



Neutral Citation No. [2022] EWHC 3350 (SCCO)

Case No: T20210032

SCCO Reference: SC-2022-CRI-000083

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

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

Date: 12 December 2022

**Before:**

**COSTS JUDGE ROWLEY**

**R**

**v**

**HAJER**

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

Appellant: Asghar & Co Solicitors

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

COSTS JUDGE ROWLEY

### **Costs Judge Rowley:**

1. This is an appeal by Asghar and Co solicitors against the classification of offence used by the determining officer in calculating the Litigators Graduated Fee in accordance with the Criminal Legal Aid (Remuneration) Regulations 2013.
2. The solicitors were instructed on behalf of Alan Hajer under a representation order dated 24 January 2020. Mr Hajer faced a single count indictment concerning the possession of articles for use in frauds contrary to section 6(1) of the Fraud Act 2006. The particulars of the offence referred to him possessing a quantity of images purporting to be data pages from passports.
3. I have been provided with the prosecution opening note which describes the relevant events. A Syrian woman named Heva Mohammed arrived at Heathrow airport on 3 January 2018 and claimed asylum upon arrival. She said that she had been provided with a passport by an agent which she had destroyed on the agent's instructions. A damaged Bulgarian passport in a different name was found on board the aircraft and Ms Mohammed confirmed that it was the passport she had been given. The passport was subsequently determined to be counterfeit.
4. Mr Hajer arrived at Heathrow on the same aeroplane from Germany as Ms Mohammed. He was arrested on suspicion of being concerned in the production of counterfeit passports. His boarding pass and passport were seized as well as two phones and an iPad. Those digital devices were analysed and a photograph resembling Ms Mohammed was found on the iPad. Moreover, according to the Prosecution's Opening Note:

“Additionally, HAJER's iPhone 5S was found to contain 20 identity cards, citizen cards and biodata passport pages belonging to Austrian, Belgian, French, German, Luxembourgish, Dutch, and Portuguese nationals. These were analysed by a forgery expert and found to be counterfeit.”
5. The opening note also sets out numerous messages from one of the phones which the prosecution obviously intended to rely upon to demonstrate the involvement on the part of Mr Hajer in some fraudulent activity.
6. The opening note concludes that the prosecution did not need to prove that Mr Hajer intended the articles to be used for a specific fraud and that a general intention to use them fraudulently would be enough. The prosecution's case was that the admissions of Ms Mohammed, with her photograph on Mr Hajer's iPad, coupled with the identity documents found on the phone and the text messages were sufficient to demonstrate that the crime had been committed.
7. In fact, the prosecution ultimately did not open the case but offered no evidence. One of the ramifications of this is that there is no information directly provided by the prosecution as to the value of the fraudulent activity.
8. The importance of this is that the remuneration of the solicitors depends upon the determining officer, and therefore a costs judge on the appeal, coming to some conclusion as to the value of the fraud. This is so because the calculation of the

graduated fee depends upon classifying the offence within the table of offences set out at Part 7 of Schedule 1 of the 2013 Regulations. As the italicised rubric makes clear:

*“The following offences are in Class G if the value involved exceeds £30,000, Class K if the value exceeds £100,000 and in Class F otherwise”*

9. The classification has simplified since the regulations were originally drafted in that the updated figures for the three classes of offence now make no distinction between Class F and Class G. As such, there is no relevance to demonstrating that the fraud was worth more than £30,000 rather than less than £30,000. The only relevant threshold is that of £100,000.
10. The Litigators Graduated Fee Scheme is set out in Schedule 2 of the 2013 Regulations. At paragraph 3(1)(c) in that schedule, it is made clear that if the fee is based upon an offence which falls into a class that is dependent upon the value exceeding the stated limit, then the value must be presumed by the determining officer not to exceed that limit unless the litigator proves otherwise to the satisfaction of the determining officer.
11. In their appellant’s notice, the solicitors make reference to the opening note and its recording of the 20 false ID cards found on Mr Hajer’s phone. It also refers to the messages set out in the opening note and describes that as indicating widescale people smuggling. Indeed, the appellant’s notice contends that the accompanying documentation to the opening note suggests that Mr Hajer was involved in people trafficking of at least 60 individuals. On that basis the value of the fraud was easily well over £100,000. The solicitors had asked the prosecution to confirm its position on the value of the fraud but, as Mr Chowdhry confirmed to me at the hearing of this appeal, there had been no positive response from the prosecution.
12. Mr Chowdhry’s oral submissions quite rightly concentrated on the value of the fraud. In particular, he took me through the table of messages in the opening note in order to demonstrate his calculation of 65 – 67 people being trafficked (one entry referred to 8 – 10 people). He also told me two other pieces of information which were not otherwise apparent from the papers.
13. The first was that the prosecution had intended to lay a “whole load” of further counts and had informed the court of this on 22 November 2021. The judge required this to occur by 4 January 2022. When that did not occur, another judge refused an application to add further counts which was made on 11 January 2022. That application was made orally and the absence of any draft indictment setting out the further counts was, in Mr Chowdhry’s view, one of the reasons for the application being refused. The prosecution then offered no evidence against Mr Hajer.
14. The second piece of information was the change in the defence. Initially, Mr Hajer denied any knowledge of Ms Mohammed. However, having seen the prosecution evidence, Mr Hajer stated that he was in fact secretly working for the Turkish secret service. As such, all of the photographs and messages could be explained by his working under cover. Mr Chowdhry was obviously rather sanguine about the prospects of such a defence succeeding in the absence of any corroborating evidence to combat the prosecution’s evidence.

15. Mr Chowdhry understandably complained about the lack of any engagement from the prosecution in valuing the fraud, even though the page count had been agreed. Mr Chowdhry was also none the wiser as to why his client had not been charged with facilitating illegal entry at the outset or why the reviewing lawyer at the CPS had not used counsel's detailed opening note in order to draft the paperwork to set out all the counts that were available based on the prosecution's evidence.
16. In the case of R v Garness (132/13) the defendant was employed by the Metropolitan police as an analyst and it was alleged that he had provided information to a group of criminals about the whereabouts of suspected cannabis factories so that the drugs could then be stolen by the group of criminals. As Costs Judge Gordon Saker pointed out, the potential victims of this conspiracy were unlikely to report any thefts to the police. There was therefore no evidence as to whether the dishonest conduct had taken place at all.
17. The case of Garness was decided under the wording of the Criminal Defence Service (Funding) Order 2007 but the provisions were essentially the same as the 2013 Regulations. It was for the litigator to persuade the determining officer of the value of the criminal activity. Costs Judge Gordon Saker described the test in the following vivid terms:

“It seems to me that the proof required to rebut the presumption provided by paragraph 3(1)(c) is proof on a balance of probabilities. In deciding whether he or she is satisfied the appropriate officer must take a common sense approach. A conspiracy to steal Bentley motor cars from a car dealer in Piccadilly is likely to involve a value in excess of £100,000 even though no cars are actually stolen. A conspiracy to steal a couple of cannabis plants from the balcony of an ageing hippy is unlikely to involve a value in excess of £30,000.”
18. What then is the common sense approach to the value of the fraudulent activity in this case?
19. The opening note says, at paragraph 24:

“We say the fraud here is fraud by false representation i.e. the counterfeit identity documents are designed to enable the user (such as Heva Mohammed) to present as the legitimate holder of a legitimate identity document, when that is not in fact the case.”
20. The note then goes on to say, as described above at paragraph 6, that the prosecution did not need to prove the article was to be used for any particular fraud: general intention was enough.
21. If the prosecution was able to prove that Mr Hajer was involved in people trafficking in relation to Ms Mohammed, then presumably that would have been included on the original count at the same time as the single count that did appear. Ms Mohammed had been apprehended at the time and specific charges could be expected in a way that might not occur with the phone messages which did not refer to specific people. Indeed, the messages were less than conclusive, in my view, as to the number of people who

appeared to be being assisted by Mr Hajer. A number of the messages appeared to relate to the same individuals. Nevertheless, I accept the general thrust of Mr Chowdhry's submissions that the assistance involved at least tens of people and not just a handful.

22. The difficulty for the solicitors in this appeal is not just the absence of any figures on which to extrapolate the value of the fraud. It is also, in my view, the fact that the offence with which Mr Hajer was indicted was a broad allegation of the use of data pages from passports. The possibilities for the nefarious use of passports are far wider than people trafficking and the messages suggest to me that Mr Hajer had a number of activities on foot. In these circumstances, I do not think that it is appropriate to conclude that the cost of trafficking someone into the country is necessarily a relevant comparator, even ignoring the other work that would be required (and paid for) to facilitate such entry.
23. This difficulty arises before there is even any consideration of the absence of such charges on the indictment. The opening note appears to have been drafted with the disclosure to hand and the prosecution does not give any indication there of further counts being added. The half-hearted attempt to add counts orally without any draft document simply adds to the impression that the prosecution were not convinced that a prosecution of further offences could be sustained. This conclusion adds weight to the view that the images should be valued by themselves rather than as part of a people trafficking operation.
24. There remain no figures to assist me, any more than they assisted Mr Chowdhury. But having concluded that the value of the fraud is essentially bound up with the images on the phone, then I have little doubt that their value was well below the threshold of £100,000. The burden of proof is on the litigator but I think there is really very little room for doubt in any event.
25. Accordingly, this appeal fails for the reasons I have given.