeal, should accordingly be made to the Applicant.

Costs Judge Whalan

Introduction

1. Mr Jonathan Turner, Counsel ('the Appellant') appeals the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') in respect of a claim for special preparation under the Litigator's Graduated Fee Scheme ('LGFS').

Background

2. The Appellant represented Ramzan Hanif ('the Defendant') who was charged at Preston Crown Court on an indictment alleging wounding with intent, where the complainant had suffered multiple stab wounds. The prosecution alleged that the Defendant committed the offence as he believed that the complainant had stolen drugs from him. The trial was listed but in November 2021 the Crown offered no evidence against the Defendant and he was discharged.
3. The Appellant states that the total PPE count was 3722, which was 3022 above the 700-page limit for this category of case. He filed a claim for 104 hours of special preparation. The claim has been rejected in its entirety by the Respondent.

The Regulations

4. The Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations') apply, as amended in September 2020 by the Criminal Legal Aid (Remuneration) (Amendment) Regulations 2020. The PPE limit, as noted, was 700 for this category of case. An additional payment for special preparation can be made which the DO 'considers reasonable to read the excess pages'.

The submissions

5. The Respondent's case is set out in Written Reasons dated 22nd April 2022. The Appellant's case is set out in brief Grounds of Appeal and in Written Submissions (undated) drafted by the Appellant. No request was made for an oral hearing and so I am directed to determine this appeal on the papers.

My analysis and conclusions

6. The Respondent, in summary, concluded that the ‘current format of the material makes it very difficult for the data to be considered in any meaningful way’, with the result that she felt unable to assess the reasonableness (or otherwise) of the time claimed to read the additional pages. Requests were made to the Appellant to submit the material in an alternative format, but he failed to do so. Accordingly, it was impossible to assess his claim for 104 hours of special preparation.
7. The Appellant, in summary, notes that the electronic datum relied on by the Crown was served in an exhibit that was ‘not formatted correctly’. When preparing the case, he had to download and print the exhibit onto A3 paper to consider the datum. Nonetheless, ‘this was the only format [in which] the material was provided’. Ultimately: ‘The Respondents have been provided with the original evidence in the format it was served upon me’. To note, as the DO has done, that the format is difficult to consider and assess, merely proves the reasonableness of the time claimed in special preparation.
8. I note at this stage that the Appellant has filed a comprehensive bundle (4059 pages) which contains all the original material. I have considered specifically the relevant parts of exhibit pages J193-3693 (selected text messages) and J3694-3722 (more accessible schedules).
9. I agree with the Appellant that the format of the relevant PPE should not prevent the DO from reasonably assessing the time claimed as special preparation. He disclosed the material in the form it was served on the defence by the Crown. He has no power realistically to re-format the material or require that it be served in a different format for the purpose of his costs appeal. It was incumbent on the Appellant to construe the disclosed material in preparation for the Defendant’s (abortive) trial. It was incumbent equally, in my view, for the DO to undertake a substantive assessment of the claim for 104 hours special preparation.
10. There is no real issue as to the fact that the Appellant undertook 104 hours of work. It seems that the initial claim was for 105 hours – a calculation challenged by the Respondent – and the Appellant confirms in his written Submissions (para. 10) that the correct figure is 104 hours. The issue is whether this was a reasonable total to the

just over 3000 PPE. An assessment cannot proceed by reference to the strictly empirical analysis, namely by the adoption of a one, two or three minutes per page methodology, a point noted repeatedly in the relevant jurisprudence. Any large PDF document will comprise pages of detailed, relevant datum, while others are more brief, irrelevant or even blank. For my part, I find that 104 hours is unreasonably high for reading just over 3000 pages, notwithstanding the fact that the formatting rendered the task more difficult and time consuming. Doing the best I can, I allow 75 hours of special preparation.

11. This appeal is allowed to the extent that I direct that the Appellant's claim for special preparation be assessed at 75 hours.

Costs

12. The Appellant has been successful (at least in substantial part) and is entitled to the return of the £100 paid to file his appeal. This appeal was determined on the papers and his written Submissions are relatively brief. I allowed additional costs of £125 (plus any relevant VAT).

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