SENIOR COURTS
COSTS OFFICE

SCCO Ref:
SC-2020-CRI-000137

16 November 2020

**ON APPEAL FROM REDETERMINATION**

**REGINA v NOWAKOWSKI**

CROWN COURT AT BIRMINGHAM

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

CASE NO: T20177986

DATE OF REASONS: 31 MARCH 2020

DATE OF NOTICE OF APPEAL: 23 APRIL 2020

APPLICANT: COUNSEL ANDREW COPELAND

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 Andrew Copeland of counsel in respect of the sum allowed to him for his special preparation claim by the determining officer under the Advocates Graduated Fee Scheme.

2. For the background to this case, I take the description from the determining officer's written reasons as follows:

> "Operation Fort concerns the exploitation and movement of a large number of people for labour exploitation. The individuals who were exploited all share common themes - Polish, homeless or destitute, and desperate to earn a decent wage for a day's work. Their desperation was exploited by an organised crime group led by Adam Brzezinski, who together with members of his family and associates viewed these men and women as commodities to be used and abused for their own financial gain.
>
> The prosecution's case against Wojciech Nowakowski was that he was the righthand-man to Adam Brzezinski, one of the two principals within this large organized criminal group (OCG).
>
> The case was divided into two. The first trial for 5 defendants started on 22nd October 2018 and concluded in February 2019. Wojciech Nowakowski was tried in the second trial together with just Ignacy Brzezinski; Jan Pawal Sadowski entered acceptable guilty pleas on the first day and Dawid Kasperowicz had absconded. The trial for just the two defendants lasted 43 days."

3. The evidence served by the prosecution involved 88 complainants whose evidence was part of 435 separate witnesses and whose statements ran to 5,073 pages together with 26,195 pages of exhibits to those statements. Additionally, a schedule of telephone material was served as well as a telephone translation disk. There were 475,628 pages on the telephone translation disk. There were a further 721,218 pages of call data.

4. Counsel, who appeared before me on the hearing of his appeal, informed me that he assumed that his solicitors would be seeking a Very High Costs Contract but in fact that did not occur. In anticipation of a VHCC being put into place, counsel recorded his time from the off.

5. When it came to making a claim for his fees, counsel and a claim for special preparation in addition to his graduated fee. His worklog showed a time spent of 582 hours 45 minutes. The determining officer allowed 267 hours 45 minutes and that period has not altered through the redetermination and written reasons procedure.

6. The determining officer considered the worklog produced by counsel and deducted 148 hours as representing time spent in relation to 10,000 pages of

prosecution evidence which is accounted for by the graduated fee. He then made a further reduction of 167 hours on the basis that the tasks described during that period did not include consideration of the "excess" pages by which I understand him to mean those pages above 10,000.

7. The determining officer has considered whether or not the facts in this case are sufficient to demonstrate that the preparation was substantially in excess of the amount normally done for cases of the same type because the case involved a very unusual factual issue.

8. Whilst accepting that the size of this case itself did not make the case very unusual, the determining officer criticised counsel for failing *"to develop how this case including the first ever Interim Slavery and Risk Order makes it a novel point in law."* The determining officer refers to a number of news articles that could apparently be located to demonstrate that modern slavery prosecutions were on the rise at the time this case was before the court. The determining officer also made reference to another human trafficking case in 2004 (R v Rooney and others) which he described as being a "large" case when nine victims were exploited over a period of 25 years.

9. Counsel addressed me at the hearing of his appeal at some length in respect of the work that had to be done. For example, English translations of the complainant's witness statements were served and the work was more involved than usual because the complainants referred to the defendant by a number of different names. There were also a multitude of addresses which had to be considered because the timings overlapped. Counsel said that the defendant had been involved in the opening of bank accounts for the complainants but his evidence was that he had only assisted them to do so. The prosecution said that he had dispersed money from those accounts and this required 200 bank accounts referred to by the prosecution being considered albeit that only about a third had actually involved the defendant.

10. Counsel informed me that his request for a junior had been refused and so he had to do all of the work on Nowakowski's defence himself. All of the other defendants, including the co-defendant in his second trial, had the benefit of two counsel. Apparently, the reasoning provided did not hold water, in counsel's view, given that Nowakowski was only convicted of about half of his offences whereas all the of the co-defendants were convicted of everything with which they were accused.

11. Counsel did not accept that there was any equivalence to the work done in the case of R v Rooney and was able to say this with some confidence given that he was junior counsel in relation to the related case of Connors. He also pointed to the statement made by leading counsel for the prosecution in this case and which was apparently recited in both cases in open court.

> *"There were 88 complainants and then around 10 who did not complain, and they have been removed. The breadth and scope of criminality is remarkable, we can see tentacles far and wide. This is the largest case of this nature in the UK and maybe in Europe."*

12. Counsel returned to the sheer size of the case on a number of occasions. He said one practical effect of there being so much evidence was that trying to marshal pages on the facts could not be done simply by reading through it on a couple of occasions which might have sufficed in a more ordinary case. The only option was to keep re-reading and/or to schedule the evidence in order to make it manageable. Such time had not been allowed by the determining officer.

13. Similarly, counsel informed me that the trial judge at the first trial ordered funding to be available for junior counsel to produce a note of the evidence at that trial which apparently ran to 800 pages. That document was provided to counsel together with some of the transcripts from the first trial. Counsel described the evidence as being very relevant even though not served evidence as such. Although he had claimed time for considering the noted evidence as part of the served evidence, that time had not been allowed by the determining officer either.

14. The determining officer's task is set out in paragraph 17 of schedule 1 to the Criminal Legal Aid (Remuneration) Regulations 2013 as follows:

> 17.—(1) This paragraph applies where, in any case on indictment in the Crown Court in respect of which a graduated fee is payable under Part 2 or Part 3—
>
> (a) it has been necessary for an advocate to do work by way of preparation substantially in excess of the amount normally done for cases of the same type because the case involves a very unusual or novel point of law or factual issue;
>
> (b) the number of pages of prosecution evidence, as defined in paragraph 1(2), exceeds 10,000 and the appropriate officer considers it reasonable to make a payment in excess of the graduated fee payable under this Schedule; or
>
> (c) a documentary or pictorial exhibit is served by the prosecution in electronic form where—
>
> (i) the exhibit has never existed in paper form; and
> (ii) the appropriate officer—
>
> (aa) does not consider it appropriate to include the exhibit in the pages of prosecution evidence; and
>
> (bb) considers it reasonable to make a payment in respect of the exhibit in excess of the graduated fee.
>
> (2) Where this paragraph applies, a special preparation fee may be paid, in addition to the graduated fee payable under Part 2 or Part 3.

(3) The amount of the special preparation fee must be calculated—

(a) where sub-paragraph (1)(a) applies, from the number of hours preparation in excess of the amount the appropriate officer considers reasonable for cases of the same type;

(b) where sub-paragraph (1)(b) applies, from the number of hours which the appropriate officer considers reasonable to read the excess pages; and

(c) where sub-paragraph (1)(c) applies, from the number of hours which the appropriate officer considers reasonable to view the prosecution evidence,

and in each case using the hourly fee rates set out in the table following paragraph 24 as appropriate to the category of trial advocate.

15. Counsel brings this claim under both subparagraphs (a) and (b). It seems to me that the determining officer has flirted with simply treating this as being an excess pages claim in accordance with (b) and has only looked at the possibility of this claim falling within (a) in terms of (dis)allowing the 167 hours of work which did not involve considering the pages of evidence.

16. There is also an interesting dispute this case as to whether or not the 10,000 page threshold must be calculated by reference to the first 10,000 pages received by the advocate. That is the approach that the determining officer has sought to follow but counsel has made the point that the regulations do not require this to be the case. Instead of deducting 180 hours for the documents said to amount to the first 10,000 pages, the determining officer could quite properly have deducted only the 20 hours 15 minutes claimed for considering the translated telephone evidence.

17. It is clearly the case that counsel has made no allowance for time to be deducted in respect of the 10,000 pages assumed to be included within the graduated fee in his claim under subparagraph (b). Similarly, counsel's appeal did not provide any indication of what amount of time he would say would usually be spent on a case of this sort. That period of time would also have to be considered as part of the graduated fee and it would only be the time claimed in excess of that period which can found a claim under subparagraph (a).

18. Whilst implicitly accepting the determining officer's point that modern slavery cases are on the rise – counsel said that the Crown Court in the South East and East Anglia are hearing such cases every day – he did not accept that the extent of the evidence in this case bore any resemblance to the evidence in such cases. By way of example, he informed me of a recent case in which he had been involved concerning individuals who had stowed away on the back of a lorry. There had been five complainants in that case that there had been fewer than 100 pages of evidence. He accepted that the Connors case involved rather more evidence but said that he had not seen anything like this.

19. In my view counsel is quite right to claim that this case falls within subparagraph (a). It does not seem to me that size case can never make it very unusual although I accept that the intention of the scheme is that such size is generally meant to be dealt with via subparagraph (b).

20. The size of this case, as demonstrated by the number of complainants does indicate that it is unusual. T the case referred to by the determining officer of Rooney involved nine victims albeit that they were exploited over a long period of time. Here there were 88 who complained and apparently there are a further 10 would not make a formal complaint. The amount of served paper evidence in the form of witness statements and their exhibits is also very unusual in my view.

21. The girth of the case might of itself demonstrate a case outside normal professional experience. But allied to this is the statement by the leading prosecution counsel that this is the largest case in the UK and may be in Europe. Counsel was of the view that there was no doubt that it was the biggest case in Europe and had involved several agencies from different countries.

22. There is also the comment of the determining officer about failing to explain how the first ever order made under the relevant legislation was a novel point in law. At first blush, that would seem to be exactly the sort of thing that would be a novel point of law.

23. The combined effect of the size, the description by leading counsel (who is apparently a specialist in these matters) and the novelty of the order being made easily categorise this case as being outside normal professional experience which is the essence of the test to be applied under subparagraph (a).

24. The amount of evidence produced by the complainants and witnesses leads to the inevitable conclusion in my view that the amount of time required to prepare the case is substantially in excess of the amount of time usually spent in cases of modern slavery. As has been noted by other costs judges, the definition should not be drawn too tightly as to the comparable cases. But I suspect, in this case, even if a narrower definition were used, the amount of time would still be well in excess of normal preparation time.

25. This is not to say that, in my view, counsel has spent a particularly long time on this case. The definition under the regulations requires the calculation of the number of hours of preparation rather than simply reading excess pages where subparagraph (a) is found to exist. The total time claimed by counsel amounts to just under 35,000 minutes. Using the LAA's benchmark of two minutes per page, 70,000 pages might be considered in the time claimed.

26. The paper witness evidence including exhibits amounts to a little over 31,000 pages. But that calculation take no account of the re-reading and scheduling et cetera to which counsel referred and which, in the circumstances of this case, seems to me to be entirely reasonable in terms of preparation. Nor does it

include the 800 pages of evidence noted by junior counsel from the first trial. Given that it was mandated by the trial judge, it seems to me that it is properly to be taken into account as being created by the prosecution rather than evidence which has come to the defendant's knowledge from some other source. My view is that it clearly should be remunerated.

27. There is also the telephone evidence to be considered. Of the 475,000 pages, counsel very fairly indicated that about two thirds of those pages were in Polish and the remaining third contained an English translation of the messages which had been produced with less space between each one. Counsel told me that they were on PDF pages and not Excel. That would amount to just under a further 160,000 pages. Additionally, there were 721,000 pages of telephone data. Even allowing for the vagaries of using print preview for an Excel spreadsheet, this is still a considerable amount of information considered.

28. This extent of documentation more than justifies the entire time claimed by counsel. He told me how he had searched the translated telephone message disk for relevant telephone numbers et cetera and that was why he had only claimed 20 hours 15 minutes for considering that information.

29. Since I have found this claim to come within the terms of subparagraph (a), there is no need for me to decide how the determining officer is to deduct 10,000 pages from a claim under subparagraph (b). The graduated fee scheme has been in existence now for some considerable time and the fact that this point does not appear to have arisen previously suggests that it is a very unusual case from this point of view also. Normally, there is little difference in the speed with which the pages are considered by the advocate or litigator and so it does not matter much which pages are considered as constituting the 'first' 10,000.

30. Counsel proposed to use the 20 hours 15 minutes claimed for considering the translation telephone data as representing the time spent on the first 10,000 pages. I do not need to make a decision on the point, but I have decided to borrow that proposal for the purposes of the subparagraph (a) claim. The regulation clearly requires payment of the special preparation claim for the number of hours of preparation in excess of the amount considered reasonable for cases of the same type. Therefore, whilst it seems to me that the time claimed overall is reasonable, some deduction has to be made to reflect the amount of work "normally" done. In the circumstances this case, counsel's review of the 160,000 pages or thereabouts of PDF documentation serves, in my view, as a suitable proxy for the normal preparation needed to be done.

31. Consequently, 20 hours 15 minutes needs to be reduced from the claim of 582.75 hours. As such the special preparation claim needs to be calculated using a figure of 562.5 hours rather than the 267.75 hours that have been allowed to date.

32. Accordingly, this appeal is successful and the appellant is entitled to his costs of the appeal.

TO: ANDREW COPELAND
THE 36 GROUP
4 FIELD COURT
GRAYS INN
LONDON
WC1R 4JH

COPIES TO: GRAHAM HUGHES
CRIMINAL CASES UNIT
LEGAL AID AGENCY
DX 745810 LIVERPOOL 35

**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.