



SENIOR COURTS  
COSTS OFFICE

SCCO Ref:  
SC-2019-CRI-000139

28 April 2020

**ON APPEAL FROM REDETERMINATION**

**REGINA v BRACE**

COURT OF APPEAL CRIMINAL DIVISION

APPEAL PURSUANT TO REGULATION 29 OF THE CRIMINAL LEGAL AID  
(REMUNERATION) REGULATIONS 2013

CASE NO: 201802333 A4

DATE OF REASONS: 8 OCTOBER 2019

DATE OF NOTICE OF APPEAL: 28 NOVEMBER 2019

APPLICANT: COUNSEL JOSEPH HEDWORTH

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

The appropriate additional payment, to which should be added the sum of £500 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

**JASON ROWLEY  
COSTS JUDGE**

## REASONS FOR DECISION

1. This is an appeal by Joseph Hedworth of counsel against the sum allowed to him by the determining officer in respect of advice and grounds of appeal against sentence under the Advocates Graduated Fee Scheme.
2. Counsel was instructed on behalf of Ian Joseph Bridges who, together with several members of his family, was tried in the Crown Court in Durham. They were accused of selling counterfeit cigarettes and other tobacco products in what counsel told me is colloquially known as a "Tab House". In his written reasons, the determining officer has described the operation as a "very lucrative business" and counsel informed me that the value involved exceeded £100,000. Upon conviction, Brace was sentenced to 28 months' imprisonment.
3. In support of an appeal against that sentence, counsel produced an advice and grounds of appeal running to 7 pages. Counsel spent 4.5 hours on this task and charged £450 for so doing. Upon determination, the determining officer allowed £225 and remained with that view on redetermination. Counsel appeals against the decision.
4. In his written reasons, the determining officer indicates that he gave careful consideration to the "weight, seriousness, importance and complexity of the case having regard to all relevant facts are set out in paragraph 1 – 11 of the Taxing Officers Notes for Guidance."
5. As amplification for this comment, the determining officer referred to counsel producing the advice five days after the sentencing hearing and as such would have been familiar with the relevant facts and issues on appeal. I am not sure that this familiarity is particularly relevant given that the determining officer then indicated his view that the 4.5 hours of time claimed was reasonable for drafting the advice and grounds of appeal.
6. In terms of the seriousness, importance et cetera, the determining officer described it as being a relatively straightforward sentence appeal and certainly not one of the more serious or complex offences. As such the level of responsibility for experienced junior counsel – as indicated by the sum claimed – was not justified.
7. Counsel's response to this point was to indicate that if the case had been classified under the table of offences, a fraud involving £100,000 would be a category K offence and for which graduated fee remuneration is paid at the highest rate (along with class A (homicide etc) and class J (serious sexual offences). Counsel also pointed to the fact that specialist counsel had been used by the local authority in pursuing these offences.
8. The determining officer says in both the written reasons and the redetermination that counsel for the co-appellant had charged £250 for five hours' preparation. That fee had comprised a "comprehensive 15 page advice" and grounds of appeal. He then points out in on both occasions that leave was

granted to the co-defendant whereas leave was not given to Mr Hedworth's client. That latter comment is regrettable in my view. There is no payment by results under this scheme and the decision of the court from whom permission to appeal is sought is irrelevant for the purposes of the reasonableness of the fee.

9. The final reason given by the determining officer is that he challenges the reliance of counsel upon a number of decisions of costs judges, including myself (for example in the case of R v Chapman & Others (100/16)) where it is said rates of £100 per hour had been considered to be reasonable for Court of Appeal Criminal Division work. The determining officer indicates that this decision is based on "unsupported observations on rates" made to the costs judges and that those observations are not only challenged but that evidence of lower hourly rates (including £50 per hour) both claimed and paid to counsel for work done was being provided to the SCCO for two future appeals (in November 2019).
10. Given that the determining officer has expressly confirmed that the time claimed by counsel is reasonable and that the fee claimed of £450 has been halved to £225, it is not difficult to see that the £100 per hour claimed by counsel has similarly been halved to £50 by the determining officer here.
11. In conclusion, the determining officer indicates that he is satisfied that reasonable remuneration has been provided by that allowance so that the test under the Criminal Legal Aid (Remuneration) Regulations 2013 has been satisfied.
12. The two cases referred to by the determining officer were heard by the Senior Costs Judge, Master Gordon-Saker in November 2019 in the cases of R v Day (190/19) and R v Hale (191/19). The case of Hale is less relevant for present purposes because it related to a brief fee and, quite properly, Master Gordon-Saker concentrated on the reasonable remuneration for that fee rather than a strict arithmetical calculation which does not take into account the weight and importance of the case etc.
13. In the case of Day, which concerned a conviction for indecent sexual assault on a 13 year old girl in the 1990's. Counsel was asked by the court to produce an advice on appeal because the defendant's own, extensive, grounds of appeal were not sufficient for the court to consider whether to grant or refuse leave to appeal. Master Gordon-Saker said this in respect of the hourly rate of £120 claimed by Mr Taylor, the appellant barrister in that case:

"22. Mr Greenhill has considerable experience in the determination of fees for criminal appeals. However in my judgment the fee allowed does undervalue the weight of the case, the importance of this matter to Day, the burden placed on Mr Taylor, his seniority and specialism, and the complexity of the task. Reasonable remuneration in this case, in my view, would be a fee for the advice of £9,000 which would equate to an hourly rate of £120. That rate reflects the factors set out in TONG and my experience of legal rates generally

(avoiding comparison with the inappropriate). While avoiding that comparison I observe that the rate I would allow is (as it should be) significantly lower than the rates allowed for junior counsel in Evans and lower than the trainee/paralegal rates for work done in London in the Guideline Rates for Summary Assessment (2010). The appeal is allowed to that extent.

23. Mr Greenhill did produce, at Mr Taylor's request, a bundle of documents relating to the 11 cases referred to in Mr Greenhill's written reasons where counsel had claimed hourly rates of between £50 and £75. Anybody involved in the assessment of costs on a daily basis will see a wide range of rates claimed for similar work.

24. Of the 5,000 payments made by Mr Greenhill's section since 1st January 2017, 40% of the overall total have been disallowed on assessment. The assessment of costs requires the assessor to allow the reasonable rate, not to fix the going rate. It may well be that if only 60% of the costs claimed are being allowed some counsel may be moderating their claims to the rates that they think will be allowed."

14. I would respectfully endorse the comments regarding the fixing of a going rate. There is no real market force in the rates allowed for the fees of criminal practitioners. Privately paid work is much more remunerative than publicly funded work but, for the reasons given in Day, a direct comparison is inappropriate. There is only one source of publicly funded work and so if it becomes known as to what rate will be allowed on assessment by that source, there will be many who simply claim that rate to ease claims through. That does not mean that such figures are necessarily any guide to what is reasonable remuneration, but simply a de facto fixing of an hourly rate rather than considering the reasonable remuneration for the particular case.
15. Mr Waldron is, like Mr Greenhill, an extremely experienced determining officer, but in my view, like Mr Greenhill in Day (and Hale), there has been an undervaluing of the worth of the work done in this case. In particular, I accept Mr Hedworth's reference to the class of offence in the regulations to give context as to the weight of the case on which he was giving advice.
16. I do not think the seriousness of this case suffers by comparison with the case of Day, albeit in that case, counsel was asked to advise the court as much as the potential appellant. I certainly do not think that the fee of £450 for the advice and grounds of appeal is outside the bounds of reasonable remuneration but I do consider the determining officer's allowance to be unreasonable.
17. Consequently, I allow the £450 for the fee claimed by counsel and he is therefore also entitled to the costs of this appeal.

TO: JOSEPH HEDWORTH  
TRINITY CHAMBERS  
DX61185 NEWCASTLE

COPIES  
TO:

SEON WALDRON  
CRIMINAL APPEALS OFFICE  
DX44451 RCJ / STRAND

**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.