



Neutral Citation No. [2024] EWHC 20 (SCCO)

Case No: T20217072

SCCO Reference: SC-2023-CRI-000003

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 11th January 2024

Before:

COSTS JUDGE ROWLEY

R

v

KNOBEL

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

Appellant: Sarah Vine KC

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

The appropriate additional payment, to which should be added the sum of £100 paid on appeal, should accordingly be made to the Applicant.

COSTS JUDGE ROWLEY

Costs Judge Rowley:

1. This is an appeal by Sarah Vine KC against the decision of the determining officer to recoup a payment previously made under the Advocates Graduated Fee Scheme as set out in the Criminal Legal Aid (Remuneration) Regulations 2013.
2. Ms Vine was instructed on behalf of Johannes Knobel in proceedings in the Crown Court at Canterbury. The background to this case is fundamental to the issue that it raises and is succinctly set out in the written submissions of Francesca Weisman on behalf of the Lord Chancellor as follows:

“The defendant faced charges of importation of Class A drugs in proceedings before the Canterbury Crown Court. A representation order was issued to him for these proceedings in September 2014, to Cartwright King solicitors.

The defendant absconded in June 2015, and a bench warrant was issued for his arrest. This was eventually executed in April 2021, after the defendant had been extradited and returned to the jurisdiction. The representation order that had previously been granted was transferred to Commons solicitors, who represented the defendant to the case’s conclusion in 2022. Knobel was acquitted by a jury on 21 April 2022.

Commons solicitors initially instructed Nicholas Wrack as counsel, who acted for the defendant at trial which commenced in August 2021. Owing to the defendant’s ill health, that trial was aborted, and took place eventually in June 2022. After the first, aborted trial, the Appellant advocate was instructed and acted until the conclusion of proceedings.”

3. Relying on the representation order produced by the court dated 6 April 2021 (when legal aid was transferred from Cartwright King to Commons solicitors), Ms Vine claimed a graduated fee based on “scheme 12” which applied for representation orders from 17 September 2020 onwards. However, the determining officer concluded that the representation order was originally granted on 8 September 2014 which meant that payment fell under “scheme 9”. The effect is a reduction in the fee payable to counsel from £11,974.89 plus VAT to £6,189.80 plus VAT. The difference was recouped by the Legal Aid Agency and Ms Vine appeals from that decision.
4. The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 were brought into being in order to improve the payments made under scheme 9. In particular, reliance upon PPE was reduced as a means of calculating the work done by an advocate. In the explanatory memorandum to those regulations, the revised scheme was recommended as reflecting the change in work practice arising from the increasingly electronic provision of evidence; the removal of unnecessary complication; the reforms of the Better Case Management programme; the increased weight given to the amount of time spent by an advocate performing their duties and provided for certain tasks to be paid for individually rather than bundled together as part of the graduated fee.

5. There were further amendment regulations in 2018 in order to improve the figures contained in the first amended regulations. As can be seen from the difference in the payments in this case, those amendments were significant. It would, I think, be a surprise to the legislators if they were able to see this case where work was carried out long after the amendments were made but without any resulting benefit in payment.
6. The arguments put forward by Ms Vine at the hearing of her appeal were very much along the lines of there being an injustice in the approach taken by the Legal Aid Agency. If a new representation order had been granted following the return of Mr Knobel, then the graduated fee claimed would have been paid. That, as I understand it, is the position in respect of Mr Knobel's co-defendant's legal team who were paid based on a representation order dated 2020.
7. The opportunity to seek a new representation order seems to be questionable given the existence of legal aid in Mr Knobel's favour at the time he decided he wished to change representation. The obvious mechanism to achieve that change was simply for the court to transfer the benefit of the legal aid representation to the new solicitors. Whilst the rules are clear that this amounts to a conclusion of the proceedings for the first solicitors so that a payment could be sought, there appears to be nothing in the regulations which otherwise provides for the effluxion of time to require the original solicitors to bring a claim under the representation order so as to render it finalised.
8. Ms Vine urged me to take a purposive approach to the regulations, but I regret that I cannot see which regulation can be construed in the positive manner she encouraged me to interpret. Indeed, as Ms Vine's own written submissions make clear, Regulation 34 of the 2018 Amendment Regulations explicitly confirms that the amendments have no effect in relation to proceedings where a determination under section 16 Legal Aid, Sentencing and Punishment of Offenders Act 2012 was made before 1 April 2018.
9. Such a provision is not surprising and indeed I note it has been followed similarly in more recent amendments to the 2013 Regulations which underpin the graduated fee schemes. Such transitional provisions are a necessary requirement to implementation of new schemes. Nevertheless, I accept Ms Vine's comment that the circumstances of this case appear exceptional and are not ones which would have been contemplated by the rule makers, in all probability.
10. Ms Vine urged me to treat the representation order date as being the one to which the various regulations are tethered. But it seems to me that it is in fact the section 16 determination that is key. The court's ability to transfer legal aid from one firm to another does not give it any jurisdiction to grant legal aid (other than in very limited circumstances). Therefore, the hearing in April 2021 was essentially administrative in terms of the qualification for legal aid. As I think Ms Vine accepted, seeking to change the tethering anchor from the section 16 determination to the representation order, even if possible, may well have many unintended consequences leading to further appeals, potentially on a speculative basis.
11. Consequently, it seems to me that the determining officer was right to conclude that the scheme to be applied was scheme 9 rather than scheme 12 as originally determined.
12. It seems to me, however, that this is not the end of the story in respect of this particular appeal. I noted in Ms Vine's written submissions – in support of the comment that the

proceedings effectively started de novo when Mr Knobel was extradited to England – she described the allocation of a new indictment number to this case. The determining officer, when referring to the court logs, confirmed that the original reference number was T20140403 and concerned a two count indictment regarding the importation of Class A drugs in June and July 2014. The determining officer then records the following:

“On 12 April 2021 there was a hearing before North Kent Magistrates’ Court at which two additional importation offences, charged against Knobel, were sent to the Crown Court – case T20217072. No fresh legal aid application was received in respect of this case. Once T20217072 got underway on the Crown Court, the two matters were listed together.”

13. I do not have a copy of the second indictment, but it seems from Ms Vine’s submissions and, in particular, the determining officer’s written reasons that there were two indictments being heard together in respect of different offences. Under the 2013 Regulations, this amounts to two cases since they have not been joined but merely listed together. On that basis, counsel would appear to be entitled to two scheme 9 graduated fees rather than the one with which she has been provided.
14. Noting that the recoupment was roughly half of the original fee, it seems to me to be administratively simpler to reinstate the original fee rather than to require a further determination in respect of the second indictment. That is what I propose to direct the determining officer to do. I appreciate that this was not a matter raised before the determining officer as such, but it appears to be within the knowledge of the parties given the documents produced by both sides which I have referred to above.
15. Out of an abundance of caution, this decision will be provisional for 14 days from today so that either the determining officer in accordance with Regulation 29(11) or the Central Legal Team (under 29(7)) may make further submissions on this point and in which case I will give further directions. In that eventuality, this decision will be re-issued so that any other party wishing to use it in a future case can be sure of having the final version.
16. Subject to any further submissions, the effect of this decision is that Ms Vine has been successful on her appeal, albeit not for the reasons that she put forward. On that basis, in respect of the costs of this appeal, it seems to me to be appropriate simply to award the court fee rather than any further costs.