



Neutral Citation No. [2023] EWHC 3129 (SCCO)

Case No: T20217248

SCCO Reference: SC-2023-CRI-000057

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

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

Date: 5 December 2023

**Before:**

**COSTS JUDGE ROWLEY**

**R**  
**v**  
**HAKIM**

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

Appellant: Stewart Begum Solicitors

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

The appropriate additional payment, to which should be added the sum of £250 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

**COSTS JUDGE ROWLEY**

### **Costs Judge Rowley:**

1. This is an appeal by Stewart Begum solicitors against the allowance made by the determining officer in respect of a disbursement claimed under the Litigators Graduated Fee Scheme as set out in the Criminal Legal Aid (Remuneration) Regulations 2013.
2. The solicitors were instructed on behalf of Lokman Hakim who was charged with perverting the course of public justice in respect of events involving seven defendants including Hakim. The defendant did not speak English and when he appeared to be suspected of a central part of the alleged crimes, he recorded conversations with co-defendants to seek to demonstrate his innocence. Those conversations, as well as interviews with the police, were conducted in Sylheti, Hakim's language.
3. The prosecution produced transcripts of the defendant in conversation by way of service on the first day of trial (31/10/22). The defence's review of those transcripts doubted their accuracy to the detriment of the defendant. This was announced to the trial judge who agreed that they should be checked but considered it to be something which the defendant needed to fund rather than the court. Consequently, the solicitors emailed an urgent request for prior authority to the Legal Aid Agency to instruct a Mr Akhtar Zaman to provide "Translation and Transcription" services.
4. Under the heading of "Transcription" in the CRM4 request form, 1,220 minutes were claimed at £0.50 per minute resulting in a total cost of £610.00. Supporting that application was a quotation from Mr Zaman which set out five recordings ranging from 4 minutes to 34 minutes and, in a separate column, "time required for correction" which similarly ranged between 80 minutes and 680 minutes. The "unit price" was described as being £30 per hour.
5. Towards the end of the prior authority request was a space for the applicant to describe what authority was being sought and why it was required. The solicitors set out the following description:

"check accuracy holding of telephone conversations between this defendant and others. Case concerns a dispute over control of the mosque dispute escalated when the complainant, allegedly suffered broken ribs and injuries to his lungs at the hands of some of the mosque trustees... Defendant sought to obtain evidence to support innocence recorded telephone conversations. Defendant's position record conversations to obtain evidence of his innocence. I[t is] apparent that there were critical mistranslations especially of linguistic nuances that were ignored. Failure is that the transcripts lack accuracy and therefore do not reflect what the defendant states in its entirety. This issue was brought to the attention of the judge who accepted that all the transcripts of the audio recordings be checked for accuracy."
6. Given the fact that the trial was already on foot, the solicitors rang the LAA to check on progress of the application on 3 November 2022. They were informed that the

application should be processed by the end of the day. The authority was indeed processed on that date and contains the following statement:

“Thank you for submitting your CRM4, which we received on 03 Nov 2022 11:24 with regards to Translation and Transcription. Having considered your application, we are able to grant the following amount, with effect from 03 Nov 2022.”

7. The amount granted by that prior authority was the sum of £610.00 for transcription of 1220 minutes at a cost of £0.50 per minute. The work was then carried out by Mr Zaman and an invoice produced for the same sum of £610.00.
8. This sum was included in the claim made by the solicitors at the end of the case, but the determining officer only allowed the sum of £30.50 based on the length of the recordings (61 minutes) multiplied by the rate of £0.50 per minute. This position has not altered during the re-determination process. In the written reasons, the determining officer states:

“We have spoken to the Criminal Finance Team who grant the CRM4’s and they have confirmed that the prior authorised [sic] was granted based on 1220 minutes of recordings and not based on the time to review and transcribe the recordings. It has always been agreed that the rate for transcription fees is based on the number of minutes of the recording and not the time it took to transcribe. This has always been the case and this is how all fees have been authorised in the past, there has been no confusion around this before.”

9. The relevant provisions regarding the prior authorisation of disbursements in the 2013 Regulations are as follows:

**13. - Authorisation of expenditure**

(1) Where it appears to a litigator necessary for the proper conduct of proceedings in the Crown Court for costs to be incurred in relation to representation by taking any of the following steps –

- (a) obtaining a written report or opinion of one or more experts;
- (b) employing a person to provide a written report or opinion (otherwise than as an expert);
- (c) obtaining any transcripts or recordings; or
- (d) performing an act which is either unusual in its nature or involves unusually large expenditure,

the litigator may apply to the Lord Chancellor prior authority to do so.

**17.- Determination of litigators’ disbursements**

(1) Subject to paragraphs (2) to (5), the appropriate officer must allow such disbursements claimed under regulation 5(2) as appear to the appropriate officer to have been reasonably incurred.

(2) ...

(3) No question as to the propriety of any step or act in relation to which prior authority has been obtained under regulation 13 may be raised on any determination of disbursements, unless the litigator knew or ought reasonably to have known the purpose for which the authority was given had failed or had become irrelevant or unnecessary before the disbursements were incurred.

(4) Where disbursements are reasonably incurred in accordance with and subject to the limit imposed by a prior authority given under regulation 13, no question may be raised on any determination of fees as to the amount of the payment to be allowed for the step or act in relation to which the authority was given.

(5) Where disbursements are incurred in taking any steps or doing any act for which authority may be given under regulation 13, without such authority having been given or in excess of any fee so authorised, payment in respect of those disbursements may nevertheless be allowed on a determination of disbursements payable under regulation 5.”

10. From the history that I have set out, the solicitors followed the procedure for obtaining prior authority as set out in regulation 13. Consequently, in determining the appropriate amounts to allow for the disbursement, the determining officer has to have regard to paragraphs 2 to 5 of regulation 17 and not simply proceed to allowing such sum as appears to have been reasonably incurred.
11. There is no dispute, it appears, that the purpose for which authority was given remained relevant and so there is no question of the propriety of taking the step of instructing Mr Zaman being impugned under paragraph (3). There is also no suggestion that the fee is in excess of the prior authority such that paragraph (5) would be engaged.
12. The determining officer has set out regulation 17 in the written reasons but does not directly engage with its contents. It seems to me that the comment in the written reasons regarding a discussion with the Criminal Finance Team set out at paragraph 8 above must relate to paragraph 4 of regulation 17. This is so, notwithstanding that the amount claimed is within the limit imposed by the prior authority. It must be being said by the determining officer that the disbursement has not been reasonably incurred in accordance with the prior authority. Otherwise, it should simply have been paid as presented.

13. The written reasons refer only to transcription charges and the accepted method of payment for such charges i.e. per minute of the recording being transcribed. There is no reference to the translation element which is explicitly set out in the prior authority (“Translation and Transcription”). Nor is there any reference to the fact that the authority expressly refers to having considered the application which included the quotation from Mr Zaman in which he set out the length of the recordings and the amount of time it would take to correct them. There is also no discussion of the description in the CRM4 requesting prior authority as to the need to check the accuracy of the existing translation of the prosecution as was confirmed by the trial judge. The task of Mr Zaman was not simply to provide a new transcribed version. To some extent this task transforms Mr Zaman into something of an expert rather than simply a translator.
14. It seems to me to be very difficult in these circumstances for the determining officer to say that the disbursements have not been incurred in accordance with the authority given under regulation 13. On that basis, the claim is being made in line with the prior authority.
15. If the determining officer wished to challenge that prior authority, it must be incumbent upon him to say why that was so. This will include, in my view, something rather more formal than a paragraph recording some form of conversation with the Criminal Finance Team. No doubt the determining officer was doing his best with the information provided but the “confirmation” that the authority was based on 1,220 minutes of recordings, despite the clear wording of the prior authority and indeed the documents supporting the original request, needs a considerable amount of explanation by the Criminal Finance Team.
16. The request was made and authorisation given urgently since the trial was proceeding. It might be possible to suggest that the request had been misunderstood, albeit that the authority specifically refers to both translation and transcription. It may also be that the limitations of the form (the heading is transcription without giving any other option) might have caused some difficulty. But the paragraph setting out why the authority was required could not have been clearer (notwithstanding its annotated nature). I am sure that it is a section of the form to which those authorising requests pay particular attention. In my view, there is simply nothing to back up the confirmation given to the determining officer. Indeed, it may be that the request for information by the determining officer was more of a query regarding the usual method of calculation of transcription charges which is only part of the disbursement required in this case.
17. For these reasons, it seems to me that the determining officer has wrongly disallowed most of this disbursement by treating it as being simply a transcription invoice. The scope of the work to be done was clearly set out on the quotation accompanying the prior authority request. The nature of the work was to provide not only an accurate transcription but a critique of why the original version was inaccurate. That, in my view, falls within regulation 13(b) as well as 13(c) and the prior authority needs to be viewed in this light rather than simply allowing a price per minute of transcript as has occurred here.
18. In any event, a prior authority has been given and a fee claimed in line with that approval. Where this occurs, the prior authority system will be in some jeopardy if

litigators cannot rely upon the subsequent payment of disbursements incurred in line with that authority. Regulation 13 refers to the submission of a request for authority. That is the point at which the LAA can control the expenditure of disbursements. If they authorise it, then it is simply not appropriate for a different part of the LAA to second guess that authority. Specific and compelling reasons as to why the disbursement was not incurred in line with the authority would need to be provided and would be subject to the limitations in regulation 17.

19. Accordingly, this appeal succeeds and the solicitors are entitled to the payment of the disbursement in full together with their costs of appeal.