



Neutral Citation No. [2024] EWHC 310 (SCCO)

Case No: T20217164

SCCO Reference: SC-2023-CRI-000096

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 24th January 2024

Before:

COSTS JUDGE WHALAN

R

v

CURTIS HOWARTH

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

Appellants: JMW Solicitors

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

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

COSTS JUDGE WHALAN

Introduction

1. JNW Solicitors LLP ('the Appellants') appeal against the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') in respect of a claim submitted under the Litigator's Graduated Fees Scheme ('LGFS'). The issue is whether the claim should be paid as a trial and a new trial, as the Appellants submit, or as a trial, as assessed by the Respondent.

Background

2. The Appellants represented Mr Curtis Howarth ('the Defendant'), who appeared with co-defendants at Leicester Crown Court on an indictment alleging conspiracy to defraud and converting criminal property (money laundering). The charges concerned the alleged defrauding of investors of a sum in excess of £1,000,000.
3. The trial began before HHJ Raynor on 29th June 2022. The jury was empanelled and the first day included legal argument concerning the absence of one co-defendant. On 30th June, the second day of the trial, one or more of the jurors indicated that he/she/they had pre-booked holiday. Accordingly, the jury was discharged. The trial was relisted for 8th May 2023.
4. On 8th May 2023, the 'second trial' began, this time before Mr Recorder M Auty KC. It continued until 9th June 2023 when the Defendant was acquitted on both counts.

The Regulations

5. The Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations'), as amended in 2018, apply.
6. I am referred by the Respondent to Paragraph 13 of Schedule 2 to the 2013 Regulations, entitled 'Retrials and Transfers'. It seems to me that the provisions of Paragraph 2(2) to Schedule 1, entitled 'Application' and dealing, inter alia, with fees for a trial, following by a new trial, may also be of relevance to this appeal.

7. I am referred to the judgment of the SCCO in R v. Forsyth [2010] Ref: 155/10, R v. Tabassum Mohammed [2020] Ref: SC-2020-CRI-000054, R v. Nettleton [2014] 2 Costs LR 387 and R v. Bernard-Sewell [2021] Ref: SC 2020-CRI-000094.
8. The Appellants also cite my decision in R v. George [2023] EWHC 2187 (SCCO).

The submissions

9. The Respondent's case is set out in Written Reasons dated 19th September 2023. The Appellants' case is set out in Grounds of Appeal filed on or about 10th October 2023. No request was made for an oral hearing and this appeal is determined on the papers.

My analysis and conclusions

10. The Respondent, in summary, submits that the claim should be paid as one continuous 23-day trial. There was no order for retrial and no break in the 'temporal and procedural matrix' between the hearings in June 2002 and May-June 2023. During the first part of the trial in June 2022, the case made little substantive progress, meaning that there is a substantial imbalance (2/21 days) between the length of the two 'legs'. There was no change in indictment or in respect of the offences alleged of the Defendant. The trial judge has made no comments as to the second hearing was a new trial or rather a re-start of the original listing.
11. The Appellants, in summary, submit that the chronology demonstrates the fact of a trial followed by a new trial. Upon the discharge of the jury on 30th June 2022, a specific retrial order was unnecessary, as the case merely required re-listing. The length between the 'two trials' – 11 months – was considerable. Different trial judges presided over the two hearings. There was some change in advocate/representation for one or more of the co-defendants. By May 2023, one (perhaps two) of the co-defendants had absconded, meaning that the composition of the dock had changed notably. More particularly, the prosecution had served further evidence in the form of transcripts of voice recordings, documentation from the Finance Conduct Authority, additional bank statements, evidence from an Intelligence Analyst, relating to an analysis of messages passing between the co-defendants, along with additional documentation from Santander Bank relevant to the (or one of the) co-defendants. The evidence, in other words, had changed significantly, meaning that the case had to

be re-prepared and for the Defendant to be given advice than that given the year before. The facts demonstrate, in other words, a clear breach of the temporal and procedural matrix between June 2022 and May 2023.

My analysis and conclusions

12. Insofar as the relevant part(s) of the Regulations require, technically, ‘an order’ for a new or retrial, I find that this requirement is satisfied necessarily in this case. A formal re-trial order was unnecessary, as the first hearing had not concluded when the jury was discharged. It nonetheless seems axiomatic to me that in discharging the first jury and ordering a re-listing, the trial judge was ordering necessarily a new trial.
13. As to the breach of the temporal and procedural matrix, on the particular facts of this case, I favour the submissions of the Appellants over those of the Respondent. Almost a year elapsed between the first and second hearing. By the second trial, the judge had changed, some of the advocates were different, a new jury was empanelled, the co-defendant profile had changed as at least one had absconded, and the evidence had developed considerably. The correct conclusion, in my view, is that on the facts of this case there were two trials, and not one continuous trial running effectively from June 2022 to June 2023.
14. This appeal is allowed and I direct that the claim be assessed as a trial followed by a new trial.

Costs

15. The Appellants have been successful and the £100 paid to lodge the appeal should be returned.

TO:

JNW Solicitors LLP
1 Byron Place
Spinningfields
Manchester
M3 3HG

DX 14372 Manchester 1

COPIES TO:

Legal Aid Agency
DX10035 Nottingham

Legal Aid Agency
102 Petty France
London SW1H 9AJ
DX 328 London

The Senior Courts Costs Office, Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL:
DX 44454 Strand, Telephone No: 020 7947 6468, Fax No: 020 7947 6247. When corresponding with the court,
please address letters to the Criminal Clerk and quote the SCCO number.