



Neutral Citation Number [2023] EWHC 1326 (SCCO)

Case No: M1168747

SCCO Reference: **SC-2022-CRI-000148**

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

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

Date: 12/5/2023

**Before:**

**COSTS JUDGE Brown**

**IN THE MATTER OF:**

**R v DeSuza**

**Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration)  
Regulations 2013/Regulation 10 of the Costs in Criminal Cases (General) Regulations  
1986**

**THE JOHNSON PARTNERSHIP SOLICITORS**

**Appellant**

**-and-**

**THE LORD CHANCELLOR**

**Respondent**

**COSTS JUDGE BROWN**

For the reasons given below this appeal is dismissed.

1. The issue arising in this appeal is the classification of a fee earner at the Appellant firm for the purpose of determining costs due pursuant to Schedule 2 of the Criminal Legal Aid (Remuneration) Regulations 2013 in proceedings under the Proceeds of Crime Act 2002 ('confiscation proceedings').

2. At the hearing of the appeal on 31 March 2023 the Appellant was represented by solicitor – advocate, Ms. Hornby (a solicitor and a partner at the Appellant firm). She subsequently provided me with further submissions and material in subsequent emails of 31 March, 5 April 2023 and 9 May 2023. The Respondent, effectively the Legal Aid Authority (the 'LAA') did not appear and was not represented.

3. Paragraph 26 of Schedule 2 of the 2013 regulations provides as follows:

*Fees for confiscation proceedings*

*This paragraph applies to—  
proceedings under Part 2 of the Proceeds of Crime Act 2002 (confiscation:  
England  
and Wales);*

...

*(2) Where this paragraph applies, the appropriate officer may allow work done in the following classes by a litigator—*

*(a) preparation, including taking instructions, interviewing witnesses, ascertaining the prosecution case, preparing and perusing documents, dealing with letters and telephone calls, instructing an advocate and expert witnesses, conferences, consultations and work done in connection with advice on appeal;*

*(b) attending at court where an advocate is instructed, including conferences with the advocate at court;*

*(c) travelling and waiting; and*

*(d) writing routine letters and dealing with routine telephone calls.*

*(3) The appropriate officer must consider the claim, any further particulars, information or documents submitted by the litigator under regulation 5 and any other relevant information and must allow such work as appears to him to have been reasonably done in the proceedings.*

*(4) Subject to sub-paragraph (3), the appropriate officer must allow fees under this paragraph in accordance with paragraph 27.*

*(5) The appropriate officer must allow fees in accordance with paragraphs 27 to 29 as appropriate to such of the following grades of fee earner as the appropriate officer considers reasonable—*

*(a) senior solicitor;*

*(b) solicitor, legal executive or fee earner of equivalent experience; or*

*(c) trainee or fee earner of equivalent experience.*

4. Regulation 2 of the 2013 Regulations, provides as follows:

*"senior solicitor" means a solicitor who, in the judgement of the appropriate officer, has the skill, knowledge and experience to deal with the most difficult and complex cases;*

*"solicitor, legal executive or fee earner of equivalent experience" means a solicitor, Fellow of the Institute of Legal Executives or equivalent senior fee earner who, in the judgement of the appropriate officer, has good knowledge and experience of the conduct of criminal cases;*

*"trainee solicitor or fee earner of equivalent experience" means a trainee solicitor or other fee earner who is not a Fellow of the Institute of Legal Executives, who, in the judgement of the appropriate officer, carries out the routine work on a case;*

5. The fee earner in respect of which the dispute has arisen is Ms. Anrea Cowie ('AC'). The Determining Officer considered that she should be regarded as a Grade C fee earner for the purpose of the claim for costs in the above headed matter; the Appellants say she should be regarded as a Grade B fee earner.

6. The background can be shortly stated. A Representation Order was made in favour of the Appellant on 16 May 2020 in respect of the Defendant who was charged with possession of a controlled drug (cannabis) with intent to supply and various firearm offences. The offences involved an attack on a property in the course of which rounds were fired; and drugs that were discovered after that incident. The Defendant pleaded guilty to the drugs charges at PTPH on 4 September 2020 and subsequently entered pleas of guilty to two of the three firearm offences. On 9 July 2021 the Defendant was sentenced on various terms of imprisonment (6 years and 8 months on one particular offence to run concurrently). Work was undertaken on the confiscation proceedings between 10 August 2021 and 25 May 2022. It appears that the order in the confiscation proceedings was agreed and made at a mention hearing on 20 May 2022. An order of confiscation was made in the sum of £272.63 to be paid within 3 months (in default the Defendant was to serve 14 days imprisonment consecutive to the term of custody which the Defendant was liable to serve for the substantive offence). The Benefit amount was, I understand, assessed at £8,000.

7. AC is not qualified either as a solicitor or as a legal executive. It is said that she has experience which is equivalent to a solicitor or legal executive and, as it is put, had the knowledge and experience to conduct criminal cases.

8. I am told that AC has been accepted as grade B fee earner by case workers with the LAA in what are referred to as PL1 ('fastrak') claims where, as I understand it profit costs are under £2,000. I am not, of course bound by those decisions. It appears that in this claim (and perhaps other similar claims) the Appellants relied upon the decision of a Taxing Master in *R v Badham* SCTO 621/93. However despite efforts on the part of Ms. Hornsby to obtain a copy of this decision she was unable to produce it for me.

9. I have not received any witness statement from the Appellant setting out the factual basis of the matters relied upon in support of appeal. I have however read and considered all the matters set out in various documents provided by and relied upon by the Appellants. It is normally easy to see and check whether a fee earner is a qualified solicitor or Legal

Executive (FCILEX) from the appropriate roll or directory. The matter is not so straightforward where the fee earner is of “*equivalent experience*”. In the civil context certification of a bill is required and the status and grade of the fee earner is to be set out in accordance with the SCCO Guide (see *AKC v Havering* [2022] EWCA Civ 630).

10. I understand however that AC obtained a law degree from degree from Derby University in July 2010 (classed as 2:1). She worked in retail as an assistant regional manager for the supermarket chain, Morrisons, between 1996 and 2001 and in a managerial role between 1999 and 2001 (responsible for training of other managers). Whilst studying I am told that AC thereafter worked for Costsco and worked full time there from 2001 to 2019. I am told she was working in bakery department where she gaining experience of product management. She began her employment with the Defendant in January 2019 and therefore had been employed for some 2.5 years when she commenced work in the confiscation proceedings in this case.

10. AC undertook the LPC (Law Professional Course) between 2015 and 2017. I am told that she was not able to sit all of the exams for personal reasons but passed all the ones that she took (albeit it is not clear which of the exams these were). She has now resumed her training to be a solicitor and switched to the SQE (Solicitors Qualification Examination) I am told that she has also attended courses including a course, I think, in September 2022 entitled Proceeds of Crime Update.

11. I understand that the Appellants are one of the largest criminal defence firms in the country and have one of the largest and most significant caseloads. AC has been employed in the Fraud and Business Crime department. It is said in the Notice of Appeal which is dated December 2022 that 80% of her time is spent during office hours dealing with confiscation cases and the remaining time, 20%, dealing with substantive fraud cases.

12. I understand also that the work that AC undertakes involves direct liaison with judges, prosecuting barristers and financial investigators, and that she works on cases which require examination of banking material, work which it is said might otherwise may be sent out to a Forensic Accountant. I am told that she enters into discussions with the Financial Investigators about the case and ways of it being resolved and instructs counsel as to how the case will proceed (I note that in the materials some of the counsel are described as inexperienced). I am told that she is involved in preparing schedules and examining material which otherwise would or might have been considered by a Forensic Accountant.

13. I have not been provided with any of the underlying papers in these proceedings. There is no clear indication of any particular complexity or difficulty (it is, it might appear, a ‘fastrak’ case). It seems to me that the consideration of bank statements and preparation of schedules on a case such as this may well be suitable work for a grade C. Some confiscation cases might require consideration by a forensic accountant but it is difficult to see how this could be such a case. Indeed it seems to me that many claims such as this would involve significant routine work and work which is suitable for a Grade C fee earner whether or not in fact undertaken by a Grade B fee earner. Indeed even if of some of the work might in fact be done by a Grade B I would not accept that such work would not necessarily be paid at Grade B rates.

14. I am required to consider whether this particular fee earner had equivalent experience in the sense required by the provisions. That appears to require an assessment

of such experience as at the time when the work was carried out.

15. It is unclear to me quite what degree of experience had gained by the time AC came to be working on this case or by the time the case had finished. It is suggested that the nature of the work undertaken by her after she had been employed for two years changed so that the work was more complex. I would take it that the work she had been undertaking prior to this was Grade C work, or at least substantially so. It would seem unlikely that when she first started working for the Appellants she would have been working without close supervision and that her work would in any real sense would have been fairly routine work. Indeed whilst the nature of the work appears to have changed I am told that that AC's work continues to be supervised.

16. In my judgment the Determining Officer was correct to reject the contention that the AC's experience would have had the equivalent experience of a solicitor or a qualified litigators executive (CFILEX). I think that the Appellant's case understates the nature, extent and breadth of the training (including the professional training of an academic nature leading to examination) and the experience of both solicitors and legal executives on qualification.

17. There was little attempt, by Ms. Hornby to address the experience that would have been gained by a trainee solicitor or a legal executive by the time they had qualified (as the Determining Officer had done in her decision). However she accepted in the hearing it was appropriate for me to consider the publicly available information as to what the training involved. I shall not set out the detail<sup>1</sup> of the training which I have considered and is probably well known by those who might read this decision and in any event is available online.

18. For those who have a law degree there is normally another three years of training in order to become a solicitor. For those seeking to qualify as a solicitor there is one year of study in areas which under the new SQE2<sup>2</sup> at least appear to include practical matters (such as advising and advocacy, interviewing, practical legal research and opinion writing); there are also modules on professional conduct and regulation. There are thereafter two years' of supervised and defined qualifying work experience.

19. To become a Chartered Legal Executive, a period of **qualifying employment** is required over a three year period (one of which must be completed as a graduate of CILEX). To qualify as a CILEX Fellow, applicants need to demonstrate eight competencies against a range of learning outcomes; this requires the submission of a work-based learning portfolio containing evidence of knowledge, experience and skills based upon their own

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<sup>1</sup> The precise requirements are complicated given the transitional arrangements Solicitors Qualifying Examination (SQ) in place until 2032.

<sup>2</sup> The SQE2 is described as having a series of practical tasks, which, assess applicants' oral and written skills, in key areas such as: Client interviewing

- Advocacy
- Legal research
- Legal drafting
- Legal writing
- Case and matter analysis (see inter alia, [Assessment topics | SQE | Solicitors Regulation Authority \(sra.org.uk\)](https://www.sra.org.uk/assessment-topics/sqe))

work experience. As I understand it in order to be eligible to apply for Fellowship via a work-based learning portfolio the individual must have completed at least 3 years' qualifying employment of which one year must be served as an Advanced Paralegal member of CILEX.

20. It is asserted that the nature of the work AC is doing on a day to day basis means that she has gained greater experience (or, at least, no less) in this area than most qualified criminal solicitors and her experience is more wide ranging than a similar period of experience in a much smaller firm. No material has been provided in support of this assertion and I am not satisfied that this is the case. As experience in dealing with other areas of work suggests it is quite possible to obtain experience in dealing with very particular kinds of claims or litigation but have little or no experience in others. Unqualified fee earners in at least one well known large civil firm specialise in preparing schedules of loss in personal injury claims; while that gives them some specialist knowledge, which not all solicitors may have, it is a long way short of the knowledge experience and understanding that would be expected of a solicitor. Indeed my impression is that AC's work appears quite specialised in confiscation proceedings, some of which may well have been relatively straightforward. No doubt this will provide some training in these particular cases but I would not regard this as providing general degree of experience that is required. I accept, of course, that confiscation matters are of importance (given not least that the Defendant's liberty is at stake) and the increasing importance that can be attached to determining the Benefit figure (and the continuing exposure of the Defendant to a claim for confiscation) but I am not satisfied that AC had substantial experience of criminal cases generally (as the definition of a Grade B fee earner might be said to contemplate) or of a broader range of more complex confiscation proceedings that I would expect someone qualified as a solicitor or a legal executive in this field to have.

21. I have considered all the matters that have been advanced on behalf of the Appellant. I am told that AC was an advisor for the Citizens Advice Bureau, as a volunteer, for approximately 18 months between 2017 and the end of 2018. Little is said about the nature of extent of the work (albeit it is said that she was advising on area of law including criminal law). I also understand that AC became a fully accredited Police Station Representative in December 2020; as a result she is able to attend upon clients for the full range of offences – and in this respect she has the same status, as regards the provision of this advice, as a solicitor (see para. 6.12 and following of the Revised Code of Practice for the detention, treatment and questioning of persons). Even accepting, as I do, that accreditation goes some way to establishing 'equivalent experience' and does provide assurance as to competence to attend upon a client in a police station (accreditation which I am told requires completion of a number of written portfolios under the supervision of a duty solicitor as well as an oral examination specifically demonstrating a working knowledge of all offences), it is not clear what experience AC has in fact acquired in doing this work. Plainly in any event this accreditation cannot of itself be equivalent to the professional qualification of solicitor and legal executive.

22. Indeed quite apart from any comparison that may be made between the nature of the work that I would expect a trainee solicitor or a graduate FILEX to have been undertaking with that which I would expect to have been undertaken by AC in the first two years of employment, as the Determining Officer commented, the route to becoming a qualified solicitor is far longer than 2.5 years when taking the LPC or the SQE are taken into account. The same is true of a legal executive.

23. I understand that AC is some 45 years of age. She has the benefit of experience from her previous careers. Her working background is, as I set above, in retail and I accept that she would in general terms have had considerable experience of business processes and procedure. However it seems to me that the type of work which she undertook before joining the Appellants is to be distinguished from the work of, say, a police officer who will have considerable experience in law enforcement. Whilst, as the Determining Officer suggested, the age and life experience of AC may well have assisted in her understanding the principles of confiscation, her previous experience in retail cannot reasonably be interpreted as equivalent experience to that of a solicitor or legal executive.

24. I note too that AC obtained a Masters degree in 2012 which she obtained (impressively) whilst apparently also working and which included modules in Fraud, Commercial Theories, International Trade and Law and Economics). But as with a Bachelor's law degree there is, in my judgment, a significant difference between accredited professional training (albeit some of it is academic in nature) and a purely academic degree.

25. I have also seen a reference provided by counsel (now senior counsel) who had been instructed by the Appellant firm. It is set out in an email dated 6 September 2022. Counsel states that he had received three instructions over the previous 12 months from AC in particular. In his opinion AC has conducted the cases competently. He describes her as "*a first rate litigator, who has the experience and ability to marshal all matters of preparation without the need for any assistance from counsel*". He says her working knowledge of the relevant law is excellent, and that he has had the benefit of relying upon a skeleton argument she drafted single-handedly in one case. Her efforts, he says, saw all three cases resolved favourably (a benefit figure in excess of £80k to discharging the proceedings altogether following receipt of a persuasive s.17 statement drafted by AC). Further he said that, AC is adept at negotiating directly with prosecuting counsel and, he is strong evidence of her established seniority.

26. I take into account all that has been said and have every reason to think that AC has acted competently. Experience of the sort that has been described is undoubtedly evidence which goes to demonstrate that the AC is rapidly developing a high degree of experience in confiscation proceedings and that the Appellants firm have increasingly entrusted her to do more responsible work. I am told that others in the firm seek out her advice and assistance. There is, of course, everything to admire about AC's career development. But I do not think that this reference either on its own or taking into account all the other matter that have been said, is sufficient to establish that she has the necessary equivalent experience as at the time when the work was done in this case.

27. In *Paturel v Marble Arch Services Limited* [2005] EWHC 1055 QB Slade J was considering, in the context of civil proceedings, a similar provision set out in the SCCO Guide to Summary Assessment to those that that I am required to consider here. I note her observation in that case that her experience was frequently as valuable, if not more valuable, in this area than an academic or professional qualification. This comment was however made when considering the grade of individual with 15 years of prior litigation experience.

28. It strikes me that if Determining Officers too readily accepted an assertion that the experience was equivalent to the training required for a solicitor or legal executive it would have the effect of devaluing these qualifications in the eyes of the firms who employ fee

earners and of encouraging work to be done by untrained (and unregulated) fee earners (presumably at substantially lower rates of pay than those who are qualified); indeed it might discourage individuals such as AC from seeking appropriate accreditation and qualification. Of course, as the rules provide, that does not mean that an individual may not obtain equivalent experience in practice with or without other qualifications: it is plain that many individuals do have such experience, see for instance *R v Lambie* SCCO -2021-CRI -000071 (a decision of Costs Judge Leonard) and *R v Ghandi* 163/9 (a decision of my own): the former case involved an individual who had completed the Bar Professional Training Course and had undertaken 6 months' training in barrister chambers (described as an internship); in the latter case the individual had qualified as an attorney in a different jurisdiction and had substantial responsibility for cases.

29. To my mind there is no set period over which such experience can be gained; it seems to that it is not simply a question of how long the fee earner been employed. It depends on the quality and nature and breadth of the experience. I can see how with sustained experience of a range of demanding cases with only a standard degree of supervision a competent fee earner, albeit unqualified, might relatively rapidly progress to Grade B. But the information provided suggests that it was only a relatively short period before work started on this case and after there a change in the nature of work which I have referred to above (at [15]). The work on this case was finished, as I say in in May 2022.

30. In my judgment and on the information available AC was correctly regarded as a Grade C fee earner at the time when the relevant work was carried out.