



SENIOR COURTS  
COSTS OFFICE

SCCO Ref: SC-2020-CRI-000020

Dated: 21 April 2020

**ON APPEAL FROM REDETERMINATION**

**REGINA v SAJID**

CROWN COURT in MANCHESTER

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

CASE NO: T20187060

LEGAL AID AGENCY CASE

DATE OF REASONS: 12 November 2019

DATE OF RECEIPT OF NOTICE OF APPEAL: 19 December 2019

APPELLANTS: Litigators, Walkers  
Solicitors

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

**SIMON BROWN  
COSTS JUDGE**

## REASONS FOR DECISION

1. The issue arising in this appeal is whether the Determining Officer was correct in his determination that the fee due to the Appellant under the Graduated Fee Scheme provided by the Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations') should be one fee calculated on the basis of a trial and a re-trial rather than, as contended for by the Appellants, an entitlement to two separate graduated fees.

2. I have determined this appeal following the grant of an extension of time for appealing. At the telephone hearing on 27 March 2020 the Appellants were represented by Mr. Cassidy, counsel, and the Legal Aid Agency ('the LAA') were represented by the Ms. Weisman, employed solicitor.

3. The Defendant was granted representation pursuant to an order made on 19 January 2018. He was charged with Attempted Murder, wounding with intent and conspiracy to commit violent disorder. Along with six other Defendants he stood trial from 14 January 2019 to 26 February 2019. As appears from the note of counsel in respect of this Defendant the jury were discharged and the trial judge ordered a fresh trial to take place in September 2019. I understand from an email from the Appellants that in respect of this Defendant the jury were unable to reach a verdict in February 2019, hence a second trial took place from 5 September 2019 to 27 September 2019.

4. The Appellants contend that two separate trial fees are due on the grounds that two trials took place. The Determining Officer held that the 2013 Regulations provide that, in the circumstances of this particular case, the graduated fee is payable in accordance with the "Retrials and Transfers" provisions set out in Schedule 2 paragraph 13 of the Regulations,. The Determining Officer held that there was no provision within the scheme to authorise two separate trial fees for one case and that the fee due for September 2019 was 25% of the fee as appropriate to the circumstances of the retrial.

5. The Appellants submit that the second trial was not a retrial but a new trial ordered by HH Judge Potter. In their Notice of Appeal they submitted that there was change to the indictment and that new evidence was heard at the second trial which was not heard in the first trial. Further, the Appellants relied upon the fact that over 6 months had elapsed between the January/February 2019 and the September 2019 trials. When considering the matters on the papers, it occurred to me that the Appellants' contention on appeal appeared more directed to an issue as to whether in the circumstances there was a trial and a re-trial or just one continuous trial. As noted above, the Determining Officer had proceeded on the former basis, this being the preferable basis from the Appellant's perspective, rather than the alternative basis of one continuous trial. At the telephone hearing which I directed in order to obtain clarification it was argued that the underlying criminal case had changed so substantially that there had been a quashing of the first indictment and the preferring of a new indictment. This matter had not been addressed by either party in advance of the hearing and I therefore gave the Appellants an opportunity to submit the Court Log and to make further submissions, with an opportunity for the LAA to respond to these matters accordingly- all of which I have considered.

### **The Regulations**

6. Schedule 2 of the 2013 Regulations provides as follows:

#### ***Interpretation***

*(1) in this Schedule-*

*"case" means proceedings in the Crown Court against any one assisted person-*

*(a) on one or more counts of a single indictment;*

*.....*

7. Schedule 2 also provides under the heading Retrials and Transfers::

13.—(1) Where following a trial an order is made for a retrial and the same litigator acts for the assisted person at both trials the fee payable to that litigator is—

(a) in respect of the first trial, a fee calculated in accordance with the provisions of this Schedule; and

(b) in respect of the retrial, 25% of the fee, as appropriate to the circumstances of the retrial, in accordance with the provisions of this Schedule.

8. In respectful agreement with decisions of other Costs Judges in R v Kandola SCCO Ref 13/16 and R v Bhandari SCCO Ref 38/15 it seems clear that for a separate fee to be payable there would need to be fresh proceedings under a fresh indictment. In that event there could be a new case for the purposes of assessing the fees.

9. The Appellants referred me to the decision of Master Campbell in R v Sharif (SCCO ref 168/13) to support the submission that payment for two trials could be made

because, (as I understood it) the first indictment was quashed and the second trial proceeded upon a fresh indictment.

10. I understand that another defendant at the first trial (Habibur Rahman) was no longer named as a defendant at the second trial. He had been charged with Attempted Murder and a section 18 offence; the jury in January/February 2019 had found him not guilty of Attempted Murder and the Prosecution had decided to offer no evidence in respect of the section 18 charge. In September 2019, Habibur Rahman was no longer named on the relevant counts (first and second charge). Mr. Cassidy said that these were formerly joint charges, which the Defendant now faced alone. In addition, in respect of the third count (Conspiracy to commit violent disorder) this was altered as two of the six Defendants to that count had been found not guilty at the first trial. Thus the number of Defendants to the third count was reduced at the second trial. I was also told that at the second trial, fresh evidence was relied upon by the Prosecution, being testimony by a witness who had not previously given evidence. This witness' testimony was said to identify the Defendant and its production at the second trial gave rise to the need to consider further material including that of telephone evidence.

11. The Court Log contains an entry at 14.53 on 5 September 2019 in which it is noted that there was discussion on the trial indictment, and that there was no need for the Defendants to plead not guilty to Count 3. Mr. Cassidy tells me that Prosecution Counsel remembers that the trial judge ordered deletion of the original counts against the initial co-Defendant Habibur Rahman and the Defendant, of Attempted Murder and the Section 18 offence, and that a fresh indictment was then preferred. In other words (per the Appellants) the principal joint counts of Attempted Murder and Section 18 against this Defendant and Habibur Rahman were "deleted" and then a fresh indictment alleging singular counts (of Attempted Murder and Section 18) against the Defendant was preferred, alongside the edited count of Conspiracy to cause violent disorder, against all Defendants.

12. It seems to me clear nevertheless that there was only case against this Defendant. The charges against him remained unchanged. I accept that the case overall may have changed substantially, but I have to deal with the charges against this Defendant. Those charges remained the same and as I understand it (whatever the precise words counsel may recollect as having been used) to the extent that there were any changes to the indictment, they amounted in effect to amendments to deal with the jury decision in the first trial, and with the decision not proceed against the co-Defendant Habibur Rahman on a Section 18 charge. Thus, the charges were in effect deleted as against another defendant.

13. That the case against this Defendant remained effectively the same, is evidenced from the fact that there was no need for any of the Defendants to plead to any of the counts. I am not satisfied that there was any formal quashing of the first indictment (nor any stay of that indictment). If there were technically a freshly preferred indictment (and significantly to my mind the Court Log does not so confirm) it would seem to me substantially a matter of 'house-keeping'. In any event, I do not accept that the nature of the amendments in this case or any changes that occurred, were such as to render this a new case after the changes for the purposes of the Regulations.

14. There is to my mind a substantial difference between the circumstances in *R v Sharif* 168/13 and this case. In that case, the original indictment alleged a Conspiracy to Defraud as between the Defendants, who were husband and wife. By count 2, Fraud by false representation was alleged against the wife alone. Count 1 was ineffective as a matter of law, as it had alleged Conspiracy between husband and wife. In respect of count 2, no evidence was offered. The original indictment was thus quashed and the Defendants were then arraigned on a new indictment which contained one count of Fraud by false representation against both Mr and Mrs Sharif. This was, on these facts, a new case and to my mind quite distinct from the facts here. In the circumstances I do not think that this decision assists the Appellants.

15. I do not doubt that the case changed significantly from the date of the original trial to the re-trial, but that is a matter which I would assume to be frequently the case. Such changes seem to me wholly consistent with there having been a re-trial. Moreover it is to be noted that the scheme permits the assessment of the fee on the basis of the case as it had become, subject to a reduction in respect of the earlier trial.

16. In my judgment therefore, the Determining Officer was correct to reject the contention of the Appellant, and this appeal fails.

TO: Walkers Solicitors,  
574 Bacup Road,  
Waterfoot,  
Rossendale,  
Lancashire BB4 7HB

COPIES TO: Carmel Curran,  
Legal Aid Agency,  
DX 10035  
Nottingham

**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.