



Neutral Citation No. [2022] EWHC 2312 (SCCO)

Case No: S20200335  
SCCO Reference: SC-2022-CRI-000026

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

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

Date: 24/08/2022

**Before:**

**COSTS JUDGE BROWN**

**Between:**

**REGINA**

**-v-**

**CHARLTON GLOVER**

**and**

**IN THE MATTER OF AN APPEAL AGAINST REDETERMINATION**

**MICHAEL CLARE**

**Appellant**

**-and-**

**THE LORD CHANCELLOR**

**Respondent**

**Hearing date: 24 August 2022**

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**Approved Judgment**  
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I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

1. The appeal has been unsuccessful for the reasons set out below. There shall be no order as to the costs of the appeal.
2. The Appellant wished the appeal to be dealt with on the papers. I nevertheless listed it for hearing yesterday on 24 August 2022 on the basis that I required further submissions to assist in understanding as to how the case was put. The Appellant helpfully prepared a skeleton argument and said that he did not wish to make orally any point not made in this skeleton argument which essentially proved the case; the time estimate for the hearing by Teams (of one hour) was, accordingly, pessimistic.
3. The issue arising in this appeal is whether (as the Appellant submits) a draft copy of a confiscation order should count as ‘evidence’ for the purposes of determining the claim for the fee due to the Appellant under Schedule 1 to the Criminal Legal Aid (Remuneration) Regulations 2013 (the 2013 Regulations’).

### **Background facts:**

4. The background to this matter can be put shortly (and has no real bearing on the issue arising). The Defendant was charged with being concerned in the supply of Class A drugs (Cocaine), being concerned in the supply of class B drugs (Cannabis) and acquiring Criminal Property. He was convicted of all charges on 21 October 2020. Sentence was adjourned until the case against other co-defendants had concluded. The confiscation timetable was set by HHJ Bacon QC on 12 February 2021 for all 3 defendants. On 18 February 2021 the Defendant was sentenced to 4 years and 6 months imprisonment. The confiscation order was made on 16 December 2021 which provided that the Defendant had benefitted by the amount of £49,253.92.
5. Paragraph 14 (2) of Schedule 1 to the the 2013 Regulations, which applies to this case, provides that the fee payable for confiscation hearings is partly dependent upon the number of pages of ‘evidence’ as defined: a higher fee is payable if the number of pages of evidence is 51 or more than if the number of pages is fewer than 51.
6. Importantly for these purposes paragraph 14 (3) Schedule 1 of the Regulations provides as follows (my underlining):

*In sub-paragraph (2) “evidence” means—*

- (a) *the statement of information served under section 16 of the Proceeds of Crime Act 2002 and relied on by the prosecution for the purposes of a hearing under Part 2 of that Act, or a similar statement served and so relied on for the purposes of a hearing under section 2 of the Drug Trafficking Act 1994 or under section 71 of the Criminal Justice Act 1988 and, in each case, any attached annexes and exhibits;*
- (b) *any other document which—*

- (i) *is served as a statement or an exhibit for the purposes of the trial;*
- i. *(ii) is specifically referred to in, but not served with, a statement mentioned in*
  - ii. *paragraph (a); and*
  - iii. *(iii) the prosecution state that they intend to rely on in the hearing; and*
- (c) *any written report of an expert obtained with the prior authority of the Lord Chancellor under regulation 13 or allowed by the appropriate officer under these Regulations, and any attached annexes and exhibits, other than documents contained in such annexes or exhibits which have also been served under paragraph (a) or (b) or which consist of financial records or similar data.*
7. The fee claim on 5 January 2022 was made on the basis of evidence totalling (at least) 51 pages. The claim was allowed but on the basis of a decision by the Determining Officer that the evidence consisted of only 49 pages. The key point in the decision of the Determining Officer was his rejection of the contention that a draft copy of the confiscation order should itself count as ‘evidence’ for these purposes. It is, as I understand it, implicit in the contentions made by the Appellant that if this were the correct approach then the evidence is indeed limited to 49 pages and the fee would then have been assessed correctly.
  8. The Appellant however contends that the draft order served upon him by the prosecution comes within the broad definition of “evidence” for the purposes of regulation 14 (3) (a), as it is annexed to the prosecution case documents for defence counsel to consider in advance of the confiscation hearing.
  9. The Determining Officer said that as the order was not made until the conclusion of the case it cannot be part of the documents relied upon by the prosecution. The Appellant says that the Officer was wrong to treat the draft order as a court order made after the hearing. Court orders made after the hearing could not be part of the evidence for the hearing but this one was submitted in draft before it began.
  10. It is, the Appellant submits, not necessary for the draft order to be expressly annexed to the Section 16 statement or exhibited to that statement as the order is, he says, annexed to that statement by implication. He says that prosecution often serve it before the hearing usually with the Section 16 statement because the prosecution specifies in the Section 16 statement what the amounts involved are and in the draft sets out the full terms of order sought.
  11. Albeit not (quite) for the reasons given by the Determining Officer, it seems to me clear that the draft order is not ‘evidence’ for these purposes. It is not enough, in my view, that the order is served with the Section 16 statement if not actually annexed to it (as I understood the Appellant effectively to have confirmed at the hearing to be the case

here). The draft order is, it might be said rather obviously, not a matter of evidence but a statement of what the prosecution intends to seek. Moreover, having regard to the specific terms of the Regulations, it seems to me that the draft order does not come within the definitions at paragraph 14 (3) (a). It was not actually annexed or exhibited to the section 16 statement, so that subsection cannot apply. I cannot accept the contention that the draft order was annexed ‘implicitly’. The draft order set out what the prosecution was seeking but that does not mean that it should thereby be treated as having been impliedly annexed or exhibited to the statement. There is, to my mind, no basis for such an implication, as quite apart from anything else, the draft order was not evidence or information which the Section 16 Statement was intended to provide.

12. It was not said, I should add, that the draft order was specifically referred to in the section 16 statement, so that it might be included as part of the evidence under Regulation 14(3) (b).
13. I understand that the draft order was fully considered and agreed in advance of the hearing. I accept that a draft of the order sought enables the court to deal with confiscation hearings efficiently. I also accept that aspects of the order had to be checked carefully. But none of this makes the draft itself evidence.
14. Applying the relevant provisions, it seems to me clear that the draft order cannot be ‘evidence’ for these purposes. It is no surprise to be told that draft orders have not been treated as part of the page count for these purposes before (albeit even if true, this would not help in answering the issue raised). Not unusually, before hearings drafts of orders are prepared and sometimes many versions of the draft might be prepared and circulated. It strikes me as unlikely in all the circumstances that it would, in general, have been intended that such draft should count as ‘evidence’ for the purposes of the Regulations.

COSTS JUDGE BROWN