



Neutral Citation No. [2022] EWHC 2660 (SCCO)

Case No: T20190419

SCCO Reference: SC-2021-CRI-000085

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

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

Date: 12 October 2022

**Before:**

**COSTS JUDGE ROWLEY**

**R**

**v**

**MAGON**

**Judgment on Appeal under Regulation 10 of the Costs in Criminal Cases  
(General) Regulations 1986**

Appellant: Ms Euphrazia Matete  
(Private prosecutor)

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

**COSTS JUDGE ROWLEY**

### **Costs Judge Rowley:**

1. This is an appeal by Ms Euphrazia Matete against the decision of the determining officer to reduce the sum claimed in respect of her costs as a private prosecutor following an order of the court dated 16 January 2020 for Ms Matete to be compensated in accordance with s17 Prosecution of Offences Act 1985.
2. The relevant statutory provision guiding the determining officer's decision is Regulation 7 of the Costs in Criminal Cases (General) Regulations 1986 which states:

“(1) The appropriate authority shall consider the claim and any further particulars, information or documents submitted by the applicant under regulation 6(5), and shall allow costs in respect of –

(a) such work as appears to it to have been actually and reasonably done; and  
(b) such disbursements as appear to it to have been actually and reasonably incurred.

(2) In calculating costs under paragraph (1) the appropriate authority shall take into account all the relevant circumstances of the case including the nature, importance, complexity and difficulty of the work and the time involved.”
3. Ms Matete challenged the determination officer's original assessment of the costs claimed. She has been through the re-determination procedure and has obtained written reasons so that this appeal may be brought before a costs judge. During the process of this appeal, the determining officer has allowed all of the time claimed by Mr F Khan, a barrister with rights to conduct litigation and appear as a directly instructed barrister, and whose fees have been paid by Ms Matete.
4. The only matter that remains in dispute is the hourly rate charged by Mr Khan. Upon redetermination, the determining officer has allowed an hourly rate of £250 per hour for the work done. Whilst that is a considerable increase on the original determination, it still falls short of the rate of £350 per hour claimed by Mr Khan. (Both hourly rates figures being net of vat).
5. The background to the case is succinctly set out in the determining officer's written reasons and which is essentially taken from Mr Khan's taxation note.

“This case concerned allegations of long-term domestic abuse, both physical & mental, of the complainant who had on 2 previous separate occasions been to the police who had failed to prosecute the defendant.

The complainant & private prosecutor therefore brought her own prosecution under The Prosecution of Offences Act 1985, Section 6. The alleged abuse lasted for a period spanning approximately 4½ years from January 2009 to July 2013.

The case was complicated by the fact of on-going, long term Children Act proceedings which formed the backdrop of the case.

There were to be 11 counts in the indictment at trial. The offences included 4 offences contrary to The Marriage Act 1949 & The Perjury Act 1911, 5 offences of actual bodily harm, 1 offence of wounding and 1 offence of criminal damage.

The defence indicated not guilty pleas would be entered from the outset. A trial date of 20th April 2020 was set at the first crown court hearing date of 2nd July 2019.

In December 2019, the CPS, having taken over the prosecution, offered no evidence and the Judge entered not guilty verdicts on all counts.”

6. As can be seen from this background, the criminal prosecution arose out of matters with which the family court was concerned. Mr Khan points to a rare, if not indeed unique, combination of experience which he possesses of family and criminal work, the latter both within a criminal law firm as well as in his role as counsel. He also points to the length of his 30 plus years of experience in justifying the hourly rate claimed. He states that he does not carry out any legally aided work and that the rate charged to Ms Matete was in fact a discount on his usually hourly rate of £450.00.
7. The determining officer allowed the work done at £250 per hour regardless of whether Mr Khan was acting as a litigator or advocate. In respect of the litigator work, he drew upon the London 3 Guideline Hourly Rate band of £229 to £267 for a Grade A fee earner to support the figure he had allowed. In respect of the advocacy, he referred to previous case law where there have been judicial pronouncements on the limits to the hourly rates to be allowed for counsel in criminal cases.
8. On 6 June 2022, Ms Matete attended this court to make representations in respect of this appeal. I commend her efforts in battling the strike on the London Underground that day to get to court. There had in fact been a number of previous dates set for the hearing, but which Ms Matete was unable to attend. Indeed, following an ineffective hearing in March 2022 I drafted a decision on the basis that Ms Matete did not wish to attend upon her appeal. I have reused paragraphs of that decision in setting out the background in this decision.
9. At the hearing, Ms Matete told me that she had agreed the hourly rate of £350 with Mr Khan on the basis that he was working as both her counsel and her lawyer. By one person doing everything, she was seeking to limit the costs in order to make them reasonable.
10. She reiterated that Mr Khan had essentially unique experience in family and criminal law. He did a very good job including the three hearings in the family court in order to obtain documents for the prosecution. Those efforts took some time and she had to pay for it. She did not consider that she could ask him to repay the money in the circumstances.
11. She wanted justice to be done but did not consider that she had received any justice given that the prosecution was wrongly halted. She had received a letter from the CPS saying that they had got it wrong and had made an error of law. She had wanted to bring the prosecution back again but could not do so because of the double jeopardy rule. As

such she felt heartbroken and did not consider that the reduction in Mr Khan's fees could be described as being reasonably sufficient compensation.

12. I think the starting point on this appeal is the question of the relevance of Mr Khan acting as both litigator and advocate. It is regularly said that by instructing one person rather than both solicitor and counsel, the fees must be reduced. The attraction of that argument is obvious. But, in my experience, it is not always borne out by reality. The barrister involved is usually quite senior and so all work done is charged at a higher hourly rate. The fees are generally meant to be fixed in advance and that can lead to contingencies being built into the agreed fee in order to cater for unforeseen events. As such, the fees claimed can be higher than the use of separate litigator and advocate charging for the work that was actually required. This is by no means always the case, but it is sufficient, in my view, to prevent any assumption being made that using a direct access counsel is inevitably the cheapest option. As such, the determining officer was correct to consider the work done by Mr Khan as an advocate and separately the work he did as a litigator.
13. In considering Mr Khan's fees as an advocate, the determining officer was required to apply the long standing test set out by Pennycuik J in [Simpsons Motor Sales \(London\) Limited v Hendon Corporation \[1965\] 1 WLR 112](#). There the judge said that the fee to be allowed would be one agreeable to a hypothetical counsel able to conduct the case but who did not seek to charge a particularly high fee because of any pre-eminent reputation.
14. In the more recent case of [Evans & Ors v The Serious Fraud Office \[2015\] EWHC 1525 \(QB\)](#), Hickinbottom J had to consider counsel's fees in complicated criminal proceedings following orders made under the Prosecution of Offences Act 1985. The key paragraph of his judgment contained the following words:

“I accept that this case warranted counsel of particular calibre, experience and expertise. However, on the basis of my knowledge of the case – and my knowledge and experience of counsel's fees generally – I do not consider that the rates charged are reasonable in the context of a section 19 assessment. I consider that the hypothetical counsel referred to by Pennycuik J in [Simpsons Motors](#) would have reasonably been charged out at approximately £480 per hour, and his hypothetical junior at a rate of approximately £240. I stress that I consider those rates are “top end” rates for criminal work: and, whilst I do not say that in another case they might not be exceeded – although, I suspect, not by very much – they take into account the especial experience and expertise of particularly eminent leading counsel, from which flows more efficient working than would be the case with less experienced and expert counsel.”
15. Hickinbottom J also referred to the case of [R v Zinga \[2014\] EWCA Crim 1823](#) where particularly experienced counsel in the field of private prosecution had claimed £220 per hour. I have dealt with claims for similar private prosecution work from the same counsel much more recently and they are still claiming similar levels of hourly rates.
16. It is clear from [Evans & Others](#) that an individual case would have to be truly exceptional in terms of gravity or complexity for hourly rates above £500 for leading

counsel and the conventional half rate for junior counsel of up to £250 per hour to be justified.

17. The determining officer here has allowed £250 per hour for Mr Khan's work as an advocate and, given the binding authority of Evans, I can only conclude that this rate provides for reasonable compensation of Ms Matete as the prosecutor.
18. As far as Mr Khan's work as a litigator is concerned, he chose to charge the same rate as for his advocacy. If he were to be allowed a different rate on assessment, there would have to be a compelling reason to do so. The determining officer has used the Guideline Hourly Rates which, although originally created for other purposes, are invariably used when private prosecutor's fees are being claimed. The rate of £350 would only be allowed for litigation in the City of London based on the rates in use at the time the work was done. Even now, the rate claimed would only be allowed for work by litigators in Central London.
19. The determining officer has looked at the Outer London rate ("London 3") which is correct for the location of Mr Khan's chambers. At the time, the guideline rates were between £229 and £267: those rates had been in force since 2010. The updated London 3 figure from October 2021 is £282.
20. The determining officer has allowed £250 for Mr Khan's work as a litigator. That is in line with the guideline rate. The combination of this with the fact that Mr Khan did not himself differentiate such work in his retainer with Ms Matete (from his advocacy rate) makes the decision of the determining officer to be clearly correct, in my view.
21. Therefore, whilst I have every sympathy with Ms Matete for her disappointing experience of the criminal justice system, I consider that I must uphold the determining officer's decision and dismiss this appeal.